

The Existence of Legal Politics In Realizing a Just State of Law

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Abstract

The rule of law aims to create justice, but in practice, legal politics is often influenced by the interests of economic and political elites. Injustice occurs due to regulations that favor certain groups over the welfare of the community at large. One example is regulatory changes in the mining sector that facilitate investment but ignore the rights of surrounding communities. This study aims to analyze the role of legal politics in realizing an equitable rule of law. This study explores how legal politics affects regulations, legal implementation, and its impact on society, especially in the context of mining policy. This research uses a normative method with a literature study approach. Secondary data is obtained from books, scientific journals, and relevant laws and regulations. The approaches used include statute approach, conceptual approach, and case approach to understand the influence of legal politics in public policy. legal politics in Indonesia still tends to favor the interests of the elite, resulting in inequality of justice. Inconsistent law implementation, weak rule of law, and political intervention in the judicial system hinder the realization of social justice. Regulations in the mining sector, for example, favor entrepreneurs over the welfare of local communities. Therefore, political legal reforms are needed that favor the interests of the people, strengthen the rule of law, and ensure the protection of human rights in order to create a just rule of law.

Keywords: Legal Politics; Rule of Law; Social Justice

INTRODUCTION

The rule of law cannot be separated from two important elements, namely law and politics, which are closely related. Legal politics is a concept that functions as a

basic policy that determines the direction, form, and content of law in a country(Sihombing, 2020). In this case, legal politics are decisions taken by policymakers to design and establish applicable laws and regulations. The goal is to create a legal system that not only fulfills social needs and justice, but also maintains public welfare and protects the interests of the people.

In Indonesia, legal politics plays a very important role in shaping the legal system and legislation. As a state of law, Indonesia strives to ensure that existing laws can create justice for all citizens, pay attention to the interests of society, and create common welfare. However, in its implementation, legal politics is often affected by the interests of certain elites or groups that have great influence in the policy-making process(Rafiqi, 2021). The interests of these groups, which often prioritize their personal or group benefits, can lead to policies that are unfair to many people.

As a result, legal politics that should prioritize justice and the public interest often produce regulations that are more favorable to certain parties who have political and economic power. This can lead to injustices, such as policies that disadvantage certain groups of people, or regulations that favor entrepreneurs and elites, while the small people and those with less power are marginalized. Thus, although the rule of law aims to ensure justice, the reality is that legal politics influenced by elite interests can hinder the achievement of true social justice

The history of legal politics in Indonesia cannot be separated from the influence of the colonial legal system that has shaped Indonesia's legal system and structure to date. The change from the Dutch colonial legal system to the national legal system has never been separated from the various legal problems that exist. In practice, the law is often used as a tool for certain groups in power to maintain their power and interests. This creates legal inequality, where the small community is often the victim of injustice, while the powerful are able to avoid the law.

Article 1 paragraph 3 of the 1945 Constitution explicitly states that Indonesia is a state of law. Indonesia as a state of law, requires that the law must be the main guide in organizing the state. This means that every government policy and action must be based on applicable law. However, in reality, many policies and legal products issued by the government are more likely to accommodate certain political interests than the interests of the people in general(Hajati et al., 2020).

The state is the result of a social consensus where the people agree to form an organization of power and the organization is the work system of the state organs which is a wholeness in the form of a system that connects and divides the duties and obligations between each of the state organs to achieve a certain goal(TARIGAN, 2024). In order to realize the goals and ideals of the state, legal certainty is needed to realize the principles of equal rights before the law without discrimination, the most decisive in the legal process is the conception and structure of political power. In reality, politics is only a fight for power, so that it justifies all means.

Emmanuel Kant's perspective on the purpose of the state states that a society in which the law provides certainty to every citizen has the same legal position, so that the state or ruler does not arbitrarily determine the law applied to citizens. The 1945 Constitution, which has been legally agreed upon as the basis for the Indonesian state constitution, mandates that every citizen has equal standing before the law and power (Article 27 (1) of the 1945 Constitution). In every regulation in the form of legal products born by the state, it should involve public participation or realization of the policy and the application of the law must be objective without being intervened by anything including power.

