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Implementation of the Principle of Equality Before the Law in the Dynamics of Indonesian Law

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This study aims to analyze the principle of equality before the law in Indonesian positive law and how this principle is understood and applied in practice.

The research method used is normative legal research with a sociological jurisprudence approach to describe the gap between law in books and law in action. Data sources were obtained through document studies, including books, journals, and relevant laws and regulations, with qualitative analysis of the deductive model.

Novelty of this research is in the form of a legal perspective in understanding and evaluating the implementation of the principle of equality before the law in Indonesia.

The results of the study show that the principle of equality before the law has been guaranteed in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, as well as in a number of other legal regulations such as the Criminal Code (KUHP) and Law Number 48 of 2009 concerning Judicial Power. However, in practice, the implementation of this principle still faces various challenges, including discrimination, abuse of power, and inequality in law enforcement. This study also found a gap between written regulations and implementation in the field, resulting in legal injustice against certain groups.

In conclusion, although the principle of equality before the law has become an integral part of the Indonesian legal system, its implementation is still far from ideal. Improvements are needed in the legislative system, law enforcement oversight, and increased public awareness to achieve equal justice under the law. This study provides recommendations for the government and law enforcement officials to be more consistent in implementing the principle of equality before the law, taking into account the moral values of Pancasila as the philosophical foundation of the state.

Keywords: Equality Before the Law; Indonesian Positive Law; Supremacy of Law; Equality of Law

Abstrak

Penelitian ini bertujuan untuk menganalisis asas equality before the law dalam hukum positif Indonesia dan bagaimana asas tersebut dipahami serta diterapkan dalam praktik.

Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan sociological jurisprudence untuk mendeskripsikan kesenjangan antara law in books dan law in action. Sumber data diperoleh melalui studi dokumen, termasuk buku, jurnal, dan peraturan perundang-undangan yang relevan, dengan analisis kualitatif model deduktif.

Kebaruan penelitian ini berupa perspektif hukum dalam memahami dan mengevaluasi implementasi asas kesetaraan di depan hukum di Indonesia.

Hasil penelitian menunjukkan bahwa prinsip equality before the law telah dijamin dalam Pasal 27 ayat (1) dan Pasal 28D ayat (1) Undang-Undang Dasar 1945, serta dalam sejumlah

peraturan hukum lainnya seperti Kitab Undang-Undang Hukum Pidana (KUHP) dan Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman. Namun, dalam praktiknya, pelaksanaan asas ini masih menghadapi berbagai tantangan, termasuk diskriminasi, penyalahgunaan kekuasaan, dan ketimpangan dalam penegakan hukum. Penelitian ini juga menemukan adanya kesenjangan antara peraturan tertulis dan implementasi di lapangan, yang mengakibatkan ketidakadilan hukum terhadap kelompok tertentu.

Kesimpulannya, meskipun asas *equality before the law* telah menjadi bagian integral dari sistem hukum Indonesia, penerapannya masih jauh dari ideal. Dibutuhkan pembenahan dalam sistem legislasi, pengawasan terhadap penegakan hukum, dan peningkatan kesadaran publik untuk mewujudkan keadilan hukum yang merata. Studi ini memberikan rekomendasi agar pemerintah dan aparat penegak hukum lebih konsisten dalam mengimplementasikan prinsip kesetaraan di depan hukum, dengan memperhatikan nilai-nilai moral Pancasila sebagai landasan filosofis negara.

Kata Kunci: *Equality Before The Law; Hukum Positif Indonesia; Supremasi Hukum; Kesetaraan Hukum*

1. INTRODUCTION

Indonesia is a country governed by law; this statement is an inevitable opening when discussing the principle of equality before the law. The legal basis that confirms Indonesia as a country governed by law is stated in Article 1 Paragraph (3) of the 1945 Constitution, which was ratified after the fourth amendment in 2002, which reads, "The State of Indonesia is a country governed by law." As a logical consequence, the state is obliged to make law the main foundation of state life, not the economy, politics, or power.¹ Therefore, the adage often used to describe the principle of the rule of law is "the rule of law, not of man."²

This means that the government, together with all the institutions within it, including the judiciary, must base every action on the principle of legal certainty.³ Thus, it is hoped that actions taken on a legal basis will prevent the government and its apparatus from acting arbitrarily against the people based on personal will or particular interests.⁴

The Renaissance in Europe had a significant impact with the advent of various new discoveries in science and technology, accompanied by social change and the beginnings of industrialization. This era gave birth to important figures such as Francis Bacon, John Stuart Mill, and Auguste Comte. One of the main characteristics of the influence and spirit of Humanism at that time was the emphasis on humans as individuals with personality and power. The manifestation of this spirit can be seen in the fields of art, politics, philosophy, religion, as well as movements against it, as well as in the efforts to uphold individual rights

¹ Mohamad Anas et al., "Acceptance of 'the Others' in Religious Tolerance: Policies and Implementation Strategies in the Inclusive City of Salatiga Indonesia," *Heliyon* 11, no. 2 (2025): e41826, <https://doi.org/10.1016/j.heliyon.2025.e41826>.

