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Instrumentalism in Criminal Law: A Critique of the Use of Criminal Law as a Mere Tool of Social Engineering

Acep Ana
Universitas Islam Nusantara Bandung, Indonesia
anaacep9@gmail.com

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Abstract:

The hegemony of legal positivism and the distortion of the concept of Law as a Tool of Social Engineering have reduced Indonesian criminal law from a means of emancipation into a repressive instrument of power that neglects human values. This phenomenon has generated an acute crisis in law enforcement, in which legal officers are trapped in procedural formalities, thereby triggering "legal liquefaction" and miscarriages of justice that undermine the public sense of justice. This authoritarian instrumentalism has hijacked the noble objectives of the Developmental School of Law, transforming them into a justification for arbitrariness through vague and elastic legal provisions that threaten citizens' human rights. Therefore, this study aims to deconstruct such manipulative legal practices and to reorient the law enforcement paradigm to prioritize substantive justice and moral integrity over the logic of power. This research employs a normative juridical method, using statutory, conceptual, and case approaches, to qualitatively analyze the gap between procedural legal norms and the values of substantive justice, and to formulate solutions to the existing legal distortion. The study finds that the distortion of Law as a Tool of Social Engineering and the dominance of rigid positivism have transformed Indonesian law into a repressive instrument that serves the interests of power while disregarding substantive justice. This condition has triggered a crisis in law enforcement, marked by the practice of "legal liquefaction" and the criminalization of criticism, where law enforcement officers remain confined to mere procedural formalities. Accordingly, a fundamental reform toward a humanistic progressive law is urgently needed to restore morality and material truth above the oppressive logic of legalism.

Keywords: Legal Positivism; Progressive Law; Substantive Justice.

INTRODUCTION

Law, in its most fundamental ontological and axiological essence, was created to serve humanity. Its existence was not designed to be merely a dead textual monument, but rather as an organic instrument that acts as a medium for achieving substantive justice, social welfare, protection of human rights, and the upholding of human dignity. However, in the historical trajectory and dynamics of Indonesia's criminal justice system, a very sharp and worrying paradigm shift has occurred. Criminal law has gradually been reduced in meaning, stripped of its moral and sociological values, and then transformed into a mere instrument of formal power blind to the realities of humanity. This phenomenon has brought the national legal system to a deep-rooted fundamental crisis, where the law is alienated from the social reality of its society and systematically fails to fulfill its primary purpose as a protector of citizens (Safaryan & Ikilikyan, 2024).

The failure of law enforcement to achieve true justice is not a momentary anomaly, but rather a deeply rooted pathology resulting from the dominance of conventional legal methods. Cases of miscarriage of justice that have torn apart the public's sense of justice, as tragically represented in the case of Asrori's wrongful arrest and a series of similar cases in Indonesian judicial history, provide undeniable empirical evidence of how fragile our justice system is. 1 The behavior of law enforcement officers in these cases shows a uniform pattern: they act as "prisoners of the law" whose shackles are procedural formalities. Instead of acting as seekers of material truth, law enforcers often fall into rigid reasoning, amputating conscience, and ignoring the suffering of the poor for the sake of maintaining the supremacy of the text of the law alone (Garrett, 2011).

The roots of all these problems can be traced to the hegemony of the legal positivism paradigm, which has become ingrained in legal education institutions and law enforcement agencies in Indonesia. Positivism produces a perspective that understands legal reality in a highly linear, deterministic, and mechanistic manner. From a rigid positivistic perspective, the success of a legal system is measured exclusively by the precision with which formal procedures, commonly referred to as procedural justice, are implemented, rather than by the extent to which substantive justice is perceived, internalized, and recognized by the wider community. This gives rise to a judicial anomaly described as "misguided and conscienceless" justice, where law enforcement officers do not base their decisions and actions on the sociological expectations of society's desire for justice, but instead submit absolutely to the dictates of statutory texts, which are often outdated and irrelevant to the dynamics of the times (Afifi, 2022).

