

Reconstructing Justice: The Role of Law No. 8 of 1981 in Upholding Equality Before the Law in Indonesia

Lusiana Jomesti^{1*}, Emrizal¹, Dian Pertiwi¹, Kamaluddin¹

¹ Universitas Islam Negeri Mahmud Yunus Batusangkar

Correspondence:

jomestilusiana@gmail.com

Received: 20-02-2025

Revised: 25-03-2025

Accepted: 30-04-2025



Abstract: *This study investigates the legal-political formulation of the principle of equality before the law in Indonesia, as codified in Law No. 8 of 1981 on Criminal Procedure. Although the Constitution guarantees equal legal standing for all citizens, implementation remains hindered by institutional, cultural, and normative constraints. Using a normative juridical approach, this research is conducted through library-based methods, drawing on secondary legal materials such as statutory texts, academic literature, journals, and previous research. The primary legal source is Law No. 8 of 1981, analyzed to explore its alignment with justice, human rights protection, due process, and legal certainty. A qualitative descriptive analysis is employed to examine how this principle operates within the Indonesian criminal justice system. The findings reveal that while the law formally enshrines the principle of legal equality, practical enforcement often falls short. This gap highlights the need for harmonizing legislative intent with judicial and institutional practice to ensure fair treatment under the law for all citizens.*

Keywords: *Equality Before The Law, Legal Politics, Criminal Procedure Law*

Introduction

Human beings are inherently social creatures who cannot detach themselves from societal life and mutual interaction. (Srinivasan, 2019) This intrinsic social nature necessitates the existence of law as a regulatory mechanism to prevent harmful behavior and to maintain order. Law plays a vital role in society as it serves as a standard for ensuring justice, stability, harmony, and legal certainty. Indonesia, as a state founded on the rule of law, upholds legal supremacy in its pursuit of truth and justice. A fundamental principle in a legal state is equality before the law, which is enshrined in Article 27(1) of the 1945 Constitution, stating that all citizens have equal status before the law and government without exception.

Despite its constitutional recognition, the implementation of this principle in Indonesia remains problematic. The inconsistencies are not solely due to the inadequacies of law enforcement, infrastructure, or societal culture, but also rooted in the legal framework itself, which often hinders the realization of equal legal standing. Justice, as a fundamental consequence of the rule of law, requires that legal equality ensures all individuals have equal access to justice regardless of their background.

In practice, however, the application of equality before the law has not aligned with the values of Pancasila and Islamic law, largely due to systemic issues within the legal system and discriminatory practices by legal authorities. Law No. 8 of 1981 on Criminal Procedure embodies this principle as part of its human rights guarantees. Yet, the aspiration for justitia balance remains unfulfilled, as legal discrimination persists in various forms. This study explores the formulation and implementation of

equality before the law within the context of Indonesia's criminal procedural law, evaluating its legal-political framework and its effectiveness in ensuring justice for all.

Literature Review

Theory of Legislation Formulation

The formation of legislation in Indonesia is governed by Law No. 12 of 2011 concerning the Formation of Laws and Regulations. Scholars have offered various definitions of legislation. For instance, Bagir Manan defines legislation as a written decision issued by the state or government that contains directives or behavioral patterns that are general in nature and legally binding. (Widiarto et al., 2025) Legislation refers to written norms that are legally binding on the public and are established by authorized state institutions or officials through a formalized procedure. The primary objective of legislative formulation is to produce regulations that are effective, just, and reflective of the nation's legal values. The principles underlying the formation of legislation must embody values such as protection, humanity, nationalism, kinship, archipelagic insight, unity in diversity (*Bhinneka Tunggal Ika*), justice, equality before the law and government, legal order, certainty, as well as balance, harmony, and coherence. (Ranubaya et al., 2024)

In this regard, three core principles are particularly relevant to this study and are used as analytical tools: the principle of conformity between type, hierarchy, and content; the principle of functionality and effectiveness; and the principle of transparency. (Matheus et al., 2021) The legislative process encompasses several stages, including planning, drafting, deliberation, ratification, and promulgation. A law (*undang-undang*) is a regulation formulated by the House of Representatives (DPR) with the joint approval of the President. (Manalu et al., 2023)

