

Legal Politics The Flow of Law Enforcement In Indonesia Review from The Constitutional Philosophy and Pancasila as The State Ideology

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ARTICLE INFO

Article history:

Received September 30, 2025
Revised 10 Oktober 2025
Accepted 15 Oktober 2025
Available online 22 Oktober. 2025

Keywords

Legal Politics, Law Enforcement,
Constitution, Pancasila



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ABSTRACT

This article discusses the flow of law enforcement in the State of Indonesia, which is used in the context of law enforcement in the State of Indonesia in terms of the country's Constitutional Philosophy, namely the 1945 Constitution of the Republic of Indonesia and also from Pancasila as the ideology of the Indonesian state. This article uses a normative legal research method, which in this article, of course, uses the primary legal source in the form of legislation, especially the Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia, and also uses the Pancasila Philosophy approach as the ideology of the Indonesian state. Law enforcement in the State of Indonesia today certainly shows that there is still the influence of the flow of legal positivism in law enforcement. However, on the other hand, law enforcement in this country does not only use legal positivism, but the Indonesian constitution regulates specifically about judicial power that the judiciary is intended To uphold law and justice, this is stated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia as the state constitution, besides looking at the philosophy of Pancasila as the ideology of the state, in the fifth precept it is stated that social justice for all people Indonesia,

from these precepts, it can be seen that upholding social justice in running the state, this is of course also related to law enforcement and must prioritize social justice for all Indonesian people.

ABSTRAK

Artikel ini membahas aliran penegakan hukum di Negara Indonesia, yang digunakan dalam konteks penegakan hukum di Negara Indonesia dari segi Filsafat Konstitusi negara, yaitu Undang-Undang Dasar 1945 Republik Indonesia dan juga dari Pancasila sebagai ideologi negara Indonesia. Artikel ini menggunakan metode penelitian hukum normatif, yang dalam artikel ini tentu menggunakan sumber hukum primer berupa peraturan perundang-undangan, khususnya konstitusi Indonesia, yaitu Undang-Undang Dasar 1945 Republik Indonesia, dan juga menggunakan pendekatan Filsafat Pancasila sebagai ideologi negara Indonesia. Penegakan hukum di Negara Indonesia saat ini tentu menunjukkan bahwa masih terdapat pengaruh aliran positivisme hukum dalam penegakan hukum. Namun, di sisi lain, penegakan hukum di negara ini tidak hanya menggunakan positivisme hukum, tetapi konstitusi Indonesia mengatur secara khusus tentang kekuasaan kehakiman bahwa badan peradilan Dimaksudkan untuk menegakkan hukum dan keadilan, hal ini dinyatakan dalam Pasal 24 ayat (1) Undang-Undang Dasar 1945 Republik Indonesia sebagai konstitusi negara, selain itu melihat filosofi Pancasila sebagai ideologi negara, dalam sila kelima dinyatakan bahwa keadilan sosial bagi seluruh rakyat Indonesia, dari sila-sila ini dapat dilihat bahwa menegakkan keadilan sosial dalam menjalankan negara, hal ini tentu juga berkaitan dengan penegakan hukum dan harus mengutamakan keadilan sosial bagi seluruh rakyat Indonesia.

INTRODUCTION

The State of Indonesia is undoubtedly a state of law, not a state of power, this is stated in the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, precisely in Article 1 paragraph (3), which states that the state of Indonesia is a state of law.

As a state of law, of course, Indonesia must put forward the law in the context of administering the state and also maintaining the statehood of the Republic of Indonesia. The Indonesian state law system is undoubtedly based on the mandate of the Indonesian state constitution, which is based on this Constitution; the Indonesian state runs a state legal system.

Talking about the context of the state legal system is undoubtedly very broad; when talking about the context of the legal system, of course, it will also talk about law enforcement in

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a country. The implementation of positive law is undoubtedly related to law enforcement in a country. As a legal state in Indonesia, of course, law enforcement must also be good, not only the rule of law is good because a good rule of law is meaningless if it is not balanced with the implementation of the law, where the implementation of the rule of law is of course also related to law enforcement.

