

Application of the Principle of Equality Before the Law in Criminal Justice Practice

Moch. Ichwan Kurniawan
Lembaga Bantuan Hukum Bumi Indonesia Bersatu
Correspondence: ichwankurniawan07@gmail.com

Submitted: April 30, 2023

Revision: June 30, 2023

Accepted: November 30, 2023

Abstract

A legal state must be fair to every citizen, without exception. It is not biased or applies to only one party. This includes providing equal services to citizens before the law. In law enforcement, for example, no citizen is immune from applicable laws. This is commonly known as a manifestation of the principle of equality before the law. For this reason, this article describes the principle of equality before the law. Apart from that, this article also describes the application of the principle of equality before the law in criminal justice practice in Indonesia, for example, as in the *Putusan Pengadilan Negeri Bandung Nomor 221/Pid.B/2019/PN.Bdg* (Bandung District Court Decision Number 221/Pid.B/2019/PN.Bdg).

Keywords:

Equality Before The Law; Criminal Justice.

Introduction

In accordance with Article 1 paragraph (3) of the *Undang Undang Dasar Negara Republik Indonesia Tahun 1945* (1945 Constitution of the Republic of Indonesia, hereinafter referred to as "*UUD NRI Tahun 1945*"), Indonesia is a country based on law. In the concept of the rule of law, ideally, the law should be the commander in chief in the dynamics of state life, not politics or economics. The submission of state authority to the law has been explicitly realized by forming laws and regulations, for example, which regulate criminal acts in Indonesia.¹

¹ Moch Choirul Rizal, *Kajian-Kajian Tentang Pembaruan Hukum Pidana Di Indonesia* (Cirebon: LovRinz Publishing, 2015), 27–28.

The concept of the state which is called the “Legal State” is an understanding that requires state power or sovereignty to be implemented according to the law. A.V. Dicey said that the rule of law requires that government power be under the control of the rule of law. According to him, there are 3 (three) main elements in a rule of law. First, supremacy of law, namely the law has the highest power in the state. Second, equality before the law, namely equality for all citizens before the law. Third, a constitution based on individual rights, that is, a constitution is not a source of human rights, but human rights must also have a protection aspect.²

Meanwhile, in accordance with the *Pengadilan Negeri Bandung* Decision Number 221/Pid.B/2019/PN.Bdg, there has been an incident of crime against independence³ and violence, which are basically as follows:

- This incident started with a person named Cahya Abdul Jabar who claimed to be Habib Bahar bin Smith when he was in Bali on the orders of his colleague, namely Muhammad Khoerul Umam Al Mudzaqi. The act in question was finally discovered by Habib Bahar through his congregation.
- After Cahya Abdul Jabar and Muhammad Khoerul Umam Al Mudzaqi (both victims) returned from Bali, Habib Agil (defendant), Habib Bahar (defendant), and other colleagues looked for their addresses. The search was successful and the two were taken to the Tajul Alawiyyin Islamic boarding school in Bogor.
- At the Islamic boarding school, the two victims were immediately interrogated by the defendants. It didn't stop there, the two victims experienced violence. This violence was even displayed in the Islamic boarding school area and was seen by students at the Tajul Alawiyyin Islamic boarding school. As a result, both victims suffered serious injuries.

Based on criminal incidents as mentioned above, this conceptual study will explain how the law in Indonesia applies to everyone without exception as an

² Ahmad Ulil Aedi and FX Aji Samekto, “Rekonstruksi Asas Kesamaan Di Hadapan Hukum (Equality Before The Law) (Suatu Kajian Khusus Putusan Mahkamah Konstitusi Perkara 21-22/PUU-V/2007 Dalam Perspektif Filsafat Hukum),” *Law Reform* 8, no. 2 (2013): 1.