² Jimly Asshiddiqie, *Gagasan Negara Hukum Indonesia* (PN Gunung Sitoli: Sitoli, 2006).

³ Aristyowati Aristyowati, Evawani Ellisa, and Ahmad Gamal, "An Investigation of Socio-Spatial Equality in Blue-Green Space at the Setu Babakan Area, Jakarta," *City and Environment Interactions* 22, no. December 2023 (2024): 100137, <https://doi.org/10.1016/j.cacint.2023.100137>.

⁴ Mukti Ali, *Perbandingan Konsep Negara Hukum* (Biro Hukum Sekretariat Jenderal Kementerian, 2020).

and freedoms.⁵

The ideas of individual freedom and equality are interrelated and must be understood dynamically, not statically. Freedom refers to the creation of opportunities for individuals to develop their full personality, while equality refers to equal opportunities for everyone to contribute to this development. This equality does not mean erasing natural differences that are beyond human control, but rather eliminating artificial differences that arise due to social structures. In a democratic society, these artificial differences should be addressed through the law.⁶

This principle is also closely related to democracy, where justice and equal rights are upheld. By implementing the principle of equality before the law, modern states strive to create social justice that protects the rights of every citizen, while providing a foundation for equal participation in the life of society, the nation, and the state.⁷ However, reality is often not in line with expectations. Sabian Ustman argues that the law can be divided into two, namely law as a written regulation known as *das sollen* or law in books, and law as reality that occurs in practice, called *das sein* or law in action. This also applies to the principle of equality before the law. What is stated in the law is often not consistently applied in reality. This principle should be a means of eliminating the boundaries between the ruler and the people. However, the opposite is true—this principle often becomes a tool that strengthens new barriers due to abuse of power by the authorities.⁸

The description of the equality of status and dignity of every individual, as well as equal rights before the law as part of human rights, still faces many challenges in practice.⁹ Discriminatory patterns and various forms of violations often occur in the application of this principle. In addition, there are still weaknesses in the drafting of laws and regulations, implementation, and law enforcement, which are often not in line with the spirit of equal rights before the law. As a result, Pancasila, which is the moral and philosophical foundation of the life of the nation and the state, has not been optimally implemented in accordance with the intended objectives.¹⁰

Basically, there have been many previous studies that discuss the principle of equality before the law in Indonesia. One of them is the work of Sunardi Riono and Haris, which specifically highlights the implementation of the principle of equality before the law in the

⁵ Siti Nurlaili Muhadiyatiningsih, *Sejarah Filsafat Barat Kuno*, UIN Raden Mas Said Surakarta (EFUDEPRESS, 2017).

⁶ Nurul Ghufroon AN, Dodik Prihatin, *STUDI KOMPARASI PERLINDUNGAN SAKSI DALAM SISTEM PERADILAN PIDANA INDONESIA DENGAN SISTEM PERADILAN PIDANA JERMAN, AMERIKA SERIKAT DAN INGGRIS*, *Journal GEEJ*, vol. 7, 2020.

⁷ Wahab Aznul Hidayat et al., "Realizing Restitution Justice for Child Victims of Sexual Assault Regulated Child Protection," *Jurnal USM Law Review* 7, no. 2 (2024): 26–37.

⁸ Eny Kusdarini et al., "Roles of Justice Courts: Settlement of General Election Administrative Disputes in Indonesia," *Heliyon* 8, no. 12 (2022): e11932, <https://doi.org/10.1016/j.heliyon.2022.e11932>.

⁹ Rahmat Wailisahalong, Wahab Aznul Hidayat, and Sahertian Marthin, "Studi Komparasi Antara Overmacht Dengan Noodweer Perpektif," *Judge: Jurnal Hukum* 05, no. 03 (2024): 21–34.