The concept of the use of law as a tool of social engineering in Indonesia cannot be separated from the major influence of American legal sociology thought initiated by Roscoe Pound, which was then adapted, modified, and contextualized by Mochtar Kusumaatmadja through what is widely known as the School of Development Law (Robian, 2025). Theoretically and historically, the concept of the School of Development Law was designed with very noble intentions and is relevant to the socio-political conditions of post-independence Indonesia. Mochtar Kusumaatmadja projects law not merely as a tool to maintain order (a conservative function), but actively functions as a means of renewal of society that is in a transitional phase towards national development. In its original conception, the use of law as a basis for development policy is required to be officially formulated, but must still be firmly rooted in the organic experience of Indonesian society and nation. Mochtar emphasized that social engineering through legal instruments must be carried out very carefully, combining top-down and bottom-up approaches simultaneously, in equilibrium, and proportionally. Furthermore, this concept expressly prohibits any attempt at legal coercion, either by the central government against regional autonomy, or vice versa.3 The success of this theory actually depends heavily on the absolute prerequisites of strengthening public control over various legislative products, the moral integrity of law enforcement officers, and the maturity of legal culture in society.

However, the irony of history shows that at the practical level of implementation, this noble theory has experienced severe distortion, ideological hijacking, and mutated into a form of legal instrumentalism with an authoritarian face. Instrumentalism in the context of contemporary Indonesian criminal justice is no longer an instrument to guide society towards prosperity, but rather a chronic "syndrome" in which the legal order is systematically manipulated according to the instincts of arbitrary (arbitrary) interests of power. Criminal law no longer positions itself as a means to realize an inclusive social order, but has been hijacked into a mere tool of procedural justification for those in power to prosecute, silence, and discipline citizens in order to maintain the political status quo (Ginsburg & Huq, 2020).

When law is reduced to a mere instrument of the state (pure instrumentalism), the state slowly but surely loses its sensitivity to the dynamics of human rights and social pluralism. Policymakers, legislators, and law enforcement officials begin to harbor the illusion that criminal law is a silver bullet (an instant solution) for coercively engineering societal behavior (Mayulu, 2025). They ignore the most basic sociological principle that civilized and genuine social engineering requires a process of internalizing values, education, and cultural enlightenment, not merely the threat of physical sanctions in the form of deprivation of liberty behind bars. This distortion creates a highly destructive phenomenon in the form of a "liquidation of the law" that is pragmatically adjusted according to the political opportunities offered. The principle of Lex Certa, which was historically formulated to guarantee legal certainty and protect citizens from the arbitrariness of those in power, is now being twisted and exploited by lawmakers to create flexible (multi-interpretable) articles (Haritjahjono & Sodikin, 2025). These flexible articles then become deadly instruments

that can ensnare anyone, anytime, and anywhere, depending purely on the subjective tastes and wishes of the legal authority holders.

METHOD

This research employs a prescriptive-analytical normative juridical method, focusing on secondary data to examine the distorted implementation of the concept of Law as a Tool of Social Engineering and the hegemony of positivism in the Indonesian criminal justice system. Through a legislative approach, a conceptual approach related to Mochtar Kusumaatmadja's theory of development law, and a case approach to the phenomenon of miscarriage of justice, this research critically examines the axiological gap between procedurally rigid normative texts and the desired substantive justice values. The analysis is conducted qualitatively to deconstruct the practice of legal instrumentalism that reduces law to a mere tool of power, in order to offer a reorientation of the law enforcement paradigm that returns to humanitarian values and the protection of human rights (Irwansyah, 2021).

