

Regulation and Challenges of Enforcing the Supremacy of Law in Indonesia: A Normative Juridical Analysis

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Abstract

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The supremacy of law is a fundamental principle affirmed in Article 1 paragraph (3) of the 1945 Constitution (*Undang-Undang Dasar 1945/UUD 1945*), stating that “The State of Indonesia is a state based on law.” This principle places law as the highest authority in national and state life, ensuring that all actions of the state and its citizens are subject to the law. However, reality reveals a gap between the concept and its implementation. Corruption, political intervention in the judiciary, and low public legal awareness are indicators of weak law enforcement. These weaknesses directly impact democracy, human rights protection, political stability, and public trust. This research employs a normative juridical method by examining statutory regulations, legal doctrines, and relevant court decisions. The analysis shows the need to strengthen the integrity of legal institutions, enhance the legal culture of society, and implement consistent institutional reforms. These efforts are expected to realize the state’s goals of justice, prosperity, and sovereignty as mandated by the constitution.

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1. Introduction

Article 1 paragraph (3) of the Constitution of the Republic of Indonesia of 1945 affirms that “The State of Indonesia is a state of law.” This statement positions law as the main foundation for the administration of national and state life. In the conception of a state of law, all actions, whether carried out by state apparatus or citizens, must adhere to the prevailing legal norms. This principle prioritizes the supremacy of law or the rule of law as a guarantee that power is not used arbitrarily, but is always within the legal framework. Ideally, the supremacy of law ensures that the law applies equally to all people regardless of status, position, or power. However, in practice in Indonesia, there is still a significant gap between the normative concept and its implementation on the ground. Weak and inconsistent law enforcement is one of the factors that triggers the widespread phenomenon of corruption, political intervention in the judicial process, and disparities in the legal treatment of different community groups.¹

The gap between the legal ideal and this reality cannot be separated from various factors, including the weak integrity of law enforcement officials, the suboptimal internal and external oversight systems, and the low level of public legal awareness. In many cases, the law is still seen as an instrument of power, not an instrument of justice. This condition gives rise to the practice of rule by law, where the law is used to maintain the interests of the rulers, not as the rule of law which places the law above everything. The impact of the weak supremacy of law is broad

¹ Danny Singh. "Challenging corruption and clientelism in post-conflict and developing states." *Crime, Law and social change* 71, no. 2 (2019): 197-216.

and multidimensional. In the field of democracy, it erodes the principle of equality before the law and weakens the legitimacy of state institutions. In the protection of human rights, a weak rule of law has the potential to lead to violations of citizens' rights who do not receive adequate protection. Political stability is also disturbed because legal uncertainty creates space for conflicts of interest and a crisis of public trust. Furthermore, this condition hinders the achievement of state goals as stated in the Preamble to the 1945 Constitution, namely realizing a just, prosperous, and sovereign society.²

From the perspective of constitutional law theory, the supremacy of law does not only function as a normative principle but also as a control mechanism over the exercise of power. The law has a dual role, namely as a regulator of interactions between citizens and between citizens and the state, as well as a protector of fundamental rights from the potential misuse of power. Therefore, the supremacy of law cannot be separated from the principle of constitutional democracy which guarantees the limitation of power. Since the reform era, Indonesia has taken various legal reform steps, ranging from the establishment of independent institutions such as the Corruption Eradication Commission (*Komisi Pemberantas Korupsi/KPK*) and the Constitutional Court (*Mahkamah Konstitusi/MK*), to improvements in the judicial system. However, the existence of these institutions has not fully eliminated the fundamental problems. Major challenges still include the inconsistency of law

² Bagus Oktafian Abrianto, Farid Ibrahim, and Xavier Nugraha. "Reformulating the concept of state principles based on ideological and technocratic strategic as a sustainable development direction." *Law Reform* 16, no. 1 (2020): 112-126.

enforcement, resistance to reform, and political and economic pressure on law enforcement agencies.

The urgency of research on the supremacy of law in Indonesia lies in the need to understand its regulation and the reality of its enforcement through a normative juridical approach. This approach allows for an in-depth analysis of prevailing laws and regulations, constitutional principles, and relevant legal doctrines, accompanied by an evaluation of their implementation. This study is expected to provide a theoretical contribution to the development of constitutional law, as well as a practical contribution in the form of policy recommendations that can strengthen the supremacy of law. By understanding the current conditions and formulating the right strategies, Indonesia has a greater opportunity to make the supremacy of law a reality that is capable of guaranteeing justice, prosperity, and national sovereignty.