¹⁰ Tia Rahmania, Septantri Shinta Wulandari, and Asep Marfu, "Sustainable Financial Institution in Indonesia: An Empirical Analysis of Social-Cultural Context, Nepotism, and Moral Hazard on the Shaping of Non-Performing Loans," *Sustainable Futures* 8, no. March (2024): 100279, <https://doi.org/10.1016/j.sfr.2024.100279>.

context of narcotics law. The study discusses how the principle of equality before the law is applied in the handling of narcotics cases, including the challenges and possible discrepancies between legal regulations and their implementation in the field.¹¹ Furthermore, there is also a journal written by Andhy H. Bolifaar, which discusses the principle of equality before the law in the context of prosecuting mixed military crimes. In this journal, Andhy highlights how the principle of equality before the law is applied in the military justice system, especially in cases involving mixed crimes, namely those involving civil and military elements. The main focus is to evaluate the extent to which this principle can be implemented fairly and effectively in the prosecution of mixed military cases.¹² Benny Ynianto and Tommy Michael also discussed the principle of equality before the law in their journal, which focused on the application of the principle of equality before the law for officials involved in handling Covid-19. The journal explores how this principle is applied in the context of policies and actions taken by public officials during the pandemic, and evaluates whether all parties, including officials with authority in handling Covid-19, are treated fairly and equally before the law, without abuse of power or discrimination.¹³

From several studies that have been conducted regarding the principle of equality before the law, the author has not found a study that discusses this principle from a legal perspective. Therefore, the researcher is interested in raising this topic by proposing a problem formulation, namely, first, how the principle of equality before the law and its implementation in positive law in Indonesia, and second, how the law views the principle of equality before the law and its implementation in Indonesia. This problem formulation aims to analyze the implementation of the principle of equality before the law in the Indonesian legal system and to explore how Indonesian law views and applies this principle in reality.

2. METHOD

This type of research is normative legal research that examines the principle of equality before the law as a legal principle that applies in society. Normative legal research, or what is known as legal research, generally only examines documents.¹⁴ Therefore, the data sources for this study were obtained from books, scriptures, and law journals containing expert opinions on the principle of equality before the law. As a document study, the data collection technique used was a bibliographic study involving the collection of data from various widely published sources.¹⁵ This research was analyzed using qualitative techniques

¹¹ Sunardi Riono and Haris Haris, "Analisis Yuridis Implementasi Asas Legalitas Dan Equality Before the Law Dalam Undang-Undang Narkotika," *Audito Comparative Law Journal (ACLJ)* 2, no. 1 (2021): 29–42, <https://doi.org/10.22219/aclj.v2i1.15473>.

¹² Andhy H Bolifaar, "Penuntutan Tindak Pidana Militer Campuran Di Indonesia : Suatu Kajian Asas Equality before the Law," *Criminal Law Policy Review* 1, no. 1 (2022): 1–3.

¹³ Ridwan Ridwan et al., "Penerapan Prinsip Persamaan Di Depan Hukum Dalam Penanganan Perkara Tindak Pidana Korupsi Di Pengadilan Negeri Serang," *Masalah-Masalah Hukum* 51, no. 2 (2022): 171–78, <https://doi.org/10.14710/mmh.51.2.2022.171-178>.

¹⁴ Muhaimin, *Metode Penelitian Hukum*. (Mataram: Mataram University Press, 2020).

¹⁵ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D* (Bandung: ALFABETA CV, 2013).

with a deductive model, starting from estimates or speculative thoughts towards the data to be explained. In addition, this study adopted a sociological jurisprudence approach to describe the gap between law in books and law in action. A comparative study was applied to find solutions to overcome these gaps.¹⁶

3. DISCUSSION

3.1. The Principle of Equality before the Law and Its Implementation in Positive Law in Indonesia

The principle of equality before the law is the basic principle that guarantees every individual, regardless of status, position, or power, is treated equally before the law.¹⁷ In Indonesia, this principle is enshrined in the 1945 Constitution as part of the principle of the rule of law. However, the implementation of this principle in Indonesian positive law still faces various challenges, both in legislation and practice in the field.¹⁸

In Indonesian positive law, this principle is reflected in various laws and regulations that govern the rights and obligations of every citizen fairly and equally.¹⁹ For example, in the Criminal Code (KUHP), every individual is presumed innocent until proven guilty, regardless of social or political background. However, in practice, the application of the principle of equality before the law often does not run smoothly. Inequality in law enforcement, abuse of power, and discrimination against certain groups are still common problems. This shows a gap between law in books and law in action, where what is written in the law is not always applied fairly and equally in the reality of Indonesian socio-political life.²⁰

The principle of equality before the law first appeared in the Stoic natural law teachings, which considered that all individuals, races, and nations had equal status based on universal reason.²¹ This view was later accepted in Roman law, although in reality, Roman law did not completely abolish differences in rights, as reflected in the practice of slavery. Internationally, this principle of equality was further emphasized through recognition in the Universal Declaration of Human Rights (UDHR) issued by the United Nations on December 10, 1948.²² One of the main principles contained in the UDHR is equality, which states that

¹⁶ Zuchri Abdussamad, *Metode Penelitian Kualitatif* (CV. syakir Media Press, 2021).