The development of legal politics in Indonesia is now experiencing various challenges, starting with the rise of the judicial mafia, abuse of power by state officials, and weak law enforcement. This condition has caused the law to lose its essence as a tool to create justice and prosperity for all Indonesian people. Various studies show that the law in Indonesia has been distorted due to strong political intervention, which can cause the law as a means for certain political interests rather than as an instrument of justice (Fadlail, 2023).

The amendment of Law No. 4/2009 on Mineral and Coal Mining to Law No. 3/2020 has sparked controversy, especially regarding its impact on local communities. One of the aspects protested is the adjustment of policies that are more favorable to mining entrepreneurs, such as easier granting of mining permits and potentially expanding mining areas. This provides opportunities for large entrepreneurs to gain greater profits, while local communities living around mining areas are often neglected and do not get equal benefits.

This example shows how the politics of law, influenced by economic and political interests, often favors groups with financial and political power, such as large companies or financiers in the mining sector. In this policy-making process, the interests of affected communities, such as the right to a healthy environment, their affected land, or access to fair employment, are often marginalized. This kind of legal politics leads to social injustice, as the decisions made do not take into account the welfare of the entire community, but rather prioritize benefits for groups that have greater influence.

METHODS

This research uses a normative legal research method with a literature study approach (library research), namely a method of collecting legal materials by reading and tracing the literature related to the research title which is mostly found in the library and then taking the things needed either directly or adapted. The approaches used include, statute approach, conceptual approach and case approach. In this research, secondary data used is obtained from various sources of literature, including books, articles, scientific journals, and laws and regulations relevant to the study of legal politics in Indonesia. The data will provide a strong foundation for

understanding the issues that arise in law changes, particularly in the mining sector, as well as their impact on society and the environment (Suryaningsih et al., 2023). This research aims to provide in-depth insight into the influence of legal politics on public policy and the social life of Indonesian society.

DISCUSSION AND RESULT

Implementation of Legal Politics in the Framework of the Rule of Law in Indonesia

The state is formed based on a social agreement in which the people agree to establish an organization of power. This organization functions as a system that regulates and divides tasks and responsibilities among various state institutions in order to achieve predetermined goals. To realize the vision and ideals of the state, legal certainty is a crucial factor so that the principle of equality before the law can be realized without discrimination. However, in practice, the legal system is strongly influenced by the concept and structure of political power (Muhlashin, 2021). In reality, politics is often just an arena for power struggles, where various means, including unethical ones, are used to achieve certain interests.

Legal politics is a basic policy that serves as a guide in determining the direction of law formation, application and enforcement in a country. In Mahfud MD's view, legal politics can be understood as legal policy, which reflects the will of the state in developing and shaping the national legal system. Legal politics has a very important role as an instrument to direct the process of law formation in accordance with the needs of the state and society. In addition, legal politics also directs the application of the law so that it can be accepted and implemented by the community fairly. Legal politics also plays a role in law enforcement that ensures that every rule that has been compiled and applied, is actually enforced, creating justice and order in the country (Huda & SH, 2024).

The definition of legal politics can be easily understood if you can how much influence the State as an organization in a certain area and aims to maintain order in it, on the style and form of law that applies in it (Rahayu & Faisal, 2021). The word 'politics' in the word 'political law' can mean wisdom or called the policy of the authorities. The word 'wisdom' in the large Indonesian dictionary means, a series of concepts and principles that become the outline and basis of the plan in the implementation of a leadership job and a way of acting. Thus etymologically, legal politics briefly means legal wisdom to achieve state goals or ideals.

Legal politics in Indonesia is a reflection of the social, economic and political dynamics that develop in society. In this study, it is found that the existence of legal politics in Indonesia shows high complexity. The Constitution is the main foundation in the formation of law, but in practice, the implementation of law often does not reflect the principles of substantive justice (Abidin, 2024). Many legal policies

accommodate the interests of economic and political elites more than the needs of the wider community.

The rule of law is a concept that emphasizes that every action taken by the government must always be based on applicable law. In this principle, the government should not act arbitrarily without referring to established legal provisions. The rule of law guarantees that every decision and policy taken by the government must be in accordance with existing legal norms, ensuring that all actions taken have a legal and fair basis (Muslih, 2017).

