

Reconstructing Legal Certainty in Indonesia from the Perspective of *Siyāsah Syar’iyyah*: From Legal Formalism to Substantive Justice

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Abstract

*Legal certainty constitutes one of the fundamental pillars of a state governed by the rule of law, serving to ensure order, justice, and the protection of citizens' rights. However, the implementation of law in Indonesia continues to face various challenges, including overlapping regulations, inconsistencies in law enforcement, disparities in judicial decisions, and a tendency toward legal formalism that often neglects the public sense of justice. This article aims to analyze the problems of legal certainty in Indonesia and to propose a reconstruction of the concept of legal certainty from the perspective of *Siyāsah Syar’iyyah*. This research employs a normative legal research method using conceptual, statutory, and philosophical approaches. The sources of data include legislation, constitutional law literature, Islamic legal scholarship, and relevant scientific journal articles. Data were collected through library research and analyzed using qualitative methods with deductive-inductive reasoning. The findings indicate that the paradigm of legal certainty in Indonesia remains predominantly influenced by a positivistic approach that views law merely as a body of written norms. From the perspective of *Siyāsah Syar’iyyah*, legal certainty is not only understood as compliance with legal texts but also as an instrument for realizing substantive justice for all citizens. The reconstruction of legal certainty should therefore be directed toward the integration of legality, justice, and public welfare (*maslahah*) through the development of responsive regulations, the strengthening of the integrity of law enforcement institutions, the harmonization of legislation, and the implementation of the principles of *Maqāṣid al-Sharī’ah* in both the legislative process and law enforcement practices.*

Keywords: Legal Certainty, Siyāsah Syar’iyyah, Substantive Justice.

Abstrak

Kepastian hukum merupakan salah satu pilar utama negara hukum yang berfungsi menjamin ketertiban, keadilan, dan perlindungan hak-hak warga negara. Namun, praktik penyelenggaraan hukum di Indonesia masih menghadapi berbagai persoalan, seperti tumpang tindih regulasi, inkonsistensi penegakan hukum, disparitas putusan pengadilan, serta

kecenderungan formalisme hukum yang sering kali mengabaikan rasa keadilan masyarakat. Artikel ini bertujuan untuk menganalisis problematika kepastian hukum di Indonesia serta menawarkan rekonstruksi konsep kepastian hukum berdasarkan perspektif *Siyāṣah Syar'īyyah*. Penelitian ini menggunakan jenis penelitian hukum normatif dengan pendekatan konseptual (*conceptual approach*), pendekatan perundang-undangan (*statute approach*), dan pendekatan filosofis (*philosophical approach*). Sumber data mencakup peraturan perundang-undangan, literatur hukum tata negara, hukum Islam, serta artikel ilmiah yang relevan. Sedangkan teknik pengumpulan data dilakukan melalui studi kepustakaan (*library research*) dan dianalisis menggunakan metode analisis kualitatif dengan penalaran deduktif-induktif. Hasil penelitian menunjukkan bahwa paradigma kepastian hukum di Indonesia masih didominasi oleh pendekatan positivistik yang menempatkan hukum sebagai norma tertulis semata. Dalam perspektif *Siyāṣah Syar'īyyah*, kepastian hukum tidak hanya dipahami sebagai ketaatan terhadap teks hukum, tetapi juga sebagai instrumen yang mampu mewujudkan keadilan substantif bagi seluruh warga negara. Rekonstruksi kepastian hukum diarahkan pada integrasi antara legalitas, keadilan, dan kemaslahatan melalui pembentukan regulasi yang responsif, penguatan integritas lembaga penegak hukum, harmonisasi peraturan perundang-undangan, serta penerapan prinsip-prinsip *maqāṣid al-syarī'ah* dalam proses legislasi dan penegakan hukum.

Kata Kunci: Kepastian Hukum, Siyāṣah Syar'īyyah, Keadilan Substantif.