RESULTS AND DISCUSSION

Devaluation of the Concept of Law as a Tool of Social Engineering: The Transition from a Means of Development to Repressive Instrumentalism

Analyzing the originality of Roscoe Pound's thinking requires a deep understanding of the sociological context of early 20th-century America, which was undergoing rapid industrialization. Pound argued that law should be a tool to direct changes in societal behavior in accordance with collectively determined goals for the common good. For Pound, the primary function of law was as a mechanism of social control operated through the systematic and regular application of coercion by state agents. However, Pound made a critical observation often overlooked by current rulers: that law alone is never sufficient for social engineering; it requires the integral support of non-legal institutions, such as family, educational, moral, and religious institutions, to succeed. Pound emphasized the flexibility and adaptability of the legal system to remain relevant to the dynamics of society's ever-evolving needs, which he referred to as legal functionalism (Andreas et al., 2025).

A comprehensive examination of Roscoe Pound's original thinking requires us to step back and understand the sociological landscape of the United States in the early 20th century. This era was a crucial one, during which massive industrialization and rapid urbanization drastically transformed society, sparking new social conflicts and creating inequalities that could no longer be addressed by rigid classical legal doctrine. It was amidst this social turbulence that Pound emerged with his revolutionary idea, Sociological Jurisprudence. He strongly rejected the positivist view that viewed law as merely a dead text or a collection of formal rules isolated from reality. For Pound, law must be viewed functionally as a living and dynamic tool for directing changes in societal behavior (law as a tool of social engineering) in order to achieve collective goals oriented towards the public interest. Law should no longer be passive, but must actively organize and balance the various conflicting interests within society.

Within this framework, Pound positions law as the primary mechanism of social control (chief agency of social control) that holds the authority to apply coercion systematically, regularly, and legitimately through the extension of state agents. However, there is one critical note from Pound that is fundamental but ironically often ignored by today's modern rulers: law never operates in a vacuum and has inherent limitations (the limits of effective legal action). Pound firmly warns that social engineering will never achieve true success if it relies solely on formal legal force and state sanctions. Law requires the integral support of non-legal institutions such as family, educational institutions, moral values, and religious institutions that function to instill ethical awareness and shape the foundation of human behavior from within. Without synergy with these social institutions, law will only become a barren instrument of coercion and lose its legitimacy.

Through an approach he called legal functionalism, Pound emphasized that the legal system must be highly flexible and adaptable to avoid becoming obsolete. Law must be continually evaluated based on its practical impact on society, not solely on its internal logical consistency. Because the dynamics of human needs are constantly evolving with the times, legal institutions must be adaptive, fluid, and responsive in facilitating social progress without losing their function as guardians of order. Pound's thinking ultimately

reminds us that the originality of his theory lies not in how law enforces the will of those in power, but rather in how law can be engineered humanistically to serve the interests of the wider community in a just manner.

Mochtar Kusumaatmadja made a significant adaptation of Pound's thinking to suit the sociopolitical reality of pluralistic and post-colonial Indonesia. Mochtar brilliantly changed the terminology of "law as a tool" to "law as a means" (instrument or means) of societal renewal. This change in terminology is not merely a matter of semantics, but rather reflects a deeper philosophy regarding the need for a more humane and cultural approach in the Indonesian context. Mochtar argues that the notion of law as a "tool" can trap the legal system into practices of rigid legalism as occurred during the Dutch East Indies era, which tended to be rejected by Indonesian sensibilities. For Mochtar, law as a means of societal renewal encompasses not only norms and principles, but also the institutions and processes that embody law in social reality. A crucial point that distinguishes Mochtar's thinking from current instrumentalist practices is his emphasis on the balance between top-down and bottom-up approaches, where law must be rooted in living law or law that lives in society (Fajar & Luthfi, 2026).

In the current practice of instrumentalism, Mochtar's fundamental requirements regarding the "maturation of legal culture" and "public control" are often completely absent. Instead of involving the community substantially through a dialogical process, legal formation tends to be elitist and oriented only to administrative speed. Mochtar requires that every attempt at legal reform must be preceded by the mental readiness and legal culture of the community so that the law is effective and not merely coercive. Failure to internalize societal values into legislation results in the law losing its sociological validity. A comparison between the idealism of the original theory and contemporary practice can be seen in the following table, which summarizes this shift in philosophical orientation.

