



Impartial Law Enforcement by the Indonesian Criminal Justice System in the Civil Law System

Nani Widya Sari^{1*}, Dian Ekawati², Isnu Harjo Prayitno³, Sri Siti Munalar⁴, Purgito⁵

^{1,2,3,4,5} Universitas Pamulang, Tangerang Selatan, Indonesia

* Corresponding author's e-mail: dosen02124@unpam.ac.id

ARTICLE INFO

Keywords :

Civil Law System; Criminal Justice System; Impartial Law.

How To Cite :

Sari, N., Ekawati, D., Prayitno, I., Munalar, S., & Purgito, P. (2024). Impartial Law Enforcement by the Indonesian Criminal Justice System in the Civil Law System. *Nagari Law Review*, 7(3), 544-554.

DOI :

10.25077/nalrev.v.7.i.3.p.544-554.2024

ABSTRACT

This writing aims to understand impartial law enforcement through the existing criminal justice system and legal system models in the world and Indonesia, along with their characteristics. The method used in this writing is normative legal research through a literature study with data collection methods in the form of secondary data. The results of the research show that law enforcement has not been implemented optimally, so it is essential that the existing criminal justice system can work well to create and realize a sense of justice in society. In this world, two models of the rule of law concept have been developed: the Continental European model called *rechstaat* and the Anglo-Saxon model called the rule of law. The idea of the *rechtsstaat* was born from a struggle against absolutism, so it was revolutionary. The concept of *rechtsstaat* (rule of law) relies on the Continental Law system called civil law. Meanwhile, the idea of the rule of law develops evolutionarily, based on a legal system called common law.

1. Introduction

Essentially, a system is surrounded and influenced by its environment, described by its boundaries, structure, and goals, and expressed in its functions. The meaning of the system can be understood in terms of language. Many experts have also put forward the definition of a system. Understanding the system helps a goal go according to plan. In terms of a system, a group of entities forms a single unit, unites, and works together. This collaboration can be used as a strength in an existing system. There are many benefits to be gained from team collaboration, both for individuals and existing groups and organizations. Collaboration increases professionalism and creativity. Therefore, at every opportunity in an environment, cooperation must be maintained so that the goals you want to achieve can go according to plan.

Cooperation in achieving law enforcement goals is also essential. This can be done by a system known as the criminal justice system. This criminal justice system will work together. Without good cooperation, law enforcement objectives can't be achieved. Of course, the systems that work in the context of law enforcement work by their respective functions and duties in a professional manner in carrying out their responsibilities in law enforcement.

The definition of law can be seen from the definition put forward by Utrecht: "The law is a collection of regulations (commandments and prohibitions) that regulate the order of a society and, therefore, must be obeyed by that society. Meanwhile, another definition of law was put forward by Kansil, who said that law is the rules of social life that are regulated and enforced to ensure order in society. Kansil also stated that it contains legal elements, namely, rules of conduct implemented by official bodies, is coercive, and has strict sanctions."

Legal experts give many definitions, but if you look at the definitions given, all legal experts agree that law is a norm that contains sanctions. When these norms are violated, sanctions will be imposed. In community life, people's expectations are how law enforcers can enforce the law in the sense that law enforcement circles are the foundation and hope that the law can be implemented in creating a just, prosperous society. In community life, law enforcement still has not been carried out optimally. There's a law enforcement crisis going on.

There are still many law enforcers who do not fully realize that justice in law enforcement ignores morality. There is overlap and violations between law, justice, and morals.¹ Disregard for the law also often occurs. People do not believe in existing laws. Law enforcement is inconsistent and sometimes discriminatory. The existing legal instruments do not yet reflect justice. Even the judiciary is not independent.² Thus, the law has not functioned optimally. Sometimes, the aspect of legal certainty ignores the value of justice. When the law only focuses on certainty, it causes it to lose its true meaning, namely, providing justice and fulfilling human rights.³ All existing legal orders must support each other to obtain the true goal of law: certainty, justice, and usefulness.

It is necessary to cooperate between the existing legal systems as a unified whole; the existing elements must be closely related.⁴ Cooperation in law enforcement is essential. Law is a regulation that contains norms and sanctions to control human behavior and create order, security, and justice in human life. More than that, when norms and sanctions are ignored, people will suffer consequences in punishments and fines.

