

Legal Politics in Indonesia: Ensuring Legal Certainty and Substantive Justice within a Democratic Rule of Law

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Abstract

Legal politics constitutes a fundamental policy framework that determines the direction of lawmaking, implementation, and enforcement within a democratic rule of law. In Indonesia, achieving a balance between legal certainty and substantive justice remains a persistent challenge due to overlapping regulations, inconsistent law enforcement, and the influence of political interests on legislative processes. This study aims to analyze the role of legal politics in ensuring legal certainty and substantive justice while identifying the principal obstacles affecting its implementation in Indonesia. A normative legal research approach was employed using qualitative analysis of constitutional provisions, statutory regulations, legal doctrines, and relevant scholarly literature. The analysis demonstrates that legal politics serves as the primary instrument for aligning legislation with constitutional values embodied in Pancasila and the 1945 Constitution. Effective legal politics contributes to legal certainty by promoting coherent, transparent, and consistent legislation, while simultaneously supporting substantive justice through the protection of human rights, equal access to justice, and non-discriminatory law enforcement. Nevertheless, the findings reveal that regulatory disharmony, political intervention, institutional inconsistency, and limited public participation continue to undermine the realization of these objectives. The study concludes that strengthening legislative planning, enhancing regulatory harmonization, safeguarding judicial independence, improving law enforcement integrity, and expanding meaningful public participation are essential to developing a legal system that combines predictability with fairness. Such reforms are necessary to reinforce democratic governance, uphold the rule of law, and ensure that legal development in Indonesia remains responsive to constitutional principles and the evolving needs of society.

1. Introduction

When talking about the rule of law, it will always be closely related to the concept of democracy, which is a system of government from, by, and for the people. Indonesia is one of the countries that also adheres to the principles of democracy. With the existence of democratic principles, it means that the highest sovereignty lies with the people. The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) is one of the written legal bases that guarantees the implementation of democracy in Indonesia. Article 1 paragraph (2) of the 1945 Constitution states that "Sovereignty is in the hands of the people and is exercised in accordance with the Constitution."

As a country based on the rule of law, Indonesia also divides state power into several branches, namely the legislative, executive, and judicial branches. The state institutions that are part of the legislative branch are the People's Consultative Assembly (MPR), the House of Representatives (DPR), and the Regional Representative Council (DPD). Meanwhile, the state institutions that are the executors of the judicial branch are the Supreme Court (MA) and the Constitutional Court (MK). Meanwhile, the executive branch is exercised by the Presidency and the government apparatus down to the lowest level. The three branches of government above are complemented by the Supreme Audit Agency (BPK) and the Judicial Commission (KY),

each of which has its own authority as stipulated in laws and regulations.

The Republic of Indonesia is a constitutional state (*rechtsstaat*), as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The logical consequence of this statement is that all aspects of social, national, and state life must be based on law, not on power alone (*machtsstaat*). In a state based on the rule of law, the main purpose of establishing laws is to create order, legal certainty, and justice for all people.

However, law does not grow and develop in a vacuum. Law is formed through a political process, in which the basic policies of the state determine the direction, form, and content of legislation. Legal politics, as the state's basic policy in the field of law, plays a crucial role as a blueprint or framework that directs how laws are formed, amended, and enforced.

There is often tension between legal certainty (rigid written law) and legal justice (a dynamic sense of justice in society). Legal politics plays a role in balancing the two. If legal politics is too dominant towards extreme positivism, certainty may be achieved, but substantive justice is often neglected. Conversely, without clear legal politics, law formation will lose direction, resulting in legal uncertainty.

In the life of a nation and state, law serves to regulate social relations, protect the rights of citizens, and create order and public welfare. However, these objectives of law cannot be achieved automatically without consistent and effective legal policies. Legal politics is an instrument that bridges the ideal values of law with the social and political realities of the state.

Law is essentially formulated to create order, certainty, and justice in social, national, and state life. However, in practice, law never stands alone as a neutral norm, but is always influenced by the direction of state policy known as legal policy. Legal policy reflects the choices of values, objectives, and interests that the state seeks to realize through the formulation and implementation of law. Therefore, the quality of a country's legal

system is largely determined by how legal politics are formulated and implemented.

In the context of a constitutional state, legal certainty and justice are two fundamental principles that must go hand in hand. Legal certainty requires clear, firm, consistent, and predictable rules so that the public has guaranteed protection of their rights and obligations. Meanwhile, legal justice emphasizes that the law should not only be applied formally, but must also take into account moral values, the public's sense of justice, and developing social conditions. An imbalance between certainty and justice often causes problems, such as rigid, discriminatory law enforcement, or even deviation from the goal of protecting the public.

