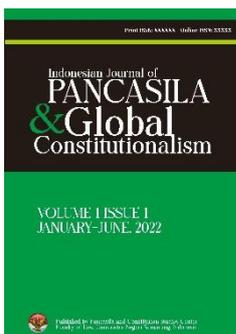


## Legal Injustice in the Perspective of Pancasila: Various Recent Developments in Indonesia<sup>1</sup>

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**ABSTRACT:** Law enforcement in Indonesia has been regulated in the 1945 Constitution paragraph (1) of the 1945 Constitution where everyone is treated equally before the law without any distinction. As stated in the 5th Pancasila precept which reads: "*Justice for all Indonesian people*". But in reality, the implementation of law enforcement in Indonesia is not going well. The law that should act decisively is now the opposite. In Indonesia, the law is used as a tool to act arbitrarily. An official, high-ranking official who has a lot of money will easily avoid legal disturbances even though the person has violated the law. And conversely for people who can not even get a severe punishment. This study aims to analyze the implementation of legal justice in the perspective of Pancasila in Indonesia as a basic framework in the state. This study uses a normative approach and literature study in which the author examines and compares various previous studies related to the topic of justice in the Pancasila perspective, as well as

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<sup>1</sup> This paper is a development of a paper submitted as one of the assignments in the Pancasila Education course at Semarang State University in 2021 with the original title in Bahasa Indonesia "*Ketidakadilan Hukum: Potret Implementasi Keadilan Pancasila di Indonesia*". The author specifically thanks Mr. Ridwan Arifin SH LLM as the Instructor in this course who provided many inputs and suggestions in the development of this paper.

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various related theories. This study finds and emphasizes that legal injustice in Indonesia is caused by the old paradigm of law enforcement officials, who still prioritize aspects of legal certainty and have not used aspects of justice and legal benefits. The legal apparatus associated with the court pays more attention to legal procedures, which they should prioritize existing legal justice.

**KEYWORDS:** Legal Injustice, Justice, Pancasila Justice, Law Enforcement

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## I. INTRODUCTION

Indonesia is currently experiencing a crisis, one of which is a legal crisis. To apply as a state of Indonesian law, of course, it has principles to regulate all behaviors or actions. Indonesia's goal of becoming a country of law is to provide justice for everyone (Indonesian citizens). This legal identity in Indonesia is deeply felt by ordinary people (underprivileged people). But the reality is that in legal cases many are not resolved fairly and the existing articles. Most legal cases are now resolved in a way that is not in accordance with the established

articles.<sup>2</sup> Where law enforcement even takes advantage of its role as an arbitrary judge. As a judge, you should be fair in making a decision. It is not just because of money that judges can treat or discriminate against people in enforcing the law. Punishments that are not worth the mistakes made, and a high sense of socialism towards fellow human beings. And there is a difference in punishment for an official, an upper class and a punishment for the lower class. A person from the lower class gets unfair legal behavior. What should be the law should be applied fairly to all the people is that now the law is only made for toys. Even though Indonesia has Pancasila that is upheld so that justice can be felt by its people.<sup>3</sup>

Justice is a condition that is fair to a nature, deed or treatment of a thing. Discussions about the form and embodiment of justice have started since the development of human philosophical theories. Discussion studies on justice are always related to the distribution of resources qualitatively-quantitatively. The nature of justice itself is that it cannot be fully stated in one statement, because justice is an expressed idea. The perspective of goodness towards justice can be understood from the individual level to the state level. The value of

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<sup>2</sup> Ridlwan, Zulkarnain. "Negara Hukum Indonesia Kebalikan Nachtwachterstaat." *Fiat Justitia: Jurnal Ilmu Hukum* 5.2 (2011); Simamora, Janpatar. "Tafsir Makna Negara Hukum dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Jurnal Dinamika Hukum* 14.3 (2014): 547-561.

<sup>3</sup> Hidayat, Eko. "Perlindungan hak asasi manusia dalam negara hukum indonesia." *ASAS* 8.2 (2016); Arliman, Laurensius. "Mewujudkan Penegakan Hukum Yang Baik Di Negara Hukum Indonesia." *Dialogia Iuridicia: Jurnal Hukum Bisnis dan Investasi* 11.1 (2019): 1-20; Muslih, Muhammad. "Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum)." *Legalitas: Jurnal Hukum* 4.1 (2017): 130-152.

justice is one type of value that is the goal of embodiment of law, so that justice is always related to law.<sup>4</sup>