³ Perihal kejahatan ini, lihat selengkapnya, misalnya, Moch Choirul Rizal, *Kapita Selekta Politik, Hukum, Dan Hukum Islam* (Surabaya: Bijak Publishing, 2017), 139–150.

application of the principle of equality before the law. If an unlawful act occurs, legal procedures will be used.

This conceptual study focuses on 2 (two) things. First, a brief explanation of the principle of equality before the law. Second, the application of the principle of equality before the law to cases as stated in the *Pengadilan Negeri Bandung* Decision Number 221/Pid.B/2019/PN.Bdg.

Principle of Equality Before the Law

The principle of equality before the law is one of the most important principles in law. This principle can be a benchmark for how the law can be fair to all of society. According to this principle, every citizen receives equal protection and justice before the law. This principle has developed widely in various countries, including Indonesia.

The principle of equality before the law is a principle that creates equality in law for every individual or human being without any exceptions or privileges. The principle of equality before the law can be used as a standard and protection for marginalized groups or minority groups.⁴

Article 27 paragraph (1) of the *UUD NRI Tahun 1945* states, “*Segala warga negara bersamaan kedudukannya di dalam hukum dan pemerintahan dan wajib menjunjung hukum dan pemerintahan itu dengan tidak ada kecualinya* (All citizens have the same position under the law and government and are obliged to uphold the law and government without exception)”. This provision is the basis for every citizen to have the same rights and position before the law and government. In other words, this arrangement is the basis for protection for citizens so that they are treated equally before the law and government.⁵

Meanwhile, according to Article 28D paragraph (1) of the *UUD NRI Tahun 1945*, “*Setiap orang berhak atas pengakuan, jaminan, perlindungan, dan kepastian hukum yang adil serta perlakuan yang sama di hadapan hukum* (Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment

⁴ Julita Melissa Walukow, “Perwujudan Prinsip Equality Before The Law Bagi Narapidana Di Dalam Lembaga Masyarakat Di Indonesia,” *Lex et Societatis* 1, no. 1 (2013): 164.

⁵ *Ibid.*, 163.

before the law).” Furthermore, Article 4 paragraph (1) of *Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman* (Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power) regulates, “Pengadilan mengadili menurut hukum dengan tidak membedakan orang (The court judges according to the law without discriminating between people).”

These articles emphasize the principle of equality before the law, which means that there is equality before the law for everyone. Therefore, there must be no discriminatory behavior against any of the parties seeking justice before the law in a judicial process in court. Also, there should be no elements of subjectivity, such as looking at social status, skin color, race, ethnicity, language, religion, belief, and others.⁶

Application of the Principle of Equality Before the Law in Criminal Justice Practice

The Panel of Judges, as in the *Pengadilan Negeri Bandung* Decision Number 221/Pid.B/2019/PN.Bdg, handed down a criminal decision on July 1 2019 which is basically as follows:

1. *Menyatakan Terdakwa Agil Yahya alias Habib Agil Bin Faruk Al Yahya, tidak terbukti secara sah dan meyakinkan bersalah melakukan tindak pidana sebagaimana dalam Pasal 80 ayat (2) jo Pasal 76 c Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak pada Dakwaan Ketiga Jaksa Penuntut Umum* (Declare that the Defendant Agil Yahya alias Habib Agil Bin Faruk Al Yahya, has not been legally and convincingly proven guilty of committing a criminal act as in Article 80 paragraph (2) in conjunction with Article 76 c of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2014 2002 concerning Child Protection in the Public Prosecutor's Third Indictment);

⁶ Rofingi, “Asas Equality Before The Law Dalam Perspektif Hukum Islam Dan Konstitusi Indonesia (Studi Tentang Implementasi Hukum Pidana Di Indonesia)” (IAIN Purwokerto, 2019), 60.