This is where legal politics plays an important role. Legal politics determines the direction of legislation, law enforcement priorities, and legal institutional reform. If legal politics is oriented towards the public interest, the protection of human rights, and democratic principles, then the resulting laws tend to provide certainty and justice. Conversely, if legal politics is dominated by the interests of certain powers or groups, the law has the potential to become a tool of legitimization that ignores the sense of justice of the people.

In Indonesia, the dynamics of legal politics are greatly influenced by changes in the system of government, the development of democracy, and the demands of globalization. Ongoing legal reforms demonstrate the state's efforts to improve the quality of legislation and the law enforcement system. However, various problems still frequently arise, such as overlapping regulations, inconsistent legal policies, weak law enforcement, and unequal access to justice. These conditions show that the role of legal politics has not been fully optimized in ensuring legal certainty and justice.

Based on this description, it is important to examine more deeply how legal politics plays a role in shaping a legal system that is not only normatively certain but also substantively fair. This understanding is necessary so that future legal policy directions can realize laws that are responsive to the needs of society, uphold

justice, and provide legal certainty that can be trusted by all citizens.

Based on the above background description, the author formulates several problems: What is meant by legal politics? How does legal politics play a role in ensuring legal certainty? How does legal politics contribute to the achievement of legal justice? What are the obstacles faced in the implementation of legal politics in Indonesia? Therefore, this scientific paper aims to analyze: The concept and scope of legal politics, the role of legal politics in ensuring legal certainty and justice, obstacles to the implementation of legal politics, and strategic efforts to optimize the role of legal politics.

2. Literature Review

Studies on legal politics, legal certainty, and justice have been widely discussed by Indonesian legal scholars, particularly in the context of law formation and enforcement. Conceptually, legal politics is understood as the state's basic policy in determining the direction, form, and content of the laws that will be formed and enforced. Mahfud MD emphasizes that legal politics is the state's official choice regarding which laws will or will not be enforced to achieve national objectives. This view places law not as a neutral instrument, but as a product of political decisions that reflect the values, interests, and ideology of the state.

In the perspective of the rule of law (*rechtsstaat*), Asshiddiqie emphasizes that the formation of law must be based on the constitution, particularly the 1945 Constitution as the highest source of law. He asserts that the principle of the rule of law requires legal certainty, protection of human rights, and limitation of power through checks and balances mechanisms. In line with this, the 1945 Constitution (Republic of Indonesia, 1945) serves as the constitutional basis for the direction of national legal policy, particularly in guaranteeing the supremacy of law and justice.

Legal certainty in the context of legal politics is further discussed by Andrianto (2020), who emphasizes that legal certainty can only be achieved if the process of forming

legislation is carried out in a systematic, consistent, and non-overlapping manner. He criticizes legislative practices in Indonesia, which are often influenced by short-term political interests, resulting in legal uncertainty. This finding is reinforced by Abdillah (2020), whose study on the formation of legislation shows that weak legislative planning and the dominance of political interests often hinder the achievement of legal certainty.

In addition to legal certainty, the aspect of justice is also a major concern in the study of legal politics. Rahardjo views law as an instrument of social change, so that law not only serves to maintain order, but must also be responsive to the needs and sense of justice of the community. In a similar perspective, Rahmanto (2025) emphasizes that the relationship between legal politics, moral values, and legal certainty must always be oriented towards the principle of justice, not merely formal certainty.

In the context of law enforcement, Soekanto identifies various factors that influence the effectiveness of law, including the quality of regulations, the integrity of law enforcement officials, facilities and infrastructure, and the legal culture of society. This shows that the success of legal politics does not only depend on legislative products, but also on their implementation in the field. Ningsih, Suprihatno, and Rosidin (2024) emphasize that legal policy in Indonesia's law enforcement system still faces challenges in the form of political intervention, inconsistent law enforcement, and unequal access to justice.

From the perspective of legal protection and human rights, Hadjon emphasizes the importance of legal protection for the people as the core of a state based on the rule of law. This view is in line with Law Number 39 of 1999 concerning Human Rights, which affirms the state's obligation to guarantee, protect, and uphold human rights. In addition, Law Number 48 of 2009 concerning Judicial Authority emphasizes the importance of judicial independence as a prerequisite for achieving substantive justice.

In terms of lawmaking, Law No. 12 of

2011 provides guidelines on the hierarchy of regulations, the principles of good lawmaking, and a more structured legislative mechanism. However, various studies show that the implementation of this law still faces challenges in the form of regulatory disharmony and weak coordination between institutions. On the other hand, Law Number 16 of 2011 concerning Legal Aid demonstrates the state's efforts to improve access to justice, although in practice there are still obstacles related to limited resources and socialization.

Overall, the literature shows that legal politics has a strategic role in determining the quality of the legal system, both in terms of certainty and justice. However, the main challenge lies in how to align political interests with the principles of the rule of law, guarantee the independence of law enforcement, and ensure that the law truly functions as an instrument of justice for all levels of society.