¹⁷ M. Ainun Najib, "Menyoal Asas Equality Before the Law Dalam Realitas Peradilan Di Indonesia Melalui Perspektif Hukum Islam," *Jurnal Humaya: Jurnal Hukum, Humaniora, Masyarakat, Dan Budaya* 3, no. 2 (2023): 139–51, <https://doi.org/10.33830/humaya.v3i2.5291>.

¹⁸ Sigit Irianto, "Kedudukan Yang Sama Di Depan Hukum (Equality Before The Law) Dalam Penegakan Hukum Di Indonesia," *Hukum Dan Dinamika Masyarakat* 5, no. 2 (2008): 206–18.

¹⁹ Sentot Yusuf Patrikha, "Tindakan Upaya Paksa Pada Sistem Peradilan Pidana Yang Memerlukan Ijin Presiden," *Maksigama* 9, no. 1 (2015): 80–90, <https://doi.org/10.37303/.v9i1.7>.

²⁰ Muhammad Ishar Helmi, "Penerapan Azas 'Equality Before The Law' Dalam Sistem Peradilan Militer," *Jurnal Cita Hukum* 1, no. 2 (2013), <https://doi.org/10.15408/jch.v1i2.2998>.

²¹ DADIN EKA Saputra, "Hubungan Antara Equality Before the Law Dalam Penegakan Hukum Di Indonesia Dengan Harmonisasi Konflik Antar Lembaga Penegak Hukum," *Syariah Jurnal Hukum Dan Pemikiran* 15, no. 1 (2015): 17–27, <https://doi.org/10.18592/syariah.v15i1.540>.

²² Nani Widya Sari Sugeng Samiyono Guntarto Widodo Dian Ekawati, "Pemberian Bantuan Hukum Bagi Rakyat Miskin Sebagai Implementasi Asas Equality Before The Law," *Jurnal Surya Kencana Dua* 6, no. 2 (2019): 938–53,

every human being is born free and equal, which is further clarified by the principle of non-discrimination, which requires that the enjoyment of human rights be carried out without any distinction.²³

This principle is not only the basis for the development of international law, but also the basis for legal policy in various countries to protect the rights of individuals regardless of differences in race, religion, or social status.²⁴ However, challenges in implementing this principle continue to arise, especially in countries with legal systems that do not fully reflect this equality. Therefore, research on the implementation of the principle of equality and non-discrimination in contemporary legal systems is essential to assess the extent to which this principle can be applied fairly worldwide.²⁵

This Universal Declaration of Human Rights was then ratified by countries that recognized the importance of equality, one of which was Indonesia.²⁶ Indonesia itself has ratified eight of the 25 international instruments on human rights, including instruments governing the elimination of all forms of discrimination.²⁷ Moreover, the principle of equality before the law is clearly recognized and guaranteed by the Indonesian constitution, as stated in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, which reads: "All citizens are equal before the law and the government and are obliged to uphold the law and the government without exception. "Everyone has the right to recognition, guarantees, protection, and certainty of fair legal rights and equal treatment before the law."

This principle of equality is not only the basis for legal policy in Indonesia, but also reflects the country's commitment to the elimination of discrimination in all its forms.²⁸ However, although the constitution has mandated this principle, its implementation in practice still faces challenges. Therefore, it is important to continue to review and evaluate the extent to which the law in Indonesia can fairly and effectively implement the principle of equality before the law amid existing social and political dynamics.²⁹

[http://download.garuda.kemdikbud.go.id/article.php?article=1696066&val=18449&title=PEMBERIAN BANTUAN HUKUM BAGI RAKYAT MISKIN SEBAGAI IMPLEMENTASI ASAS EQUALITY BEFORE THE LAW.](http://download.garuda.kemdikbud.go.id/article.php?article=1696066&val=18449&title=PEMBERIAN%20BANTUAN%20HUKUM%20BAGI%20RAKYAT%20MISKIN%20SEBAGAI%20IMPLEMENTASI%20ASAS%20EQUALITY%20BEFORE%20THE%20LAW)

²³ Ibnu Alwaton Surya Waliden, Selvia Fitri Maulida, and Mochammad Agus Rachmatulloh, "Tinjauan Asas Equality Before the Law Terhadap Penegakan Hukum Di Indonesia," *Verfassung: Jurnal Hukum Tata Negara* 1, no. 2 (2022): 123–42, <https://doi.org/10.30762/vjhtn.v1i2.186>.

