

JUSTICE AND LEGAL CERTAINTY AS A MANIFESTATION IN THE CONTEXT OF CONSTITUTIONAL LAW

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Abstract

This journal aims to explore and analyze the relationship between justice and legal certainty in Indonesian constitutional law. Using normative juridical methods, this study identifies the challenges faced in realizing both concepts amidst complex social and political dynamics. The problem that arises in this study is about the relationship between justice and legal certainty in the constitutional law system and the challenges faced in realizing justice and legal certainty in Indonesia. The results of the study indicate that community involvement in the legal process and institutional strengthening are key factors in achieving equitable justice. In addition, this study emphasizes the need for more effective legal aid programs and active citizen participation in legal decision-making. These findings are expected to provide valuable insights for the development of more inclusive and equitable legal policies in Indonesia, as well as encourage the creation of a more democratic society.

Keywords: Justice, Certainty, Law, Order, State

I. INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states, "The Republic of Indonesia is a state based on law."¹ This concept emphasizes the importance of law as a foundation for the implementation of honest and clean governance. This article also has the meaning that all aspects of national, social, and state life are based on law. Law is the entirety of regulations or legal norms that can regulate relations between humans in social life. This article is also one of the sources of the basis for law enforcement in Indonesia. The 1945 Constitution of the Republic of Indonesia in Article 27 paragraph (1) emphasizes that every individual has the right to be treated

equally before the law, this is what shows the importance of the principle of equality before the law in the Indonesian legal system.² The definition of Legal Justice is a fundamental concept in the legal system, which refers to the application of the law fairly and equally to all individuals. This means that everyone, regardless of social status, race, religion, or other background, has the right to receive equal treatment before the law.

Legal justice in the context of constitutional law is a concept that refers to the application of law fairly and equally in regulating the relationship between the state and its citizens. This involves how the state exercises its power, makes policies, and makes decisions that impact the entire society.

¹Article 1 paragraph (3) of the 1945 Law of the Unitary State of the Republic of Indonesia

²The 1945 Constitution of the Republic of Indonesia in Article 27 verse (1)

Thus, the power structure in the Indonesian state system is currently divided into three institutions of power, where each institution has an equal position in the level of government in Indonesia, namely with the principle of checks and balances which is the flow of supervision and control of the three institutions in exercising their power.

The difference between interpretations of justice becomes a problem that is often faced, especially when various legal regulations are blunt in cutting off the authority of constitutional law which can fail to present itself as a proper problem solver. Realizing justice in the legal system is a complex process and requires quite a long time because this process is often influenced by various competing forces within the framework of the political order to realize it.³

The Main Element of Legal Justice in Constitutional Law, which is legal certainty, Legal certainty refers to the implementation of clear, permanent, consistent, and consequent laws whose implementation cannot be influenced by subjective circumstances. This certainty of justice is not merely a moral demand, but rather factually

characterizes the law. A law that is uncertain and unwilling to be fair is not merely bad.⁴

Legal certainty in the context of constitutional law is a situation in which the laws in force in a country provide certainty and clarity for every citizen regarding their rights and obligations. In other words, every individual can know the applicable rules and the legal consequences if the rules are violated. Constitutional law is an integral part of a country's legal system that regulates the structure, function, and relationship between state institutions and the relationship between the state and its citizens.

Constitutional law comes from three separate syllables, namely "law", "data" and "state". According to experts, constitutional law is according to Christian Van Vallenhoven (1934): "Constitutional law regulates all superior legal communities and subordinate legal communities according to their levels, each of which determines the territory or environment of its people and determines the bodies within the legal community concerned along with their respective functions and also determines the composition and authority of the bodies in question".⁵This states that constitutional law provides legal certainty where all the rules have been determined individually based on the community

³ Luh Yossi Shuartini Milenia, "The Role of Constitutional Law (Case Study of General Elections in Indonesia)," *Journal of Communication Media* 3, no. 2 (2020): 66, <https://ejournal2.undiksha.ac.id/index.php/JMPPPKn/article/view/433.thing>; 2

⁴Cst Kansil, Christine ST Kansil, and Engelin R, Palandeng and Gottlieb N Mamait, *Dictionary of Legal Terms*, Jakarta: Pustaka Yustisia, 2009, p: 385

⁵Ibn Sam Widodo, Mohammad Hidayat Muhtar, et al., *Constitutional Law*, PT Sada Kurnia Pustaka, 2023, p. 4

environment. Justice and legal certainty are two concepts that are closely related to constitutional law. Both are important pillars for the creation of a good and democratic country. To achieve a balance between the two, continuous efforts are needed from all parties, including the government, the judiciary, and the community.