In carrying out various legal rules in the administration of the state, of course, all of them must be carried out in accordance with the mandate of the constitution, where this constitution is the legal basis that is used as a reference in law enforcement. Good law enforcement will undoubtedly lead to achieving legal goals, where the law aims to achieve justice and legal certainty. The law certainly protects the rights of every community and also protects the interests of the state. Therefore, in protecting the public interest and the state, law enforcement must be good.

In law enforcement in various countries, it is undoubtedly based on law enforcement schools, where the flow of law in law enforcement has an important role related to the system of law enforcement in a country. Many consider that the Indonesian state applies the flow of positivism law; this can be seen in several cases that anyone who violates a legal provision will be subject to sanctions as regulated in the country's positive law regardless of the person's background that violates the legal provisions.

The influence of the flow of positivism on law enforcement in Indonesia is indeed quite significant; it is also related to the creation of justice in law enforcement in the State of Indonesia because, essentially, law enforcement's primary goal is law enforcement philosophically is the creation of justice.

The flow of law in law enforcement in Indonesia certainly reaps polemics from legal experts in Indonesia. Indeed, in a state of law like Indonesia, the law must be adequately enforced, but on the other hand, the law must also achieve the purpose of the law, where the goal of the law is philosophically the creation of justice.

Law enforcement in a country is an essential element in the administration of the state, especially in a state of law such as Indonesia. Law enforcement is undoubtedly based on the flow of law used as a paradigm by law enforcers to carry out law enforcement to achieve legal goals.

RESEARCH METHOD

The methodology used in this article relates to research that views a statutory regulation in the State of Indonesia. This article uses a normative legal research method, which in this article, of course, uses the primary legal source in the form of legislation, especially the Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia, and also uses the Pancasila Philosophy approach as the ideology of the Indonesian state. This article discusses the flow of law enforcement in the State of Indonesia regarding the state constitution and state ideology as the main guidelines and legal basis in carrying out state activities.

RESULT AND DISCUSSION

Law and society are linked. Any changes that occur in society will undoubtedly be followed in terms of the law. If the law does not respond to social change, then the law is a closed institution. If this continues, the law will be difficult as an instrument to organize an increasingly complex social life. The link between law and society can be described as that even though the law is a set of legal norms, it results from a social process. This means that human efforts to create and change the legal order are always in a constantly changing social context (Satjipto Rahardjo, 1980).

The theory of the function of law in an advanced society can be seen from two sides, namely the first side, where the progress of society in various fields requires legal rules to regulate it. The second side is where good law can develop society or direct the development of society (Siti Romlah, 2020).

The law enforcement to the violations is very important because without good law enforcement, the violations will happen more frequently (Arsyad Aldyan, 2019). Excellent law enforcement is one of the criterion's success nation to increase dignity, especially in law (Rosdalina Bukido, 2006). The theory of optimal law enforcement is based on a particular concept

of justice: justice as efficiency ((Nuno Garoupa, 1997). Public enforcement of the law using government agents to detect and sanction violators of legal rules is a subject of obvious importance (A. Mitchell Polinsk, 2005). Effective law enforcement is a primary concern for any legal system (Chenggang Xu, 2002). Law enforcement agencies are under increasing scrutiny and pressure to address both highly localized concerns and issues of national interest (U.S. Department of Justice, 2019).

A sociological perspective is constructive when comparing the legal institutions of different countries (Buckley F, 1993). The concept of sociological jurisprudence has not been prominent in the recent jurisprudential debate (Cotterrell R, 2019). In empirical, inductive, pragmatic, and sociological methods, logic is sometimes held up as hostile to justice and familiar sense and the term 'sociological jurisprudence' is employed as a badge of identification of the new way of thinking (Frank Thilly, 1923). The very concept of sociological jurisprudence was to protect the social and political value of law while increasing its capacity to organize a modern society, control its order, and guarantee its integration and coherence (Roger Cotterrell, 2018).