A. Introduction

Legal certainty is one of the fundamental elements of the rule of law. In the Indonesian constitutional system, the principle of the rule of law is explicitly affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a state based on law.¹ The logical consequence of adopting this principle is that the state is obliged to guarantee the protection of human rights, equality before the law, and fair legal certainty for all citizens without exception.²

The problem of legal certainty in Indonesia can be observed from various aspects, both in law-making and law enforcement. One of the major issues is the overlap of regulations, which creates normative inconsistencies within the legal system. Furthermore, law enforcement practices in Indonesia continue to face challenges such as disparities in judicial decisions, weak integrity among law enforcement officials, and interventions by political

¹ Sholahuddin Al-Fatih dan Yusuf Syahputra, "Rekonstruksi Paradigma Kepastian Hukum Berkeadilan Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Ius Quia Iustum* Vol. 28, no. 2 (2021): hlm. 246, <https://doi.org/https://doi.org/10.20885/iustum.vol28.iss2.art3>.

² Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia, Cet. Ke-7* (Jakarta: Sinar Grafika, 2018). hlm. 122

power and vested interests. Judges and law enforcement officers are often rigidly bound by statutory texts without adequately considering the values of justice that exist within society.

Within the concept of the rule of law, legal certainty is an essential element that guarantees order and the protection of citizens' rights. Modern rule-of-law theory places law as the supreme authority in state governance. Friedrich Julius Stahl argued that one of the essential elements of a rule-of-law state is the protection of human rights and government based on statutory law.³ In the Indonesian context, however, the concept of the rule of law should not merely focus on the supremacy of written regulations but must also embody the values of social justice reflected in Pancasila.

The perspective of *Siyāsah Syar'iyah* offers a more substantive legal paradigm oriented toward public welfare (*maslahah*). Conceptually, *Siyāsah Syar'iyah* refers to governmental policies aimed at realizing public welfare in accordance with the principles of Islamic law.⁴ Legal certainty within *Siyāsah Syar'iyah* is closely related to the principles of justice (*'adl*), public interest (*maslahah*), and equality before the law.⁵ These principles are reflected in *maqāṣid al-syarī'ah*, which places the protection of religion, life, intellect, lineage, and property as the primary objectives of law.

Studies on legal certainty have generally been dominated by legal positivism and modern rule-of-law theories that emphasize formal legal aspects. Most research focuses on regulatory harmonization, the effectiveness of law enforcement, and the role of judicial institutions in ensuring legal certainty.⁶ Meanwhile, studies examining legal certainty from the perspective of Islamic law tend to discuss the concept of justice in Islamic jurisprudence in general terms without specifically linking it to the challenges of Indonesia's national legal system.⁷ Moreover, only a limited number of studies have attempted to integrate the concept of *Siyāsah Syar'iyah* with the reconstruction of legal certainty in Indonesia within the framework of transforming formal legality into substantive justice.

³ Friedrich Julius Stahl, *Philosophy of Law, Diterjemahkan Oleh A. Pitlo* (Bandung: Alumni, 1986). hlm. 87

⁴ Ibnu Qayyim Al-Jauziyyah, *Al-Thuruq Al-Hukmiyyah Fi Al-Siyasah Al-Syar'iyah* (Beirut: Dar al-Kutub al-Ilmiyyah, 1995). hlm. 13

⁵ Yusuf Al-Qaradawi, *Fiqh Daulah Dalam Perspektif Al-Qur'an Dan Sunnah* (Jakarta: Pustaka Al-Kautsar, 1997). hlm. 58

⁶ Lili Rasjidi dan Ira Thania Rasjidi, *Dasar-Dasar Filsafat Dan Teori Hukum* (Bandung: Citra Aditya Bakti, 2012, 2012). hlm. 102

⁷ Syafiq Anwar, "Kepastian Hukum Dalam Hukum Islam Dan Kontribusinya Terhadap Teori Hukum Ketatanegaraan Modern," *Asy-Syir'ah: Jurnal Ilmu Syariah Dan Hukum* Vol. 55, no. 1 (2021): hlm. 20, <https://doi.org/https://doi.org/10.14421/ajish.v55i1.912>.