Legal System Theory

The term "system," as defined in the *Kamus Besar Bahasa Indonesia* (Indonesian Dictionary), refers to a set of elements that are interconnected in a structured manner, forming a cohesive whole such as a framework of views, theories, or principles. A system may also be understood as a methodical approach. Law, on the other hand, is defined as a set of rules or customs officially recognized as binding, and reinforced by the authority of the state. In the Indonesian context, law includes statutes, regulations, and other legal instruments that govern social interaction and public conduct. (Pradijonrika, 2022)

A legal system can be understood as an integrated unit composed of interrelated elements that work collaboratively to achieve specific objectives. When one of these elements fails to function properly, the entire system may be rendered ineffective, preventing the attainment of its intended goals. Lawrence M. Friedman identifies three essential components of any legal system: the legal structure, the legal substance, and the legal culture. These three components collectively serve as benchmarks for assessing whether a legal norm or regulation is functioning effectively within a society. (Halim & Ammar, 2021)

The Principle of Equality Before the Law

The principle of equality before the law holds that every individual must be subject to the same legal rules and judicial processes. In essence, this concept asserts that all individuals are equal in the eyes of the law. Long before its formal adoption into modern constitutional frameworks, the idea of legal equality had already emerged in religious texts. For instance, the Book of Numbers 15:15–16 emphasizes that all humans are equal before God, while the Qur'an in Surah Al-Hujurat (49:13) affirms the egalitarian ideal that all people—regardless of gender, ethnicity, nationality, or lineage—are of equal moral worth.

Equality before the law is a cornerstone of modern legal systems, underscoring that justice must be administered impartially, without discrimination based on social class, economic status, gender, race, or religion. (Amri & Anggono, 2024) This principle is essential for upholding human dignity and ensuring fairness within a legal system. Its significance lies, firstly, in guaranteeing equal access to justice for all citizens. In the absence of such a principle, judicial processes risk becoming discriminatory, leading to

unfair treatment of marginalized groups and eroding public confidence in the judiciary. Secondly, this principle contributes to maintaining social stability by ensuring that legal protections are universally applied. (Kobrusieva et al., 2021)

Unequal legal treatment may fuel dissatisfaction and societal tensions, potentially escalating into broader conflicts. Ensuring equal legal standing fosters a sense of inclusion, respect, and recognition, thereby reducing the likelihood of unrest. Furthermore, equality before the law underpins the protection of fundamental human rights, ensuring that individuals are not subjected to arbitrary treatment or violations of their liberties. (Yunus & Setiawan, 2024) This principle not only supports justice but also upholds human dignity and social cohesion. When interpreted dynamically, the principle of equality before the law implies the assurance of access to justice for all individuals, regardless of their background. Public perception of the law is critical in determining whether the legal system is perceived as fair and whether its authority is respected. (Bergquist et al., 2022) This is particularly relevant for government officials, who function as key agents in enforcing the "due process of law" in criminal justice systems around the world. Their perception of the law significantly influences its effectiveness and legitimacy.

Human Rights

Human rights are inherent, fundamental entitlements that belong to every individual by virtue of their humanity. They are innate, universal, and divinely endowed, encompassing the right to life, family, personal development, communication, welfare, and other essential aspects of human existence. These rights are inalienable and must not be disregarded or violated by any party. (Sonafist & Yuningsih, 2023) According to Law No. 39 of 1999 concerning Human Rights, the right to life is recognized as a fundamental human liberty. Article 9(1) of the law stipulates that "every person has the right to live, to sustain their life, and to improve the quality of their life." This commitment is further echoed in Article 3 of the Universal Declaration of Human Rights, which affirms that "everyone has the right to life, liberty, and personal security." These legal provisions reflect Indonesia's strong commitment to upholding and protecting human rights.

As divinely granted rights, human rights are embedded in each individual as part of their inherent dignity and humanity. Every person, by virtue of being a creation of God, is born with these rights, regardless of differences in background or identity. These include the right to self-development, meaningful participation in society, and a life of well-being. Human rights carry with them both responsibilities and obligations, which serve to preserve individual dignity, uphold moral values, and maintain harmony within society (Yuliani, 2018).

Method

This study employs a library research approach, relying primarily on secondary data supported by primary legal sources. The core data consist of legal materials, particularly Law No. 8 of 1981 on Criminal Procedure, along with scholarly books relevant to the research topic. Additional legal sources include research findings, academic papers, journals, and other written references that are directly related to the subject of study. These secondary materials serve as the main basis for analysis, while supplementary sources are used as supporting data. The data were analyzed using a qualitative descriptive method, aimed at providing a comprehensive understanding of the legal-political formulation of the principle of equality before the law within the Indonesian criminal justice system.