Examining deviations in contemporary legal practice requires us to revisit Mochtar Kusumaatmadja's fundamental thinking on the Theory of Development Law. In his original blueprint, Mochtar emphasized that law should not simply be a mechanical instrument of coercion, but rather a cultural process requiring the "maturation of legal culture" and strong "public control" as fundamental prerequisites. However, in the current reality of instrumentalism, these two democratic pillars are often completely absent. Instead of positioning the public as subjects substantially involved through participatory, dialogical spaces, the modern law-making process tends to shift into a highly technocratic, elitist activity. Its primary orientation has been distorted by the pursuit of administrative speed and the accommodation of short-term pragmatic interests, thus neglecting the essence of regulation-making itself.

From the outset, Mochtar has clearly stipulated that any attempt at legal reform or restructuring must be preceded by mental preparedness, education, and adaptation of the local community's legal culture. This step is crucial to ensuring that the resulting law is firmly rooted and effective, preventing it from becoming a tool of unilateral coercion (naked power) by those in power. When the state fails to internalize the values, real aspirations, and growing sense of justice within society into the text of legislation, what occurs is legal alienation. As a result, the law automatically loses its sociological validity (soziologische Geltung) due to latent public rejection. This sharp shift from the idealism of Mochtar's original theory to reductionist contemporary practice reflects a conceptual crisis, where law no longer functions as a means of humanistic societal development, but rather becomes merely a transactional regulatory tool that has lost its soul.

The concept of the Development Law School, originally intended as a just, transformative force, has been distorted or hijacked by powerful actors. Mochtar Kusumaatmadja emphasized that development must be understood holistically, encompassing all aspects of community life, not just the economic dimension. However, in practical political dynamics, the emphasis on "order," a prerequisite for development in Mochtar's theory, has been misinterpreted as a justification for forcing citizen compliance. Order, which should be the basis for orderly change, is instead used to silence dissent deemed disruptive to the unilateral development agenda. Critical articles demonstrate that development law can become a repressive instrument if not guarded by the ethics of power and public accountability (Saputra et al., 2025).

This misuse of law as a tool of power is exacerbated by the mistaken assumption that law is merely written rules that must be obeyed unconditionally. Mochtar himself warned that "power without law is tyranny," yet in practice, law is often drawn into the orbit of power to provide a stamp of legality for authoritarian actions. A weak legal culture and low public awareness of their rights create loopholes for those in power to carry out manipulative social engineering. Without a critical public and officials with integrity, the concept of social engineering turns into a highly repressive tool of bureaucratic control, where public participation is reduced to a mere formality with no substantial influence on policy content.

The misuse of law as an instrument of power in the contemporary political landscape is further exacerbated by the erroneous assumption rooted among elites and some sections of society, who view law in a reductionist manner as merely a written text of rules that must be obeyed absolutely and unconditionally. This narrow positivistic view ignores the dimensions of morality and substantial justice that should be inherent in every legal product. Mochtar Kusumaatmadja has from the beginning issued a very strong philosophical warning that "power without law is tyranny, conversely, law without power is paralysis." However, in practical reality, this adage is often distorted, where the law is forcibly drawn into the orbit of egoistic power, not to limit arbitrariness, but rather to provide a formal stamp of legality to the actions of rulers who tend to be authoritarian. The law is ultimately positioned as a greedy shield to legitimize ethically flawed policies, as long as the administrative procedures appear to be fulfilled.