This journal aims to explore and analyze the concepts of justice and legal certainty in the context of constitutional law. In an era of increasingly complex democracy, it is important to understand how these two concepts are interrelated and contribute to the creation of a good and democratic state. Overall, this journal also seeks to provide in-depth insights into how justice and legal certainty can be integrated into legal practice to support the creation of a just and democratic society.

In line with the title and discussion that will be reviewed in this study, this study was conducted using the normative legal method (normative legal research method). The normative legal research method is library legal research conducted by examining library materials or secondary data alone.⁶ The formulation of the problem that arises in this study is about the relationship between justice and legal certainty in the constitutional legal system and what challenges are faced in

realizing justice and legal certainty in Indonesia.

II. RESEARCH METHODS

This research is analytical and prescriptive, using normative legal methods,⁷ Which refers to the legal norms contained in the regulations, namely the 1945 Constitution, Law Number 12 of 2012, and other related regulations. This study uses the type of legislative approach, and the concept approach, the type of data used is secondary data.⁸ The theory used is the Theory of democracy based on law according to John Locke a democratic state is a means to achieve legal agreement and protect human rights, which synthesizes with the Theory of Legal Positivism put forward by Hanskelsen. Data collection is carried out through literature document studies, namely the collection of document data, literature, and studying regulatory provisions related to the problems to be answered. All data that has been obtained through literature research is then sorted to obtain various articles of legal rules that regulate and then systematized to produce a classification that is in line with the research problems. The data that has been obtained is analyzed deductively and qualitatively to conclude so that the main

⁶Soerjono Soekanto and Sri Mahmudji, Normative Legal Research, A Brief Review, Jakarta: Raja Grafindo Persada, 2003, p. 13

⁷Soekanto, Soerjono, and Sri Mamuji, Normative Legal Research. Jakarta: Raja Grafindo Persada, 2004, p. 10.

⁸Sunggono, Bambang, Legal Research (An Introduction). Jakarta: Raja Grafindo Persada, . 2002, pp. 194-195.

problems studied in the research can be answered.⁹

III. RESEARCH RESULTS AND DISCUSSION

Engaging the public in the Indonesian legal system through various forums for deliberation and participation in decision-making is essential. The government and the public have worked together to produce a more inclusive approach to creating and implementing legal policies. To bridge the gap between theoretical and practical aspects, implementation in the field still needs improvement. A more just and efficient legal system requires institutional strengthening, more effective legal aid programs, and a system for preventing human rights violations. Justice and legal certainty that are evenly distributed throughout Indonesian society can be achieved through cooperation between government institutions, civil society organizations, and active citizen participation.

However, we can assume that two main factors influence law enforcement officers in enforcing the law, namely internal and external factors. Internal factors, which come from law enforcers themselves, include their tendency to focus solely on the law and ignore community values. External factors, which come from law enforcers themselves, The common people will lose trust in the law, especially law enforcers, because of the fact of law enforcement like this. Be aware that

justice seekers, who consist of small communities, often feel frustrated.¹⁰

3.1 Implementation of Justice in Constitutional Law

In Indonesian constitutional law, the implementation of justice focuses on the formation, implementation, and enforcement of laws based on humanity and social justice. The law regulates social interactions to provide comfort and security and address social disparities through fair and inclusive regulations. Social justice is the standard for assessing what is right and wrong in society. A transparent and accountable judicial process is part of fair law enforcement. This shows that before the law everyone has equal rights and is not discriminated against. The courts must be independent and not influenced by politics or external resources.

The term "justice" originates from the root word "fair" which in the Indonesian dictionary means equal weight, not biased, not taking sides.¹¹ Justice is the broadest feeling in the order of human relations based on generally applied principles.¹² In general, justice can be defined as a condition where there is equal treatment before the law, equal rights to compensation, the right to live

¹⁰Budi Rizki Husin, Study of Law Enforcement Institutions, Bandar Lampung: Heros Fc, 2020, page: 14

¹¹Department of National Education, Great Dictionary of the Indonesian Language, Language Center, Fourth Edition, Jakarta: PT Gramedia Pustaka Utama, 2008, p.: 10

¹²Morris Ginsberg, Justice in Society, Solo: Pondok Edukasi, 2003, page: 41

⁹Ibid, p. 196.

decently, the right to enjoy development, and no party is harmed and there is balance in every aspect of life.¹³

Article 27 paragraph 1 of the 1945 Constitution of the Republic of Indonesia states, "All citizens have equal status before the law and government and are obliged to uphold the law and government without exception."¹⁴ All Indonesian citizens have the right to equality before the law. This means that in the eyes of the law and government, everyone has the same rights and obligations. In addition, this shows the principle of justice and non-discrimination in the application of the law, and Article 28 D paragraph (1) of the 1945 Constitution reads as follows "Everyone has the right to recognition, guarantees, protection, and certainty of fair law and equal treatment before the law."¹⁵ In short, this article states that everyone has the basic right to:

1. Legal recognition: A person is recognized with inherent rights by law.
2. Legal guarantees: A person is protected from these rights through legal mechanisms.
3. Legal protection: A person is free from violation of rights by others.