Based on these conditions, the novelty of this study lies in its effort to reconstruct the concept of legal certainty in Indonesia through the perspective of *Siyāṣah Syar'īyyah* by positioning *maqāṣid al-syarī'ah* as an ethical and philosophical foundation for achieving substantive justice. This study does not merely examine legal certainty as a normative concept but also positions it as an instrument of social welfare that must be capable of addressing the problems of injustice in the practice of law enforcement in Indonesia. Accordingly, this research offers a new paradigm of legal certainty that is more responsive, humane, and oriented toward the realization of substantive justice.

B. Research Methods

This study employs a normative juridical legal research method, focusing on the examination of legal norms within the positive legal system as well as relevant principles of Islamic law. The approaches applied in this research include the statutory approach, conceptual approach, and comparative approach. The sources of data in this normative study consist of two categories. Primary sources include the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the Qur'an, and the Hadith of Prophet Muhammad (peace be upon him). Secondary sources comprise classical works on *Siyāṣah Shar'īyyah*, literature on positive law and legal theory, and scholarly journal articles. Data were collected through library research by reviewing, recording, and analyzing relevant legal documents and literature. Subsequently, the collected legal materials were analyzed using a qualitative method with deductive and inductive reasoning to formulate a prescriptive legal conceptualization.

C. Discussion and Research Findings

The Concept of Legal Certainty in Indonesia's Constitutional System

Legal certainty constitutes one of the primary objectives of law, alongside justice and utility. From the perspective of legal positivism, legal certainty is realized through the existence of written rules that are clear, systematic, and consistently applicable.⁸ Hans Kelsen, through his *Pure Theory of Law*, positioned law as a pure normative system that must be obeyed rigidly without consideration of morality, politics, or external social values.⁹

⁸ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: Liberty, 2007). hlm. 160

⁹ Hans Kelsen, *Teori Umum Tentang Hukum Dan Negara* (Bandung: Nusa Media, 2011). hlm. 122

Within Indonesia's constitutional framework, the concept of legal certainty is constitutionally guaranteed under Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which stipulates that every person has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law. The phrase "fair legal certainty" is particularly significant because it demonstrates that the drafters of the constitutional amendments did not intend legal certainty to be understood merely in a formalistic sense; rather, it should embody the spirit of substantive justice.¹⁰

Nevertheless, the implementation of legal certainty within Indonesia's constitutional and judicial systems continues to face serious systemic challenges, including the following:

a. The Dominance of Legal Positivism

Law enforcement in Indonesia remains largely centered on a textual interpretation of statutory regulations. Judges and law enforcement officials frequently decide cases based solely on the formal wording of legislation without adequately exploring the values of substantive justice. Consequently, legal actors often become mere "mouthpieces of the law" (*la bouche de la loi*), creating a separation between procedural justice as reflected in legal texts and the actual sense of justice experienced by society.¹¹

b. Regulatory Overlap (Hyper-Regulation)

The rapid proliferation of regulations, unaccompanied by effective harmonization mechanisms, has fostered institutional sectoralism among governmental bodies. Numerous regulations conflict with one another both vertically and horizontally, generating legal ambiguity and uncertainty. This situation makes it difficult for citizens to understand the applicable legal framework and creates opportunities for the abuse of authority by state officials.¹²

c. Inequality in Law Enforcement

Law enforcement in Indonesia is often perceived as discriminatory and selective. The popular expression "sharp

¹⁰ Fatimah Zahra dan Rian Ramadhan, "Integrasi Maqashid Al-Syari'ah Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia," *Jurnal Konstitusi* Vol. 22, no. 1 (2025): hlm. 82.

¹¹ Bintang Dwi Pratama, "Eksistensi Istihsan Sebagai Basis Filosofis Putusan Contra Legem Demi Keadilan Substantif," *Mizan: Journal of Islamic Law* Vol. 7, no. 2 (2023): hlm. 136.