Even in philosophy, justice is one of the fundamental issues. Justice is a kind of abstract value that is difficult to measure. An understanding of justice can only be obtained by making it the embodiment of law. Fulfillment of justice is one of the functions and roles of law for society. The means of fulfilling justice in society is generally through the criminal justice system. General and individual justice arrangements and the alignment of both are the roles of state law. In addition, spreading the value of justice to all human beings is also one of the missions of religion.<sup>5</sup>

## II. METHODS

From the data used in this writing process, the Author used various correct and valid sources using articles, journals, and books and news on social media that can be accounted for the truth of the news. By

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<sup>4</sup> Blunt, Peter, Mark Turner, and Henrik Lindroth. "Patronage, service delivery, and social justice in Indonesia." *International Journal of Public Administration* 35.3 (2012): 214-220; Bakker, Laurens, and Jaap Timmer. "Justice in Indonesia: The social life of a momentous concept." *The Asia Pacific Journal of Anthropology* 15.4 (2014): 293-301; Murphy-Berman, Virginia, and John J. Berman. "Cross-cultural differences in perceptions of distributive justice: A comparison of Hong Kong and Indonesia." *Journal of Cross-Cultural Psychology* 33.2 (2002): 157-170.

<sup>5</sup> Amin, Subhan. "Keadilan dalam Perspektif Filsafat Hukum Terhadap Masyarakat." *El-Afkar: Jurnal Pemikiran Keislaman dan Tafsir Hadis* 8.1 (2019): 1-10; Dwisvimiar, Inge. "Keadilan dalam perspektif filsafat ilmu hukum." *Jurnal Dinamika Hukum* 11.3 (2011): 522-531; Sugiarto, Totok. "Keadilan Dalam Pandangan Filsafat Hukum." *IUS: Jurnal Ilmiah Fakultas Hukum* 2.1 (2015): 7-14; Sari, Liani. "Hakekat Keadilan dalam Hukum." *Legal Pluralism: Journal of Law Science* 2.2 (2012); Handayani, Handayani, Johannes Satya Pirma, and Kiki Kiki. "Peranan Filsafat Hukum Dalam Mewujudkan Keadilan." *Jurnal Muara Ilmu Sosial, Humaniora, dan Seni* 2.2 (2018): 720-725.

collecting existing data and then reading it, and being selected to get valid information, the Author prepared to compile and rewrite the existing data systematically and as well as possible. This writing method is a literature study, information obtained from various existing sources and then compiled based on information that has been obtained from various sources. The sources obtained and written are expected to be related to each other according to the theme of writing in order to make it easier for readers to read to understand the content of the theme in this writing. And then at the end of this writing will be listed the conclusions of all so that the reader can easily understand, and the author will list some of the sources that are used as references for writing this work.

### **III. FAIR LAW ENFORCEMENT**

According to ethical theory, law is justice. In other words, law according to ethical theory embodies justice for all people. Geny (1861-1959) was a proponent of ethical theory. Justice in general can only be seen in those who get treatment. In general, justice must be felt by all parties, but now in Indonesia justice is very lacking. Justice in Indonesia can now only be felt by the higher-ups, the rich, and the people of the government. For people who are less capable justice is sorely lacking. What is called justice? unequal justice, hanya certain people alone can feel the name of justice. Then what must the incapacitated people do in order to feel justice? Justice in a country can be learned through good rules. The soul of man of that age consists of several parts, namely the part of the mind, part of the feelings, the passions of both psychic and physical and spiritual, the part of the sense of good and evil. So, justice lies in a balanced

boundary between the three parts according to their respective forms.<sup>6</sup>

The main focus of a justice concern is the fate of a society that is very less profitable. The application of justice is what makes the public appraisal of the judges' performance poor. One of the demands for reform is the demand for law enforcement. Meanwhile, in Indonesia, the law is strict to be enforced. Law enforcement does not occur at the execution of the law alone, but at the lawmaking stage. Meanwhile, according to Satjipto Raharjo, he stated that "*law enforcement is defined as a process to realize the wishes of the law, namely the mind of the law-making body that is formulated and established in the rule of law and then becomes a reality.*"<sup>7</sup>

Law enforcement efforts are one of the legal enforcement processes, one of which can run in harmony and legal awareness for the community. People's legal awareness is greatly influenced by the sense of justice that the community feels first. In enforcing the law, you must pay attention to several aspects. Aspects that must be considered are (1) laws and regulations (2) law enforcement officials (police, judges, prosecutors, advocates, and community institutions)

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<sup>6</sup> Sumadi, Ahmad Fadlil. "Hukum dan Keadilan Sosial dalam perspektif hukum ketatanegaraan." *Jurnal Konstitusi* 12.4 (2016): 849-871; Wijaya, Daya Negri. "Montesquieu dan Makna Sebuah Keadilan." *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 1.2 (2017): 79-84; Nasution, Bahder Johan. "Kajian Filosofis Tentang Konsep Keadilan Dari Pemikiran Klasik Sampai Pemikiran Modern." *Yustisia Jurnal Hukum* 3.2 (2014).