²⁴ Jurnal Hukum, Tatanegara Siyasa, and Maslahah A L Mursalah, "PENERAPAN HUKUM TATA NEGARA DALAM SISTEM PEMERINTAHAN DI INDONESIA: TANTANGAN DALAM DINAMIKA POLITIK KONTEMPORER," *El-Siyasa: Journal of Constitutional Law Jurnal Hukum Tatanegara (Siyasa)* 2, no. 1 (2023): 29–38, <https://doi.org/https://doi.org/10.61341/el-siyasa/v2i1.013>.

²⁵ Satrias Apgar, Efa Laela Fakhriah, and Zainal Muttaqin, "Penerapan Asas Equality Before the Law Dan Prinsip Equal Employment Opportunity Dalam Persyaratan Pengangkatan Direktur Rumah Sakit Dihubungkan Dengan Undang-Undang Nomor 44 Tahun 2009 Tentang Rumah Sakit," *Jurnal Poros Hukum Padjadjaran* 3, no. 2 (2022): 311–26, <https://doi.org/10.23920/jphp.v3i2.882>.

²⁶ Insan Firdaus, "Perlindungan Masyarakat Hukum Adat Dalam Konstitusi Sebagai Perwujudan Asas Equality Before The Law," *De Jure Jurnal Ilmiah Ilmu Hukum* 1, no. 740 (2017): 153–69.

²⁷ Zulfahmi Nur, "Rekonstruksi Negara Hukum Dalam Paradigma Hukum Islam Dan Ketatanegaraan Di Indonesia," *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat* 6, no. 1 (2023): 119, <https://doi.org/10.24853/ma.6.1.119-142>.

²⁸ Ridwan et al., "Penerapan Prinsip Persamaan Di Depan Hukum Dalam Penanganan Perkara Tindak Pidana Korupsi Di Pengadilan Negeri Serang."

²⁹ Azzahra Meutia Ramadhani and Bagus Ramadi, "Realita Perwujudan Asas Equality Before the Law Terhadap

Because the constitution has stated this, the lower laws must follow and submit to the principle of constitutional supremacy, where the 1945 Constitution as the highest law is the basis for all laws below it. This principle of equality is also reflected in the General Explanation of the Criminal Procedure Code in point 3a, which emphasizes that everyone is treated equally before the law without any distinction in treatment. In addition, Article 4 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power states that "The court tries according to the law without discriminating against people". This concept in Sanskrit is known as *tan hana dharma manrua*, which is the motto of the Prosecutor's Union. Thus, it is clear that the meaning of the principle of equality before the law mandated by the 1945 Constitution and applied in the Criminal Procedure Code and the Judicial Authority Law is that every individual, when dealing with the law, is not distinguished based on any attribute except their dignity as a human being. This is in line with the view expressed by Febriana Annisa and Yetisma Saina, who state that "every person, regardless of group, has equal status, rights, and obligations before the law without distinguishing social status, race, religion, and ethnicity". In addition to the human rights argumentation in this principle, another objective contained therein is, according to Eddy O.S. Hiariej quoted by Ramdhan Kasim and Apriyanto Nusa, "to provide legal guarantees to anyone who commits a violation or a crime, by making it possible to apply legal sanctions to anyone who does so, be they state officials or ordinary citizens, as long as they commit unlawful acts. Therefore, the legal sanctions applied must be in accordance with applicable law."

If we look at the description above, it can be understood that the principle of equality before the law is how each individual is treated equally before the law, so that in law enforcement, everyone gets the same treatment and enforcement of the law. However, in reality, the practice of the principle of equality in Indonesia is not always in line with this theory. For example, we can look at the case of a grandfather with the initials AS who stole a cellphone from a counter in Nganjuk Regency. According to the chronology, AS came to the counter to fix his slow cellphone. While at the counter, he saw that there was no guard and then took a cellphone that was there. His actions were recorded by CCTV, and less than three hours later, AS was arrested by the Nganjuk police, detained, and threatened with five years in prison for theft.³⁰ This case shows how legal action is confronted with the principle of equality before the law, but in reality, the application of the law often has an imbalance in practice, even though in theory every individual should be treated equally regardless of age, status, or background.

3.1.1. The Principle of Equality Before The Law And Its Implementation In Indonesia

In an effort to create a safe and harmonious social environment for a country, it is very

Tingkat Kepercayaan Masyarakat Pada Penegakan Hukum (Penerapan Restorative Justice Di Lembaga Kejaksaan Republik Indonesia)," *Causa: Jurnal Hukum Dan Kewarganegaraan* 1, no. 10 (2023): 1–18, <https://ejournal.warunayama.org/index.php/causa/article/view/1427>.