¹² Fatimah Zahra dan Rian Ramadhan, "Integrasi Maqashid Al-Syari'ah Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia," *Jurnal Konstitusi* Vol. 22, no. 1 (2025): hlm. 87.

downward, blunt upward” reflects the unequal treatment of ordinary citizens and political or economic elites. Such conditions weaken public trust in the legal system and undermine the constitutional principle of equality before the law.¹³

d. Weak Integrity of Law Enforcement Officials

The human factor, or legal culture, remains one of the most significant obstacles to achieving fair legal certainty. Corruption, judicial mafia practices, and abuses of power by certain law enforcement officials continue to pose serious challenges to the realization of a legal system that is both certain and just.¹⁴

Concept of Legal Certainty in the Perspective of *Siyāsah Syar’iyyah*

From the perspective of *Siyāsah Syar’iyyah*, the concept of legal certainty possesses epistemological foundations that differ fundamentally from those of secular legal positivism. In Islam, legal certainty does not derive from the absolute will of the ruler but is rooted in the principle of *Al-Hakimiyyah* (the sovereignty of God's law), which is subsequently delegated to human beings as *khalifah* through a measured and accountable process of *ijtihad*.¹⁵ *Siyāsah Syar’iyyah* regards law as an instrument for realizing the objectives of the Shari’ah (*maqāṣid al-syarī’ah*), namely the protection of religion, life, intellect, lineage, and property. To understand the construction of legal certainty within *Siyāsah Syar’iyyah*, two fundamental principles must be considered.

a. Principle of Legality and Clarity of Legal Texts

Islam strongly emphasizes that punishment may not be imposed before the existence of a clear legal rule. This principle is reflected in the legal maxim: “*There is no legal ruling upon the actions of a rational person before the existence of a legal command (khitab)*.”¹⁶ Within the framework of *Siyāsah Syar’iyyah*, the principles of legality and textual clarity are not merely administrative instruments but

¹³ Elma Fitriani, “Rekonstruksi Asas Legalitas Menuju Restorative Justice: Perspektif Hukum Progresif Dan Fiqh Siyasah,” *Siyasah: Jurnal Hukum Tata Negara*, Vol. 4, no. 1 (2024): hlm. 50.

¹⁴ Farihan A. Siregar, “Kepastian Hukum Versus Keadilan Dalam Putusan Hakim: Analisis Hukum Positif Dan Siyasah Qadhaiyyah,” *Jurnal Al-Ahkam* Vol. 16, no. 2 (2022): hlm. 208.

¹⁵ Muhammad Haris, *Fikih Siyasah Kontemporer: Prinsip Tata Negara Islam Modern* (Jakarta: Rajawali Pers, 2022). hlm. 42

¹⁶ Syafiq Anwar, “Kepastian Hukum Dalam Hukum Islam Dan Kontribusinya Terhadap Teori Hukum Ketatanegaraan Modern,” *Asy-Syir’ah: Jurnal Ilmu Syariah Dan Hukum* Vol. 55, no. 1 (2021): hlm. 12.

manifestations of divine justice intended to protect individual rights (*huquq al-'ibad*) from arbitrary governmental actions.¹⁷

1. Principle of Legality (*Al-Mashru'iyah*)

The principle of legality in Islam affirms that no legal obligation (*taklif*) may be imposed upon individuals before the existence of a clear Shari'ah text or legal rule governing the matter. This principle is rooted in the Qur'anic verse: "And We never punish until We have sent a messenger." (Qur'an, Al-Isrā': 15) This verse implies that punishment cannot be imposed without prior notification or a pre-existing legal basis. The principle of legality is also reflected in the jurisprudential maxim: "*Al-ashlu fi al-af'al al-ibahah*" (The original ruling concerning human actions is permissibility).¹⁸