For this reason, in society, law is not value-free; that is, its benefits and harms solely depend on how humans carry it out, implement it, and apply it. The law is a rule of values and norms that determine one's will, goals, identity, ideals, and hopes. However, in practice, the law will not be able to realize one's desires, goals, and aspirations because it is only a rule. The law needs human presence, namely, people who carry it out, for example, law enforcers, to realize all their goals, desires, and aspirations. By looking at the law in this way, law enforcement does not just enforce the formal mechanism of a legal rule but also strives for the realization of the values contained in the law, such as respecting fellow citizens, obeying all existing regulations, always maintaining and maintain order, security, and peace in the social life of the community. This is where the task of the criminal justice system is awaited because achieving a peaceful and comfortable social life requires law enforcement based on existing regulations in the Indonesian legal state. The problems discussed in this article are: How is impartial law enforcement enforced relatively in the Indonesian legal system by the existing criminal justice system? Second, what legal system models exist in the world and Indonesia, accompanied by their characteristics, that create justice?

2. Metode

Every academic scientific writing requires a method so that the study results can be accounted for academically. The discussion of the problems raised in this paper was carried out using normative legal research methods. The source for this research is secondary data, namely legal regulations related to the problem and theories related to the issue being raised. The following source collected is in court decisions and is strengthened by legal comparisons, especially between civil and common law legal systems. The research results obtained were then analyzed qualitatively.

¹ Iin Ratna Sumirat, (2020). 'Penegakan Hukum Dan Keadilan Dalam Bingkai Moralitas', *Jurnal Al-Qisthas*, 11(2), p. 86.

² *Ibid.*

³ *Ibid.*

⁴ Rusadi Kantaprawira, 1988, *Sistem Politik Indonesia Suatu Model Pengantar*, Bandung: Sinar Baru, p 3.

3. Result and Discussion

3.1. Indonesia as a Rule of Law State

Article 1, paragraph (3) of the 1945 Constitution states, "The State of Indonesia is a State of Law." From the sound of Article 1 paragraph (3), the provisions regarding *rechtsstaat* are explicitly included in the Third Amendment of 2001 to the 1945 Constitution of the Republic of Indonesia. The concept of *Rechtsstaat* relies on the belief that state power must be exercised based on just and reasonable law. The relationship between the governed (governed) and the governing (governor) is based on an objective norm, not absolute power alone.

The Indonesian legal state can be likened to a house project, which must be built, maintained, and passed on to successors. It requires self-discovery or identity in its formation. Historically, Indonesia followed the steps of *Rechtsstaat*, or civil law, because the Dutch colonized Indonesia for a long time. However, if the concept of civil law is applied purely, it will most likely not bring happiness to the Indonesian people. The law will move much slower than the dynamics of Indonesian society. Even worse, government implementation will be rigid and tend to be repressive.⁵

Fair and reasonable law is based on implementing existing legal provisions to create legal certainty in the Indonesian legal state. The Indonesian rule of law concept is based on the nation's worldview, namely Pancasila. The basic principle of the rule of law is that state or government action is based on law, not on individuals. This means the law emphasizes enforcing recognition, equality, individual freedom, and human rights.

The word rule of law is the meaning of a compound word, namely state, and law. In giving their meaning, each person can provide an excessive weight to assessing both the word law and the word state. Likewise, the value weight of each element of the rule of law. The aspects of the rule of law are closely related to the historical development of a nation and its society. Because each country has a different history, the meaning of the rule of law in various countries will have different contents and elements.⁶

In Abdul Mukthie Fadjar's view, a legal state is one whose structure is as well regulated as possible in law. All government powers and tools are based on existing laws. Contrary to the law, people cannot act independently according to their desires. The rule of law is a state ruled not by people but by-laws (in which men do not govern but by-laws). Therefore, in a legal state, the state fully guarantees the people's rights to obtain legal justice.⁷ People seek justice endlessly; justice is fought for tenaciously. People from the ruling class await justice. People will oppose as strongly as possible if justice is not given and if justice does not exist.

3.2. Impartial Law Enforcement in the Indonesian Legal System by the Criminal Justice System

Laws are rules that can be applied in society's social life. The purpose of implementing the law is to create goodness and order. Even though the law must be enforced, law enforcement must always uphold justice. Creating a good, prosperous society will not be possible without it. The role of law enforcement institutions is vital to achieve just law enforcement. Therefore, cooperation is needed to support just law enforcement's goals. This is part of the proper application of the law.

As referred to above, law enforcement efforts are carried out by a system known as the criminal justice system. The criminal justice system works based on existing formal laws and their functions and duties. In carrying out its responsibilities, it aims to create goodness for society in the sense that

⁵ Achmad Irwan Hamzani, (2014) "Menggagas Indonesia Sebagai Negara Hukum Yang Membahagiakan Rakyatnya", *Jurnal Yustisia*, 3(3), p. 136-142.