2. *Membebaskan Terdakwa dari Dakwaan Ketiga Jaksa Penuntut Umum tersebut di atas (Acquit the Defendant from the three Public Prosecutor's charges mentioned above);*
3. *Menyatakan Terdakwa Agil Yahya alias Habib Agil Bin Faruk Al Yahya, terbukti secara sah dan meyakinkan bersalah melakukan tindak pidana "turut serta merampas kemerdekaan orang yang mengakibatkan luka berat dan dimuka umum bersama-sama melakukan kekerasan terhadap orang yang mengakibatkan luka berat", sebagaimana diamksud dalam Pasal 333 ayat (2) KUHPidana jo Pasal 55 ayat (1) KUHPidana pada Dakwaan Kesatu Primer dan Pasal 170 ayat (2) ke-2 KUHPidana pada Dakwaan Kedua Primer Jaksa Penuntut Umum (Declaring that the Defendant, Agil Yahya alias Habib Agil Bin Faruk Al Yahya, has been legally and convincingly proven guilty of committing the crime of "participating in depriving people of their freedom which results in serious injuries and in public together committing violence against people which results in serious injuries", as intended in Article 333 paragraph (2) of the Criminal Code in conjunction with Article 55 paragraph (1) of the Criminal Code on the First Primary Indictment and Article 170 paragraph (2) 2 of the Criminal Code on the Second Primary Indictment of the Public Prosecutor);*
4. *Menjatuhkan pidana kepada Terdakwa, oleh karena itu dengan pidana penjara selama 2 (dua) tahun (Sentenced the defendant to a prison sentence of 2 (two) years);*
5. *Menetapkan masa penangkapan dan penahanan yang telah dijalani oleh Terdakwa dikurangkan seluruhnya dari pidana yang dijatuhkan (Determining that the period of arrest and detention that has been served by the Defendant shall be deducted entirely from the sentence imposed);*
6. *Memerintahkan agar Terdakwa tetap berada dalam tahanan (Order that the Defendant remain in detention);*

7. *Menetapkan barang bukti berupa* (Determine evidence in the form of):
- *1 (satu) buah sarung warna biru list putih* (1 (one) blue and white sarong);
 - *1 (satu) pasang sandal slop warna putih* (1 (one) pair of white slop sandals);
 - *1 (satu) buah peci warna putih, dikembalikan kepada HB Assayid Bahar bin Smith Alias Habib Bahar bin Ali Bin Smith* (1 (one) white peci, returned to HB Assayid Bahar bin Smith Alias Habib Bahar bin Ali Bin Smith);
 - *1 (satu) buah handphone merk Vivo warna putih gold, dikembalikan kepada Terdakwa Agil Yahya Alias Habib Agil bin Faruk Al Yahya* (1 (one) white gold Vivo brand cellphone, returned to Defendant Agil Yahya Alias Habib Agil bin Faruk Al Yahya);
 - *1 (satu) buah laptop warna hitam merek HP* (1 (one) black HP brand laptop);
 - *1 (satu) buah handphone merek Samsung warna putih, dikembalikan kepada Muhamad Abdul Basit Iskandar, S.Pd., alias H. Basit bin H. Ence Iskandar* (1 (one) white Samsung brand cellphone, returned to Muhamad Abdul Basit Iskandar, S.Pd., alias H. Basit bin H. Ence Iskandar);
8. *Membebankan kepada Terdakwa untuk membayar biaya perkara sebesar Rp5.000,00 (lima ribu rupiah)* (Charge the Defendant to pay court costs of IDR 5,000.00 (five thousand rupiah)).

It should be remembered that the rule of law is a state system that is regulated based on applicable legal rules which are structured in statutory regulations for everyone without exception. In this case, both those who are governed and those who rule are obliged to submit to the same law. Thus, everyone is treated equally before the law regardless of gender, race, ethnicity, religion, skin color, creed and wealth.⁷

A legal state must have a just legal system. No one or some people are above the law and no one can escape from that law. The meaning is that everyone in

⁷ Ibid., 51.