2. Principle of Textual Clarity (*Bayān al-Nuṣūṣ*)

In Islamic law, textual clarity refers to the requirement that legal messages must be understood with certainty (*qaṭ'ī*) so as not to create confusion for the legal subject (*mukallaḥ*). Both Shari'ah texts and governmental regulations (*qanun*) must be formulated using *muhkam* language (clear and unequivocal wording) while avoiding *mutashabihat* (ambiguous expressions).¹⁹

3. Relationship between Legality, Textual Clarity, and *Maslahah*

Within *Siyāsah Syar'iyah*, the relationship between these principles and public policy may be summarized as follows:

Element	Explanation in Islamic Law
Sovereignty of Legal Texts	Legal authority stands above the authority of rulers (<i>Islamic Nomocracy</i>). ²⁰
Legal Certainty	Citizens enjoy a sense of security because laws remain stable and are not altered arbitrarily without valid Shari'ah justification. ²¹

¹⁷ Abdul Wahab Khallaf, *Politik Hukum Islam (Al-Siyasah Al-Syar'iyah)*, Terj. Mohammad Zuhri (Semarang: Asy-Syifa, 2023). hlm. 78-82

¹⁸ Ahmad Al-Raysuni, *Maqasid Al-Syariah: Epistemologi Hukum Islam Transformatif* (Yogyakarta: Pustaka Pelajar, 2022). hlm. 95-98

¹⁹ Syafiq Anwar, "Kepastian Hukum Dalam Hukum Islam Dan Kontribusinya Terhadap Teori Hukum Ketatanegaraan Modern," *Asy-Syir'ah: Jurnal Ilmu Syariah Dan Hukum* Vol. 55, no. 1 (2021): hlm. 15, <https://doi.org/https://doi.org/https://doi.org/10.14421/ajish.v55i1.912>.

²⁰ Syafiq Anwar, "Kepastian Hukum Dalam Hukum Islam Dan Kontribusinya Terhadap Teori Hukum Ketatanegaraan Modern," *Asy-Syir'ah: Jurnal Ilmu Syariah Dan Hukum* Vol. 55, no. 1 (2021): hlm. 18.

²¹ Muhammad Haris, *Fikih Siyasah Kontemporer: Prinsip Tata Negara Islam Modern* (Jakarta: Rajawali Pers, 2022). hlm. 60

Element	Explanation in Islamic Law
Substantive Justice	Legality and textual clarity are directed toward achieving the objectives of the Shari'ah (<i>maqāṣid al-syarī'ah</i>), namely the protection of religion, life, intellect, lineage, and property. ²²

b. Justice as the Essence of Legal Certainty

In Islam, legal certainty cannot stand independently from justice. If a law is textually certain but produces oppression or injustice, it loses its Shari'ah legitimacy.²³ Legal certainty in this context is referred to as *al-yaqin*, meaning a state of certainty that provides reassurance and tranquility to legal subjects. From the perspective of *Siyāsah Syar'īyyah*, justice (*al-'adalah*) is not merely the ultimate goal of law but rather the spirit that animates legal certainty itself.²⁴ The following is an explanation of the position of justice as the core of legal certainty in the perspective of *Siyāsah Syar'īyyah* :

1. Justice as the Standard of Legitimacy

Within *Siyāsah Syar'īyyah*, a legal rule or public policy is considered to possess legal certainty only when it is founded upon the principle of justice. Legal certainty must never become an instrument of oppression. If a formal legal text generates widespread injustice, it fundamentally contradicts the objectives of the Shari'ah (*maqāṣid al-syarī'ah*). A well-known legal maxim states: "Where justice exists, there exists the law of God."²⁵

2. Manifestations of Justice within Legal Certainty

To ensure that justice remains the core of legal certainty, *Siyāsah Syar'īyyah* emphasizes three principal pillars:

a) Equality Before the Law (*Al-Musawah*)