3. Research Methods

The method used in compiling this paper is a normative approach. According to Achmad Ali, this jurisprudential or normative legal study approach focuses its study by viewing law as a complete system that encompasses a set of legal principles, legal norms, and legal rules (both written and unwritten). Normative writing can be understood as research to test applicable norms and provisions. It can also be described as writing that is done by researching library materials or secondary data. Because this research focuses on library materials, normative research is often referred to as doctrinal research or library research. This research will examine the role of political law in the formation of legislation in Indonesia.

The writing style used is descriptive and analytical, analyzing and presenting facts systematically so that they are easier to understand and conclude,¹⁵ in relation to the issues. Descriptive means describing legal rules, systematically and accurately depicting the formation of law in Indonesia.

4. Results and Discussion

4.1. Results

4.1.1. Review of Legal Politics in Indonesia

Legal politics in Indonesia has its own characteristics because it is influenced by national history, Pancasila values, and political consensus. Indonesian legal politics is rooted in efforts to realize the national legal ideals as stated in the Preamble to the 1945 Constitution and Article 1 paragraph (3) of the 1945 Constitution, which states that Indonesia is a constitutional state (*rechtsstaat*). Legal policy in Indonesia involves the legislative, executive, and judicial branches in the formulation and implementation of legislation.

Legal policy is the state's basic policy in the field of law that reflects the direction, form, and content of the laws that will be formulated, applied, and enforced. Legal policy shows that laws are not born neutrally but are the result of a political process influenced by state ideology, the system of government, and the social dynamics of society.

In Indonesia, legal politics is based on Pancasila and the 1945 Constitution as the source of values and direction for the formation of national law. Thus, the laws that are developed should reflect the values of social justice, humanity, democracy, and respect for human rights.

The Development of Legal Politics in Indonesia. The Old Order Period During this period, legal politics was greatly influenced by the spirit of revolution and state ideology. The law was often used as a tool to support political stability and state power. Many legal products were centralistic in nature and did not provide much room for public participation.

The New Order Period. Legal politics during the New Order era was oriented towards national stability and economic development. The law tended to be used as a tool of power (law as a tool of social engineering by those in power). Legal certainty was emphasized in the sense of maintaining order, but substantive justice and human rights were often neglected.

Many laws were revised or created to strengthen legal institutions, such as the Constitutional Court, the Judicial Commission,

and the strengthening of the role of the community in the legislative process.

Foundations of Indonesian Legal Policy National legal policy is based on several main foundations:

a. Philosophical Foundation

Pancasila as the foundation of the state is the source of values in the formation of law, especially the values of social justice and humanity.

b. Constitutional Foundation

The 1945 Constitution is the main guideline in the formation of legislation, especially the principle of the rule of law (Article 1 paragraph 3).

c. Sociological Foundation

Laws must be in accordance with the needs and developments of Indonesia's diverse society.

d. Juridical Foundation

Every law must follow the hierarchy of legislation in accordance with the national legal system.

4.1.2. Legal Policy and Legal Certainty

Legal policy is the direction of a country's basic policy in forming and implementing laws. Meanwhile, legal certainty is a situation in which laws can be clearly understood, are not open to multiple interpretations, are consistent, and can be enforced fairly. In this context, legal policy plays a central role in determining whether a legal system is capable of providing certainty or instead creates uncertainty. Good legal policy will result in legislation that is: Clearly and systematically formulated

Not contradictory, Has objectives that are in line with the interests of society Conversely, legal policy that is unfocused or laden with power interests has the potential to give rise to overlapping, volatile, and difficult-to-implement regulations, thereby reducing legal certainty.

Legal Politics in the Formation of Legislation The results of the study show that the legislative process in Indonesia is greatly influenced by the developing political configuration. In some cases, the formation of laws is driven more by short-term political

needs than long-term legal needs. This has an impact on: The emergence of regulations that are frequently revised in a short period of time, Inconsistency between regulations, Uncertainty in implementation in the field

These conditions indicate that unstable legal policy directions can weaken legal certainty, as the public and law enforcement officials face difficulties in interpreting and applying the rules.

The Impact of Legal Politics on Legal Certainty in Society Weak legal certainty has a broad impact, including: Declining public trust in the law, Increased social conflict due to unclear rules, Hampered economic activity and investment, Weak protection of the rights of small communities. Conversely, when legal politics is directed towards regulatory harmonization, transparency, and justice, legal certainty will increase and create social and economic stability.

It can be concluded that legal politics has a very strategic role in realizing legal certainty. When legal politics is directed towards the public interest, transparency, and the rule of law, legal certainty will be easier to achieve. However, if legal policy is still influenced by power interests and weak law enforcement integrity, legal certainty will be difficult to achieve evenly.

