



## FROM STRUCTURE TO REALITY : LAW ENFORCEMENT, INEQUALITY FUNCTIONAL, AND JUSTICE FOR RESIDENT

## DARI STRUKTUR KE REALITAS: PENEGAKAN HUKUM, KETIMPANGAN FUNGSIONAL, DAN KEADILAN BAGI PENDUDUK

Irfandi <sup>1\*</sup>,

<sup>1\*</sup> Muhammadiyah University of Palopo, Email: [irfandi3tww@gmail.com](mailto:irfandi3tww@gmail.com)

\*email Koresponden: [irfandi3tww@gmail.com](mailto:irfandi3tww@gmail.com)

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### Abstract

Study This aiming For analyze inequality between law normative and practical its implementation in system Indonesian law, as well as to study the impact to justice social and awareness law citizens. This article also explores the role of Citizenship Education in to form character critical, fair and conscious citizens law. In the research This the method used is approach qualitative descriptive with type studies library, relying on secondary data from literature academic, documents law, and reports institution independent. The results of the study show that inequality enforcement law due to low integrity institution justice, intervention power, and social bias to group vulnerable. The phenomenon of dualism of law causes law lost universal and changing nature become tool discriminatory power. Therefore that, Citizenship Education own position strategic in to plant mark justice, awareness law, and bias towards groups marginal, in order to create a more society fair and democratic.

**Keyword:** Inequality law, justice social, education citizenship

### Abstrak

Penelitian ini bertujuan untuk menganalisis ketimpangan antara hukum normatif dan praktik implementasinya dalam sistem hukum Indonesia, serta mengkaji dampaknya terhadap keadilan sosial dan kesadaran hukum warga negara. Artikel ini juga mengeksplorasi peran Pendidikan Kewarganegaraan dalam membentuk karakter warga negara yang kritis, adil, dan sadar hukum. Pada penelitian ini metode yang digunakan adalah pendekatan kualitatif deskriptif dengan jenis studi pustaka, mengandalkan data sekunder dari literatur akademik, dokumen hukum, dan laporan lembaga independen. Hasil kajian menunjukkan bahwa ketimpangan penegakan hukum disebabkan oleh rendahnya integritas institusi peradilan, intervensi kekuasaan, serta bias sosial terhadap kelompok



rentan. Fenomena dualism of law menyebabkan hukum kehilangan sifat universal dan berubah menjadi alat kekuasaan yang diskriminatif. Oleh karena itu, Pendidikan Kewarganegaraan memiliki posisi strategis dalam menanamkan nilai keadilan, kesadaran hukum, dan keberpihakan pada kelompok marjinal, guna menciptakan masyarakat yang lebih adil dan demokratis.

**Kata Kunci:** Ketimpangan hukum, keadilan sosial, pendidikan kewarganegaraan

## 1. INTRODUCTION

Indonesia in general constitutional has set self as a state of law (*rechtstaat*) as mandated in The 1945 Constitution of the Republic of Indonesia. Within the framework this, various instrument law has arranged For ensure rights citizens, uphold justice, and maintaining order social through device law normative. Normative law refers to a set of rule law that is ideally written in laws, regulations government, and documents law others who regulate behavior in demand society. This law nature imperative, contains binding norms, and reflects the values you want enforced by the state (Soekanto, 1981). Although in a way normative system Indonesian law upholds principle equality in front law (*equality before the law*), reality on the ground show that access to justice is greatly influenced by factors social, economic, and political.