Results and Discussion

Legal Politics in the Formulation of the Principle of Equality Before the Law in Law No. 8 of 1981

Law No. 8 of 1981 on Criminal Procedure regulates the rights and obligations of all parties involved in criminal proceedings. The law is designed to uncover material truth, protect the legal rights of suspects and defendants, ensure legal certainty, and preserve human dignity. As such, this legislation represents Indonesia's commitment to implementing the principle of due process of law.

The legislative process in Indonesia comprises several formal stages, including planning, drafting, deliberation, approval, and promulgation. Under this structure, the House of Representatives (DPR) acts as the primary legislator, while the President functions as a co-legislator, as all laws must be jointly approved and formally enacted under presidential authority. The revision of Law No. 12 of 2011 through Law No. 13 of 2022 further emphasizes the importance of improving the lawmaking process, particularly by enhancing public participation and legislative transparency.

Law No. 8 of 1981 introduced the principle of equality before the law, replacing earlier colonial legal doctrines derived from the *Herzien Inlandsch Reglement* (HIR) and *Rechtreglement voor de Buitengewesten* (RBG), (Fitrianggraeni et al., 2023) which endorsed the presumption of guilt. This principle presumed individuals guilty upon arrest, even before a judicial ruling, contradicting the constitutional guarantees of equality under Articles 27 and 28 of the 1945 Constitution. Such a system often violated the human rights of suspects by denying them equal treatment under the law. To correct this injustice, the 1981 legislation abandoned the presumption of guilt in favor of the presumption of innocence, affirming that individuals may only be declared guilty following a final and binding court decision. This shift served as the legal and philosophical foundation for institutionalizing equality before the law within Indonesia's criminal justice system.

The findings of this research highlight that the legal-political formulation of equality before the law in Law No. 8 of 1981 was a deliberate response to the outdated and unjust colonial legal norms. By embedding the presumption of innocence into the criminal procedure code, Indonesia has aligned its legal framework more closely with democratic values and human rights, establishing this law as a key milestone in the nation's legal reform and commitment to justice.

Implementation of the Principle of Equality Before the Law for Justicia Balance in Law Enforcement

The principle of equality before the law represents a fundamental element of the rule of law (*rechtstaat*), which demands that all individuals be treated equally before legal institutions. This principle ensures that every citizen, regardless of their status—whether as private individuals or public officials—has equal standing before the law (Walukow, 2013). In the Indonesian constitutional context, this principle is enshrined in Article 27(1) of the 1945 Constitution, which affirms that all citizens are equal before the law and the government, and are obligated to uphold the law without exception. Furthermore, Article 28D guarantees the recognition, protection, and fair legal treatment of all individuals, reinforcing the commitment to human rights and legal certainty (Waliden et al., 2022).

Law No. 8 of 1981 on Criminal Procedure codifies these ideals by emphasizing that all citizens possess equal rights and must be treated fairly throughout the judicial process. This obligation is directed not only at society but also at law enforcement authorities, who are tasked with enforcing the law impartially, based on regulations designed to promote the public good. The general elucidation of Law No. 8/1981 highlights that the law must be applied without discrimination, ensuring that no individual is treated differently before the courts. The law's preamble further emphasizes that Indonesia is a legal state grounded in Pancasila and the 1945 Constitution, which upholds human rights and equality before the law as constitutional mandates.

However, practical implementation of this principle reveals a stark contrast. For instance, the criminal prosecution of Minah, an elderly woman sentenced to one month and fifteen days in prison for stealing three cacao fruits worth approximately Rp 2,100, stands in sharp contrast to the relatively lenient six-year-and-six-month sentence and Rp 1 billion fine for a defendant in a corruption case involving illegal tin mining in Bangka Belitung, which reportedly cost the state Rp 271 trillion. Such discrepancies illustrate the selective application of justice in Indonesia, where the law appears "sharp downward but blunt upward"—a situation that runs counter to the core tenets of equality before the law and the broader doctrine of rule of law.

These disparities underscore the urgent need to bridge the gap between normative ideals and law enforcement practices. The inconsistent application of legal standards erodes public trust and undermines Indonesia's status as a constitutional democracy that is supposed to guarantee equal legal protection for all individuals, regardless of social or economic status.