⁶ Azhary, 1995, *Negara Hukum Indonesia, Analisis Yuridis Normatif Tentang Unsur-Unsurnya*, Jakarta: Universitas Indonesia Press, p. 3.

⁷ Abdul Mukthie Fadjar, 2016, *Sejarah, Elemen Dan Tipe Negara Hukum*, Malang: Setara Press, p. 6.

when a person commits an act contrary to material law, the system will provide punitive sanctions according to the mistake committed by the legal subject. For this reason, people are required to comply with existing laws and regulations so as not to receive punitive sanctions from the state as the implementer of the law. However, suppose some people or legal subjects commit acts contrary to existing regulations. In that case, the legal system must work well, starting from the investigation and investigation process until the judge makes a court decision. Sometimes, many factors influence law enforcement, so the process does not run well.

Sometimes, money can influence the investigation, prosecution, and decisions handed down.⁸ Even the judge's activities in handling a case in court cannot be separated from and influenced by the cultural value system adopted.⁹ Even though the judge has a very central role, the judge has the authority to decide cases, who is right and who is wrong. Judges can be seen as the personification of the law, so they must guarantee justice for every justice seeker through the legal process in court.¹⁰ Regarding the court judge's decision, it is the last bastion of just law enforcement.

It is not wrong that the judge's decision is the crown of the judges; the judge's decision is the judge's statement, which is stated in written form and pronounced in a trial open to the public as the result of an examination of a case.¹¹ In realizing the function of law enforcement, the main requirements must be met, namely that legal material is made correctly, legal awareness, and has beneficial value for the interests of individuals and society. In contrast, the requirements for supporting law enforcers as translators and application of rules to maintain a balance between law and justice (especially judges as creators of law, if a legislative vacuum arises), and likewise, law enforcers must put aside personal interests from political, cultural, economic and social influences that have the potential to trap every law enforcer's discretion and influence the results of law enforcer decisions. Realizing and producing justice values without public pressure must be based on legal principles.

"According to Prof. Muladi, law enforcement must be interpreted within the framework of three concepts, namely, First, the concept of total law enforcement (total enforcement concept), which demands that all values behind the legal norms be enforced without exception; Second, it is full (full enforcement concept), realizing that the total concept must be limited by procedural law and so on to protect individual interests; Third, the concept of actual law enforcement (actual enforcement concept) which emerged after it was believed that there was discretion in law enforcement due to limitations, both related to infrastructure, quality of human resources, legislation and lack of community participation."¹²

That is the true principle of justice needed to achieve the expected law enforcement. Law and justice are interrelated elements which are a "conditio sine qua non" for each other. In practice, the existence of a fair legal process for everyone is sometimes far from being a fire. There are still legal processes that are not by the provisions of existing laws and regulations. As a result, the law is not implemented effectively to create certainty, justice, and legal benefits. This situation will lead to failure to achieve respect for Human Rights (HR).

Meanwhile, Romli Atmasasminta said that law enforcement in Indonesia is ineffective due to the following factors: First, the substance of the legal regulations is incomplete, and there are still weaknesses. Second, the substance of legal rules still overlaps. Third, there is the substance of legislative regulations, which still place the government's interests far greater than the interests of the wider community. Fourth, there is still no clarity regarding the differences between executive, judicial, and legislative functions. Fifth, national and state awareness and responsibility in producing

⁸ Sanyoto, (2008). 'Penegakan Hukum Di Indonesia', *Jurnal Dinamika Hukum*, 8 (3) p. 200-2004,.

⁹ M. Syamsudin, 2012, *Budaya Hukum Hakim Berbasis Progresif*, Jakarta: Kencana, p. 153.

¹⁰ Ahmad Kamil, 2012, *Filsafat Kebebasan Hakim*, Jakarta: Kencana PrenadaMedia, p. 167.

¹¹ Mukti Arto, 2007, *Praktik Perkara Perdata pada Pengadilan Agama*, Yogyakarta: Pustaka Pelajar, p. 251.

¹² Imam Suroso, 2016, *Hukum Acara Pidana Karakteristik Penghentian Penyidikan Dan Implikasi Hukumnya*, Yogyakarta: Laksbang, p. 79-80.

legislative regulations and law enforcement is still weak. This weakness appears as an implication and weak link in other social, cultural, economic, and political fields.¹³

Soerjono Soekanto believes that: "law and law enforcement are some of the factors in law enforcement that cannot be ignored; if they are ignored, it will result in the expected law enforcement not being achieved."¹⁴ The expected law enforcement is the dream of all elements of society. The correct implementation of the law by the authorities or law enforcers by upholding the law's certainty, justice, and usefulness reflects the existence of the rule of law. Authorities or law enforcers cannot enforce the law arbitrarily. There is no law without regulations. With these rules, the freedom of individuals and rulers can be limited.