¹³Center for Islamic Economic Research and Development (Yogyakarta), Islamic Economics or the Center for Islamic Economic Research and Development, Islamic University of Indonesia Yogyakarta, Jakarta: Raja Grafindo Persada, 2008, page: 59

¹⁴The 1945 Constitution of the Republic of Indonesia in Article 27 paragraph (1)

¹⁵The 1945 Constitution of the Unitary State of the Republic of Indonesia in Article 28 D paragraph (1)

4. Fair legal certainty: The law must be enforced, transparently, and fairly.
5. Equal treatment: Everyone is treated equally before the law. This article strengthens human rights in the Indonesian constitutional state and adheres to the principle of the supremacy of law.

Everyone has a responsibility to ensure that justice is accessible throughout society. We can help build a more inclusive and just justice system by implementing effective legal aid and legal representation programs. This is not just about providing legal services but also empowering people to protect their rights and achieve real justice. Justice must be guaranteed for everyone, including vulnerable groups such as women, children, and the poor. To guarantee the rights of everyone, there are legal aid and legal representation programs.

In constitutional law, justice also means that the community must be involved in the policy-making and decision-making process. So that the policies made meet the needs and interests of the people, the community must be allowed to voice their opinions and aspirations. To create a welfare state with social justice, collaboration between the government and the community is very important. The government, as a state institution responsible for regulating social welfare policies and programs, can work together with the community in implementing these programs. By working together, the community will feel more involved and feel

more responsible for these programs. One of the government's efforts is to provide space and opportunities for the community to participate in the planning and implementation process of social welfare programs. For example, through village or sub-district deliberation forum activities, the community can provide input and suggestions to the government regarding their needs and expectations for the social welfare programs that will be implemented.¹⁶

In the Indonesian Constitutional Law, the judicial power system recognizes that the judiciary has its power, both in the constitution and in legislation. However, independence is responsible freedom rather than unlimited freedom, which means you can do whatever you like. Thus, the decisions made by the court must be accounted for not only by the law, and society but also by God. Therefore, the independence of the court is limited by the applicable laws and regulations of the country, because the freedom given to them is only the freedom to judge independently and not depend on the power of legal bodies. In carrying out its functions, the court institution is always regulated and supervised by law. Although there are regulations that aim to guarantee and strengthen the independence of the court

institution, it cannot be denied that these regulations also allow other parties to intervene in the court institution in terms of organization or administration.

In terms of institutions, regulated in the 1945 Constitution of the Republic of Indonesia in Article 24 paragraph (2) which states that the structure of the Indonesian judiciary consists of the Supreme Court, General Courts, State Administrative Courts, Religious Courts, Military Courts, and the Constitutional Court. The judiciary, including the Supreme Court and courts throughout Indonesia, is responsible for maintaining law and justice. They act as arbiters in legal disputes, protect individual rights, and ensure that all citizens are served equally before the law. The independence of the judiciary is essential to ensure that justice is impartial and that decisions are not influenced by economic or political power. If these three institutions work together well, Indonesia can build a legal system that is fair, transparent, and responsive to the needs of the community. State institutions can create trust and stability in the life of the nation and state by working together and monitoring each other. Government policies protect individual rights and ensure fair access to the law. These institutions must work together to create an environment that supports inclusive and sustainable social justice.

3.2 Protection of human rights and legal certainty

¹⁶ Mochamad Riyanto and Vitalina Kovalenko, "Community Participation Towards a Welfare State: Understanding the Importance of Active Community Roles in Realizing Shared Welfare," *Journal of Indonesian Legal Development* 5, no. 2 (2023): 374–88, <https://doi.org/10.14710/jphi.v5i2.374-388>, page: 381

Protection of human rights and legal certainty are two important components in building a just and democratic society. Both are interrelated and mutually supportive, where legal certainty provides the basis for the protection of human rights, while respect for human rights promotes legal certainty. To ensure that these principles are implemented in everyday life, all parties—government, law enforcement agencies, and civil society—must commit to achieving both.