In a state of law, there are several main principles that form the basis for running the state, namely the rule of law, equality before the law, limitation of power, human rights, and independence of the judiciary. The principle of the rule of law emphasizes that all government actions must be subject to the law. This means that no one is above the law, not even the government. The government can only act within the limits set by the applicable law (Syuhada, 2021). This aims to prevent the government from acting arbitrarily and in accordance with the principles of justice.

The principle of equality before the law is a fundamental concept in the rule of law that asserts that every citizen, without exception, should be treated equally in the eyes of the law. There should be no discrimination against anyone based on factors such as race, religion, social status or position in society. This principle ensures that the law does not distinguish one individual from another, and that all people are entitled to equal treatment in every legal process, be it in terms of courts, law enforcement, or government policies (Butarbutar & Butarbutar, 2025).

This principle of equality also implies that no one is beyond the reach of the law, including those who have a higher social position or power. For example, a government official, despite having a higher position, must still be subject to the same laws as other citizens (Hadji et al., 2024). Therefore, no individual should be denied their rights simply because of their status or position.

Article 27 Paragraph (1) of the 1945 Constitution underlines that the law must apply universally to all citizens, without any exceptions based on position or status. This means that no citizen is privileged or treated lower than another. Law and government must be implemented with the principle of justice, where everyone has the same right to be tried, to get legal protection, and to get fair treatment in every legal process (Hum et al., 2020). The principle of equality before the law has a very important impact on the development of a fair and abuse-free justice system. With this principle, it is expected that the state not only guarantees the rights of every individual but also prevents any form of discrimination that can harm certain parties in society.

The principle of limitation of power is one of the important elements in the concept of the rule of law that aims to ensure that the powers possessed by the state or government are not used arbitrarily or abused (Tardjono, 2021). This principle emphasizes that although the state has broad authority in regulating the life of the nation and state, this power must be limited by law. In Article 28D Paragraph

(1) of the 1945 Constitution, this limitation aims to prevent the abuse of power that can harm the rights of individuals, groups, or society as a whole.

The limitation of state power is done so that the government or other state institutions cannot act arbitrarily, violate individual rights, or make unfair policies. With restrictions, every policy or action taken by the state must be in accordance with applicable legal provisions and must not conflict with the principles of justice and human rights. State power that is limited by law includes things such as government decisions that must go through legal procedures, the existence of control mechanisms that allow the public to hold the state accountable for its actions, and oversight carried out by state institutions such as the Constitutional Court and other judicial institutions (Fadlail, 2023).

Human rights (HAM) refer to the basic rights possessed by every individual as a human being, which include the right to life, freedom of opinion, freedom of religion, the right to education, and the right to legal protection, as well as various other rights that guarantee human dignity in accordance with Article 28A to Article 28J of the 1945 Constitution. The state must be responsible for providing legal protection so that every individual can exercise their rights freely and fairly without fear of discrimination or violation (Hadji et al., 2024).

This principle aims to ensure social justice for all. The state must be able to provide conditions that allow everyone to fully enjoy their rights, and eliminate all forms of discrimination that could harm certain groups or individuals. The existence of this principle also aims to create shared prosperity in society, where basic rights are safeguarded and fulfilled by the state, so that people can live in peace, justice and security.

Judicial independence is essential to ensure that every legal decision taken in a case is truly fair, without any intervention that can damage the integrity and authority of the judiciary (Rafiqi, 2021). When the judicial system is free from interference from political or other powers, judges can decide cases based on the law and evidence available, not based on external considerations that could harm the parties involved in the case.

The principle of judicial independence is one of the important principles in a state of law that aims to maintain objectivity and justice in the judicial system. Based on Article 24B Paragraph (1) of the 1945 Constitution, this principle emphasizes that the judicial system must be free from interference from any party, be it the government, political parties, or other state powers. In other words, judicial decisions must be based entirely on existing facts and applicable legal provisions, not influenced by pressure or the interests of certain parties who seek to influence the outcome of the judicial process.