<sup>7</sup> Raharjo, Satjipto. *Hukum Progresif, Sebuah Sintesa Hukum Indonesia*. (Yogyakarta: Genta Publishing, 2009). See also Raharjo, Satjipto. *Hukum dan Perilaku*. (Jakarta: PT Kompas Media Nusantara, 2009).

(3) the community (4) infrastructure and infrastructure of law enforcement, and (5) legal culture.<sup>8</sup>

Legal culture is "*the whole factor that determines how the legal system acquires a logical place within the framework of belonging to the general public. Legal culture is not what is roughly public opinion for anthropologists, it is not just a collection of fragments of behavior (thought) that are mutually detached, the term culture is defined as the whole social value associated with law.*" In other words, the legal system includes the legal minds of the community, the legal awareness of the community and the ethics of law enforcers. Public order about the law will be realized if there is authority in the law. Authority in law can be created because it is influenced by the realization of the law, while legal justice is strongly influenced by the sense of justice felt by society. On the other hand, the authority of the law is strongly influenced by law enforcement officials. The main purpose of law enforcement is to realize pasteness, justice and expediency so that welfare is realized for all Indonesian rikat based on the One True Godhead. Gustav Radbruch (1878-1949) said "*justice, expediency and legal certainty as pillars of law.*" All it, you need because to understand and implement the law. The legal stuffing is supposed to be the same as the goal to be achieved. But the matter of legal certainty is not the business of law alone, but rather the business of human behavior itself.<sup>9</sup> Legal issues have been a matter of law since the law was

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<sup>8</sup> Karunia, Ana Aniza. "Penegakan Hukum Tindak Pidana Korupsi di Indonesia Dalam Perspektif Teori Lawrence M. Friedman." *Jurnal Hukum dan Pembangunan Ekonomi* 10.1 (2019): 115-128; Friedman, Lawrence M. *Sistem Hukum: Perspektif Ilmu Sosial*. (Jakarta: Nusamedia, 2019); Friedman, Lawrence M. *The Legal System: A Social Science Perspective*. (London: Russell Sage Foundation, 1975).

<sup>9</sup> Radbruch, Gustav. "Five minutes of legal philosophy (1945)." *Oxford Journal of Legal Studies* 26.1 (2006): 13-15; Radbruch, Gustav. "Law's Image of the Human." *Oxford Journal of Legal Studies* 40.4 (2020): 667-681.

written down until now. In the thousands of years ago or since the prophet Muhammad did, they talk about the law? Certainly not because they talk more about justice. Because justice is very important to society.<sup>10</sup>

#### IV. PROGRESSIVE & REPRENSIVE LAW ENFORCEMENT

Responsive law enforcement can be said to be a "*conditio sine quanon*", if the law still wants to be regarded by the public as a commander in the life of society, nation and state. So, the term law as commander means that the law is at the forefront of being able to respond to values in justice to realize the welfare of its people. The depiction of seeking responsive law has been an ongoing activity of modern legal theory for a long time and until now has not been completed either. As Jerome Frank (1889-1957) points out, the main goal for legal realists is to make the law more responsive to the needs of the legal system.<sup>11</sup> A law that is still responsive still has to be fought for so that it does not conflict with justice and the existing dimensions of human rights. So is the opinion, there is a connection between responsive and progressive law. The law on the one hand coincides with the interests and partiality to the community and on the other hand is more

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<sup>10</sup> Kamali, Mohammad Hashim, and Islamic Texts Society. *Freedom, equality and justice in Islam*. (Cambridge: Islamic Texts Society, 2002); Al Jaafar, MD Tamadur Murshid Salim. "Justice in Islamic Thought and a Theory of Justice by John Rawls A comparative study in renewing the common concepts between Islamic and Western thought." *Journal of Basic Sciences* 1.1 (2021).