One of manifestation real from inequality the can seen in treatment different between cases that ensnare the common people and corrupt elites. As For example, the case that befell Grandma Asyani, a commoner, only related suspicion theft wood worth around Rp. 4 million. He direct detained without suspension and undergoing a judicial process which is classified as fast. The case started on July 14, 2014 when officer Forestry do patrol, and on March 12, 2015 he has tried in the room hearing Situbondo District Court. He was detained since December 15, 2014. His detention suspended on March 16, 2015 after get guarantee Regent Situbondo Dadang Wigiarto. On the other hand, the treatment different seen in the case Setya Novanto, a corruptor class on those involved in case e-KTP corruption worth Rp 71 billion (based on exchange rate 2010). Although has called own role in trial by KPK prosecutors on March 9, 2017 at the KPK Court Corruption, legal process against him takes a long time and is complicated, as well his detention often suspended. He new accept decision law on April 24, 2018 at the Court Action Criminal Jakarta Corruption. In the legal process, Novanto get help power expensive and professional law. In fact, Novanto had time send letter through Fadli Zon who is currently That take office as Deputy Speaker of the DPR in 2017 to the Corruption Eradication Committee, with request for investigation to himself postponed until decision pretrial out. Phenomenon This show system Indonesian law in practice Still presenting a double standard, where poor groups tend to more easy ensnared law in a way repressive, while the political-economic elite to obtain more treatment soft (Wignjosoebroto, 2012).

In theory justice, inequality the contradictory with principle *justice as fairness* proposed by Rawls (1971), where justice should give the biggest advantage to those who are the least lucky. Aristotle in *Nicomachean Ethics* (Aristotle, trans. 2009) defines justice as action give to everyone what to be his rights. He distinguish between two types justice, namely justice distributive, which is related to with distribution source Power public in a way proportional, and justice commutative, which focuses on equality in transaction or agreement between individual. In the system modern law, principles justice This should reflected in practice the law that guarantees equality before law (*equality before the law*) without discrimination.

According to Hans Kelsen, in work *Pure Theory of Law* (1934), the rule of law functioning as the system that regulates connection between individuals and the state through



legal norms that are objective and able applied in a way fair for all citizen. In general theoretical, system law understood as subsystem from society that has function For maintain order, regulate behavior, as well as guard stability society (Parsons, 1951). Supremacy law referring to the principle that law is the highest, which is not can set aside by other powers. In the Indonesian context, the principle This set up in the 1945 Constitution and provides base for the country to ensure that law will arrange all aspect life society. However, the implementation supremacy law often hampered by existing inequalities in system justice, such as legal bias influenced by power politics and economics, which caused law No can applied in a way consistent and fair (Bourne, 2017).

So, the inequality enforcement law No just problem technical or administrative, but is problem structural matters concerning legitimacy and credibility of the state in operate principle law in a way fair and equitable. Inequality functional in context law refers to the discrepancy between ideal function of law and reality its implementation in society. When the law No capable operate his role as tool protection, settlement disputes, and enforcers justice in a way evenly, then happen inequality function (Luhmann, 2004). Law in practice is reality implementation law in society. Law does not always run as should be Because influenced by many factor like interpretation enforcer law, interests politics, power, even condition social economy citizens (Mahfud MD, 2009). This is what is often create gap between *das sollen* (what should be) and *das sein* (what happens).

Therefore that's important For highlight and evaluate how far the system Indonesian law is capable operate its function in a way fair and equal for all over citizens. Justice in system law differentiated into two: justice procedural and justice substantive. Procedural justice emphasizes a fair legal process, without take sides, and in accordance with rule applicable law. This includes aspect like right on defense, equality before law, and certainty law (Tyler, 2006). While that, justice substantive see results from a legal process—whether results the fair in fact social. Substantive justice more notice context, impact, and conditions social background A case law (Sen, 2009).

In the context of Pancasila and Citizenship Education (PPKn), the problem inequality enforcement law become important For under review in a way deep. Civic education own role strategic in to form character a conscious citizen law. Through education this, participants educate taught values democracy, rights and obligations citizens, as well as importance supremacy law in life nation and state (Irianto, 2015). The main objective from education citizenship is to form active and responsible citizens answer, which is not only understand law in a way normative, but also critical to inequality and ability participate in fight for justice social (Print, 2007). This condition become challenge Serious for Pancasila and Citizenship Education (PPKn), which is tasked with to plant values justice, equality and awareness law on generation young.

