

## Law Under the Grip of Power

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KEYWORDS	ABSTRACT
Rule of Law; Power Dynamics; Legal Manipulation; Indonesia, Democracy	This study examines the problematic relationship between law and power in Indonesia's democratic system. The research focuses on how powerholders manipulate legal frameworks to maintain political dominance, undermining the principle of equality before the law. Using normative juridical analysis with statute and conceptual approaches, the study reveals three critical findings: (1) systematic distortion of law enforcement favoring political elites, (2) institutional failure of legislative bodies to represent public interests, and (3) the consequent erosion of public trust in democratic institutions. The analysis demonstrates that Indonesia's legal system has become a tool for power preservation rather than justice administration, contradicting constitutional guarantees of equal protection. These findings contribute to ongoing debates about legal reform in developing democracies by exposing structural weaknesses in Indonesia's rule of law implementation. The study recommends comprehensive judicial reforms and stronger accountability mechanisms to restore the law's legitimacy as an impartial instrument of governance.

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### Introduction

Law and power are two different things but affect each other. Law is a system of rules about appropriate human behavior (ajeg), which contains norms of prohibitions, commands or instructions, and abilities (Tamanaha, 2017). Power, on the other hand, is the ability of a person or a group as a monopolistic role holder to influence the behavior of a person or another group, according to the wishes of the person or group of people who have that power (Lukes, 2021). Law and power are interrelated and even affect each other (Dyzenhaus & Thorburn, 2016). In fact, without power, law may become ineffective, and without law, power may become arbitrary (Vincent, 2019). Power requires legal legitimacy in order to be able to compete for and maintain authority to manage the government and control the people in certain ways (Beetham, 2021). Therefore, legal institutions often serve as tools through which power is exercised and justified (Comaroff & Comaroff, 2018).

In the context of democracy in a state of law, the participation of the people in the democratization process is very necessary, especially in relation to the development and progress of modern civilization, including technological advances (Diamond, 2019). Therefore, the government, politicians, bureaucrats, and other office holders and role holders must show commendable attitudes and behaviors that can be used as role models by the people to participate

in the democratization process (Schedler, 2015). Public trust is central to maintaining democratic legitimacy, and it relies heavily on the moral integrity of political leaders (Norris & Inglehart, 2019). However, in Indonesia today, there is a heartbreaking reality of a moral and integrity crisis among the rulers who no longer care about public services and the aspirations of the people (Aspinall & Mietzner, 2019). Many public officials have prioritized personal gain over public interest, weakening the quality of democratic governance (Tapsell, 2021). This condition reflects a broader pattern of democratic backsliding driven by the erosion of ethical leadership and the instrumentalization of power for private ends (Berenschot, 2018).

Even more heartbreaking is the question that continues to haunt the Indonesian people until now: whether the House of Representatives, which has been elected by the Indonesian people and trusted by them to carry out the mandate as representatives of the people in a representative manner, can show performance that favors the interests of the people? Or on the contrary, as in previous periods, does the House of Representatives only side with the interests of the rulers, businessmen, or certain parties or groups? In fact, the essence of democracy is to realize the will of the people, which is manifested through the struggle of their representatives—my representatives, your representatives, our representatives—in Parliament. But in reality, what have we gained over the years by handing over or entrusting our mandate and sovereignty as citizens to the House of Representatives? The answer is a BIG NOLE, because they are only busy with party affairs and gathering support to seize or maintain power.

In the past, the House of Representatives of the Republic of Indonesia (DPR – RI) together with the Executive Institution and the Judiciary were referred to as State High Institutions; but now, the term State Institutions is used (Siambaton & Irwansyah, 2023; Taswin, 2022). As a general understanding, it can be said that *"state institutions are state institutions whose regulation and authority are directly determined by the 1945 Constitution, consisting of several main state institutions that are interconnected based on the distribution of power as a network that forms the system of government of the Republic of Indonesia, known as the presidential system of government"* (chair: Author ~ Appe Hutaaruk). The basis of the existence of functions and rights/authorities owned by the House of Representatives as determined by the constitution (1945 Constitution) is the framework of controlling, because as said by Jimly Asshiddiqi in his book entitled *Introduction to Constitutional Law*, *"The executive branch of power is the branch of power that holds the highest administrative authority of the state government."*

However, what then becomes a fundamental and crucial question is whether the House of Representatives (not an abbreviation for the *Ringleader of the People's Fraud*) will be able to optimally carry out its obligations in accordance with its functions and authorities or rights? Or can the House of Representatives be an outlet for the Indonesian people's aspirations to demand social welfare from the Government? Such questions are currently very common and relevant to be used as material for moral reflection and scientific studies, based on the following facts:

1. Many members of the House of Representatives who are elected (elected by the Indonesian people) through the General Election mechanism are not chosen based on the consideration of *the right man in the right place*, but rather due to the *like and dislike* or *popularity* factor, so that the elected members do not have the ability or capability to speak and act in order to carry out their obligations as bearers of the mandate and sovereignty of the people;
2. Many elected members of the House of Representatives are not aware of their existence and essence as representatives of the people, so that their mindset or paradigm remains polarized in understanding the concept that they sit in parliament solely to fight for the goals of the political party as the vehicle that supports them. This reality causes members

or factions in the House of Representatives to often use their rights not because of *blocked people's aspirations*, but due to encouragement by certain political parties—especially radical opposition parties—aimed at overthrowing the hegemony of the legitimate government;

3. Many elected members of the House of Representatives do not have a *moral responsibility* for the welfare of the people but rather prioritize their personal interests or cronies, especially capitalists as an interest group who, at the time of the campaign, provide very large material support through the *Political Bargaining Strategy*; after the Candidate Legislative Member who is supported or the term *allowed* to sit in Parliament must make an *Effort to Reciprocate*, or in terms used by the Author, an *Achievement* must be replied with a *Counter Achievement*.

Regarding the rights owned by the House of Representatives (DPR) to carry out its functions, these are also regulated in the provisions of Law Number 27 of 2009 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives jo. Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives jo. Law Number 42 of 2014 concerning Amendments to Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives, as detailed in Article 79 paragraph (2) concerning the *Right to Interference*, paragraph (3) concerning the *Right of Inquiry*, and paragraph (4) concerning the *Right to Express Opinions*. The embodiment of these rights at the level of reality is often not commensurate with or does not reflect the aspirations of the people, because the use of these rights is often manipulated as a means of justification to undermine government policy or abuse of authority. This postulate aligns with the opinion of I Gede Yusa (2016) in his book entitled *Constitutional Law*, which states that "*the House of Representatives as a political representative of the Indonesian people cannot struggle only with laws and regulations, but with the existing dynamics, there will be changes in the laws and regulations on its institutions as well.*" Therefore, within the framework of forward-thinking (*outlookingward*), it is a priority and absolute necessity to make regulations regarding certain requirements so that members of the House of Representatives who are allowed to run meet certain criteria, especially those related to loyalty to the state ideology of Pancasila, the Unitary State of the Republic of Indonesia (*NKRI*), have a national spirit (*nationalism*), have the vision of *Bhinneka Tunggal Ika*, and possess skills and competencies in certain fields related to aspects of the lives of the Indonesian people.

In the course of history, as the basis of the philosophy of the Republic of Indonesia, the Republic of Indonesia has undergone various interpretations and political manipulations in accordance with the interests and political direction of the rulers (*regime*) to maintain their power. In other words, Pancasila is not positioned as the way of life of the Indonesian nation and state but is reduced and manipulated for the sake of the political interests of the ruling elite. Similarly, the role of government legal politics in the development of national law is no longer essentially aimed at "*creating a just and prosperous society based on Pancasila and the 1945 Constitution.*"

The development of national law in the Indonesian legal state is based on the source of state law order, namely the ideals contained in the outlook on life, awareness, and legal ideals as well as noble moral ideals, which include the psychological atmosphere and character of the Indonesian nation formulated in Pancasila and the 1945 Basic Law. However, it must be admitted that in the current Reform era, after the resignation of President Suharto as the ruler of the New Order regime,

there is absolutely no clear concept regarding the guidelines for the direction and goals of national legal development. There is even a tendency for laws and regulations to be products of executive institutions (government) and legislative institutions (House of Representatives) that do not reflect the spirit of reform and universal democratic values. Laws and regulations are made solely to provide justification or a means of justifying the actions of the rulers who violate the principles of the state of law in order to satisfy the lust for power that has climaxed, seeing Indonesia's *sexy* natural resources held captive and exploited.

Law and power are two distinct yet interconnected concepts. Law serves as a system of rules governing human behavior, while power represents the ability to influence others. In a democratic state under the *rule of law*, the participation of the people is essential for progress. However, Indonesia currently faces a moral and integrity crisis among its rulers, who prioritize personal and political interests over public welfare. This raises critical questions about the effectiveness of the House of Representatives in representing the people's aspirations and upholding the principles of democracy and justice.

