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## Equality Before the Law in Law Enforcement in Indonesia

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**ABSTRACT:** Law enforcement is an effort to uphold and implement the values of justice outlined in formal regulations. However, a significant obstacle often arises from the actions of law enforcement officers conflicting with existing laws. This article discusses law enforcement in Indonesia from the perspective of equality before the law, using a juridical-empirical research method through literature review. The results indicate several deviations in the law enforcement process that hinder the realization of the principle of equality before the law. One of the main causes is the morality of law enforcement officers themselves.

**Keywords:** Equality Before the Law, Law Enforcement.



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## INTRODUCTION

Indonesia is a country whose governance system is based on the rule of law. This is explicitly stated in the constitution of the Unitary State of the Republic of Indonesia, specifically in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI), which states, "Indonesia is a state based on the rule of law." Therefore, it is evident that all forms and mechanisms of governance, politics, and the administration system of Indonesia must be grounded in the existing legal framework (Castillo-Manzano et al., 2022; Gover et al., 2011; Van Rooij et al., 2017).

John Locke described law as something generally determined by citizens or the community regarding the actions they undertake. Its purpose is to establish or judge what constitutes right actions and what constitutes wrongful actions (Asikin, 2020). Hans Kelsen defined law as a command with coercive force over all human conduct, regulated by primary rules and norms that include sanctions (Asikin, 2020). Therefore, it can be said that law is a set or collection of principles and rules organized within a system to determine what is permitted to be done and what is prohibited for individuals in societal life (Erickson et al., 2015; Messing et al., 2020; Silalahi, 2023).

Therefore, the law serves as a protector of the interests of society; hence, every stratum of society holds an equal position and rights before the law. In its implementation, the law must be upheld clearly and concretely, as mandated by Article 28D, paragraph (1) of the 1945 Constitution of the

Republic of Indonesia, which states: "Everyone has the right to recognition, guarantees, protection, and legal certainty that is fair as well as equal treatment before the law." Referring to the aforementioned provision, it is evident that all members of Indonesian society have the same standing and position before the law (Jennings et al., 2021; Lamneck et al., 2023; Lenk et al., 2014).

In the implementation of effective and high-quality law enforcement, it is essential for it to be carried out by competent law enforcement authorities. Law enforcement, in this context, is interpreted as all efforts undertaken by law enforcement officials and institutions to make decisions and execute the application of various legal provisions efficiently. This is carried out in an organized manner to ensure the establishment of justice and order through state mechanisms. Law enforcement institutions include not only the police but also the public prosecutor's office, the judiciary, and legal practitioners (Hukumonline) (Becker & Bachman, 2020; Zoorob, 2022).

The distrust of the legal system, as reflected in the belief that the law has two different sides, "blunt upwards but sharp downwards," may be attributed to various factors. One of these is the perception of inequality or unfair treatment in law enforcement. This phenomenon could result from weak performance or inconsistent actions by law enforcement authorities (Cerulli et al., 2015; Diehl, 2023; Presskreischer et al., 2023).

A concrete example, such as the case of the Chairman of the Corruption Eradication Commission (KPK) Firlil Bahuri, being declared a suspect but not detained, creates an impression of inequality in the eyes of the public. Factors like these can fuel the opinion that certain individuals receive privileges or special treatment, thereby undermining public trust in the fairness of the legal system.

It is crucial for law enforcement authorities to carry out their duties with transparency, consistency, and without discrimination. Inequality in law enforcement can compromise the integrity of the system and reinforce the perception that the law does not operate fairly for all layers of society. Efforts to improve the system and ensure that law enforcement is carried out consistently can help rebuild public trust in legal institutions .