2. Literature Review

The concept of the supremacy of law or the rule of law is a universal principle in modern democratic states. Nagy,³ states that the rule of law has three main elements: the supremacy of law over power, equality before the law, and the protection of human rights by the constitution. In the Indonesian context, this principle is explicitly regulated in Article 1 paragraph (3) of the 1945 Constitution, which states that “The State of Indonesia is a state of law.” This confirms that law is the highest foundation for every action of the government and its citizens.

³ Csongor István Nagy. "The diagonality problem of EU rule of law and human rights: Proposal for an Incorporation à l'europeenne." *German Law Journal* 21, no. 5 (2020): 838-866.

According to Juanda,⁴ the concept of a state of law in Indonesia combines the principles of *rechtsstaat* (continental state of law) and rule of law (Anglo-Saxon state of law), which emphasize the protection of human rights, the supremacy of law, and the limitation of power. The enforcement of the supremacy of law is the key to achieving the state goals as stated in the Preamble to the 1945 Constitution.

Various literatures highlight the gap between normative concepts and implementation reality. Erwiningsih,⁵ emphasizes that the supremacy of law in Indonesia still faces structural and cultural challenges. Structurally, the weaknesses of the judicial system, the weak supervision of officials, and the lack of integrity of legal institutions are serious obstacles. Culturally, the low legal awareness of the public means that the law is often ignored or manipulated for personal or group interests. Indicators of weak supremacy of law in Indonesia include widespread corruption, political intervention in the judiciary, and disparities in legal treatment between community groups. Tambunan (2023)⁶ places Indonesia at a relatively low Corruption Perceptions Index score, showing the continued strong influence of political and economic interests in the legal process.

From a constitutional law perspective, the supremacy of law is closely related to the principle of constitutional democracy. The law functions as a controller of power so that it is not misused. Weaknesses in law enforcement have implications

⁴ Ogiandhafiz Juanda Ogiandhafiz. "The Ideal Law State Concept in Indonesia; The Reality and The Solution." *Journal of Law, Politic and Humanities* 3, no. 2 (2023): 251-262.

⁵ Winahyu Erwiningsih. "Enhancing Legal Certainty in Land Collateral: Bridging Regulatory Gaps, Mitigating Vulnerabilities, and Promoting Credit Access in Indonesia." *Croatian International Relations Review* 29, no. 93 (2023): 26-49.

⁶ Derwin Tambunan. "Indonesia under threat: The danger of corruption to political legitimacy." *Asian Journal of Comparative Politics* 8, no. 1 (2023): 112-140.

for the disruption of democracy, the decline in the protection of human rights, and the loss of public trust in state institutions.

International literature, such as the work of Bhagat,⁷ also reminds us that the rule of law is only effective if there is a strong commitment from all stakeholders, including the government, law enforcement officials, and the public. Without this commitment, the law will lose its authority and will not be able to function as a protector of the public interest. From this literature review, it can be concluded that the supremacy of law in Indonesia has a strong constitutional foundation, but its implementation still faces serious challenges. Therefore, further analysis is needed through a normative juridical approach to understand how the regulation and realization of the supremacy of law can be effectively improved.

3. Method

This study uses a normative juridical method, which is a legal research method that focuses on the study of written legal norms and applicable legal principles. This approach was chosen because the focus of the study is to analyze the regulation and challenges of enforcing the supremacy of law in Indonesia based on constitutional provisions, laws and regulations, legal doctrines, and relevant court decisions. The main data sources in this study are primary legal materials which include the 1945 Constitution, especially Article 1 paragraph (3) which affirms the principle of a state of law, laws and regulations related to law enforcement and the judiciary such as Law

⁷ Sanjai Bhagat, and Glenn Hubbard. "Rule of law and purpose of the corporation." *Corporate Governance: An International Review* 30, no. 1 (2022): 10-26.

No. 48 of 2009 concerning Judicial Power, Law No. 30 of 2002 concerning the Corruption Eradication Commission and its amendments, and Law No. 39 of 1999 concerning Human Rights. In addition, primary legal materials also include decisions of the Constitutional Court and the Supreme Court that are relevant to the application of the principle of the supremacy of law.