According to Marcus Tullius Cicero, law as a tool is a regulation that can prevent rulers from acting arbitrarily. The law is the boundary of freedom between individuals and authorities in every interaction, so the law becomes a protection and guarantee for creating public order. Without the enactment of law, chaos, and arbitrariness will arise. In the words of Vivian Bose, the law is the treasure of all humanity (the rule of law is the heritage of all humanity), which was conveyed at the International Congress of Legal Experts in Rio de Janeiro, Brazil, in 1962.¹⁵

One of the laws that acts as a barrier for the authorities to prevent them from acting arbitrarily is criminal law, which, in this case, is implemented in the Criminal Code (KUHP). Carrying out their duties and responsibilities means that the authorities must adhere firmly to and uphold all the provisions of the Criminal Code. The authorities referred to in this case are law enforcers, starting from the police, prosecutors, and judges or what is known as the criminal justice system. This means that law enforcers work in a system known as the criminal justice system. Police, prosecutors, and judges, in determining punishment for someone suspected or proven guilty, must refer to article by article in the Criminal Code. Especially in this case, the judge. The judge is the spearhead determining who will be examined in criminal justice to enforce the law.

Based on the description above, it is essential that the existing criminal justice system can work well to create and realize a sense of justice in society. Fair law enforcement in the Indonesian legal system by the criminal justice system must be discovered by those given the authority to create it. Justice in social life is very much needed because the principle that must be upheld in the rule of law is how justice can be felt by society.

In various legal literature, many theories talk about justice. One of the theories of justice is the ethical theory; according to this theory, the law aims solely at justice. The content of law is determined by ethical beliefs about what is just and unjust.¹⁶

To obtain justice, sometimes justice seekers have to go through unfair procedures. It's not wrong that the law is a scary thing for society. The rule of law touted so far is only a sign without meaning. Sometimes, legal texts are just language games that are deceptive and disappointing.¹⁷ In the theory of just law, Gustav Radbruch states that the ideal of law is nothing other than justice. The problem of justice is not a classical mathematical problem but rather a problem that develops along with human society and intellectual civilization. The essence of justice always exists in human life.¹⁸

¹³ Romli Atmasasmita, 2001, *Reformasi Hukum, Hak Asasi Manusia Dan Penegakan Hukum*, Bandung: Mandar Maju, p.11-12.

¹⁴ Soerjono Soekanto, 2004, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Cet Kelima, Jakarta: Rajawali, p. 5.

¹⁵ Juniarso Ridwan dan Achmad Sodik Sudrajat, 2019, *Hukum Administrasi Negara dan Kebijakan Layanan Publik*, Bandung, Nuansa Cendekia, p. 49.

¹⁶ Hasuri, (2019). 'Sistem Peradilan Pidana Berkeadilan melalui Pendekatan Kontrol dalam Proses Penegakan Hukum', *AJUDIKASI : Jurnal Ilmu Hukum*, 3(2), p. 173.

¹⁷ Lilik Haryadi dan Suteki2017,' Implementasi Nilai Keadilan Sosial Oleh Hakim Dalam Perkara Lanjar Sriyanto dari Perspektif Pancasila dan Kode Etik Profesi Hakim', *Jurnal Law Reform*, Program Studi Magister Ilmu Hukum, Universitas Diponegoro, 13(2), Tahun 2017, p. 165.

¹⁸ Peter Mahmud Marzuki, 2008, *Penelitian Hukum*, Jakarta: Kencana, p. 23.

Daniel Webster stated that justice is the ideal or goal of law, which is the noblest human interest. Justice is something that people always seek and fight for; wait for it with complete confidence, and people will oppose it as strongly as possible if justice is not realized or does not exist.¹⁹ Justice is always the object of aim, primarily through the institution of justice. Justice is fundamental to the functioning of a legal system. The legal system is a structure or completeness to achieve a mutually agreed concept of justice.²⁰

Equating justice and legal regulations is the easiest way to understand justice. Legal regulations promote justice in two ways: First, legal regulations introduce several moral norms as legal norms and establish standards in the legal system as a system of justice. Second, the justice system is formed through several institutions established by legal regulations to implement and enforce legal regulations to obtain justice.²¹