Upon closer examination, all citizens should have an equal standing before the law, as mandated by Article 27, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states, "All citizens have equal standing before the law and government and must uphold the law and government without exception." The preamble of the 1945 Constitution of the Republic of Indonesia, in its fourth paragraph, also emphasizes, "...To establish a government of the Indonesian state that protects all Indonesian people and the entire Indonesian bloodline,...the independence of the Indonesian nation is formulated in a Basic Law of the State of Indonesia." Referring to these provisions, it is abundantly clear that all Indonesian citizens have an equal standing before the eyes of the law based on existing legal regulations, solely to realize the noble aspirations of the nation.

Failure to promptly address issues like this can breed distrust within society, ultimately leading to vigilantism. When the public loses trust in law enforcement institutions, they may resort to resolving issues in their own way, essentially resorting to violence or taking matters into their own hands. If such problems persist, they have the potential to erode confidence in the legal system, and individuals may feel compelled to seek alternative, often extralegal, means to address their

grievances. It is imperative to address these challenges promptly and effectively to maintain public trust in the legal system and discourage the emergence of vigilantism.

Indeed, in reality, it is challenging to find a singular definition of law, mainly because every legal scholar provides their own interpretation of it. Consequently, some people may assume that the multitude of definitions of law equals the number of legal scholars, or possibly even exceeds it. The difficulty in finding a singular definition for law stems from its abstract nature and extensive scope. Upon closer examination, it becomes apparent that, often without us realizing it, humans are enveloped by law from birth—governing their lives and even extending to the moment of death. As Immanuel Kant stated, "*noch suchen die juristen eine definition zu ihrem begriffe von recht*," emphasizing the ongoing quest among jurists to define the concept of law (Asikin, 2020).

Hans Wehr posits on the word "hukum," derived from Arabic, specifically "*ḥukm*" with its plural form "*ahkām*." This term encompasses meanings such as judgment, verdict, decision, provision, command, government, and authority or power (Wehr, 1980). In Thomas Hobbes' work "Leviathan" (1651), law is defined as a collection of commands issued by a governing authority, enforced upon others. Conversely, Gluckman, an anthropological proponent, defines law as the entirety of rules that judges utilize in rendering decisions, serving as a foundation for judicial outcomes. On the other hand, John Locke, a proponent of natural law, sees law as a means established by the community to assess and judge actions deemed right or wrong within societal life.

R. Soeroso defines law as a collection of rules created by those with authority, aimed at regulating the course of societal life. It is characterized by its prescriptive and prohibitive nature, possessing a distinctive feature of compulsion by establishing legal sanctions for violators. Abdulkadir Muhammad asserts that law constitutes all written and unwritten rules backed by explicit sanctions for those who breach them. Meanwhile, Mochtar Kusumaatmadja elucidates that an adequate understanding of law should not only consider it as a set of normative values and principles regulating human life in society but should also delve into the institutions and processes necessary for the practical realization of these legal aspects.

From the various descriptions above, it is evident that law encompasses all forms of regulations or normative principles established and upheld by society. Whether in written or unwritten form, these rules aim to govern the flow of life processes within the realms of community, nation, and state. They possess a binding nature, aiming to create a secure and orderly societal environment. In the event of individuals or groups violating these rules, legal sanctions determined by law, law enforcement institutions, and necessary processes come into play to achieve the objectives of the law.

Furthermore, the process of law enforcement involves institutions empowered by legislation. Law enforcement institutions are entities or government agencies granted authority by the law to carry out their duties. Their main responsibility is the enforcement of laws, closely linked to the judicial process, in upholding legal norms as guidelines for behavior in societal, national, and state contexts. This is done with the ultimate goal of achieving a safe and orderly life to support national development and create a just and prosperous society, as mandated by the 1945 Constitution of

the Republic of Indonesia. Law enforcement officials must perform their functions by actively upholding legal principles as practical guides for behavior in legal relationships within the realms of community and state. This ensures the establishment and consolidation of the law itself (Rooseno, 2015).