Secondary legal materials in the form of legal literature, books, scientific journals, reports from independent institutions, and previous research results that discuss the supremacy of law in Indonesia and other countries are also used to support the analysis. Tertiary legal materials, such as legal dictionaries, legal encyclopedias, and other supporting sources, are used to clarify legal terms and concepts used. The research approaches used include the statutory approach to examine the prevailing legal provisions, the conceptual approach to examine legal theories about the supremacy of law and the state of law, and the case approach to analyze court decisions that reflect the success or failure of the application of this principle. Data analysis is carried out qualitatively by describing, interpreting, and assessing relevant laws and regulations as well as literature.

This process includes inventorying and classifying related laws and regulations, identifying problems and gaps between normative arrangements and their implementation, analyzing the relationship between the principle of the supremacy of law and the state goals mandated by the constitution, and formulating recommendations to strengthen the enforcement of the supremacy of law in Indonesia. The choice of the normative juridical method is considered the most appropriate because the problem being studied is rooted in prevailing legal norms,

not merely in empirical social behavior. By examining primary, secondary, and tertiary legal sources, this study is expected to provide a comprehensive overview of the normative framework of the supremacy of law, the challenges of its implementation, and the strategic steps that can be taken to strengthen law enforcement in Indonesia.

4. Results

4.1. The Normative Framework of the Supremacy of Law in Indonesia

The principle of the supremacy of law in Indonesia has a very strong constitutional foundation. Article 1 paragraph (3) of the Constitution of the Republic of Indonesia of 1945 explicitly states that “The State of Indonesia is a state of law,” which means that all actions, whether carried out by state administrators or citizens, must be subject to and comply with the law. This principle places the law as the highest commander in national and state life, not power, momentary interests, or the will of a group. Thus, the law becomes the main guide that regulates the administration of power, guarantees the protection of citizens' rights, and creates order and justice in society.⁸

Within the normative framework, the principle of the supremacy of law is regulated and further elaborated through various interrelated laws and regulations. One of these is Law Number 48 of 2009 concerning Judicial Power, which regulates the guarantee of judicial independence and affirms the freedom of judges to decide

⁸ Selznick, Philip. *Law, society, and industrial justice*. Quid Pro Books, 30, (2020).

cases objectively without any intervention from any party. In addition, there is also Law Number 39 of 1999 concerning Human Rights which comprehensively regulates the protection, promotion, and fulfillment of human rights as an integral part of the concept of a state of law. In the field of combating corruption, Law Number 30 of 2002 concerning the Corruption Eradication Commission, along with all its amendments, is a special legal instrument designed to combat one of the biggest obstacles to the enforcement of the supremacy of law, namely the widespread practice of corruption. Meanwhile, Law Number 25 of 2009 concerning Public Services is present to strengthen the accountability and transparency of state administrators, as well as to encourage better quality public services.

In addition to this regulatory framework, the decisions of the Constitutional Court also play an important role in enforcing the supremacy of law. The Constitutional Court has the authority to review laws against the 1945 Constitution and to annul provisions that are contrary to the constitution.⁹ Through these decisions, the constitutional rights of citizens can be protected from the potential misuse of power or the erroneous application of legal norms. The decisions of the Constitutional Court are not only binding but also provide direction for the formation of laws that are more in line with the principles of a state of law and constitutional democracy.

Although the normative framework governing the supremacy of law in Indonesia is relatively complete and comprehensive, the reality is that it has not fully

⁹ Febriansyah Ramadhan and Ilham Dwi Rafiqi. "Study of constitutional court decisions cancelling all norms in the law." *Legality: Jurnal Ilmiah Hukum* 29, no. 2 (2021): 286-308.

guaranteed the realization of an effective supremacy of law. One of the weaknesses that often arises is when the implementation of legal norms is not in line with the purpose of their formation. The principle of judicial independence, for example, is often eroded by political intervention, pressure from interest groups, or excessive public opinion, resulting in decisions that are not entirely based on legal considerations. In addition, the oversight mechanism for law enforcement agencies still has limitations. Although the Judicial Commission was established to oversee the behavior of judges, the authority of this institution basically only covers ethical aspects, not repressive legal aspects. As a result, strict sanctions for legal violations committed by law enforcement officials are relatively rarely applied, which has the potential to weaken the authority of the law itself.

Another challenge that is no less important is the problem of legal culture in society. The low level of legal awareness causes violations of norms to often be considered commonplace and does not cause a deep sense of guilt. In addition, legal uncertainty stemming from differences in interpretation among officials and among legal institutions further worsens public perception of legal certainty and justice. Thus, although the legal norms governing the supremacy of law in Indonesia have been relatively completely arranged, their effectiveness still depends heavily on the integrity of law enforcement officials, the consistency of law application, and the level of public legal awareness. Without a balanced combination of these three aspects, the supremacy of law will only be a normative concept on paper, not a reality felt in daily life.