Justice is a characteristic that must permanently be attached to criminal sanctions. Every criminal sanction must be able to adhere to the principles of justice that apply in society so that society is treated fairly. If a criminal sanction is implemented in an order that makes the majority of the people feel positioned unfairly, then it is inevitable that society will reject the criminal sanction.²²

The concept that justice is legal justice as expressed in the doctrine of legal science, *Fiat justitia, ruat coelum* (let justice be done, even if the heavens fall; let justice be done, though the sky should fall) must always be present in law enforcement. Even if the sky falls, every judge or court must provide justice based on applicable law. In Lord Denning's view, If justice is done, the heavens should not fall. They should rejoice. (if justice is carried out, the sky will not fall. The sky will be happy).²³

By adhering to the existing provisions of the Criminal Code, all law enforcers must provide legal protection to the public interest. This is because criminal law is part of public law. After all, its object is the public interest, and the government defends them. So, the government has the right or authority but is also burdened with the obligation to maintain criminal law.²⁴ Several legal interests are protected through criminal law if those interests have become a public interest. The legal interests protected in criminal law are usually grouped into three groups: state legal interests. Second, the legal interests of society, and third, the legal interests of individuals.²⁵ Taking into account the above legal interests in protecting the legal interests of society, the law must be implemented effectively by law enforcement officials. Law enforcers must pay attention to the legal principles inherent in existing criminal law regulations to achieve justice in the community's judicial process.

To enforce the law through the judicial process, the process must follow the legal provisions that specifically regulate it. In Indonesia's judicial system, laws specifically regulate how the state must carry out the judicial process through its organs.²⁶

Justice can be understood as something where everyone gets what is then their right. In Gustav Radbruch's view, three basic principles must exist in law: certainty, justice, and expediency. The most crucial goal of law is to achieve justice in society. Law enforcers must be earnest in carrying out their law enforcement duties to achieve legal justice. Law enforcers who are members of the criminal

¹⁹ Juniarso Ridwan dan Achmad Sodik Sudrajat, 2019, *Hukum Administrasi Negara Dana Kebijakan Layanan Publik*, Bandung: Nuansa Cendikia, p. 38.

²⁰ Lilik Haryadi dan Suteki. (2017). 'Implementasi Nilai Keadilan Sosial oleh Hakim dalam Perkara Lanjar Sriyanto dari Perspektif Pancasila dan Kode Etik Profesi Hakim', *Jurnal Law Reform*, Program Studi Magister Ilmu Hukum, Universitas Diponegoro, 13(2), p. 207.

²¹ Jonlar Purba, 2017, *Penegakan Hukum Terhadap Tindak Pidana Bermotif Ringan Dengan Restoratif Justice*, Jakarta: Jala Permata Aksara, p. 50.

²² *Ibid*, p. 84.

²³ *Ibid*, p. 49-50.

²⁴ Frans Maramis, 2016, *Hukum Pidana Uum Dan Tertulis di Indonesia*, Depok: Rajagrafindo, p. 16

²⁵ *Ibid*, p. 18.

²⁶ Satjipto Rahardjo, 2006, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, p. 181-182.

justice system must not play around in enforcing the law for the sake of societal justice. Therefore, all rules and ethics in law enforcement must not be eliminated. The existing criminal justice system must uphold everything.

3.3. The Legal Systems existing in the World and Indonesia Accompanied by their Characteristics to Create Justice

In Indonesia's legal state, the principle of equality before the law is a principle that has been recognized internationally, namely in the Universal Declaration of Human Rights/DURHAM) in 1948. Equality before the law is a fundamental principle in law enforcement. It is something essential that must be applied fairly and transparently. All of this aims to ensure that protection for all citizens is the same without making any distinction between one another. The Indonesian constitution in Article 27, paragraph 1 states, "All citizens have the same position under the law and government and are obliged to uphold the law and government without exception. The equal position of everyone in law and government is recognized normatively and implemented empirically. Within the framework of this principle of equality, all discriminatory attitudes and actions in all their forms and manifestations are identified as prohibited attitudes and actions.²⁷ Equality before the law for every citizen in Indonesia is a legal ideal in realizing justice on the one hand and the other hand as a system of legal norms. The articles, both those that only concern citizens and those that affect the entire population, contain the desire of the Indonesian people to build a democratic country that wishes to implement social justice and humanity.²⁸ The principle of equality before the law is interpreted as the equal rights of justice seekers to obtain legal protection and justice for justice seekers based on the same material and formal law before judges and courts.²⁹