The flow of law in law enforcement in Indonesia is, of course, not only the flow of positivism as legal experts say, but the flow of law in the context of law enforcement in the State of Indonesia is also implicit in the constitution of the Indonesian state, namely the 1945 Constitution of the Republic of Indonesia and also ideology. State as the legal basis of the state, namely Pancasila.

The Indonesian constitution has regulated the legal system related to law enforcement in the State of Indonesia. The constitution regulates judicial power in the Indonesian state, where this judicial power is one of the powers that exist in the concept of trial political power.

Judicial power in a state of law like Indonesia is tasked with exercising its power in the field of law enforcement; therefore, the concept of law enforcement in a state of the law is undoubtedly closely related to judicial power.

The concept of a state of the law in Indonesia uses the concept of a state of law Pancasila, where the concept of law enforcement must also, of course, be based on the precepts of Pancasila. Law enforcement in the State of Indonesia must, of course, be based on a just and civilized sense of humanity and social justice for all Indonesian people.

The concept of a state of law Pancasila is implemented in law enforcement in the State of Indonesia. In connection with the first principle, which reads Belief in One Supreme God, it is implemented in court decisions, where at the beginning of every court decision, there is an *irah-irah*, "For the sake of Justice based on the One Godhead." Based on this, it can be seen that in law enforcement, justice must be upheld, where the enforcement of justice must be based on the One Godhead.

Law enforcement is carried out to create legal certainty, but law enforcement must also be carried out by prioritizing justice, where the law's primary goal is philosophically the creation of justice.

The concept of a state of the law in Pancasila needs to be implemented in law enforcement in Indonesia, where law enforcement in the State of Indonesia is the flow of law in law enforcement in Indonesia also uses Pancasila as the state ideology to make guidelines for law enforcement in the State of Indonesia.

Pancasila as a guideline for the life of the nation and state is the main foundation in the legal context in the Indonesian state, not only in making favorable laws but in the context of law enforcement must also declare the values of Pancasila.

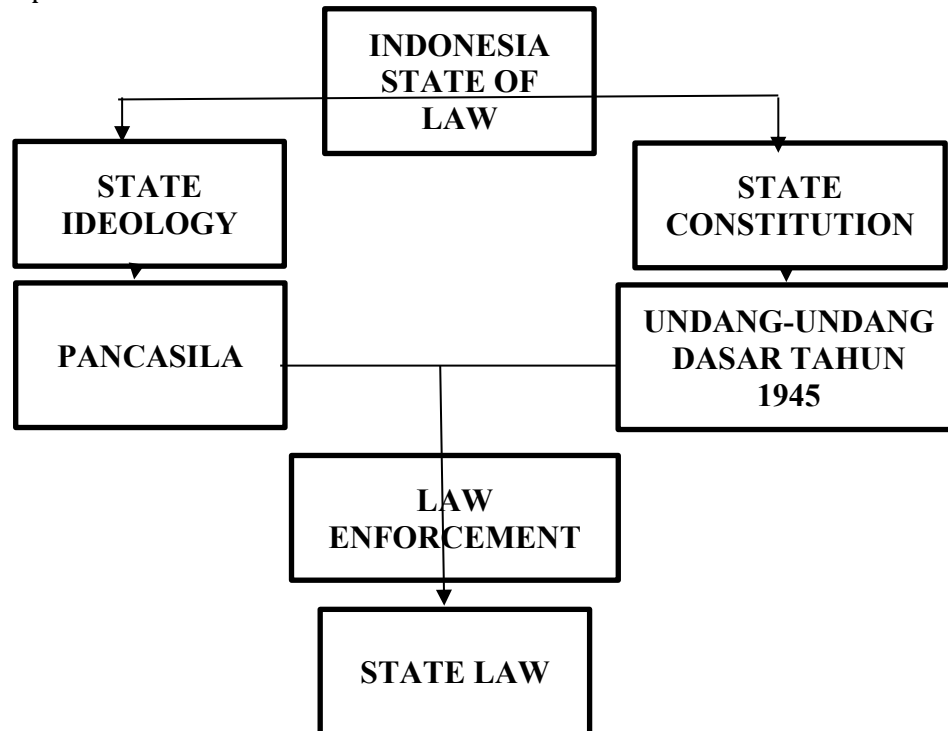
The flow of law in law enforcement in the State of Indonesia must be implemented by implementing the values in Pancasila in law enforcement in the Indonesian state. Based on the values of Pancasila, law enforcement must be based on the second principle, namely "just and civilized humanity" and the Fifth Precept, which reads "Social Justice for all Indonesian people."