A critical analysis of previous research reveals significant gaps in the discourse. First, Munir Fuady's *Teori Negara Hukum Modern* (2011) emphasizes the ideal of a *rule-of-law* state but overlooks the practical challenges of power manipulation in Indonesia. Second, Soerjono Soekanto's *Faktor-Faktor yang Mempengaruhi Penegakkan Hukum* (2008) examines law enforcement factors but fails to address the systemic corruption and political interference that undermine legal integrity. This study fills these gaps by analyzing how power dynamics distort law enforcement in Indonesia, offering a more nuanced understanding of the intersection between law and political power.

The objectives of this research are twofold: (1) to critically examine the manipulation of law by powerholders in Indonesia, and (2) to propose reforms that align legal practices with the principles of justice and democracy. The study's significance lies in its contribution to academic discourse on legal integrity and its practical implications for policymakers striving to restore public trust in Indonesia's legal and political systems.

## Materials and Methods

The study in this journal employed a normative juridical law research approach. The research utilized several techniques, including the statute approach and the conceptual approach. Additionally, the case approach, a method in normative juridical research, was used to examine the application of legal norms in practice; in this context, these included norms related to ethics, morals, and the government's responsibility as the role holder and controller of state power. Essentially, the case approach focused on how legal norms were implemented in practice. The conceptual approach aimed to explain concepts relevant to the subject matter, such as the concept of the state of law and the behavior of rulers as bureaucrats responsible for good governance, particularly nondiscriminatory law enforcement.

In principle, the modern Indonesian state requires a modern bureaucratic management system or governance based on the concept of nondiscriminatory law enforcement to ensure the protection of basic rights, as the law should be applied impartially and free from the control of rulers (power). However, in reality, rulers as state or government apparatuses and bureaucrats who implement constitutional responsibilities and public policies often manipulated the enforcement of laws due to their dominant positions.

The rulers' unlawful behavior essentially constituted acts of thuggery, posing a serious threat to all segments of society. Such acts not only damaged and disrupted the orderly, safe, and peaceful

social order but also distorted the spirit of law enforcement, contradicting the enthusiasm for economic recovery amidst Indonesia's ongoing crisis.

## Results and Discussions

Conceptually, the essence of law enforcement lies in the activity of synchronizing the relationship of values formulated in norms to regulate everyone's attitude without exception in order to create, maintain, and maintain peaceful interactions of living together. These rules are legal rules formulated in laws and regulations, discretion, jurisprudence, customs, customs and so on. In the context of law enforcement, the pairs of values need to be harmonized; For example, it is necessary to harmonize the value of order with the value of peace. The value of order is the starting point for attachment including obligations and responsibilities, while the value of order is the freedom related to the rights of certain parties. In the context of social life, every individual needs dependency and attachment (limitation) as well as freedom in a harmonious or balanced form, in accordance with the concept of equality of natural rights. Thus, the role of law is very important as a means of control as well as a regulator so that at the practical level there is no clash between rights and obligations.

Law enforcement is not only about the implementation of laws and regulations as positive laws, but the meaning of law enforcement, also concerns the socialization process and policies in the form of discretion to increase public awareness to comply or obey the applicability of applicable laws and regulations. The tendency to understand that law enforcement is synonymous with the implementation of judges' decisions (Court decisions), is very wrong. Law enforcement is also closely related to moral responsibility in complying with agreements formulated in cooperation agreement clauses (facultative law) and various regulatory instruments made by authorized officials, including the legal considerations of judges in deciding a case that is processed in court.

The function of law (legal certainty) is intended to regulate the relationship between the state or community and the relationship between humans, so that life in society runs smoothly and orderly, there is no chaos in the society in the life of naturalist status. The existence of such a legal function has implications for legal duties, namely to realize legal certainty (for the sake of legal order) and provide justice to the community.

Justice is the condition of morally ideal truth about something, whether it concerns objects or people. According to most theories, justice has a great level of importance. John Rawls, an American philosopher who is considered one of the leading political philosophers of the twentieth century, stated that "Justice is the first virtue of social institutions, as is truth in systems of thought." It is closely related to "justice" in a country, namely the aspect of the Government's public policy in order to uphold human rights and equal treatment before the law (equality before the law). In line with this conception, C.F.G. Sunaryati Hartono put forward the following description: "Therefore, both theory and legal practice have explained to us, that law does have an important role, especially to maintain balance, harmony and harmony between various interests in society, and thus maintain a healthy and clean social life environment based on Pancasila and the 1945 Constitution". Based on C.F.G. Sunaryati Hartono's explanation, it can be understood that in essence justice has a close correlation with the duties and functions of the government to empower the role of law in the interaction of social life in society.