<sup>11</sup> Frank, Jerome, and Brian H. Bix. *Law and the modern mind*. (London: Routledge, 2017); Suhardin, Yohanes. "Fenomena Mengabaikan Keadilan dalam Penegakan Hukum." *Mimbar Hukum* 21.2 (2009): 341-354; Alhidayat, Nanang. "Keadilan Yang Terdiskriminasi Dalam Penegakkan Hukum." *Jurnal Cakrawala Ilmiah* 1.4 (2021): 605-612.

courageous for enforcement, especially the law apparatus. In order to realize progressive law enforcement, progressive laws are needed as well.

On this basis, Satjipto Rahardjo emphasized progressive law. The essence of progressive law lies in the progressive thinking and action that liberates from the text of the document, which is essentially the law not for the text of the law but the law to be the happiness and welfare of the people. The philosophical basis of the law is the law for man. With philosophy, man is the determinant and point of legal orientation. The law has a duty to serve man not the other way around. Therefore, law is not an institution can be independent of man-human interests. With the ideology of dedication, legal actors get the main place for legal recovery. Legal actors should prioritize the interests of honesty and sincerity in enforcing the law so that the law can run fairly, and justice can be felt by all parties. Progressive law assumes the law is for man not the other way around. The law is not absolute but is a moral institution. Therefore, the law is an institution that aims to usher in justice and welfare and make people happier. The essence of progressive law is about acting and thinking progressively that liberates from the law but for the welfare of society. Because the welfare of the people is very important for a country. Progressive law is a law that develops progressively for the demands of the development of life.

## V. LEGAL INJUSTICE IN INDONESIA: SOME FACTOR AND CURRENT CASES

### 1) *Low Moral of Law Enforcement*

Many law officials even violate the law itself. It should be as a law enforcement official setting a good example to the community, so that the community can imitate it and they do not violate the existing law. The low moral of law enforcement is caused by the low moral of officials so that officials can do arbitrary things without feeling that they violate the existing rule of law. Officials should set a good example to other communities.

### 2) *Nepotism*

Those who have power or people who have an important role in this country get in and out easily from legal convictions. This is very different from ordinary citizens who can easily be sentenced to the law. Not looking at the fact that he is big or small remains difficult to defend himself and is made difficult by legal officials.

### 3) *People's distrust of the law*

The public's distrust of the law is because the law does not play its proper role and results in the community not believing in the law. The law that should have been implemented properly is now that law officials underestimate human and commit arbitrary acts that violate the law itself.

### 4) *Examples of Cases of Legal injustice*

The case of Asyani's grandmother, Asyani's grandmother lives in Situbondo which is undergoing trial for allegedly stealing 7 logs

belonging to perum Perhutani. According to Asyani's grandmother's statement, the wood was cut down by her late husband 5 years ago. Thek ayu was cut down on their own land not from Perum Perhutani. In this case, it actually has a gaffe, the missing wood is 100 cm in diameter, while the wood in Asyi's grandmother's house is only 10 cm to 15 cm in diameter.

Asyani's grandmother's case was reported in July 2014, and Asyani's grandmother was detained in December 2014. But the case was only heard 3 months later. We should have imagined how Asyani's middle-aged grandmother was imprisoned in the same place. Law enforcement officials should have wisdom towards Asyani's elderly grandmother. Asyani's grandmother had a trial many times in the Situbondo court, very sad about this grandmother's situation. He was put to stand with a case that was not yet clear, but he was treated unfairly in the eyes of the law, he was detained and imprisoned before the trial as if he were like a criminal who had made a grave mistake before the law. The case seemed long and berlalut-laraut was not resolved immediately, adding to the threat of 5 years in prison.

In this case we can conclude that justice in this country is less functioning properly, less providing justice for the people at the bottom. The laws of this country serve for those who have positions and have a lot of money. Those who have a lot of money can play with the law.

##### *5) The Case of Gayus Tambunan*

The case of Gayus who embezzled billions of rupiah worth of money. At the beginning, Gayus's case was suspected by the Center for Financial Transaction Reporting and Analysis (PPATK). He