The politics of law and the concept of the rule of law are closely interrelated in shaping a just and dignified legal framework in a country. The politics of law acts as

a basic policy that directs the formation, application and enforcement of law in accordance with the vision of the rule of law, which emphasizes that every government action must be subject to applicable law. In the context of the rule of law, there are principles underlying a fair legal system, such as the rule of law, equality before the law, limitation of power, human rights, and judicial independence (Riswanto, 2016).

These principles ensure that state power is limited by law, individual rights are protected, and the judicial system functions independently without interference from political or other state power. Thus, the rule of law guarantees that all citizens enjoy equal protection before the law and that the law is applied fairly, transparently and without discrimination.

The application of strong rule of law principles and justice-oriented legal politics will create a balance between state power and the rights of citizens, which will ultimately realize justice, welfare and prosperity for all people. Thus, legal politics and the concept of the rule of law are not only the foundation for the creation of an efficient and effective legal order, but also the main pillars in maintaining democracy and social justice in the country.

Legal development and national development are important things to be realized in the state, as mandated in the 4th paragraph of the opening of the 1945 Constitution of the Republic of Indonesia. In line with legal development and national development, it is necessary to make changes to the 2009 Minerba Law. This regulatory change then raises the pros and cons of various groups because it is felt that it is only beneficial for entrepreneurs and the government but not for the community. So it is important to know the legal politics of changes to the Minerba law and its impact on society and the environment.

The politics of law in the amendment of the Minerba law is related to increasing state revenue in the Minerba mining sector, one of which is through the legal certainty of mining and ease of investing in "good mining and corporate governance practices". However, the purpose of this change has not had a massive impact on the people's prosperity, fully in favor of the community, especially the community around the mining project or close to the prospective area to be used as a mining area. The rights of communities around mining are still being neglected, often violated (Soraya et al., 2024).

Community rights are still not fully fulfilled by the government. Changes in Article 4 (on mineral and coal tenure rights) and Article 6 (on mining management authority) in the 2020 Minerba Law have reduced the role of local governments in granting mining licenses. Ideally, mining companies are expected to contribute to the welfare of surrounding communities through the provision of employment, economic improvement, and tax payments that are well managed by the government to reduce social inequality (Nugroho, 2020). However, in reality, there are still many community

rights, especially those living around mining areas, that have not been fulfilled and are often violated.

One of the most glaring problems is the criminalization of environmental activists and citizens fighting for their rights. This kind of practice should not happen, because they are trying to defend the right to life that has been guaranteed in the constitution. Therefore, repressive actions against them must be stopped in order to uphold justice and human rights.

The principle of the rule of law and the politics of law, as stipulated in the 1945 Constitution, underline the importance of the protection of human rights and equality before the law. In this regard, the state must ensure that the law is applied fairly, that the rights of individuals, especially those living around mining areas, are protected and respected (Abidin, 2024). The principle of judicial independence is also important to ensure that legal decisions are based on facts and applicable law, without any intervention from any party. Therefore, repressive actions against citizens or activists who fight for their rights must be stopped to uphold justice and respect human rights guaranteed by the constitution.

Overall, although regulatory changes in the mining sector are intended to increase state revenue and create legal certainty, legal politics in this case must ensure that these changes do not ignore the rights of the community and the environment. The rule of law, which is based on the principles of justice and protection of human rights, must ensure that policies are taken in favor of the interests of the people, not only for entrepreneurs or the government. Thus, legal development and regulatory changes must truly reflect the welfare and social justice for all levels of society.

Challenges in Realizing an Equitable Rule of Law

Realizing a just rule of law is a big challenge for every country, including Indonesia, because it involves applying legal principles that not only prioritize the rule of law and order, but also provide protection of human rights (HAM) and equality before the law for all citizens (Yusyanti, 2020). A just legal state must be able to guarantee that all legal decisions taken will take into account the interests of every individual and group, without discrimination based on race, religion, social status, or position.

In Indonesia, the principles of a just rule of law are clearly set out in the 1945 Constitution, which emphasizes the importance of the rule of law, equality before the law, and the protection of human rights. However, while these principles are enshrined in the constitution, implementation in practice still faces a number of challenges.