This legal dystopia is further fueled by a weak national legal culture and low civil society awareness of their constitutional rights. This public ignorance and apathy create an architectural loophole for those in power to launch manipulative social engineering to perpetuate the status quo or further the economic and political interests of certain groups. Without the presence of a critical and organizational public and law enforcement officers with strong moral integrity, the noble concept of social engineering envisioned by Mochtar has decayed. It has become a highly repressive tool of bureaucratic control, where the law is used to forcibly discipline society rather than to improve its welfare. In this crippled ecosystem, public participation is deliberately minimized and reduced to mere cosmetic formalities or mere tokenism in discussion forums, without ever being given real space to fundamentally influence the substance of policy.

This distortion is also evident in the unclear criteria for what kind of change or development should be supported by law. Because the character of current legal products is largely determined by the dominant political constellation, development law projections are easily trapped in the pragmatic desires of elites. This leads to the demise of the autonomous character of the law itself, where the law no longer functions as a guide or control of power, but rather becomes a servant of certain political and economic interests. Efforts to measure the success of development law are also still very weak, as the indicators used so far are only administrative and quantitative, rather than quality indicators that encompass social justice and respect for human rights (Fitriani et al., 2025).

The most alarming phenomenon in the current devaluation of legal concepts is the mutation of the function of criminal law. Philosophically and doctrinally, criminal law in Indonesia should function as the *ultimum remedium*, a last resort only used when administrative, civil, or other alternative sanctions have failed. However, between 2020 and 2025, a systematic paradigm shift has occurred, positioning criminal law as the *primum remedium*, the first line of defense, to enforce order according to the wishes of those in power. This positioning of criminal law at the forefront is often disguised as a deterrent, but in reality, it is used to secure the political status quo and silence vocal public criticism (Muladi & Nawawi, 1998).

This shift is particularly evident in the implementation of the Electronic Information and Transactions Law (UU ITE), which contains numerous "rubber articles" open to multiple interpretations. These articles often fail to meet the principle of clarity of formulation (lex certa), thus giving law enforcement officials excessive discretion to interpret criticism as defamation, hate speech, or the spread of fake news that incites unrest. This practice of overcriminalization has become a legal weapon to punish citizens who attempt to expose corruption, collusion, and nepotism (KKN) or simply criticize the misuse of state resources by officials (Butt, 2015). The criminalization of Haris Azhar and Fatia Maulidiyanty is one example of a current case that demonstrates how criminal law is used aggressively against activists who voice public interests in natural resource conflict areas such as Papua.

The impact of this mutation in the function of law is the creation of a climate of fear in society, which directly contradicts the purpose of development law to empower citizens. Data shows that the most victims of the use of these flexible articles are activists, human rights defenders, journalists, and even ordinary citizens trying to defend themselves from injustice. The shift toward primum remedium is also evident in the handling of environmental crimes, where criminal sanctions are often prioritized without going through adequate administrative processes, but ironically, they often target small-scale perpetrators while large corporations are protected through pragmatic "legal dilution" policies. The following table summarizes the differences in implementation between the ultimum and primum remedium paradigms in contemporary law enforcement.

The shift in the function of law from an instrument of development and protection to a tool of repression has had a highly destructive systemic impact, namely the creation of a climate of acute fear within society. This phenomenon is diametrically opposed to the basic philosophy of development law, which is supposed to empower citizens and uphold emancipatory justice. When the law no longer provides certainty but rather threats, the safe space for democracy automatically shrinks. Empirical data in the field shows an ironic reality: the most victims of criminalization that utilizes flexible and multi-interpretable articles are not perpetrators of white-collar crimes or those who destroy the state order, but rather critical elements of civil society such as activists, human rights defenders, journalists, and even ordinary citizens simply trying to voice their defense against the injustices they experience. The law in this context has shifted its function from a shield protecting the weak to a sword to strike at anyone who dares to disturb the comfort of the elite.