In other words, law enforcement officials, particularly in the context of criminal law, are individuals or institutions vested with authority by statutory regulations to carry out the judicial process (Rizal, 2021). This process encompasses several stages, starting from investigation, inquiry, prosecution, to the judiciary. These law enforcement officials have been granted the authority to execute the judicial process, including activities such as apprehension, examination, or carrying out lawful orders tailored to their respective domains.

A principle of the rule of law underscores the importance of relationships and social interactions involving various elements working together to achieve common goals and aspirations. The structure of life patterns and communication among individuals refers to established rules agreed upon and utilized as guidelines and references by parties in carrying out legal actions. Ultimately, this is expected to contribute to the formation of a civil society where individuals hold balanced and equal positions before the law (equality before the law).

While there is a guarantee and protection of the right to equality, the reality is that differences between individuals persist. These differences may include unequal treatment based on economic, political, ethnic or tribal, gender, religious factors, and more. One of the most prominent differences in society is between those in ruling power and those who are ruled. History has shown that such differences can lead to oppression and unfair treatment among different groups (Rooseno, 2015).

The principle of equality before the law, often known as the doctrine of "equality before the law," is a crucial legal principle in its realization. This principle is a key element of the rule of law doctrine frequently applied by developing countries, particularly in Indonesia (Walukow, 2013). Equality before the law is highly significant as it is associated with justice in the judicial process. Justice, in this context, does not imply uniformity in all legal decisions but rather entails equal submission, compliance, and fair treatment based on lawful processes and mechanisms.

According to Article 7 of the Universal Declaration of Human Rights (UDHR), "All are equal before the law and are entitled without any discrimination to equal protection of the law." (wikipedia) Therefore, the principle of equality before the law must be rigorously upheld. The objective is to ensure that every individual receives equal treatment in the eyes of the law, regardless of differences in economic status, political affiliation, gender, nationality, skin color, ethnicity, religion, disability, or other characteristics. Article 27, paragraph (1) of the 1945 Constitution of the Republic of Indonesia similarly stipulates, "All citizens are equal before the law and government and are obliged to uphold the law and government without exception." This principle is further reinforced by Article 28D, paragraph (1) of the 1945 Constitution, which states, "Everyone has the right to recognition, guarantees, protection, and legal certainty that is fair, as well as equal treatment before the law." It is evident that Indonesia is committed to upholding justice in its enforcement processes.

Principles of justice are not only found in positive law but are also regulated in religious teachings. There is an instructive story where a woman from the Bani Makzhum, one of the three wealthiest tribes in the city of Mecca, was caught stealing. The leaders of Bani Makzhum decided to protect the woman to preserve the honor and dignity of their tribe. Subsequently, they approached Usamah bin Zaid to mediate with Prophet Muhammad SAW, hoping to mitigate the punishment for the woman. After hearing the testimony from his companion, Prophet Muhammad (SAW) addressed the entire community, saying, "Indeed, the nations before you were destroyed because they used to inflict the legal punishments on the poor and forgive the rich. By Him in Whose Hand my soul is! If Fatimah (the daughter of the Prophet) did that (i.e., stole), I would cut off her hand." Following this, the woman was punished in accordance with the teachings of the hadith (Hasanul).

With the existence of these two foundations, both in the positive law of the state and in religious teachings, it becomes increasingly clear that equality before the law or "equality before the law" in Indonesia is not merely a slogan but an inherent value of the law itself. It aligns with the teachings of religion, emphasizing the genuine commitment to ensuring equal standing for all individuals in the eyes of the law.

The focus of this research is on the implementation of the principle of equality before the law in the legal enforcement system in Indonesia. Additionally, it aims to elucidate the factors influencing the application of the principle of equality before the law in the legal enforcement system in Indonesia. The goal is to examine the implementation of the principle of equality before the law and the factors influencing it in the process of legal enforcement in Indonesia.

## METHOD

This research adopts a normative legal research approach, focusing on the analysis of doctrines and a set of regulations embedded in positive law in Indonesia. Therefore, the approach involves legal and conceptual frameworks. The researcher also includes relevant books. Consequently, the technique for collecting secondary data involves a literature review, which is then analyzed descriptively (Moch Choirul Rizal F. Z., 2012).