4.2. The Reality of the Implementation of the Supremacy of Law in Indonesia

The implementation of the supremacy of law in Indonesia is still far from the ideal conditions expected. Although the normative framework that regulates it has been clearly and comprehensively arranged, the gap between the law written on paper and the practice that occurs on the ground remains wide. This creates a condition where the principle of a state of law as mandated by the 1945 Constitution has not been fully realized in real life. One of the biggest obstacles to the realization of the supremacy of law is the widespread practice of corruption. Corruption does not only occur at the bureaucratic level, but also affects law enforcement agencies themselves. Transparency International's 2023 data shows that Indonesia's Corruption Perceptions Index score is still stagnant at a low range, which is a strong indicator of serious problems with the integrity of law enforcement agencies. Major cases involving police officers, prosecutors, and even judges, show that the fundamental principle of “equality before the law” is often ignored.¹⁰ In many events, the legal process against parties who have power or influence tends to be more lenient than the treatment of ordinary people.

A second obstacle that is no less significant is political intervention in the judiciary. A number of controversial court decisions often give rise to allegations of influence from certain political interests or economic forces that affect the independence of judges. This condition not only weakens the principle of judicial

¹⁰ Wira Purwadi, Mohamad Ali Akbar Djafar, Gilang Fatirah Densi, Anika Zaitun Tumiwa, and Arum Salsabila Yieputri Langkamane. "Application Of The Principle Of Equality Before The Law To Law Enforcement For The Realization Of Justice In Society." *Jurnal Legalitas* 15, no. 1 (2022): 59-75.

independence but also erodes the level of public trust in the judicial system itself. In addition, the problem of legal treatment disparities is still deeply felt. The different attitudes of officials in handling criminal offenders are often influenced by the perpetrator's social status, wealth, or position. This phenomenon shows that the principle of equality before the law has not been applied consistently. In many cases, parties who have access to resources and power tend to receive more favorable treatment than ordinary people who are structurally weaker.

The low legal awareness of the public also worsens this situation. Not a few citizens do not understand or even deliberately ignore the law, so violations occur massively in various sectors of life.¹¹ Factors such as the low level of legal education, a culture that is permissive of violations, and the weak consistency of law enforcement are the main causes of this low legal awareness. Furthermore, legal uncertainty is also a serious obstacle to the enforcement of the supremacy of law. This is caused, among other things, by overlapping laws and regulations and differences in legal interpretation between institutions. A real example can be seen in cases where there are conflicting regulations between the central government and local governments, so the law enforcement process becomes protracted and does not provide certainty for the parties concerned.

The impact of this weak implementation of the supremacy of law is very broad and multidimensional. In the context of democracy, weak law enforcement erodes the mechanism of checks and balances between state institutions, thereby

¹¹ Novia Puspa Ayu Larasati. "Gender inequality in Indonesia: Facts and legal analysis." *Law Research Review Quarterly* 7, no. 4 (2021): 445-458.

creating opportunities for the misuse of power. In the context of human rights, this condition increases the risk of violations of the rights of citizens who do not receive adequate protection. From the political stability side, a weak supremacy of law has the potential to trigger public dissatisfaction which can ultimately lead to horizontal and vertical conflicts. In addition, public trust in the government and state institutions as a whole will decline, which in turn weakens the legitimacy and effectiveness of government administration.

Therefore, strengthening the implementation of the supremacy of law in Indonesia requires comprehensive and sustainable reform measures. The reform must include improvements to the recruitment system for law enforcement officials to ensure that only individuals with high integrity can occupy strategic positions, an increase in independent oversight mechanisms that are free from political intervention, equitable and continuous legal education for the public, and firm, consistent, and impartial law enforcement. Only then can the ideals of the supremacy of law as mandated by the constitution be realized in a real way.

5. Discussion

The supremacy of law in Indonesia, as expressly mandated by Article 1 paragraph (3) of the 1945 Constitution, is the main foundation for the administration of the state and is an important pillar for the creation of a democratic, just, and integrated government. This principle requires that all actions, whether carried out

by state administrators or citizens, must be subject to the applicable law.¹² However, the reality on the ground shows a quite wide gap between the ideal legal norms and factual implementation. This discussion elaborates in detail on the factors that cause this gap, its implications for the democratic system and the protection of human rights, a comparison with practices in other countries, and the strategies and challenges in strengthening the supremacy of law in Indonesia.