³⁰ M. Ainun Najib, "Menyoal Asas Equality Before the Law Dalam Realitas Peradilan Di Indonesia Melalui Perspektif Hukum Islam."

important that there are rules governing people's behavior so that everyone can live together well. Although conflicts between individuals cannot be completely avoided, the law acts as a tool to maintain justice and order in society. The concept of the rule of law as stated in the Constitution of the Republic of Indonesia emphasizes that Indonesia is a country based on law. There are three basic principles that are used as the foundation of the rule of law in general. First, the principle of the supremacy of law, which emphasizes that the law applies to all individuals and institutions, including the government, without exception. This means that every public authority must submit to and comply with the applicable legal provisions, without exception.³¹

The second principle, equality before the law, emphasizes that every individual has the same right to recognition and legal protection, regardless of social or political status. There should be no discrimination in the application of the law, and everyone is entitled to fair treatment under applicable law. The third principle is due process of law, which ensures that every individual is entitled to a fair and transparent judicial process, in accordance with applicable law or legal procedure. This includes the right to be heard and to defend oneself, as well as the right to obtain a decision based on evidence and procedures clearly established by law.³²

The concept of equality before the law as set out in Article 27 paragraph (1) of the 1945 Constitution Amendment is an important foundation to ensure that every citizen is protected and treated fairly and equally before the law and the government. This principle emphasizes that every individual has the same right to legal recognition and protection, regardless of social status or origin. More simply, equality before the law means that everyone has the same rights in the legal system. Equality before the law, or equality before the law, is a very vital principle in the modern legal system. This principle is not only an integral part of the rule of law, but is also widely accepted and applied in developing countries such as Indonesia. This concept is part of the implementation of the principle of the rule of law (*rechtstaat*) which emphasizes the need for equal treatment of all individuals before the law (*gelijkheid van ieder voor de wet*). Thus, this principle emphasizes that every individual has the right to equal protection under the law and to obtain equal justice in the legal process. In Indonesia, this principle has been adopted since colonial times through the *Burgelijke Wetboek* (KUHPerdata) and the *Wetboek van Koophandel voor Indonesie* (KUHD) which were enacted on April 30, 1847 through Stb. 1847 Number 23. However, during the colonial period, this principle was not fully implemented due to political-legal pluralism, which created a space for differences between customary law, Islamic law, and colonial law.³³

³¹ Hasaziduhu Moho, "Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, Dan Hasaziduhu Moho. 'Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, Dan Kemanfaatan.' *Jurnal Warta* 13, No. 1 (2019): 138–49. Kemanfaatan," *Jurnal Warta* 13, no. 1 (2019): 138–49, <https://doi.org/https://doi.org/10.46576/wdw.v0i59.349>.

³² Zulkarnain et al., "Penerapan Asas Equality Before the Law Dalam Penegakan Hukum Tindak Pidana Narkotika Terhadap Pengguna Narkotika Di Kalangan Publik Figur," *Locus Journal of Academic Literature Review* Volume 2, no. Issue 5 (2023): 395, <https://jurnal.locusmedia.id/index.php/jalr/article/view/160/124>.

³³ Helmi, "Penerapan Azas 'Equality Before The Law' Dalam Sistem Peradilan Militer."

The principle of equality before the law is a basic principle of law which states that everyone should be treated equally by the law. This means that there should be no discrimination or unfair treatment of anyone, anywhere, based on factors such as social status, religion, ethnicity, gender, or other reasons. The purpose of this principle is to provide equal legal protection to all citizens, both before the law and the government, with the hope of ensuring that the community and law enforcement agencies will be treated fairly.

The principle of equality before the law will only be properly implemented if all parties can implement this principle appropriately. In this case, legislative bodies such as the House of Representatives have special rights, one of which is the right to immunity. The right of immunity of members of the House of Representatives is regulated in Article 224 Paragraphs (1), (2), and (3) of Law Number 2 of 2018 which amends Law Number 17 of 2014. The article explains that members of the House of Representatives cannot be prosecuted for remarks, comments, or statements they make in public as long as they are related to the authority or duties of the House of Representatives as a legislative institution. Although this immunity is intended to protect members of the House of Representatives, in practice it can lead to ambiguous understandings and potential for speculation. This right gives power to members of the House of Representatives to express opinions that civil society may not be able to express freely without risking public unrest. This freedom of speech that cannot be penalized then raises the question of whether this immunity can reduce or even eliminate the principle of equality before the law.