One of the biggest challenges in realizing an equitable rule of law is inequality in access to justice. While the rule of law is supposed to ensure equality and protection for every citizen, in reality, large disparities in access to the justice system

often hinder the achievement of equitable justice. People with low economic backgrounds, especially those living in remote areas, often face major obstacles in accessing a fair legal process (Wisnaeni, 2022).

The first problem they face is the high cost of court proceedings. For those living on low incomes, the cost of paying for lawyers, court administration or other fees is often prohibitive. This leaves them unable to file a lawsuit or defend their rights before the law, as they cannot afford the necessary fees. In many cases, they are forced to ignore their rights or even simply give up without getting the justice they deserve.

In addition, a lack of understanding of legal rights is also a major hindering factor. Many people, especially those in rural or remote areas, do not have sufficient knowledge of their legal rights. They do not know how to report violations of the law or how to obtain necessary legal assistance. Without adequate understanding of the legal process, they often feel helpless and do not know what to do when their rights are violated. This lack of understanding further exacerbates inequalities in access to justice, as those without knowledge of the law are more likely to fall victim to injustice (Hasugian, 2022).

Limited legal facilities in certain areas are also a major problem. Many areas do not have adequate legal facilities, such as lawyers' offices, legal aid organizations, or easy access to information about legal rights. This makes it difficult for people in these areas to get the legal assistance they need. With limited legal facilities, they have to travel long distances to big cities to get help, which is costly and time-consuming.

This inequality in access to justice creates disparities in law enforcement, where only those with sufficient resources - both financial and knowledge - are able to enjoy their legal rights. Meanwhile, the poor and those without access to legal facilities often have to succumb to injustice, without adequate efforts to defend their rights. This inequality further exacerbates social injustice, as fair and equitable law enforcement becomes difficult to achieve (Yuanita, 2022).

In the face of these challenges, efforts are needed from the government and the community to reduce inequality in access to justice. One solution is to improve the accessibility of legal services for the poor, such as the provision of free legal aid or reduced court fees for those who cannot afford it. In addition, legal education programs aimed at improving people's understanding of their legal rights are also very important. These measures are expected to reduce inequality and ensure that every citizen, without exception, can obtain equal justice before the law.

Legal certainty is one of the most important elements in creating a just legal state. In the context of a state of law, legal certainty means that every individual or group has confidence that their rights will be respected and guaranteed by clear and consistent laws (Agustinus et al., 2022). Legal certainty also refers to the fact that the applicable law must be applied consistently and predictably by all parties, so that no

party feels disadvantaged or oppressed by unclear or changing legal decisions. Without legal certainty, the creation of social justice will be very difficult. In many countries, including Indonesia, there is often legal uncertainty caused by various factors, such as regulatory vagueness, overlapping laws, or inconsistent regulations. Regulatory vagueness can occur when existing rules are not detailed enough or have ambiguities, leading to different interpretations of the law by law enforcement officials as well as by the community itself. When rules are unclear, anyone involved in the legal process - be it the government, the public, or the judiciary - will experience confusion about how a rule should be implemented, which of course will harm those who are fighting for their rights.

Overlapping laws often create legal uncertainty. When several different regulations or even contradict each other are applied in one legal issue, confusion will arise about which rule should be applied (Tardjono, 2021). This can lead to disagreement between law enforcement officials or courts in issuing decisions, which ultimately creates legal uncertainty for the parties involved in the case. For example, there are laws regulating the same field with conflicting provisions or irrelevant to the times, which makes their application ineffective and inefficient.

Inconsistent regulations or frequent regulatory changes can also lead to legal uncertainty. Regulations that change or are not consistently applied over time make it difficult for people to understand the rules that apply and how they should act in the face of certain legal issues. Especially for those who do not have sufficient legal understanding, such changes can create confusion about their rights and the steps that need to be taken. This can be a major obstacle, especially for people living in areas far from government centers, where information about regulatory changes is not easily accessible (Pertwi & Waha, 2024).

This legal uncertainty ultimately provides opportunities for certain parties, such as large entrepreneurs or individuals who have more resources, to find loopholes in the law for personal or group benefits. Those who have more knowledge about the legal system and enough financial capability can easily take advantage of the unclear regulations to obtain benefits that they should not get. Weaker parties, such as the poor or minority groups, who do not have sufficient resources and legal knowledge, are often the victims of this legal uncertainty. They are the most vulnerable to being denied their rights, because they are unable to fight for them through clear and effective legal channels (Salmudin, 2019).