Legal certainty can only exist when the law applies equally to all individuals, including those in positions of authority. In the history of Islamic constitutional governance, this principle was demonstrated when caliphs could be brought before a court by ordinary citizens.²⁶

b) Protection of Fundamental Rights (*Hifz al-Huquq*)

²² Al-Raysuni, *Maqasid Al-Syariah: Epistemologi Hukum Islam Transformatif*. hlm. 121

²³ Raden Saputra, "Tantangan Penegakan Hukum Transformatif: Dari Formalistik-Positivistik Menuju Hukum Berkeadilan Substantif," *Jurnal Rechten: Jurnal Hukum Dan Hak Asasi Manusia* Vol. 5, no. 2 (2023): hlm. 115.

²⁴ Ibnu Qayyim al-Jauziyyah, *I'lam Al-Muwaqqi'in 'an Rabb Al-'Alamin*, Jilid 3, Ed. Al-Anshari (Kairo: Dar al-Hadith, 2021). hlm. 14

²⁵ Pratama, "Eksistensi Istihsan Sebagai Basis Filosofis Putusan Contra Legem Demi Keadilan Substantif,." hlm. 67

²⁶ Farihan A. Siregar, "Kepastian Hukum Versus Keadilan Dalam Putusan Hakim: Analisis Hukum Positif Dan Siyasah Qadhaiyyah," *Jurnal Al-Ahkam* Vol. 16, no. 2 (2022): hlm. 215.

The essence of legal certainty lies in guaranteeing protection for the five essential interests (*al-dharuriyyat al-khamsah*), namely religion (*ad-din*), life (*an-nafs*), intellect (*al-'aql*), lineage and honor (*an-nasl*), and property (*al-mal*).²⁷

c) Procedural and Substantive Justice

Islam requires certainty not only regarding what is formally written in legal texts (procedural justice) but also regarding the outcomes produced by the law (substantive justice).²⁸

Critique of Legal-Formal Legal Certainty

The legal-formal model of legal certainty, which has long dominated Indonesia's constitutional culture and judicial practice, suffers from fundamental paradigmatic weaknesses. This mindset originates from the tradition of analytical legal positivism, which strictly separates law as it ought to be (*das Sollen*) from morality, justice, and the sociological realities that develop within society (*das Sein*).²⁹ Based on both empirical realities and theoretical studies of Indonesia's constitutional system, several fundamental criticisms can be directed at this legal-formal conception of legal certainty.

a. Procedural Deadlock and the Mechanization of the Judiciary

Within the legal-formal tradition, judges are positioned mechanistically as the "mouthpiece of the law" (*la bouche de la loi*).³⁰ The judicial function is simplified into a rigid syllogistic exercise of matching concrete facts with written statutory provisions. As a consequence, law enforcement often experiences what may be described as a "procedural deadlock," in which the truth sought is merely formal truth documented on paper rather than substantive truth that touches the essence of justice.³¹

b. Marginalization of Living Law

²⁷ N Rohayana, A., & Fitriani, "Penerapan Konsep Maqashid Syariah Dalam Pembentukan Hukum Nasional (Siyasah Tashri'iyah)," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* Vol. 21, no. 2 (2021): hlm. 182, <https://doi.org/https://doi.org/10.18326/ijtihad.v21i2.175-194>.

²⁸ Raden Saputra, "Tantangan Penegakan Hukum Transformatif: Dari Formalistik-Positivistik Menuju Hukum Berkeadilan Substantif," *Jurnal Rechten: Jurnal Hukum Dan Hak Asasi Manusia* Vol. 5, no. 2 (2023): hlm. 123.

²⁹ Zainal Mukhtar, "Menggeser Keadilan Prosedural Menuju Keadilan Substantif: Kritik Terhadap Positivisme Hukum Ketatanegaraan," *Jurnal Hukum & Pembangunan* Vol. 53, no. 3 (2023): hlm. 418, <https://doi.org/https://doi.org/10.21143/jhp.v53i3.3102>.