Legal Politics and the Principle of Equality Before the Law in the Indonesian Legal System

Legal politics refers to the state's official policy or direction concerning which laws will be enacted or repealed in order to fulfill national objectives, as outlined in the Preamble to the 1945 Constitution. (Setyawan et al., 2024) It involves a deliberate choice regarding the development or elimination of legal norms that reflect a state's political will. Padmo Wahjono defines legal politics as a fundamental policy that determines the direction, form, and substance of future laws (Soedarto, 1986). In this context, a sound criminal procedure law is not only aimed at combating crime but also at upholding and enhancing human dignity – to improve the quality of man as man.

The principle of equality before the law dictates that all individuals must be subject to the same legal standards. Historically, this notion predates its constitutional adoption, originating in religious texts and legal-philosophical traditions that emphasize the equal status of all humans. The principle is grounded in the concept of *rechtsstaat* (the rule of law), which requires legal constraints on state power and guarantees legal protection for citizens. In such a system, the law serves as a mechanism to prevent arbitrary government action, ensuring that the rights and interests of the people are safeguarded.

Article 1(3) of the 1945 Constitution affirms Indonesia's status as a legal state. This carries with it several legal consequences: citizens must comply with enacted laws, state officials must adhere to legal frameworks in performing their duties, and human rights must be protected and respected. Moreover, the principle of the rule of law must be manifest in every aspect of governance and public administration. Social tolerance and conflict resolution play a vital role in maintaining national cohesion and order. (Rizal et al., 2024) Indonesian society—composed of diverse individuals, communities, and institutions—is shaped by cultural, economic, and political dynamics. Therefore, cooperation, mutual respect, and mechanisms for resolving disputes peacefully are essential pillars of a functioning legal society. In protecting one's own rights, individuals must respect the rights of others and refrain from actions that cause harm or conflict (Ibrahim Ahmad, 2018).

However, access to justice remains a challenge, particularly for marginalized groups. Legal awareness is often limited due to restricted access to legal information and education, especially in rural or underdeveloped regions. (Nabilah et al., 2025) This impedes the realization of a functional and inclusive legal system. Legal consciousness, which should be a gradual and socially integrated process, is weakened when law is understood only in punitive terms rather than as a framework for justice, order, and human dignity. In alignment with the fifth principle of Pancasila—"Social justice for all Indonesian people"—the realization of a just legal system requires collective commitment. Law enforcement officers, government institutions, and civil society must all be conscious of the constitutional commitment to equality before the law, and strive to uphold the legal principles of justice, legal certainty, and utility for the greater welfare of the nation.

Conclusion

The principle of equality before the law, as embedded in Law No. 8 of 1981 on Criminal Procedure, represents a critical legal-political milestone in Indonesia's pursuit of justice and the rule of law. Its formulation signifies a shift from colonial-era presumptions of guilt to a due process model that prioritizes the presumption of innocence, legal certainty, and the dignity of all individuals. This legal transformation underscores the state's commitment to establishing a criminal justice system that not only adjudicates disputes but also promotes order, fairness, and human rights.

Despite this normative commitment, the implementation of equality before the law in practice remains uneven. Disparities in legal treatment – especially in cases involving socio-economic inequality – reveal ongoing challenges in upholding justitia balance. To ensure the full realization of this principle, all components of the legal system, including lawmakers, law enforcement, and judicial actors, must internalize and consistently apply this constitutional mandate. Upholding equality before the law is not only a legal imperative but also a moral and democratic obligation essential for building public trust, safeguarding human rights, and strengthening Indonesia's legal system in accordance with Pancasila and constitutional ideals.

Acknowledgement

Thanks are due to all those who have helped in the process of researching and writing this article.

Conflict of Interest

This article has no conflicts of interest.