4.1.3. Legal Policy and Legal Justice

Legal policy plays a role in achieving legal justice through:

- a. Protection of Human Rights: Policies that place human rights as a basic principle of law.
- b. Access to Justice: Policies that guarantee public access to courts, legal aid, and dispute resolution.
- c. Non-Discriminatory Treatment: A legal system that avoids discrimination based on ethnicity, religion, social status, or economic class.

Legal policy is the basic policy of the state in determining the direction of the formation, application, and enforcement of law. In the context of legal justice, legal policy plays an important role because it determines the values

to be realized through the legal system. Law is not only understood as a set of written rules, but as an instrument to achieve social justice for the whole community.

Legal justice itself does not only mean the equal application of the law, but also takes into account aspects of substantive justice, namely the protection of vulnerable groups, the balance of rights and obligations, and respect for human rights. Therefore, good legal policy must be oriented towards the public interest and the values of justice that exist in society.

In Indonesia, legal policy based on Pancasila and the 1945 Constitution should encourage the realization of fair and humane laws. However, in practice, there are still challenges such as the influence of political interests in the formation of laws, unequal access to justice, and inconsistent law enforcement. This situation shows that the direction of legal policy greatly determines whether the law truly becomes a means of justice or merely an instrument of power.

Thus, it can be understood that legal policy has a strategic role in shaping a legal system that is not only normatively certain but also substantively fair. A democratic, transparent legal policy that favors the interests of society is the main key to realizing real legal justice.

4.1.4. Obstacles to the Implementation of Legal Policy in Indonesia

The implementation of legal policy in Indonesia still faces various obstacles that affect the effectiveness of the law in realizing certainty and justice. One of the main obstacles is the strong influence of political interests in the process of forming legislation. It is not uncommon for regulations to be formed based on short-term power compromises, thus failing to pay attention to the broader legal needs of society.

In addition, there is overlap and disharmony between central and regional regulations, as well as between sectors. The large number of unsynchronized regulations causes confusion in the application of the law and reduces legal certainty. This condition

shows that the direction of legal policy has not been fully accompanied by systematic and integrated legislative planning.

Another obstacle is the weak consistency of law enforcement. Even though regulations have been established, their implementation often varies in the field due to factors such as the integrity of officials, power interventions, and a legal culture that does not fully support the rule of law. As a result, the law becomes unpredictable and the public's sense of justice is not fulfilled.

In addition, limited access to justice, especially for the poor, is also a serious obstacle. Complex legal processes, high costs, and a lack of legal understanding prevent some people from receiving maximum legal protection.

Thus, the obstacles to the implementation of legal policy in Indonesia are not only normative, but also structural and cultural. Future improvements require strong political commitment, regulatory harmonization, strengthening the integrity of law enforcement, and increasing public legal awareness so that legal policy can truly realize a fair and effective legal system.

5. Conclusion and Recommendations

5.1. Conclusion

Based on the discussion of the role of legal politics in ensuring legal certainty and justice, it can be concluded that legal politics has a very strategic position in determining the direction of the formation, application, and enforcement of law in Indonesia. Legal politics is the basis for state policy in choosing the values to be realized through the legal system, so that the law does not stand neutral, but reflects the social, political, and moral goals of the nation.

The role of legal politics is clearly seen in efforts to achieve legal certainty, namely through the formulation of clear, consistent, and non-overlapping legislation. However, legal certainty is not enough if it is not accompanied by legal justice. Therefore, legal policy must also be oriented towards substantive justice, namely laws that are able to protect the rights of the people, especially vulnerable groups, and uphold the values of humanity and human

rights.

In practice, the implementation of legal politics in Indonesia still faces various obstacles, such as the influence of political interests in legislation, regulatory disharmony, and weak consistency in law enforcement. These conditions show that the direction of legal politics has not been fully able to guarantee legal certainty and justice evenly. Therefore, continuous improvement is needed so that legal policy can truly become a means to realize a legal system that is fair, certain, and in the interests of the wider community.

5.2. Recommendations

- a. Strengthening Legislative Planning: The government and the House of Representatives need to strengthen the planning of legislation so that there is no overlap or inconsistency in legal norms.
- b. Maintaining the Independence of Law Enforcement, Legal policy must be directed at ensuring the independence of law enforcement agencies so that law enforcement is objective, consistent, and free from the intervention of power.
- c. Increasing Public Participation, The law-making process needs to be more transparent and participatory so that the resulting regulations truly reflect the needs and sense of justice of the community.
- d. Harmonizing Central and Regional Regulations: Better coordination between the central and regional governments is needed in the formulation of regulations to create national legal harmony.
- e. Improving Access to Justice: The state needs to expand legal aid and simplify legal procedures so that the poor can experience legal certainty and justice in a tangible way.

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