## 2. RESEARCH METHOD

Study This use approach qualitative descriptive. Approach This chosen Because allow researcher For understand in a way deep reality complex social and legal issues , especially in to study gap between structure law normative and implementation law in practices that impact on justice for citizen.

Types of research This is studies literature (library research), which aims For to examine theories, concepts, documents law, and results study previously to explain



phenomenon inequality functional in enforcement law as well as its relevance to education citizenship.

According to Moleong (2017), research qualitative descriptive give room for understanding in a way interpretive to phenomenon social, legal and cultural based on the data obtained from various source secondary.

Study This using secondary data, namely data obtained from sources that have been available and documented, including: Relevant books with theory justice, system law, and education citizenship; Journals scientific national and international related Topic law and citizenship; Documents law like 1945 Constitution, law sectoral (for example Human Rights Law, Power Law) Justice, and decision court; Report from institution independent like National Human Rights Commission, ICJR, Kontras, and other institutions supervisor judiciary. Election this data source aiming For enrich and deepen analysis to researched theme in a way theoretical and practical.

Data collection techniques in study This is documentation and analysis Contents (*content analysis*) on relevant documents and literature. This technique allow researcher For identify, categorize, and interpret meanings certain from document or text.

Analysis Contents will done to narrative, argumentation, or regulation the law that describes inequality implementation law or obstacle in realize justice social substantive. The data analysis process is carried out with following the model of Miles and Huberman (1994), which includes three stages main:

1. Data Reduction: Filtering and sorting information from literature and documents relevant laws with focus study.
2. Presentation: Arranging data in form summary, table, or description narrative For make it easier understanding and withdrawal conclusion.
3. Drawing Conclusions and Verification: Compiling findings based on relatedness between data and theory For answer formulation problem.

In addition, it is used approach interpretation thematic that allows researcher group data based on themes important like structure law normative, practice unequal laws, and relevance justice substantive in context education citizenship.

### 3. RESULTS AND DISCUSSION

Butt (2010) revealed that one of obstacle main in implementation the law in Indonesia is low capacity institution justice, which is exacerbated by the rampant practice corruption as well as abuse authority in the process of enforcement law. Situation This reflect failure system Indonesian law, both from aspect structure institutional and function its operations. Views similar put forward by Hadjon (2002), who highlighted weakness protection law to society, especially marginal groups, as a result bureaucracy law that does not responsive and ignore principle justice substantive. In a more area, Butt and Lindsey (2010) explain that enforcement law in Indonesia is greatly influenced by dynamics relation power, so that law tend take sides to elite and ignorant circles interest public usual. While that, Pompe (2005), in his study about The Supreme Court, stated that has happen a kind of "*institutional collapse*", namely conditions in which an institution justice fail operate his role in a way fair and independent. As a result, various decision law often show inequality treatment law , especially in related matters with interest politics and economics.



Hadjon (2002) emphasized existence difference fundamental between *law in the books* and *law in action* in context system law in Indonesia, where the law often not run as should be. Because existence intervention power, weakness integrity enforcer law, and lack of supervision public. Indicators inequality the the more clarified by the findings Indrayana (2008), who shows that even though Indonesia has device law written in full, its implementation often stuck consequence low integrity apparatus law, intervention politics, as well as lack of culture law. Pompe (2005) added that independence weak judiciary cause law lost authority the moral as guarantor justice. Report *The World Justice Project* (2023) also strengthens findings This with put Indonesia in a position low in *Rule of Law Index*, especially on the indicators enforcement law and justice civil.

As shown in report annual *Indonesian Legal State Index by the Indonesian Legal Roundtable* (ILR) and the Commission Judicial, although law written in a way normative applicable for all over citizen, practice its enforcement Still show biased tendency towards poor and weak groups (ILR, 2019). Findings This in line with Santoso's thoughts (2016), which reveal perpetrator from circles lower more prone to accept punishment heavy compared to perpetrator from elite group, although act the crime similar. This is show weakness principle equality law as well as dominant influence social in the judicial process. For deepen understanding about accessibility law, Nurjannah (2021) added that group vulnerable — like women, society customs, and poor people—often experience obstacle in access help law. Because cost, lack of information, as well as limitations institution help law. With Thus, the law normative Not yet ensure justice substantive bias to all over citizen.