To understand more deeply the relationship between the principle of equality before the law and the right of immunity of the DPR, a clear explanation is needed. As members of the DPR, they are given the freedom to express views or comments in public, as long as these views do not conflict with the duties and authorities granted. To determine whether a statement by a member of the DPR exceeds the limits guaranteed by immunity, the first step is a preliminary investigation. If the statement is reported to the police, the Council's Honorary Court (MKD) can conduct an investigation. Even though members of the House of Representatives have immunity, this does not mean that they are free from legal consequences for their actions. The application of this immunity must be adjusted to the functions, duties, and authorities of members of the House of Representatives. The aim is to ensure that the immunity is not abused and does not damage public trust in the judicial system.

The concept of the rule of law clearly emphasizes the application of the law in Indonesia, as stated in the 1945 Constitution Article 27 paragraph (1) which states, "All citizens have the same position in law and government, and must respect the law and government without exception." Another affirmation is found in Article 28D paragraph (1), which states, "Everyone is entitled to recognition, guarantees, protection, and the certainty of fair legal rights and equal treatment before the law." If these principles can be properly applied by all parties, there will be no discrimination against individuals, ethnic groups, or certain groups, and equality before the law will be realized for every citizen.

3.2. Comparison of the Implementation of the Principle of Equality Before the Law in Indonesia and Germany

The German constitution also upholds the principle of equality before the law, as stated in Article 3 Paragraph 1 of the Grundgesetz (German Constitution). This article states that all people before the law are equal. This principle means that every German citizen has the right to equal treatment, especially during legal proceedings. Although the German constitution does not explicitly explain in detail the equality before the law, overall the German basic law has included the principle that ensures that every individual in the country gets equal basic rights and equal treatment before the law. The German Criminal Court also recognizes and applies the principle of equality before the law in every judicial process carried out.

The principle of equality before the law is also applied in German criminal justice. As a member state of the Council of Europe, Germany has ratified the European Convention on Human Rights, which is stated in Article 14. This article states that every individual has the right to equal treatment without discrimination based on sex, race, color, language, religion, political views, social origin, and other status. Although there are variations in legal practice in different regions, the principle of equality before the law must still be used as the main guideline, because equality before the law is the fundamental right of every individual to ensure that there is no injustice or jealousy among them. Equality and freedom are the main foundations of human rights. This equality includes the dignity of every individual to determine their own destiny, which in principle is the right of every person to be free and equal.³⁴

The Basic Law of the Federal Republic of Germany in Article 3 explicitly explains:³⁵ a) Everyone is equal before the law; b) Women and men have equal rights. The state must encourage the implementation of real equality between men and women, and take steps to eliminate existing inequalities; c) No one should be given preferential treatment or be disadvantaged on the basis of gender, origin, race, language, homeland, beliefs, or religious or political views. In addition, no one should be disadvantaged because they have a disability. With these principles, Germany emphasizes that every individual, without exception, is entitled to fair and equal treatment under the law.

3.3. Comparison of the Implementation of the Principle of Equality Before the Law in Indonesia and the Netherlands

Equality before the law is a fundamental principle that emphasizes that every individual, regardless of social, economic, or political status, has the same rights within the legal system. This principle requires that everyone be treated fairly and equally in legal proceedings, without discrimination or unfair preferential treatment. As part of the rule of

³⁴ AN, Dodik Prihatin, *STUDI KOMPARASI PERLINDUNGAN SAKSI DALAM SISTEM PERADILAN PIDANA INDONESIA DENGAN SISTEM PERADILAN PIDANA JERMAN, AMERIKA SERIKAT DAN INGGRIS*.

³⁵ Dwi Dasa Suryantoro, "Konsep Bantuan Hukum Dalam Peradilan Pidana Di Indonesia," *At-Turost: Journal of Islamic Studies* 8, no. 2 (2021): 201–17, <https://doi.org/10.52491/at.v8i2.71>.

law doctrine, this principle serves as the basis for creating equal justice in the judicial system.³⁶

In the context of modern law, the principle of equality before the law is very important to ensure that all individuals are treated equally in court, regardless of their background or origin. This principle also serves to prevent the abuse of power by the government that can be exploited for the personal interests of certain individuals or groups. With equality before the law, the legal system can operate more fairly, transparently, and free from bias against certain parties.