The gap between concept and reality in the implementation of the supremacy of law is clearly visible even though the normative framework in Indonesia is already quite comprehensive.¹³ Regulations have covered the protection of human rights, the guarantee of judicial independence, and the mechanism for combating corruption. However, the biggest obstacle lies in the practice of law enforcement, which still faces systemic problems. Political intervention that influences the judicial process, corruption within law enforcement agencies, and disparities in legal treatment are chronic diseases that are difficult to overcome with only normative reform. This situation is exacerbated by the weak legal culture of society. Many people view the law not as a rule that is absolutely binding on everyone, but as a flexible and negotiable tool.

¹² Hafiz Muhammad Azeem, Mubashar Tariq, and Muhammad Zahid Rafique. "Navigating the Complexity of Administrative Actions: A Taxonomy and Legal Analysis." *Pakistan Journal of Humanities and Social Sciences* 11, no. 3 (2023): 3600-3608.

¹³ Slamet Rosyadi, Ayusia Sabhita Kusuma, Elpeni Fitrah, Nurul Azizah Zayzda, and Thanawat Pimoljinda. "Barriers of public policy faced by SMEs of creative economy in Indonesia." *International Journal of Law and Management* 64, no. 1 (2022): 32-48.

The low level of legal awareness causes violations to occur repeatedly, while weak law enforcement reduces the deterrent effect on offenders.¹⁴ When the supremacy of law weakens, its implications for democracy are very significant. An independent judiciary will weaken the function of oversight of the executive and legislative branches. Entrenched corruption in the legal sector worsens injustice and erodes public trust in the state. From a human rights perspective, weak law enforcement creates opportunities for systemic violations. In cases of civil and economic rights violations, slow, biased, or intervention-ridden legal processes make it difficult for victims to obtain proper justice.

A comparative study with countries that have a high rule of law index, such as Finland and New Zealand, shows that their success is based on three main factors: the integrity of law enforcement officials, the transparency of the legal process, and a high level of public legal awareness. These three factors are interrelated and form a healthy legal ecosystem. Unfortunately, Indonesia is still lagging in all three aspects. To close the gap between norms and practice, a number of strategic steps are needed. Institutional reform of law enforcement must be carried out by tightening the selection of officials, increasing welfare to minimize the potential for corruption, and providing firm sanctions for violations. Judicial independence must be strengthened by expanding the authority of the Judicial Commission and ensuring that the oversight mechanism is free from political intervention.

¹⁴ Camille Faubert, David Décary-Héту, Aili Malm, Jerry Ratcliffe, and Benoît Dupont. "Law enforcement and disruption of offline and online activities: A review of contemporary challenges." *Cybercrime in context: The human factor in victimization, offending, and policing* (2021): 351-370.

Legal education needs to be expanded through school curricula and sustainable outreach programs in society. Regulations must be simplified by abolishing overlapping rules in order to create legal certainty. Transparency and public participation must also be guaranteed through information technology, including the publication of decisions and the holding of open hearings. However, the implementation of these strategies faces major challenges in the form of resistance from parties who benefit from the weak supremacy of law. Reform is often hampered by short-term political interests, while building public legal awareness requires a long process and a cross-generational commitment.

6. Conclusion

The supremacy of law is a fundamental pillar in the administration of a state of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution. This principle places the law as the highest foundation, guaranteeing equality before the law, the protection of human rights, and political stability. The normative framework in Indonesia is already relatively comprehensive, with regulations that cover the protection of human rights, the independence of the judiciary, and the mechanism for combating corruption. However, the reality of implementation shows a significant gap between norms and practice. Factors such as corruption, political intervention, legal disparities, and low public legal awareness are the main obstacles. The impact is not only on weak public trust, but also on the quality of democracy, the protection of human rights, and political stability.

Strengthening the supremacy of law requires structural and cultural reform. Structurally, improvements are needed in the system for recruiting and supervising officials, simplifying regulations, and strengthening the independence of the judiciary. Culturally, increasing public legal awareness is a must through education and public participation in legal oversight. Only with a combination of normative reform, consistent law enforcement, and legal cultural transformation can the state's goals as stated in the Preamble to the 1945 Constitution social justice, prosperity, and sovereignty be realized. The supremacy of law is not just a constitutional jargon, but must become a reality felt by all citizens in their daily lives.

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