Legally, Komnas HAM is an independent body in Indonesia that has equal status with other state institutions. One of its functions is to conduct studies, protection, research, education, monitoring, and mediation on issues related to human rights. The Human Rights Law and the Human Rights Court Law are the main pillars in the legal system in Indonesia in resolving cases of human rights violations. The presence of Komnas HAM is a further process in an effort to protect and uphold human rights that have been recognized in the 1945 Constitution.¹⁷

The functions of the Human Rights Committee are covered in various Indonesian laws, Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, which regulates the basic rights

granted to every human being as a creature of God Almighty which must be respected, upheld, and protected by the state, law, government, and every person for the honor and protection of human dignity.¹⁸ This law covers various aspects of human rights, such as the right to life, the right to have a family, the right to continue descendants, and the right to have children. Therefore, Komnas HAM does not seem to have a complete institutional structure. The tasks given to it seem to be carried out partially and not in line with the authority that should be given to it by the objectives given to it.

Legal certainty means legal security, meaning protection for the parties against the arbitrariness of judges. So, legal certainty can be determined by law (written law) in certain concrete matters, for example, buying and selling, collecting and paying taxes, and so on. This legal certainty is to prevent the emergence of arbitrary acts that can be carried out by anyone.¹⁹ According to Utrecht, legal certainty has two meanings, namely first, the existence of regulations that have a general nature to be able to make an individual know what actions are allowed and not allowed to be done. The second meaning is legal security for an individual from government arbitrariness because, with the existence of

¹⁷ Viddy Firmandiaz and Jadmiko Anom Husodo, "Resolution of Serious Human Rights Violations Cases in Indonesia by the National Human Rights Commission Reviewed from Its Authority (Case Study of East Timor)," *Res Publica* 4, no. 1 (2020): 96–100, <https://doi.org/10.20961/respublica.v4i1.45695>. Page: 96-97

¹⁸ Republic of Indonesia Law Number 39 of 1999 concerning Human Rights

¹⁹ Abid Zamzami, "Implementation of the Function of State Administrative Law in Realizing Good Governance," *Jurispruden* 3, no. 2 (2020): 200, <https://doi.org/10.33474/yur.v3i2.6736>. Page: 207

general regulations, individuals can know what can be charged and what can be done by the state to an individual. According to Utrecht, legal certainty has two meanings, namely first, the existence of regulations that have a general nature to be able to make an individual know what actions are allowed and not allowed to be done. The second meaning is legal security for an individual from government arbitrariness because, with the existence of general regulations, individuals can know what can be charged and what can be done by the state to an individual.²⁰

Equality before the law does not only occur in practice, namely when law enforcement agencies apply the law to certain events, but also in concept, namely when the state makes laws and regulations. These principles must be used during the process of formulating and implementing laws. In the process of formulating laws, the principle of equality before the law is ignored. As a result, the law is considered morally flawed and can be annulled by the Constitutional Court. This also applies to its implementation at all levels and law enforcement processes. The principle of equality must be applied in all matters. In any legal matter, the time, cost, and method of handling cases must be the same for everyone. The absence of equality before the law will have an impact on legal certainty and justice. Legal certainty does not only mean

that the law must be applied consistently in every case but also that justice can not only be seen and measured from the verdict or decision made but also from the process itself.²¹

In cases of human rights violations related to legal uncertainty, there are many, especially in Indonesia itself. Legal uncertainty in the enforcement of human rights hinders justice for victims and creates a climate of impunity. Examples of gross human rights violations in Indonesia include various tragic events such as the shooting of Trisakti students in 1998, the murder of Marsinah in 1993, the Tanjung Priok Incident in 1984, and other human rights violation tragedies, such as the May 1998 Riots. Human rights victims experienced sexual harassment, murder, torture, and violence during this period, which hurt various communities and groups in Indonesia. Although some cases have been resolved, there are still problems in ensuring victims receive full justice and preventing human rights violations from recurring.

3.3 Challenges and Solutions in the Context of Future Constitutional Law Studies

There are many challenges in creating justice and legal certainty. The first challenge arises from the many cases of corruption of law enforcement and various levels of

²⁰Legal Certainty Theory According to Experts,<https://www.gramedia.com/literasi/theoretika-kepastian-law/>, accessed on December 7, 2024

²¹Suparman Marzuki, Human Rights Law, Yogyakarta: PUSHAM UII, 2017, page: 18

government hindering the establishment of a fair and transparent legal system. Corruption is an act carried out to obtain some benefits that are contrary to official duties and other truths. Corruption is an act of an official or someone's trust who in violation of the law and full of mistakes uses several benefits for himself or others that are contrary to duties and other truths. This is a major problem that has an impact on many aspects of social life and the progress of the country.