³⁰ Raden Saputra, "Tantangan Penegakan Hukum Transformatif: Dari Formalistik-Positivistik Menuju Hukum Berkeadilan Substantif," 2023. hlm. 115

³¹ Sholahuddin Al-Fatih dan Yusuf Syahputra, "Rekonstruksi Paradigma Kepastian Hukum Berkeadilan Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Ius Quia Iustum* Vol. 28, no. 2 (2021): hlm. 252.

A defining characteristic of legal-formalism is its insistence upon rigid codification and legal unification. This paradigm assumes that law does not exist unless it is formally enacted and recorded in official legal documents. Consequently, forms of *living law*—including customary law, local wisdom, and religious norms—are frequently marginalized and regarded as lacking binding legal force.³²

c. The Legitimization of Lawful Injustice

Perhaps the most significant criticism of legal-formalism is its vulnerability to manipulation by political elites and economic interests. This phenomenon creates opportunities for what may be termed *lawful injustice*, a situation in which formally valid laws are used as instruments to legitimize political interests, preserve existing power structures, or suppress dissenting voices. Under such circumstances, legal certainty ceases to function as a means of protecting citizens' rights and instead becomes a mechanism for reinforcing domination and inequality. Furthermore, lawful injustice may emerge when legal provisions are employed to criminalize public policies that are actually intended to serve the interests of the people.³³

Reconstruction of Legal Certainty in Indonesia: From Legal Formalism to Substantive Justice

Considering the various fundamental weaknesses inherent in the legal-formal paradigm, which tends to be rigid and repressive, the Indonesian legal system urgently requires a profound paradigmatic reconstruction. This reconstruction demands a shift from legal certainty that is predominantly positivistic and procedural toward a conception of legal certainty that is substantive, progressive, and humanistic.³⁴ From the perspective of *Siyāsah Syar'iyah*, such legal reform does not entail replacing the entire constitutional framework of the state; rather, it seeks to transform the spirit of law enforcement so that it remains consistently aligned with the principle of public welfare (*maslahah 'ammah*).³⁵ Strategic efforts to reconstruct legal

³² Farihan A. Siregar, "Kepastian Hukum Versus Keadilan Dalam Putusan Hakim: Analisis Hukum Positif Dan Siyasah Qadhaiyyah," *Jurnal Al-Ahkam* Vol. 16, no. 2 (2022): hlm. 209.

³³ Fatimah Zahra dan Rian Ramadhan, "Integrasi Maqashid Al-Syari'ah Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia," *Jurnal Konstitusi* Vol. 22, no. 1 (2025): hlm. 88.

³⁴ Raden Saputra, "Tantangan Penegakan Hukum Transformatif: Dari Formalistik-Positivistik Menuju Hukum Berkeadilan Substantif," *Jurnal Rechten: Jurnal Hukum Dan Hak Asasi Manusia* Vol. 5, no. 2 (2023): hlm. 122.

³⁵ Haris, *Fikih Siyasah Kontemporer: Prinsip Tata Negara Islam Modern*, 2022. hlm. 103.

certainty in Indonesia may be formulated through the following five principal pillars.

a. Reorienting the Paradigm of Law Enforcement

The architecture of law enforcement in Indonesia must be redirected from the mere pursuit of procedural justice toward the realization of substantive justice. In this regard, judges should no longer act passively as mere “readers of statutory provisions” but should be willing to engage in *rechtsvinding* (judicial law-finding) through a progressive legal approach. As famously stated, “Law exists for human beings, not human beings for the law.” The implication of this principle is that every law-enforcement process must balance the three fundamental values of law: justice (*al-‘adalah*), public benefit (*al-istishlah*), and legal certainty (*al-yaqin*).³⁶