Legal uncertainty can exacerbate social injustice. As a result, those in weaker positions - be it economically, socially or educationally - are often unable to get the justice they need. Therefore, to realize an equitable rule of law, it is crucial for the state to ensure that regulations are clear, non-overlapping, consistent, and easily understood by all levels of society. The government also needs to harmonize laws

and keep existing regulations relevant to the needs of society, and can be applied fairly to all citizens without exception.

The principle of the rule of law emphasizes that state power must be limited by law to ensure that every government action - whether from the executive, legislative, or judiciary - is carried out in accordance with existing provisions and does not exceed the limits that have been set. This limitation of power aims to prevent abuse of authority and ensure that every decision taken by state officials does not harm the rights of individuals or groups (Ainillah, 2016). Thus, the principle of the rule of law requires supervision of the use of power by the state to guard against violations of the law and human rights.

However, in reality, there are still many cases where state power goes unchecked. This is especially true in countries with weak legal systems or where oversight institutions do not function properly. Abuse of power often occurs when state officials use their power for personal or group interests, or when state power is used to suppress opposition or those who disagree with the government. This abuse of power can take many forms, ranging from unlawful decision-making to repressive actions against individuals or groups that are trying to fight for their rights.

Corruption is also one of the main factors that hinder the creation of a just rule of law (Prakasa, 2023). When public officials or state apparatus accept bribes or commit acts of corruption, they not only break the law but also undermine the foundations of the rule of law itself. Corruption creates injustice, where those with power and access to state resources can evade the law or manipulate the legal process for their personal benefit. People without access to resources or power are often the losers, as they have no channels to fight for justice.

Political interference in the judicial process is also a major problem in realizing a just rule of law. The principle of judicial independence requires that the judicial system should be free from external influences, including political pressure from the executive or legislature. However, in reality, many countries face situations where judicial decisions are influenced by political power (Pandu, 2020). This can take the form of direct influence over judges in handing down decisions or the appointment of judges based on certain political affiliations, leading to biased or unfair decisions. When the judicial system is influenced by politics, the justice that should be received by each individual can easily be influenced by unfair external factors, which ultimately harms society and weakens public confidence in the legal system.

When power is not properly limited and supervised, the judicial process and law enforcement become ineffective (Simatupang, 2024). In such a situation, the law no longer applies to everyone in the same way, but rather depends on social position, political power, or other influences. This injustice further exacerbates social and economic inequality, as stronger or more powerful parties will always be able to take

advantage of legal uncertainty or weaknesses in the legal system for their own benefit.

To realize a just rule of law, it is crucial to ensure that state power is clearly limited by law and that there is strict oversight of that power. This includes ensuring that the judiciary can work independently without interference from political power or vested interests, as well as making efforts to fight corruption at all levels of government (SUDISMAN, 2019). Without effective restrictions and oversight of power, justice will be difficult to achieve, and the principle of a just rule of law will only be rhetoric without real implementation.

CONCLUSION

A just rule of law must guarantee legal certainty, equality before the law, and protection of human rights, as well as limit state power from being abused. Legal politics plays an important role in shaping, implementing and enforcing the law in accordance with the state's goal of achieving social welfare and justice. However, in practice, legal policies often accommodate the interests of economic and political elites, while the rights of communities, especially those living around mining projects, are often overlooked. Therefore, it is important for legal politics to side with the interests of the people and ensure that every policy taken does not only benefit certain parties, but also guarantees justice for all levels of society.

Realizing an equitable rule of law in Indonesia requires the application of legal principles that prioritize the rule of law, equality, and the protection of human rights, but the main challenge faced is unequal access to justice, especially for the poor and those living in remote areas. Factors such as high court fees, lack of legal understanding, and limited legal facilities exacerbate this disparity. In addition, legal uncertainty due to overlapping regulations and corruption further exacerbates injustice. Therefore, concrete steps are needed, such as improving access to legal aid, clarifying regulations, and limiting state power to prevent abuse of authority, to ensure that the law can be applied fairly and equitably for all citizens.

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