The fact that is a problem in the life of the nation and state in Indonesia today is that people believe that injustice must be fought and punished, even many social and political movements in



Indonesia are fighting for justice and truth. However, the struggles of these various movements have failed and even become frustrating when the various struggles of these movements cannot fight against the injustice committed by the rulers, even the injustices committed by the cronies of the rulers who want to maintain their position in the circle of power. In fact, a very terrible phenomenon is that in the course of history, Pancasila as the basis of the philosophy of the sovereign Republic of Indonesia who has grasped the law in its power carries out various interpretations and political manipulations in accordance with the interests and political direction of the ruler's law (regime) to maintain its power. Pancasila is not positioned as a way of life of the Indonesian nation and state, but is reduced and manipulated for the sake of political diligence in power. Similarly, the role of government politics in the development of national law is no longer aimed at "creating a just and prosperous society based on Pancasila and the 1945 Constitution" but for the benefit of various elements that are symbiotic of mutualism as cronies of power. In such a situation, there are also certain circles who originally claimed to be part of the 1998 reform movement, but ended up being the shoe-lickers of power in order to get soft bread that smelled of the blood of the 1998 tragedy.

After the 1998 reform movement, many tragic and heartbreaking events occurred in Indonesia in the context of law enforcement and efforts to realize justice (including welfare) that are the expectations of all Indonesian people. At the theoretical practical level, Justice essentially contains philosophical aspects, namely legal norms, values, justice, morals, and ethics. Law as the bearer of the value of justice, on the other hand, the value of justice is also the basis for the enactment of the law. Justice has a normative nature as well as constitutive for the law, so it must be formulated in various laws and regulations as a legal system. Justice is the moral foundation of the law and at the same time the benchmark of a positive legal system and without justice, a rule does not deserve to be a law. However, the moral and ethical content that must be contained by law in the form of laws and regulations, currently in Indonesia has been thrown into the garbage basket. Because the laws made by the ruler are no longer based on legal, moral or ethical logic and the essence of the purpose of the law. Often laws are made depending on the free will of the ruler, the political interests of certain parties that ignore the interests of the people, the nation and the state. Likewise, the Court's decisions often do not reflect the values of justice and truth because they ignore the legal facts revealed at the trial. This reality is a very scary scourge for the Indonesian people because the ruler not only grips the law in his power but also co-opts the Court in certain cases both directly and indirectly. Explicitly, the provisions of Article 28 D paragraph 1 of the 1945 Constitution expressly state that "Everyone has the right to fair legal recognition, guarantee, protection, and certainty as well as equal treatment before the law". However, in the actual reality in Indonesia, the imperative provisions in the formulation of the article are often violated and even amputated by uniformed officers who call themselves law enforcers, even these constitutional provisions are often ignored by law enforcers or law officers when the people/people are dealing with the interests of the rulers.

The goal of a modern democratic state based on the rule of law today is to achieve the welfare, justice and prosperity of the people in all aspects of life, or in other words to achieve social justice (*welvaarstaat*). A negative state will become a power state (*machtsstaat*) that ignores the fulfillment of the basic rights of the people. But it is very ironic that the reality in Indonesia today is that the development orientation so far has only been aimed at infrastructure development, and allows the welfare of the people and the rights of certain groups of people to be marginalized and even amputated. The development of a good legal system and law enforcement is not a priority because the law is used as a commodity by the rulers as a means of political transactional and a

tool of bargaining positions. Law enforcement and legislation enforcement are no longer based on ethical content but are oriented to interest factors. So that when the law is in the grip of the ruler, there will often be attempts to justify the behavior of the ruler that is an abuse of power.

When the ruler as a public leader issues various policies and decisions that are not in accordance with the expectations of society and even results in moral shocks, can he be considered an ethical leader? When the ruler as a public leader carries out development that is contrary to the propaganda of his campaign programs, can he be considered an ethical leader? When the ruler as a public leader always justifies the maladministration he has made by throwing moral responsibility into the latrines of reclaimed land, can he be considered an ethical leader?

Actually, ethical leadership (ethics leadership) of a ruler is a leadership paradigm that has the power of social sensitivity to be involved in community problems with moral responsibility as a form of ethics of care for people's morals and expectations. Included in this is consistency in attitude to prove moral responsibility and not denying campaign programs that have been used as a seasoning that hypnotizes the people who have already given trust to the rulers to become the leaders of the nation and state.