suspected Gayus because at that time Gayus had an account worth billions of rupiah in a bank. He suspected Gayus because it was possible for a class III A civil servant to have billions of dollars worth of money in a bank, and from that he then reported to the Police headquarters. The National Police Headquarters sent a team of investigators to investigate Gayus' case. On October 7, 2009, Gayus was named as a suspect. Then Gayus was ensnared by 3 layered articles, namely the corruption article, the money laundering article and the embezzlement article. After an investigation and obtaining the results of the prosecutor's investigation, only one can be proven to be a crime, namely embezzlement of uang. It is also not related to the Rp. 25 billion worth of money in Gayus's account at a bank that was fussed about by PPATK and the National Police. He was later sentenced to a light sentence of 1 year in prison. But it wasn't long before Gayus was released on the grounds of the abolition of corruption and money laundering articles. So, Gayus was only charged with embezzlement of money with such a light sentence. But after that, the Investigating Attorney traced Gayus's case, it turned out that the evidence of the case, the documents and the sanctions turned out to be incomplete. Then the research team conducted a re-study of the gayus case. After re-examination, it turned out that he had committed a corruption case, and embezzlement of money, so he was sentenced to 30 years of imprisonment. In the middle of his sentence, he was caught on vacation in Bali using a fake passport, his name and photo were also fake. Then he was arrested by authorities at the airport, and it was revealed how he got out of the detention cell because he bribed the guards sel prisoners. Then the punishment is supplemented. That is how the law in Indonesia can be bribed by people who have money and officials. That is how the law in the country is so unfair to everyone.

## VI. EFFORTS TO ADDRESS LEGAL INJUSTICE

In the further effort, Indonesia being a just country Indonesia must create a new generation, a generation that does not favor its own interests. Instead, it favors the common interest in order to realize a just law. And it should be that the people should have a leader who was really wise there and could take a clear decision. Instead of choosing a leader who is only his looks, his wealth is good, but does not do decisively in solving a masalah that is being faced and looking for a solution or punishment for a person who causes a problem to have consequences that are in accordance with the mistakes that the person made. And sanction all those who make mistakes in accordance with the existing provisions of the Act, do not be indiscriminate whoever he is, and whatever his work is do not discriminate against him. If he has violated the regulations that have been made or have been stipulated, he must also be punished in accordance with the provisions that exist or have been stipulated in the Basic Law. So, by giving strict sanctions to those who have made mistakes and indiscriminately over time the Indonesian state will become a fair country if indeed the existing regulations and those that have been stipulated in the Basic Law are carried out properly indiscriminately. And law enforcement should do justice, don't want it if a justice is bought with the material or wealth it has. Justice remains justice that runs in accordance with existing regulations. If all of this is carried out in accordance with existing regulations and applied strictly, Indonesia will become a country of justice.

Furthermoe, *law, justice and the welfare of the people* are three keys that cannot be separated by a country to realize a just and prosperous society as stated in the Preamble to the 1945 Constitution. The existence of a legal state of the Republic of Indonesia implied in the

preamble to the 1945 Constitution in the second paragraph, namely *"And the struggle of the Indonesian independence movement has come to a happy time safely sentausa to deliver the Indonesian people in the future the door of independence of the Indonesian State, which is independent, united, sovereign, just and prosperous."* The task of the state, the government, is to implement the mandate of the 1945 Constitution in various legal contexts that contain to advance the welfare of the Indonesian people. In other words, the law should make the people happy, not make it difficult for the people, and discriminate against the people. As with other developing countries, it certainly encourages its people to think tent ang a legal presence for an enforcement.

The point is that law enforcement in Indonesia is an affirmation that aims to prosper its masyarakat (just and prosperous society). Therefore, the slalu government developing the task of making laws must pay attention to these two things, namely justice and prosperity of the Indonesian people. As well as the laws made must be in favor of the community. In order to realize the welfare of the people, the government nurtures and prospersits people.

## VI. CONCLUSION

This study highlighted and concluded that the legal injustice in Indonesia is caused by the paradigm of the old law enforcement officials, who still prioritize the aspect of legal certainty and have not used aspects of justice and legal expediency. The legal apparatuses related to the courts pay more attention to legal procedures, which they should prioritize the justice of the existing law. This is the cause of unfair law in Indonesia. Law enforcement officials such as judges

are still fixated with the paradigm of applying laws alone, lacking the courage to apply existing laws and using systems that prioritize justice for the community. They do not yet understand that the main purpose of the state is to put forward its goal of welfare and justice to its people.

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None.

## COMPETING INTERESTS

The Authors declared that they have no competing interests.

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*Injustice anywhere is  
a threat to justice  
everywhere.*

### **Martin Luther King**

Martin Luther King Jr. (born Michael King Jr.; January 15, 1929 – April 4, 1968) was an American Baptist minister and activist, one of the most prominent leaders in the civil rights movement from 1955 until his assassination in 1968. An African-American church leader and a son of early civil rights activist and minister Martin Luther King Sr., King advanced civil rights for people of color in the United States through nonviolence and civil disobedience. Inspired by his Christian beliefs and the nonviolent activism of Mahatma Gandhi, he led targeted, nonviolent resistance against Jim Crow laws and other forms of discrimination.