In general academic, phenomenon This called as *dualism of law*, namely implementation different laws depending on the background behind social and political perpetrator (Butt & Lindsey, 2010). In conditions like this, law lost character universal and changing become instrument discriminatory power. Satjipto Rahardjo (2009) emphasized that law should No only understood as text normative, but as practice demanding social sensitivity to reality. Without notice context social and structure inequality, law at risk become instrument repressive, not protective.

In perspective theory John Rawls (1971) justice, law must ensure fair distribution on burden and benefits social. If the law only emphasize equality procedural, without consider inequality structural like poverty or discrimination, then justice that is produced nature pseudo. Santos (1995) even to mention system modern law as hegemonic, because more serve interest class dominant. This is reinforced by Lindsey (2008) who highlighted that in developing country context, legislative and enforcement processes law often controlled by political and economic elites.

Criticism of formalism law is also voiced by Rahardjo (2006), who said that compliance to law written No ensure justice if ignore values substantive. Apparatus enforcer the law that only stick to the procedure normative without notice essence justice will produce practice repressive law. Asshiddiqie (2009) also highlight trend institution justice For bow to pressure politics, which in the end create uncertainty law. The results of research by Butt and Lindsey (2008) revealed that enforcement law in Indonesia often nature discriminatory and selective, where groups weak more easy ensnared law, while group in power get treatment special. This shows existence inequality serious functional between principle law normative and reality practice in the field.





Findings Hadiprayitno (2010) strengthens framework thinking about inequality enforcement law in Indonesia, especially with show that law often put into operation No For realize justice substantive, but rather For maintain interests of the status *quo* power. Argument This in line with Pompe's (2005) perspective, which highlights that intervention power political in the process of enforcement law become source main distortion justice. In terms of this, the appointment apparatus law such as judges and prosecutors No off from tug-of-war interest politics, which then bother independence institution justice . With Thus, the relationship between second theory the confirm that structural bias in system law No only impact on implementation law, but also on trust public to justice That himself. Santoso (2004), in his study about criminology and discrimination law, emphasize that condition social economy play role important in treatment law to perpetrator crime. He show that individual from poor groups tend to more easy criminalized compared to those who have position more social and political strong. Findings This in line with view theory conflict in sociology law, which states that law often take sides to group dominant and strengthening structure existing power. In line with That, Butt and Lindsey (2010) underlined that low integrity and independence apparatus enforcer law to worsen inequality in enforcement law , especially when intervention power to blur objectivity law. Second perspective This blend in show that system law No only influenced by formal norms, but also by dynamics social and political context surrounding it. In a more extensive, the Indonesia *Corruption Watch* report (2023) confirms that inequality This exacerbated by the height level corruption among institution enforcer law like police, prosecutors, and the judiciary. With Thus, there are continuity between theory discrimination structural and practical corrupt leading to degradation trust public as well as change function law from protector rights citizens become instrument transaction power.

Findings Nurjannah (2020) in *IUS Law Journal* highlight that training and education the law given to police and prosecutors Still Not yet adequate in to form character professional and sensitive apparatus to values justice social. Judicial Commission, Korpri, and Ombudsman, which formally function as supervisors, often not own sufficient authority For give sanctions firm to violations (Hadikusuma, 2020). With Thus, it is explained that weakness quality education law and its limitations effectiveness supervision is factor structural contributing factors to low professionalism as well as accountability apparatus enforcer law in Indonesia.

View Soetando Wignjosoebroto (2002) highlights that implementation the law in Indonesia is often not reflect justice because of the authorities enforcer law not enough understand philosophy base law and tend to operate his job in a way procedural-formalistic, not substance. Disconnection between legal norms and their practice this , according to Wignjosoebroto (2012), rooted that weakness meaning to justice substantive become factor main in creation inequality implementation in the field. Relevance between second view This show that understanding philosophical to law is prerequisite important for implementation just law. With Thus, the theory justice substantive become framework that can explain Why structure law that is built formally not capable present justice at the level practice if No accompanied by with moral integrity, competence professionalism, and independence from pressure politics.