Based on the sound of the second and fifth precepts of Pancasila as the ideology of the Indonesian state, which is also used as a guide in law enforcement in the State of Indonesia, it is evident that the flow of law in law enforcement in Indonesia that is used is related to social justice.

Law enforcement in the State of Indonesia certainly has a close relationship with the state's ideology and the state constitution, where the flow of law used in law enforcement in the

State of Indonesia is also contained in the constitution and ideology of the Indonesian state. Therefore, Pancasila as the state ideology and the constitution The year 1945 as the country's constitution was used as a basis and guide in making good legal products and concepts in law enforcement in the state of Indonesia.

Indeed, Indonesian law enforcement cannot be separated from the philosophy of the state constitution and the philosophy of Pancasila as the state ideology. The constitution and ideology of the Indonesian state are closely related to the legal system in Indonesia, both of which have significant positions in law enforcement.



Based on the chart above, it can be explained that the Indonesian state is a state of the law as referred to in Article 1 paragraph (3) of the constitution of the state of Indonesia, namely the 1945 Constitution. In contrast, a legal state in Indonesia certainly has a state ideology as a guide to the life of the nation and state and legal basis or basic norms in making laws and the basis for law enforcement.

As a legal state, Indonesia certainly also has a state constitution; the constitution is the fundamental law of a country, wherein the State of Indonesia the constitution is the 1945 Constitution of the Republic of Indonesia. In making good legal products in a legal state like Indonesia, of course, one must pay attention to the legal basis, which is the ideology of the state and also the fundamental law as the state constitution, this is, of course, intended to create the primary goal of the Indonesian state related to the legal context, namely the creation of social justice for all Indonesian people as stated in the fifth precept of the Indonesian state ideology, namely Pancasila.

Regarding the state constitution related to the concept of law enforcement, it can be seen in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which relates to judicial power. The article reads that "Judicial power is an independent power to administer justice in order to uphold law and justice."

When discussing the concept of law enforcement, which states that what is enforced is law, it will undoubtedly lead to the flow of legal positivism, wherein law enforcement indeed refers to the positive law of a country. However, on the other hand, Article 24 paragraph (1) of the Constitution of the Republic of Indonesia 1945 states that not only is the law enforced, but through the judiciary, judges have the power to administer justice to uphold law and justice. In essence, justice is the main thing that must be upheld.

From the sound of Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it can be seen that the flow of law used in law enforcement in Indonesia is not purely positivism but must prioritize the values of justice. As previously mentioned, the Indonesian state's legal basis, namely Pancasila, mentions in the fifth precept, which reads "Social Justice for All Indonesian People," it can be implicitly concluded that the flow of law in Indonesia is not pure positivism. However, in law enforcement, there is also the influence of the flow of law. According to this school, sociological jurisprudence still puts forward the values of justice that exist in society and is undoubtedly not purely looking at the law from a positive legal aspect.

Sociological jurisprudence, therefore, was introduced by Pound, efforts at advancing social welfare against barriers thrown up by judges invoking traditional legal doctrines (Brian Z, 2019). In Sociological Jurisprudence, the idea of collaborative networks is explicitly used to explore how different kinds of regulation can be produced from nonstate sources and acquire authority (Roger Cotterrell, 2019). Sociological Jurisprudence certainly sees justice in society and does not necessarily only see justice from positive law enforcement.

The basic concept of Sociological Jurisprudence is based on the distinction between positive law and the law that lives in society. This flow should be applied in law enforcement because so that law enforcement does not rely on positive law alone because if only positive law is enforced, justice will not be achieved; in essence, this law is a tool of social engineering as stated by Roscoe Pound, so the law is not just a tool of social control only.