In law enforcement, we often see that applying the principle of equality before the law has not been implemented as well as it should be. In the Criminal Procedure Code, this principle encourages upholding human rights by putting aside all forms of differences. So that there will be severe and total law enforcement. Total and profound law enforcement will be valuable work in maintaining the existential function in social life from the actions of humans or groups of humans. Because basically, the law aims to create certainty, justice, and benefit in society. Every country, including Indonesia, has a legal system to regulate its government. In principle, the legal system governs the life of a society so that conflict does not occur. Even though conflict cannot be avoided, the legal system has a role in resolving this conflict. In the world of justice, the legal system significantly influences the application of law, especially for judges in examining and deciding cases. The court is where justice seekers can obtain the justice they hope for. "Justitia est constans et perpetua voluntas jus suum cuique tribune" (Justice is the constant and eternal will to give everyone what is due).

In general, the legal system in the world consists of 2 systems, namely the Continental European Legal System (civil law) and the Anglo-Saxon Legal System (common law). The civil law system has a legal source from written legal codification (written code). Legal System in Indonesia Indonesia is one of the countries that adhere to the Continental European Legal System (civil law). Even though Indonesia adheres to the legal system of the Continental European Legal System (civil law) globally, after the third amendment to the 1945 Constitution, the legal system adopted in Indonesia is the Pancasila Legal System. According to Mahfud MD, the Pancasila Legal System adopted in Indonesia uses a "prismatic concept," namely a concept that takes the best aspects of two conflicting concepts (between *Rechtstaat* and The Rule of Law) which are then combined as a separate concept so that it can always be applied according to the life of Indonesian society and its dynamics.³⁰

²⁷ Fajlurrahman Jurdi, 2016, *Teori Negara Hukum*, Malang: Setara Press, p. 224-225.

²⁸ Zainuddin Ali, 2005, *Sosiologi Hukum*, Jakarta: Sinar Grafika, p. 101.

²⁹ Mukti Arto, 2018, *Penemuan Hukum Islam Demi Mewujudkan Keadilan "Penerapan Penemuan Hukum, Ultra Petita & Ex Officio Hakim Secara Proporsional"*, (Buku Kedua), Yogyakarta: Pustaka Pelajar, p. 303.

³⁰ Moh. Mahfud MD, 2010, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*, Jakarta: Raja Grafindo, p. 6.

Apart from that, Indonesia also adheres to a customary law system. The Indonesian community is built as a whole, not as an individual, where internal relationships are organic so that the understanding of organic relationships extends to the environment within the community and where the community finds its life. o

Therefore, it cannot be denied that Indonesia has a diversity of ethnicities and local languages; in implementing its laws, it also pays attention to the customary laws that apply in a region. The Indonesian legal system cannot be separated from constitutional law. Jimly Asshiddiqie, in his book, has formulated at least seven types of sources of constitutional law, namely: (a) Unwritten constitutional values; (b) The constitution, both its preamble and its articles; (c) Written laws and regulations; (d) Judicial jurisprudence; (e) Constitutional conventions; (f) The doctrine of legal science which has become *ius commissions opino doctorum*; (g) International law that has been ratified or has come into force as customary international law.³¹

Some of the characteristics of the legal system can be seen as follows. First, a legal system is bound to time and place. The validity of a legal norm is not eternal but is constantly evolving to adapt to the dynamics of the social order. Therefore, the legal system is time-bound. Likewise, a legal system sometimes only applies to certain areas. For example, regional regulations regarding Islamic law in Aceh are called Qanun. This system only applies in the Aceh area and, of course, does not apply in other areas. The second characteristic of a legal system is that it is sustainable or sustainable and independent. Related to the norm system, the validity of a legal rule is intended for an extended period. This means that legal formation must reflect the current situation and conditions and anticipate various possibilities in the future. Even if changes occur, there must be continuity from the previous arrangements. Likewise, the legal system is independent. This means that if a problem arises, it will be resolved by the system itself. The third characteristic of the legal system is that it recognizes its decomposition. Generally, several legal descriptions exist, such as material and formal law. Material law is the substance that contains a subject matter that will be regulated, while formal law is to implement or maintain material law. The fourth characteristic of a legal system is that it does not require conflict between elements or parts. In this case, the relationship between one subsystem and another must not be contradictory. This is based on the postulate of *non est credendum de regulis juris*: no laws conflict with one another. The question then arises: what happens if there is a conflict between the elements or parts? If this happens, it will be resolved by the legal system itself. This is where the legal system's importance as a whole consists of parts or elements. The fifth characteristic of the legal system is that it is complementary. As a norm system, the legal system does not only consist of concrete legal regulations but also legal principles, doctrine, jurisprudence, and so on as a subsystem of the legal system. The final or sixth characteristic is that the legal system has a fundamental concept. This means that a legal system is constructed based on values, the most basic principles in the interaction between individuals and other individuals and between individuals and the state.