## RESULT AND DISCUSSION

### 1. The Application of the Principle of Equality Before the Law in the Enforcement of Laws in Indonesia.

Equality before the law, as the equal standing of all citizens in the eyes of the law, is articulated in the Indonesian constitution, specifically in Article 27, paragraph (1) of the 1945 Constitution, which states, "All citizens are equal before the law and government and are obliged to uphold the law and government without exception." Additionally, as a form of human rights protection, equality before the law is further elucidated in Article 28D of the 1945 Constitution, "Everyone has the right to recognition, guarantees, protection, and legal certainty that is fair, as well as equal treatment before the law."

Concerning the implementation of the principle of equality before the law, evidence indicates that deviations persist. This is evident not only in the case of the designation of the Corruption Eradication Commission (KPK) Chairman, Firlil Bahuri, but also in the existing laws governing the positions of the People's Consultative Assembly (MPR), the Regional Representative Council (DPD), and the Regional People's Representative Council (DPRD). These laws stipulate matters related to arrest, detention, and the use of force against officials holding these special positions, who still require permission from the president.

The principle of equality before the law asserts that it implies an equality and sameness in the law for each individual without any exceptions. This principle is used as a reference standard to affirm various marginalized or minority groups. From another perspective, due to disparities in resources such as power, capital, and information, the principle is often dominated by those in power and entrepreneurs as protectors to safeguard their assets and authority.

In reality, at its age of 79 years since gaining independence from colonial rule, the legal situation in Indonesia can still be considered highly volatile, akin to a teenager still searching for its identity. This is often evidenced by a lack of justice in the enforcement of laws in society. For the lower and middle classes, it seems as though the law complicates and burdens them. Conversely, for the upper class, coupled with the positions they hold, it appears as if the law facilitates all their affairs.

In essence, all forms of criminal behavior should be met with sanctions proportionate to the rules outlined in existing laws and regulations. However, there are instances where the imposed laws are not equitable (*blunt upwards, sharp downwards*), disproportionately affecting only the lower class of society "*wong cilik*". In Indonesia, numerous cases, ranging from simple to complex, require strict processing. Particularly in simpler cases, it is not uncommon for the perpetrators, often individuals from the lower class who have little knowledge of the law, to become victims in the judicial process due to their ignorance and other factors, even if their actions could be deemed as minor offenses. On the other hand, those in power or close to it sometimes commit crimes in a sophisticated manner, acting with impunity or, if apprehended, managing to retain a degree of freedom in their activities.

The role of law enforcement officials is exceedingly crucial for the quality of the legal enforcement system in a country, whether it is lacking or functioning well. In Indonesia, the performance of law enforcement officials is often deemed unsatisfactory. Many people express dissatisfaction and disapproval of the work carried out by law enforcement authorities. This signals that the legal enforcement process in the country is not being pursued with the seriousness it requires. In essence, the law should serve as a means to seek justice, not inflict harm upon it.

### **2. There are various factors influencing the enforcement of laws in Indonesia. Some key factors include.**

In essence, humans are beings capable of taking action. They not only respond to things but also interact. Through their actions, various activities are born, expected to alleviate anxieties, uncertainties, and build self-confidence and enthusiasm in life. However, these aspects sometimes unfold with acts of violence, impurity, and solitude. Hence, the presence of legislation is highly relied upon as a form of control, encompassing both social and systemic control. The law in society

materializes as a manifestation of social control. Anyone daring to commit a legal violation is assuredly confined within the circle of legal regulations. Ideally, the law does not discriminate based on social strata; it applies to everyone regardless of their social status (Biroli, 2015). However, in reality, this principle is often contradicted, as the law is merely treated as a formality and exploited by those in power.