Regarding law enforcement, looking at this sociological jurisprudence flow, positive state law can be said to be effective in law enforcement if the law is in harmony with the law that lives in society and by prioritizing social justice.

The interpretation of the law that lives in this society is related that law enforcement must also look at the social aspects of society, meaning that positive law must also be in harmony with the law that lives in society. About the law that lives in society, the application of customary law is also recognized as living law in Indonesia. As the legal basis for the enactment of living law in society, the state constitution also recognizes the validity of customary law, namely in Article 18B paragraph (2) Amendment II to the 1945 Constitution of the Republic of Indonesia, which reads, "The state recognizes and respects customary law community units. along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law".

In addition to customary law, religious law, which is also a living law in the community of adherents of a specific religion, is also recognized in the state constitution, which is regulated in Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which reads "The state guarantees the independence of every individual." people to embrace their respective religions and to worship according to their religion and beliefs." Based on the article's sound relating to religious law, of course, it is also recognized by the constitution because everyone who adheres to a religion certainly has different rules. Customary law and Islamic law are specific laws that live in society.

In law enforcement, law enforcers certainly do not only look at positive law but must prioritize the values of social justice in society, where the primary purpose of the law is to create justice. Especially in the enforcement of criminal law, many legal experts consider that the Indonesian state is strongly influenced by the doctrine of positivism in the enforcement of criminal law.

The flow of Sociological jurisprudence is the flow that should be used in law enforcement in Indonesia, where it is based on the mandate of the state constitution and state ideology related to social justice in law enforcement and justice. This flow certainly looks at the social aspects of law enforcement.

In essence, it is not only the law that should be enforced but philosophically, what should be enforced is justice. However, on the other hand, law enforcement certainly depends on law enforcers; law enforcers carry out law enforcement, justice will be created or not in law enforcement; of course, it depends on law enforcers.

There are still law enforcers who are still influenced by the flow of positivism to enforce the law, thus overriding the values of justice. The flow of positivism can undoubtedly affect the

law enforcement system in Indonesia, especially in criminal law enforcement, where positive law takes precedence over social interests. According to this positivism paradigm, the law can be said to be saklek or rigid, where every judicial process always refers to positive law regardless of the values that live in society.

However, on the other hand, in Indonesia, in law enforcement, there are still some law enforcers who enforce the law but do not reflect the values of justice and humanity. In this paper, the author takes one example of law enforcement that does not reflect the value of justice but only relies on positive law; this is the influence of the legal positivism paradigm on law enforcement in Indonesia. One example of law enforcement that does not reflect these values of justice is the case of poor people who take wood for cooking; it is apparent in the Decision of the Panel of Judges, the panel of judges of the Probolinggo District Court granted the demand and sentenced them to 2 years in prison and a fine of Rp. 2 billion subsidiaries one month. The law still has to be enforced, but in making a decision, it must use considerations and look at non-juridical aspects such as social aspects. Moreover, law enforcement does not see the cause and effect aspect of the person's actions. From this case, it is evident that positivism has implications for law enforcement in Indonesia.

In law enforcement in Indonesia, it should adhere to the sociological jurisprudence flow. The flow of Sociological Jurisprudence essentially focuses on law about society. In law enforcement, it does not only look at the juridical aspect; it is based on the law, but it must also look at the social aspect. Of course, one has to look at the cause of someone committing an act and also see that the consequences of the person committing the act must be considered in law enforcement.

As in the case of taking wood for cooking done by poor people on the coast of Probolinggo, the person took the wood for nothing but cooking. However, in law enforcement in court, the panel of judges at the Probolinggo District Court granted the prosecutor's demands and sentenced him to 2 years in prison and a fine of IDR 2 billion, subsidiary of 1 month. Taking wood to be sentenced to such punishment does not reflect justice. In passing the judge's decision, of course, he does not look at the social aspect, only races in positive law in law enforcement. So it does not reflect justice. In addition, when viewed from the reason the person did this, the person took the wood for the necessities of life, not to benefit themselves; this was done because of economic pressure. Besides that, the consequences of his actions also do not have a massive impact on the environment because the amount of wood taken is not much, unlike large-scale debt logging.