In modern times, the concept of the Rule of Law in Continental Europe was developed, among others, by Immanuel Kant, Paul Laband, Julius Stahl, and others. Meanwhile, in the Anglo-American tradition, the concept of the rule of law was developed based on the pioneering work of A.V. Dicey.

The concept of resistance, according to Friedrich Julius Stahl in his book *Constitutional Government and Democracy: Theory and Practice in Europe and America*, as quoted by Miriam Budiardjo, is characterized by four elements, namely: 1) Protection of human rights; 2) There is a separation or division of power to guarantee human rights, commonly known as Trias Politics; 3) government based on regulations/laws; and 4) The existence of administrative justice in disputes.³²

³¹ *Ibid.*

³² Miriam Budiharjo, 1997, "*Dasar-Dasar Ilmu Politik*", Jakarta: PT. Gramedia Pustaka Utama, p. 57-58.

The concept of Rule of law according to A.V. Dicey in his book *Introduction to the Law of the Constitution*, as also quoted by Miriam Budiardjo, is characterized by three elements, namely: 1) supremacy of law; the absence of arbitrary power, a person can only be punished if he violates the law; 2) equal position before the law (equality before the Law), both for ordinary people and for officials; and 3) guaranteeing human rights by law and court decisions.³³

The four principles of 'rechtsstaat' developed by Julius Stahl mentioned above can be combined with the three principles of 'Rule of Law' developed by A.V. Dicey to mark the characteristics of today's modern rule of law. In fact, according to the International Commission of Jurists", the principles of the rule of law were supplemented by the principle of free and impartial justice, which nowadays is increasingly felt necessary in every democratic country. The principles that are considered essential characteristics of the rule of law according to "The International Commission of Jurists" are: First, the state must obey the law. Second, the Government respects individual rights. Third, a free and impartial judiciary.³⁴

The prominent difference between the concept of rechtsstaat and the rule of law, namely in state administrative justice, is an essential tool and a prominent feature of rechtsstaat. On the other hand, administrative justice is not applied in the rule of law because the public trusts general justice.

4. Conclusion

Fair and reasonable law is based on implementing existing legal provisions to create legal certainty in the Indonesian legal state. The Indonesian rule of law concept is based on the nation's worldview, namely Pancasila. The basic principle of the rule of law is that state or government action is based on law, not on individuals. This means the law emphasizes enforcing recognition, equality, individual freedom, and human rights. The rule of law implies a compound word, namely state and law. In giving their meaning, each person can provide an excessive weight to assessing both the word law and the word state. Likewise, the value weight of each element of the rule of law. The aspects of the rule of law are closely related to the historical development of a nation and its society. This means that impartiality is protected by criminal law enforcement in Indonesia. Because each country has a different history, the meaning of the rule of law in various countries will have different contents and elements. In this world, two models of the rule of law concept have been developed: the Continental European model, called resistant, and the Anglo-Saxon model, called the rule of law. The idea of the *rechtsstaat* was born from a struggle against absolutism, so it was revolutionary. The concept of *rechtsstaat* relies on the Continental Law system called civil law. Meanwhile, the idea of the rule of law develops evolutionarily, based on a legal system called common law.

References

Buku

- Azhary, 1995, *Negara Hukum Indonesia, Analisis Yuridis Normatif Tentang Unsur-Unsurnya*, Jakarta: Universitas Indonesia Press.
- Abdul Mukthie Fadjar, 2016, *Sejarah, Elemen Dan Tipe Negara Hukum*, Malang: Setara Press.
- A.V. Dicey, 1977, *Introduction To The Law Of The Constitution*" Dalam Miriam Budihardjo, "*Dasar-Dasar Ilmu Politik*", Jakarta: PT. Gramedia Pustaka Utama.
- Ahmad Kamil, 2012, *Filsafat Kebebasan Hakim*, Jakarta: Kencana PrenadaMedia.
- Fajlurrahman Jurdi, 2016, *Teori Negara Hukum*, (Malang: Setara Press, 2016).

³³ Miriam Budihardjo, "*Dasar-Dasar Ilmu Politik*", Jakarta: PT. Gramedia Pustaka Utama, p. 8.

³⁴ *Ibid*, p. 58.