In developing countries like Indonesia, the principle of equality before the law has a very important role in overcoming problems such as corruption, nepotism, and abuse of power. With the consistent application of this principle, the state can build a stronger, more transparent, and more accountable legal system, which in turn will strengthen the foundation for sustainable development and a more equitable society. In Indonesia, the principle of equality before the law has been emphasized in Article 27 paragraph (1) of the 1945 Constitution, which is an integral part of the concept of the rule of law.³⁷

However, in practice, there are several obstacles that prevent the effective implementation of this principle. One of them is the diversity of customs and cultures which are often not in line with the principle of equality before the law. In addition, the issue of access to equal justice remains a major challenge. Inequality in access to the judicial system, especially for underprivileged or marginalized groups, is a major obstacle to achieving equal social justice for all citizens.

In the context of the judiciary in Indonesia, especially military justice, there are characteristics that distinguish it from general justice. Military personnel are required to submit to military law which governs court procedures for offenses committed by them. In the judicial process, the main focus is on regulations relating to the military code of ethics, while still being aligned with the provisions of the 1945 Constitution. However, the principle of equality before the law is still applied in every judicial process, regardless of the rank or position of the military member involved in the case. This is also reflected in Article 27 paragraph 2 of the 1945 Constitution which states that "Every citizen shall be equal before the law."

One of the main dilemmas in applying the principle of equality before the law in military justice is maintaining a balance between the disciplinary aspects that are an essential element in the military environment and adequate protection of individual rights. Although military personnel are bound by hierarchical structures and internal disciplinary obligations, it is important to ensure that the judicial process upholds the principle of fair and proportionate treatment of individuals. Therefore, it is important to ensure that equality

³⁶ Muhammad Ihsan, "Kedudukan Kejaksaan Republik Indonesia Dalam Proses Penuntutan Peradilan Militer Di Indonesia," *Jurnal Intelektualita: Keislaman, Sosial Dan Sains* 10, no. 2 (2021): 283–92, <https://doi.org/10.19109/intelektualita.v10i2.8907>.

³⁷ Saputra, "Hubungan Antara Equality Before the Law Dalam Penegakan Hukum Di Indonesia Dengan Harmonisasi Konflik Antar Lembaga Penegak Hukum."

before the law is not only valid in theory, but also in practice that upholds justice for all citizens, including in the military environment.³⁸

Indonesia still maintains a military justice system that is bound by special military regulations and is different from general courts. Nevertheless, the principle of equality before the law is still implemented in the military justice process, while taking into account the distinctive characteristics of the military in its courts. This shows that despite differences in the structure and rules that apply in the military environment, the basic principles of justice are still upheld, including equality of rights before the law.

Meanwhile, in the Netherlands, the military justice system is an integral part of the country's legal structure, governed by specific laws and regulations. Military justice in the Netherlands has unique characteristics and procedures, designed to maintain discipline and security within the armed forces. Although military justice in the Netherlands operates separately from general justice, the two systems remain integrated, with the main objective of balancing military interests and individual rights. As in Indonesia, the principle of equality before the law is also a cornerstone of the Dutch military justice system. Although military personnel are bound by discipline and hierarchical structures, the Dutch judiciary ensures that every individual, regardless of rank or position, has equal access to justice and fair treatment.

A comparison of the application of the principle of equality before the law in the military justice systems in Indonesia and the Netherlands shows differences in the approach, structure, and practice of military law. Although both have different systems for regulating discipline and courts for military personnel, both Indonesia and the Netherlands show a strong commitment to upholding the principle of equality before the law.

In Indonesia, although military justice is governed by special regulations that take into account the characteristics of the military, the principle of equality is still applied by ensuring that all military personnel, regardless of rank or position, have equal rights before the law. In this case, the rights and obligations of military personnel and victims must be fulfilled fairly. Meanwhile, in the Netherlands, although the military justice system is separate from the general justice system, the principle of equality remains an important part of the judicial process. Military justice in the Netherlands ensures that military personnel, regardless of their position in the military hierarchy, are treated fairly and equally. The application of this principle ensures that every individual, both perpetrator and victim, has the same right to be treated fairly at every stage of the military justice process. Thus, despite differences in the structure and approach of military law in the two countries, the commitment to realizing the principle of equality before the law remains the primary objective in upholding justice and individual rights in the military justice system.

4. CONCLUSION

The principle of equality before the law, guaranteed by the 1945 Constitution, states that every Indonesian citizen must be treated equally before the law, regardless of social

³⁸ Helmi, "Penerapan Azas 'Equality Before The Law' Dalam Sistem Peradilan Militer."

status, race, religion, or group. Although this principle is clearly stated in the constitution, its implementation still faces challenges, both in theory and in practice. Inequalities in law enforcement, abuse of power, and discrimination against certain groups still occur frequently, resulting in a gap between written law and applied law. A more consistent and fair implementation of this principle is needed in order to realize a legal system that truly guarantees justice for all citizens, in line with the principle of the rule of law and the protection of human rights.

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