The person is a farm laborer who takes wood; the influence of positivism is very influential on the law enforcement process. The farm laborer was declared to have violated Article 35 letters e, f, and g of the Law of the Republic of Indonesia Number 27 of 2007 concerning Management of Coastal Areas and Smallest Islands. While the criminal provisions in article 73, which reads: Sentenced to imprisonment for a minimum of 2 years and a maximum of 10 years and a fine of at least Rp. 2 billion and a maximum of Rp. 10 billion for each person who intentionally uses methods and methods that damage the mangrove ecosystem. They are converting mangrove ecosystems, cutting mangroves for industrial and residential activities, and other activities referred to in Article 35 letter e, letter f, and letter g.

However, on the other hand, the influence of positivism is evident in the decision of the Panel of Judges, the panel of judges at the Probolinggo District Court granted the demand and sentenced him to 2 years in prison and a fine of Rp. 2 billion, subsidiary of 1 month. The law still has to be enforced, but in making a decision, it must use considerations and look at non-juridical aspects such as social aspects.

In this case, there is an influence from applying the positivism paradigm in law enforcement, wherein law enforcement the panel of judges only relies on positive law without considering human values and without considering the causes and consequences of the act.

From some of the explanations above, it can be concluded that based on the constitution, namely the 1945 Constitution of the Republic of Indonesia, and also the state ideology, namely Pancasila, the flow of law in law enforcement in Indonesia is the Sociological Jurisprudence flow, but on the other hand the influence of the positivism flow in law enforcement in Indonesia. The state of Indonesia is sometimes still seen from several cases, such as cases of stealing wood to

make a living where wood is used for cooking. The values of social justice are not shown in the prosecution of the case. Seeing this flow of Sociological Jurisprudence, law enforcement must prioritize the values of social justice in society.

Following the mandate of the constitution and the state ideology, namely Pancasila, in law enforcement, social justice values should be put forward, which in this case is a form of implementation of the sociological jurisprudence flow. However, looking at several cases in law enforcement in the State of Indonesia, it is still visible that the influence of this flow is still visible. Positivism in law enforcement.

As a state of law, Indonesia must also enforce the law well, but basically, what is enforced is positive law, but philosophically, what should be enforced is social justice; therefore, law enforcement in Indonesia should still prioritize values. -Social values in law enforcement in the State of Indonesia do not only look at positive law; this is, of course, to create a legal goal, namely the creation of justice.

The law is to regulate social society; the law aims to protect every interest that exists in social society; therefore, positive law must also be in harmony and in line with a law that lives society, to create social justice in social life. . Laws are made by looking at social aspects of society. Of course, law enforcement must also look at social aspects of society. Law enforcement is critical, especially in the Indonesian state of law, but the enforcement of social justice is far more important than law enforcement. This is, of course, in order to minimize the impact of the implementation of the flow of positivism in law enforcement, which is intended to achieve legal goals as stated in the Indonesian state ideology, namely Pancasila in the fifth precept, namely "social justice for all Indonesian people."

CONCLUSION

Law enforcement in the State of Indonesia today certainly shows that there is still the influence of the flow of legal positivism in law enforcement. However, on the other hand, law enforcement in this country does not only use legal positivism, but the Indonesian constitution regulates specifically about judicial power that the judiciary is intended To uphold law and justice, this is stated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia as the state constitution, besides seeing from the philosophy of Pancasila as the ideology of the state, in the fifth precept it is stated that social justice for all people Indonesia, from these precepts it can be seen that upholding social justice in running the state, this is of course also related to law enforcement and must prioritize social justice for all Indonesian people.

RECOMMENDATION

it can be concluded that the flow of law enforcement in the State of Indonesia is not pure positivism; looking at the philosophy of the constitution and the state ideology, namely Pancasila, it is clear that the constitutional mandate states that not only the law is enforced, but the values of justice must also be put forward. In the state's ideology, it is also seen that in carrying out the life of the state, social justice must be prioritized, as in law enforcement, of course, must prioritize the values of social justice.

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