References

- Amri, A. I., & Anggono, B. D. (2024). Implementasi Perbandingan Asas Equality Before The Law Dalam Sistem Peradilan Pidana Di Indonesia Dengan Negara Lain. *Al-Syakhsyiyah: Journal of Law & Family Studies*, 6(1). <https://doi.org/10.21154/syakhsyiyah.v6i1.8958>
- Bergquist, M., Nilsson, A., Harring, N., & Jagers, S. C. (2022). Meta-Analyses of Fifteen Determinants of Public Opinion About Climate Change Taxes and Laws. *Nature Climate Change*, 12(3), 235–240. <https://doi.org/10.1038/s41558-022-01297-6>
- Fitrianggraeni, S., Fauziah, E. F., & Purnama, S. (2023). Dealing with Unsatisfactory Arbitral Awards: Observing the Grounds of Annulment of Arbitral Awards in Indonesia. *Journal of International Arbitration*, 40(Issue 6), 735–764. <https://doi.org/10.54648/JOIA2023030>
- Halim, A., & Ammar, D. (2021). Analisis Perbandingan Azas-Azas Sistem Peradilan Islam dan Indonesia. *Kalam Keadilan : Jurnal Hukum*, 9(2), 132–146.
- Kobrusieva, Y., Leheza, Y. O., Rudoi, K., Shamara, O., & Chalavan, V. (2021). International Standards of Social Protection of Internally Displaced Persons: Administrative and Criminal Aspects. *Jurnal Cita Hukum*, 9(3), 461–484. <https://doi.org/10.15408/jch.v9i3.23752>
- Manalu, F. H., Saraswati, R., & Yulida, D. (2023). Political Law Interpretation on President's Refusal to Sign an Approved Bill with the House of Representatives. *Jurnal Dinamika Hukum*, 23(1), 37. <https://doi.org/10.20884/1.jdh.2023.23.1.3267>
- Matheus, R., Janssen, M., & Janowski, T. (2021). Design Principles for Creating Digital Transparency in Government. *Government Information Quarterly*, 38(1), 101550. <https://doi.org/10.1016/j.giq.2020.101550>
- Nabilah, W., Putra, R., Afroo, F. A., Nurjanah, N., & Wahyuni, E. (2025). Between Protection and Permissiveness: A Fiqh Siyasah Reexamination of Marriage Dispensation in Indonesia. *JURIS (Jurnal Ilmiah Syariah)*, 24(1), 137. <https://doi.org/10.31958/juris.v24i1.11882>
- Pradijonrika, H. (2022). The Role of People's Representatives Council and President Post the Amendment to Basis of the 1945 Law in The Establishment of Law. *Journal of World Science*, 1(11), 1063–1076. <https://doi.org/10.58344/jws.v1i11.144>
- Ranubaya, F. A., Hexanno, S. A. D., Rangga, W. K., & Endi, Y. (2024). Enhancing Indonesian Nationalism: Exploring Archipelago and National Resilience (Social Philosophy Perspective). *Jurnal Filsafat Indonesia*, 7(1), 173–179. <https://doi.org/10.23887/jfi.v7i1.68765>
- Rizal, D., Warman, A. B., Putri, D., Nabilah, W., & Octavia, N. A. (2024). Youth Of Indonesia: The Application of Soft Approach Method in Preventing Irhabiyah Thought in the Young Generation in West Sumatra. *ICSIS Proceedings*, 1(1 SE-Articles), 98–105. <http://icsisproceedings.org/index.php/icsis/article/view/9>

- Setyawan, E., Yasin, A. A., & Dahlan, R. (2024). Legal Culture Review and Judicial Track Record of the Kesultanan Cirebon in the Manuscript Pepakem Jaksa Pepitu. *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 24(1), 1–21. <https://doi.org/10.18326/ijtihad.v24i1.1-21>
- Sonafist, Y., & Yuningsih, H. (2023). Islamic Law, the State, and Human Rights: The Contestation of Interfaith Marriage Discourse on Social Media in Indonesia. *JURIS (Jurnal Ilmiah Syariah)*, 22(2), 381. <https://doi.org/10.31958/juris.v22i2.10934>
- Srinivasan, K. (2019). Remaking More- Than- Human Society: Thought Experiments On Street Dogs As “Nature.” *Transactions of the Institute of British Geographers*, 44(2), 376–391. <https://doi.org/10.1111/tran.12291>
- Widiarto, A. E., Hassan, M. S., Rusli, M. H. M., & Setiawan, E. B. (2025). The Authority Relationship of Central and Local Governments in Forming Laws and Regulations: Between Indonesia and Malaysia. *Legality : Jurnal Ilmiah Hukum*, 33(1), 148–167. <https://doi.org/10.22219/ljih.v33i1.36629>
- Yunus, N. R., & Setiawan, R. (2024). The Enforcement Of Human Rights In The Constitution Of The Republic Of Indonesia. *EL-SIYASA: JOURNAL OF CONSTITUTIONAL LAW*, 1(2), 68–86. <https://doi.org/10.61341/el-siyasa/v1i2.007>