As a result of the law being controlled by power in accordance with the interests of the ruler, the purpose of the welfare state to realize a just and prosperous society becomes a nonsense program that is just a puff of the thumb. In today's reform era, where the reform movement does not seem to have a clear concept of its mission and vision (in contrast to the determination and principles of the 1998 Reform Movement), it can even be said that the vision and mission of reform are not in accordance with the construction that was envisioned by the "moral movement" in its awakening in mid-1998, whether the reform is just developing the power structure that is in power or really has a vision and mission according to The expectation of the struggle of the "Change Movement" is to carry out reforms in the order of national and state life from what was considered to show many deviations from the paradigmatic corridors to be returned to the corridor "The noble ideals of the founders of the nation, namely to create a just and prosperous society with equality of dignity and dignity of everyone before the law and government in accordance with the concept of Constitutional Democracy.

Even more dangerous as a result of a current reality where the law is in the grip of power (rulers), there is a shift in the concepts of "justice" and "democratic system" applied in Indonesia, which are no longer based on Pancasila as a philosophy or philosophy of outlook on life. At the level of the concept of "justice" and "democratic system" based on Pancasila as a philosophy or philosophy of the way of life, justice and the democratic system must refer to the noble values crystallized in Pancasila, as formulated in the Second and Fifth Precepts. Thus, the concept of justice as affirmed by the Second Precept and the Fifth Precept of Pancasila must be a parameter for the ruler (executive) to carry out constitutional responsibilities and not use legal means as a trap to grasp the rights and freedoms of the people as the principal owner of sovereignty.

The paradox of law enforcement that becomes a heartbreaking reality is that on the one hand if the poor people who commit minor crimes are rewarded with severe punishments, while on the other hand if the bourgeois group who commit serious crimes but they only receive very light punishments. Although the law contains the principle of "THE LAW MUST NOT BE MERCIFUL", the penal policy contained in this principle is considered CONTRARY TO REASON (CONTRA RATIONEM). Currently, the community feels that there is no RULE of LAW that realizes equality before the law, especially when there is a conflict between the interests of the people to demand justice and the interests of the rulers to maintain their hegemony. More than that, the general public considers that in reality "the law cannot resist power" (Contra vim non

valet ius), because of the fact that the law in Indonesia is like the MATA PISAU which is sharp downwards but blunt upwards.

There is an impression in the current Indonesian constitutional system that there are nuances of power that is TOTALITARIAN or AUTHORITARIANISM where the system of government is strictly regulated and controlled over almost all aspects of the life of the public or citizens. The government is highly concentrated on the one hand to accommodate the various interests of repressive groups and hidden interest groups including the oligarchs. Various policies of justification spread through propaganda – penetrative propaganda, terror and intimidation – scare the people for the sake of power. LAW being controlled by the RULER or GOVERNMENT is a very scary dream, it is very possible if the chief executive, chief law enforcement officer and chief of legislation rest on the ruler who is controlled by interest groups and pressure groups who are in the vortex of power.

The development of national law in the Indonesian legal state is based on the source of state law order, namely the ideals contained in the outlook on life, awareness and legal ideals as well as noble moral ideals which include the psychological atmosphere and character of the Indonesian nation formulated in Pancasila and the 1945 Basic Law. However, it must be admitted that in the current Reform era, after the resignation of President Suharto as the ruler of the New Order regime, there is absolutely no clear concept regarding the guidelines for the direction and goals of national legal development. There is even a tendency for laws and regulations to be products of executive institutions (government) and legislative institutions (House of Representatives) that do not reflect the spirit of reform and universal democratic values. This situation occurs because there is currently a tendency for law enforcement to no longer reflect the alignment of the values of justice and truth that originate from ethical and moral content, but the law is in the grip of the ruler who can be used at any time as a tool to criminalize and even suppress civil society and press freedom who oppose the policies of the ruler and even the cronies of the ruler.

## Conclusion

This study concludes that law in Indonesia has been profoundly shaped by power dynamics, resulting in systemic injustice and inequality before the law. Manipulation of legal frameworks by political elites has eroded public trust, as demonstrated by the House of Representatives' failure to represent the people's aspirations and the widespread discriminatory enforcement of laws. The stark contrast between harsh penalties for minor offenses by the poor and leniency for serious crimes by elites underscores these deep inequities. To address these challenges, the study recommends strengthening legal accountability, increasing governance transparency, and ensuring law enforcement agencies function independently of political influence. Furthermore, fostering public awareness and civic engagement is essential to cultivate a culture of justice and integrity. Future research should explore effective mechanisms to institutionalize these reforms and evaluate their impact on reducing legal manipulation and enhancing democratic governance in Indonesia.



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