*Firstly*, the factor lies within the substance of the law itself. In the structure of a legal state, the highest authority is the state law. All legislation and its implementing regulations must comply and not deviate from state law. Philosophers such as Plato, Thomas Hobbes, and Hegel argued that state law takes precedence over other laws, and nothing should contradict state law. The evolving practice of law enforcement in society, particularly concerning current cases within the community, significantly influences the mindset of the public. For example, when laws are implemented without adhering to the principles of justice towards the community, creating a situation where the law is sharp downward but dull upward. Differential treatment by law enforcement officers can create an image that the law is only applied to the lower class, while those in the upper class with financial strength, positions of power, or proximity to authority can negotiate the law. This unfortunate reality results from the failure to implement the law as intended.

The law applied in society is a reflection of the actual law enforcement process. From a sociological perspective, law refers more to the social relationships present in the enforcement of the law, including judicial power: the decisions made by judges that can have a significant impact. The law enforcement process ultimately results in consequences that affect individuals or groups facing legal issues, their respective families, communities, social organizations, and society at large. Additionally, mass media plays a substantial role in reporting on legal matters within society.

*Secondly*, there is the factor of legal culture within law enforcement agencies and society. The cause of the law being sharp downwards and dull upwards is primarily due to issues within the law enforcement process. These issues arise from various factors, including the judicial system applied, the legal framework, the inconsistent commitment of law enforcement officers to the noble values of law enforcement, and the intervention of power or legal protection for certain individuals (Hidayah).

The public's dissatisfaction serves as an alarm signaling weaknesses in law enforcement in Indonesia. The law, often seen as a breakthrough for those seeking justice, sometimes ironically results in a sense of injustice. One of the factors contributing to the challenges in law enforcement in Indonesia is the low quality of law enforcement officers. The lack of moral values leads to a decline in professionalism and empathy among law enforcement officers. The issue of judicial corruption, where law enforcement officers engage in corrupt practices, is closely related to morality. Instead of upholding the law, some law enforcement officers become entangled in legal issues, involving themselves in corrupt practices. This moral decline contributes to the perception of weak law enforcement in this legal state. Law enforcement would be more stable and acceptable to society if law enforcement officers worked professionally, prioritized honesty, and adhered to good governance principles both personally and institutionally.

The bleak picture of the law enforcement process is not limited to the case of the Chairman of the Corruption Eradication Commission (KPK), Firli Bahuri, who has been named a suspect by the

police but has not been detained. This differential treatment compared to other suspects is just one instance. Similar issues are also prevalent in other law enforcement institutions such as the prosecution and the judiciary. Particularly within the judiciary, judges are dismayed by corrupt practices and other criminal activities, extending from judges in district courts, high courts, appellate courts, and even the Constitutional Court. It is indeed ironic that those referred to as representatives of God on earth are not immune to the temptation of enriching themselves (Irfan).

Furthermore, based on data released by the Chief of the Indonesian National Police, General Polisi Listyo Sigit Prabowo, there has been a decrease in the number of disciplinary violations, professional code of ethics violations, and criminal offenses committed by police officers in 2021, totaling approximately 4,900 cases. Although this marks a decline from the previous year, the sheer number remains significant and ironic for law enforcement agencies (Kusnandar). Therefore, for improvement, the wider community also bears responsibility and should support a positive legal culture. This involves fostering a legal culture where the community adheres to the law, creating a synergistic relationship among all elements (Rizal M. C., 2016).

## **CONCLUSION**

Equality before the law, often known as the principle of equality, is a crucial legal principle in its realization. This principle serves as a key element in the doctrine of the rule of law and is essential for developing countries, particularly in Indonesia. However, the implementation of equality before the law still faces various deviations, significantly influencing the mindset of society. The deviations manifest in a legal system where justice is not consistently applied to all members of society, resulting in a system where the law is sharp downwards but blunt upwards. This creates a perception of differential treatment by law enforcement agencies, implying that the law is only applicable to the lower socio-economic strata of society.

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