## DISCUSSION

Legal awareness covers understanding, attitude, and behavior citizens who reflect respect to law and willingness For obey as well as uphold it for the sake of creating order and



justice social (Soekanto, 2006). Civic education own potential strategic in build awareness critical law, where citizens do not only comply law in a way normative, but also capable evaluate and demand justice substantive from the country (Samsuri, 2019). View This in line with theory John Rawls's emphasis on justice importance education in to form structure just social through principle equality and justice procedural, which in turn ensure access law and state protection evenly (Rawls, 2006). In line with perspective In this regard, Maftuh (2014) shows that integration values citizenship in formal education contributes to formation foundation ethical in state administration and strengthen practice accountable and participatory law. Views This reinforced by Kymlicka and Norman (2000), who emphasized that education citizenship play a role important in to plant values justice, supremacy law, and awareness constitutional citizens, so that complete framework Rawls and Maftuh's theory in see role education as a medium of transformation social going to justice law.

Curriculum education citizenship in Indonesia has integrate values justice social and supremacy law as element main, as reflected in Minister of Education and Culture Regulation No. 24 of 2016 which emphasizes importance development awareness constitutional and participatory active inhabitant through approach contextual learning (Ministry of Education and Culture, 2016). However Thus, the results study Yudistira and Budimansyah (2021) showed that existence gap between understanding conceptual student about supremacy law with implementation in practice, especially in courage act critical to violation law in the environment social they.

View (2004) confirms that education citizenship is tool strategic in build a democratic and just society through formation character as well as understanding law citizen. Views This in line with Banks' (2008) idea, which emphasizes that education fair multiculturalism only can achieved if the educators own awareness will role ethical and moral in public democratic. Relevance between role education and awareness critical is also emphasized by Freire (1970), who views that education must nature to free, namely push participant educate For understand and criticize structure social and legal nature oppressive. With Thus, thirdly perspective This to form foundation strong conceptual about importance education—in particular education citizenship—in build awareness law and justice social in the middle reality inequality law.

Civic education own role strategic in to form a conscious citizen law and active in a way democratic. Winataputra (2012) stated that education citizenship oriented towards *civic* disposition capable to plant commitment to values democracy, rights basic human beings, and supremacy law. In line with matter In this regard, Kerr (1999) emphasized that quality education citizenship correlated positive with level involvement politics and social citizens. Furthermore, Winataputra (2011) expands view This with state that education citizenship based Pancasila values and the constitution can become bridge between ideal legal norms and practice social which is often complex as well as lame. Completing This formal approach, Handayani and Diani (2018) show that the education program informal law also has role important in increase awareness law society, especially when supported by policy proper public and allocation source adequate power.

## 4. CONCLUSION

### Conclusion

Based on results study and discussion, can concluded that enforcement law in Indonesia is still face various problem structural and cultural obstacles that hinder achievement justice



substantive for all over citizens. Inequality treatment law, low independence institution justice, and the rise intervention power become indicator failure system law in realize justice substantive. Enforcement law tend nature discriminatory, more take sides to elite groups, as well as prone to to intervention power politics and economics. Besides that, its weak integrity, professionalism, and understanding philosophical apparatus enforcer law participate to worsen inequality law.

On the other hand, education citizenship own potential transformative in to form awareness more laws progressive and democratic in the middle society. Through approach based on values, participatory, and contextual, education can to plant understanding to justice substantive, supremacy law, and role citizens in demand as well as guard justice.

### Suggestion

1. Strengthening Integrity and Professionalism Apparatus Law enforcer
2. Structural Reform Anti-Discrimination Institutions and Legislation
3. Strengthening the Role of Civic Education as an Agent of Transformation
4. Encouraging Public Participation and Legal Literacy
5. Strengthening Institutional Supervision Independent to mechanism existing supervision.

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