- Frans Maramis, 2016, *Hukum Pidana Uum Dan Tertulis Di Indonesia*, Depok: Rajagrafindo.
- Imam Suroso, 2016, *Hukum Acara Pidana Karakteristik Penghentian Penyidikan Dan Implikasi Hukumnya*, Yogyakarta: Laksbang.
- Juniarso Ridwan Dan Achmad Sodik Sudrajat, (2019). *Hukum Administrasi Negara Dan Kebijakan Layanan Publik*, (Bandung: Nuansa Cendikia,)
- Jonlar Purba, 2017, *Penegakan Hukum Terhadap Tindak Pidana Bermotif Ringan Dengan Restoratif Justice*, Jakarta: Jala Permata Aksara.
- Moh. Mahfud MD, 2010, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*, Jakarta: Raja Grafindo.
- Miriam Budiharjo, *Dasar-Dasar Ilmu Politik*”, Jakarta: PT. Gramedia Pustaka Utama.
- M. Syamsudin, 2012, *Budaya Hukum Hakim Berbasis Progresif*, Jakarta: Kencana.
- Mukti Arto, 2007, *Praktik Perkara Perdata pada Pengadilan Agama*, Yogyakarta: Pustaka Pelajar.
- Mukti Arto, 2018, *Penemuan Hukum Islam Demi Mewujudkan Keadilan “Penerapan Penemuan Hukum, Ultra Petita & Ex Officio Hakim Secara Proporsional”*, (Buku Kedua), Yogyakarta: Pustaka Pelajar.
- Peter Mahmud Marzuki, 2008, *Penelitian Hukum*, Jakarta: Kencana.
- Satjipto Rahardjo, 2006, *Ilmu Hukum*, Bandung: Citra Aditya Bakti.
- Romli Atmasasmita, 2001, *Reformasi Hukum, Hak Asasi Manusia Dan Penegakan Hukum*, Bandung: Mandar Maju.
- Rusadi Kantaprawira, 1988, *Sistem Politik Indonesia Suatu Model Pengantar*, Bandung: Sinar Baru.
- Sanyoto, Penegakan Hukum Di Indonesia, *Jurnal Dinamika Hukum*, Vol. 8 No. 3 September 2008.
- Soerjono Soekanto, 2004, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Cet Kelima, Jakarta: Rajawali.
- Zainuddin Ali, 2005, *Sosiologi Hukum*, Jakarta: Sinar Grafika.

Journal

- Achmad Irwan Hamzani (2017), “Menggagas Indonesia Sebagai Negara Hukum Yang Membahagiakan Rakyatnya”, *Jurnal Yustisia*, 3(3). P136-142
DOI: <https://doi.org/10.20961/yustisia.v3i3.29562>
- Hasuri, (2019) Sistem Peradilan Pidana Berkeadilan melalui Pendekatan Kontrol dalam Proses Penegakan Hukum, *AJUDIKASI : Jurnal Ilmu Hukum*, 3(2). p.167-184,
<https://doi.org/10.30656/ajudikasi.v3i2.1879>
- Iin Ratna Sumirat, (2020) “Penegakan Hukum Dan Keadilan Dalam Bingkai Moralitas”, *Jurnal Al-Qisthas*, 11(2). P.167-186, <https://doi.org/10.37035/alqisthas.v11i2.3827>
- Lilik Haryadi Dan Suteki, (2017). “Implementasi Nilai Keadilan Sosial Oleh Hakim Dalam Perkara Lanjar Sriyanto Dari Perspektif Pancasila Dan Kode Etik Profesi Hakim”, *Jurnal Law Reform*, Program Studi Magister Ilmu Hukum, Universitas Diponegoro, 13(2).p.164-179,
<https://doi.org/10.14710/lr.v13i2.16153>
- S Sanyoto, (2008), “Penegakan Hukum Di Indonesia”, “*Jurnal Dinamika Hukum*”, 8(3), p.199-204,
DOI: <http://dx.doi.org/10.20884/1.jdh.2008.8.3.74>

Dalam Lilik Haryadi dan Suteki (2017), "Implementasi Nilai Keadilan Sosial Oleh Hakim Dalam Perkara Lanjar Sriyanto Dari Perspektif Pancasila Dan Kode Etik Profesi Hakim", *Jurnal Law Reform*, Program Studi Magister Ilmu Hukum, Universitas Diponegoro, 3(2). P.164-179, <https://doi.org/10.14710/lr.v13i2.16153>

Zulkarnain Ridlwan, (2012). "Negara Hukum Indonesia Kebalikan Nachtwachterstaat", *Fiat Justitia Jurnal Ilmu Hukum*, 5(2). p.141-152, <https://doi.org/10.25041/fiatjustisia.v5no2.56>.