b. Regulatory Reform and Harmonization

The chronic problem of hyper-regulation and overlapping legislation in Indonesia constitutes a primary source of legal uncertainty. Therefore, regulatory reform must be undertaken through the restructuring of legislative institutions (*Siyāsah Tashrī‘iyyah*) based on the principles of harmonization and simplification. The enactment of new legislation and the revision of existing laws should not merely pursue quantitative legislative targets. Instead, every legal product must be preceded by comprehensive sociological assessments designed to evaluate its social consequences and contribution to public welfare. Through such an approach, legislation can become more responsive to societal needs while minimizing normative conflicts among legal instruments.³⁷

c. Strengthening the Morality and Integrity of Law Enforcement Officials

Corrupt public officials constitute one of the greatest threats to legal certainty. No matter how well legal provisions are drafted, they lose their effectiveness when implemented by individuals lacking integrity. According to the doctrine of *Siyāsah Syar‘iyyah*, public office and governmental authority are sacred trusts (*amanah*) that must ultimately be accounted for before God. Law enforcement officials must therefore possess a high degree of spiritual and ethical awareness (*transcendental awareness*), recognizing

³⁶ Muhammad Erwin, “Keadilan Substantif Dalam Penegakan Hukum Indonesia,” *Jurnal Rechtsvinding* Vol. 13, no. 1 (2024): hlm. 45-47.

³⁷ Firdaus Syam, *Politik Hukum Dan Legislasi Nasional* (Jakarta: Rajawali Pers, 2023). hlm. 211-215

that every decision they make carries not only worldly consequences but also theological and moral accountability before the Almighty.³⁸

d. Integrating the Values of *Maqāṣid al-Syarī'ah* into the National Legal System

The integration of the values of *Maqāṣid al-Syarī'ah* into Indonesia's national legal system should be understood as the establishment of an ethical foundation and moral compass for both law-making and law enforcement. By adopting the five fundamental objectives of the Shari'ah—protection of religion, life, intellect, lineage, and property—as guiding principles for legal and economic policymaking, the state can formulate regulations that are more responsive to poverty alleviation, social inequality, and human rights violations. Consequently, legal certainty becomes inseparable from the broader objectives of justice and public welfare.³⁹

e. Promoting Responsive and Humanistic Law

Responsive law is law that possesses sufficient flexibility to accommodate *living law*, cultural values, and the religious and social pluralism that characterizes Indonesian society. A humanistic legal approach places human beings at the center of legal protection, recognizing and respecting their inherent dignity and worth. In practical terms, this approach can be implemented through the strengthening of restorative justice mechanisms within the criminal justice system.

D. Conclusion

This study concludes that the guarantee of legal certainty within Indonesia's constitutional system should no longer be understood narrowly as mere compliance with formal and textual procedures. Instead, it must undergo a transformation from a legal-formal conception of certainty toward a model of substantive legal certainty. The process of lawmaking undertaken by the House of Representatives (DPR) and the President should integrate the values of *Maqāṣid al-Syarī'ah* as a methodology for substantive evaluation and legal assessment. Every legislative product enacted by the state should not merely pursue the quantitative fulfillment of formal legislative requirements. Rather, it must consistently be oriented toward safeguarding the five essential objectives of human welfare (*al-daruriyyāt al-khams*), namely the protection of religion, life, intellect, lineage, and property. These objectives should serve as the ethical and philosophical foundation for the

³⁸ Dedi Supriyadi, "Integritas Aparat Penegak Hukum Dalam Perspektif Good Governance Dan Siyasah Syar'iyah," *Jurnal Al-Ahkam* Vol. 34, no. 1 (2024): hlm. 95-99.

³⁹ Moh. Mahfud MD dan Khoirul Anwar, "Maqashid Al-Syariah Sebagai Basis Reformasi Hukum Nasional," *Al-Manahij: Jurnal Kajian Hukum Islam* Vol. 18, no. 1 (2024): hlm. 12-18.

formulation, implementation, and interpretation of law within the Indonesian legal system. From the perspective of *Siyāsah Syar’iyyah*, a legal regulation or judicial decision can only achieve genuine legal certainty when it simultaneously fulfills three interconnected dimensions: certainty, justice, and public welfare (*maslahah*).

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