Since many legislators and state officials, both at the central and regional levels, have been involved in corruption cases, their honesty, integrity, and morality are constantly at stake, which ultimately reduces public trust in the government. Since its formation, the KPK has done many things to prevent and combat corruption, such as providing education on corruption in educational institutions, providing training in various institutions, and establishing laws governing gratification and compensation. However, these steps have not achieved the expected goals. This is related to the consideration of the KPK's prosecutorial authority, which has given rise to many opinions, as well as the determination of legal policy in eradicating corruption to build a good and clean government. Corruption is also difficult to eliminate because it is a complex and multi-dimensional problem rooted in the socio-political structure of society. Many ways can be done to eliminate and eradicate this corruption, not only by

accelerating the examination, investigation, and arrest of those who do it but also by strengthening the campaign to improve one's morals.

In legal certainty, the law must be implemented and enforced firmly for every concrete event and there must be no deviation (*fiat justitia et pereat mundus*), namely the law must be enforced even if the sky falls. Legal certainty protects the justiciable from arbitrary actions by other parties, and this is related to efforts to maintain order in society, in fact the problem of the purpose of law can be studied through 3 (three) perspectives, namely:

1. From the perspective of positive normative or dogmatic juridical law, the aim of law is focused on the aspect of legal certainty.
2. From a legal philosophy perspective, the aim of law is focused on the aspect of justice.
3. From a legal sociology perspective, the aim of law is focused on the aspect of utility.²²

Furthermore, Gustav Radbruch stated that there are 3 (three) basic legal values, namely justice, utility, and legal certainty, as the priority principles of the three principles, where the priority always falls on justice, then utility, and finally legal certainty.

²²Zainal Abidin Pakpahan, *Critical Review of Discriminatory Actions as Minor Human Rights Violations*, Medan: PT. Sofmedia, 2015, p. 75

The next challenge that arises is the abuse of power that often occurs in constitutional law. Abuse of power occurs when public officials or government agencies use their authority for the benefit of certain individuals or groups rather than the public interest. These actions often involve decisions that violate democracy and justice, such as corruption, misuse of budgets, or violations of human rights. Abuse of power can damage public trust in government institutions and weaken the legitimacy of those in power. In addition, it has the potential to cause social and political instability and hinder progress.

An effective mechanism to monitor abuse of power requires the active participation of the community and independent institutions that uphold democratic rights as a manifestation of human rights that have their characteristics, with a fairly strong theological side. The statement that human rights are a gift from God Almighty shows that human rights are a gift from God that is then attached to every human being. Where human rights are also the responsibility of every party to maintain and protect them, both the state, law, society, and each individual wherever and whenever. Rights also include civil, political, social, and economic rights to the right to live in a healthy environment.²³ Violation of human rights is tantamount to degrading human dignity from its humanity. Of course, in terms

of recognition, respect, and protection of human rights and the freedom of others must also meet the requirements of morality, public order, and just general welfare in a democratic society.

The law enforcement process often finds elements of "against the law" and "abusing authority" which are accompanied by mentioning the amount of "state losses" as the basis for accusing an official of committing a criminal act of corruption solely based on the perspective of criminal law without considering that when an official carries out his activities, he is subject to and regulated by administrative law norms. It is also often found that the element of "harming state finances" is used as an initial suspicion to accuse an official without first mentioning the form of the violation. A reversed idea. The element of "harming state finances" is the result of a violation of the law in the form of abuse of authority by an official who uses state finances and cannot be categorized as an action that "harms state finances" if the official concerned acts by applicable law.²⁴

IV. CONCLUSION

This study emphasizes that justice and legal certainty are two essential elements in the legal structure of the Indonesian state that are interconnected and inseparable.

²³Ibid., pp. 87-88

²⁴ Bram Mohammad Yasser, "Testing the Elements of Abuse of Authority in State Administrative Courts about Corruption," *Soumatra Law Review* 2, no. 1 (2019): 1, <https://doi.org/10.22216/soumlaw.v2i1.3558>.Page: 3

Comprehensive justice can only be achieved with active community participation in the legal process and improvement of the existing institutional system. Although in reality there are still many challenges that occur such as social injustice and the many corrupt practices that occur, it is important to increase community participation and increase the effectiveness of legal aid. However, the challenges found in the implementation of these two concepts show that there is still a gap between theory and practice. The community often feels marginalized in the legal decision-making process, and often legal institutions do not operate optimally. Therefore, deeper reforms are needed in the legal system and public policy to ensure that justice and legal certainty can be accessed by all levels of society.

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