Indonesia has the same position before the law.⁸ The laws in force or enforced in Indonesia must close the door to the growth of a system of exploitation of the strong against the weak.⁹

In accordance with the explanation above, the law must apply and be enforced, even to public figures, for example a habib, as long as it can be legally and convincingly proven to have committed an unlawful act. One example is Habib Agil bin Faruk, who was accused of crimes against other people's freedom and violence that resulted in serious injuries. In these words, Habib Agil bin Faruk committed a criminal act together with Habib Bahar bin Smith and his other colleagues.

In accordance with the case above, it is appropriate according to the law if Habib Agil bin Faruk, who has been legally and convincingly proven to have committed a criminal act, should have criminal law enforced against him. Here we can see how the principle of equality before the law is applied in criminal justice practice in Indonesia. Even though a habib has many followers and is respected by his congregation, when he commits acts against the law, he will still be treated the same before the law. This is in accordance with Article 27 paragraph (1) of the *UUD NRI Tahun 1945* which states, “*Segala warga negara bersamaan kedudukannya di dalam hukum dan pemerintahan dan wajib menjunjung hukum dan pemerintahan itu dengan tidak ada kecualinya* (All citizens have the same position under the law and government and are obliged to uphold the law and government without exception)”.

Conclusion

The principle of equality before the law can be interpreted as a principle to create equality in the law for every individual or human being without any exceptions or privileges. The application of the principle of equality before the law in criminal justice practice can be seen, for example, in the *Pengadilan Negeri Bandung* Decision Number 221/Pid.B/2019/PN.Bdg. When a legal subject commits an unlawful act, then

⁸ Ibid., 52. Bahkan, dalam suatu negara hukum, negara yang dimaksud memberikan jaminan perlindungan hukum kepada masyarakatnya yang berpartisipasi dalam proses-proses penegakan hukum. Lihat selengkapnya, Moch Choirul Rizal, “Kebijakan Hukum Tentang Bantuan Hukum Untuk Pemberantasan Korupsi Di Indonesia,” *Al-Jinayah: Jurnal Hukum Pidana Islam* 4, no. 1 (2018): 147–171.

⁹ Al Khanif, *Pancasila Dalam Pusaran Globalisasi* (Yogyakarta: LKiS, 2017), 7.

by referring to the principle of equality before the law, law enforcement will be carried out regardless of their status in society.

Reference

- Aedi, Ahmad Ulil, and FX Aji Samekto. "Rekonstruksi Asas Kesamaan Di Hadapan Hukum (Equality Before The Law) (Suatu Kajian Khusus Putusan Mahkamah Konstitusi Perkara 21-22/PUU-V/2007 Dalam Perspektif Filsafat Hukum)." *Law Reform* 8, no. 2 (2013): 1–19.
- Khanif, Al. *Pancasila Dalam Pusaran Globalisasi*. Yogyakarta: LKiS, 2017.
- Rizal, Moch Choirul. *Kajian-Kajian Tentang Pembaruan Hukum Pidana Di Indonesia*. Cirebon: LovRinz Publishing, 2015.
- . *Kapita Selekta Politik, Hukum, Dan Hukum Islam*. Surabaya: Bijak Publishing, 2017.
- . "Kebijakan Hukum Tentang Bantuan Hukum Untuk Pemberantasan Korupsi Di Indonesia." *Al-Jinayah: Jurnal Hukum Pidana Islam* 4, no. 1 (2018): 147–171.
- Rofingi. "Asas Equality Before The Law Dalam Perspektif Hukum Islam Dan Konstitusi Indonesia (Studi Tentang Implementasi Hukum Pidana Di Indonesia)." IAIN Purwokerto, 2019.
- Walukow, Julita Melissa. "Perwujudan Prinsip Equality Before The Law Bagi Narapidana Di Dalam Lembaga Pemasyarakatan Di Indonesia." *Lex et Societatis* 1, no. 1 (2013): 163–172.