This shift in orientation is increasingly evident in the adoption of the primum remedium paradigm, where criminal law is the primary weapon, recklessly applied in handling various cases, including environmental crimes. Repressive criminal sanctions are often prioritized aggressively without adequate administrative sanctions, which are standard procedure in environmental law. However, the irony of this law enforcement does not stop there; the firmness of the primum remedium paradigm is almost always selective, especially when targeting small-scale actors at the grassroots level, such as traditional farmers or indigenous communities struggling to survive. Conversely, against large-scale corporations committing massive environmental destruction, the law suddenly softens and undergoes a "liquefaction of law" through various pragmatic, compromising policies, ranging from peaceful settlements, minimal administrative fines, to the pretext of discretion to maintain the investment climate. This reality demonstrates an acute double standardization, where the law appears very frightening to the grassroots, but becomes very fluid and accommodating to capital owners.

Sharp criticism of the current state of national law can also be analyzed through the concept of "legal liquidity" introduced by Shidarta. This phenomenon refers to a situation in which the law no longer possesses an autonomous, stable, and authoritative character, but instead becomes highly fluid and flexible to adapt to immediate economic and political interests. Legal liquidity is characterized by the tendency of those in power to use extraordinary legislative methods, such as the Omnibus Law, to rapidly cut thousands of regulations without in-depth philosophical debate or meaningful public participation. In this context, the law is no longer viewed as a moral or social ethical guide, but rather as merely an administrative tool that must be quickly adjusted (liquidated) to facilitate investment flows and capital accumulation (Sanders et al., 2024).

Law No. 11 of 2020 concerning Job Creation (which was later amended through a Government Regulation in Lieu of Law (Perpu) and Law No. 6 of 2023) is the most concrete manifestation of this legal liquidity phenomenon. Although promoted as a solution to increase the effectiveness of legal and economic development, its hasty drafting process is considered to have violated the principles of sound legal regulation, particularly the principles of clarity of formulation and transparency. The spirit of the Job Creation Law, which is heavily oriented towards ease of doing business, has resulted in the erosion of previously established labor and environmental protection standards. The demise of the autonomous character of law means that the law can no longer act as a fair "arbiter" between investors' interests and the people's rights, but has instead become a complete "player" favoring one party solely for the sake of GDP growth.

Legal dilution also resulted in a massive centralization of authority from regional governments back to the central government, which often ignored local aspirations and the rights of indigenous communities. When the law became too pragmatic, the promised legal certainty turned into uncertainty for citizens because the rules could change at any time through highly technical implementing regulations with minimal public oversight. This phenomenon marked the end of the era of law as a means of emancipatory development and the beginning of an era of pragmatic instrumentalism, where legal autonomy has died and been replaced by blind obedience to market needs and power. An analysis of indicators of legal dilution in contemporary legislation is presented in the table below.

Empirical evidence of the transition to repressive instrumentalism can be found in various human rights monitoring reports from 2024 to 2025. Monitoring conducted by the Commission for Missing Persons and Victims of Violence (KontraS) shows that the human rights situation in Indonesia has not shown significant improvement, and even tends to regress in several key sectors. The excessive use of force by security forces, particularly the Indonesian National Police (Polri) and the Indonesian National Armed Forces

(TNI), remains a recurring pattern in dealing with political expression and public protests. This demonstrates that Mochtar Kusumaatmadja's vision of an apparatus that understands the function of law in a balanced manner between order and justice has not been realized at the operational level.

Data from the Bhayangkara Day 2025 report and the 2025 annual torture report record alarming figures regarding state violence. Between June 2024 and May 2025, 66 incidents of torture were recorded, resulting in 139 victims, with the National Police (Polri) being the institution most involved, with 36 cases. Furthermore, a wave of nationwide demonstrations in late August 2025 in response to the government's economic and political policies was met with brutal repression, resulting in at least 451 civilian injuries, 10 deaths, and thousands of arbitrary arrests. Criminalization of public participation also remains high, with activists and human rights defenders frequently facing prosecution under the ITE Law and treason laws simply for expressing peaceful criticism (Robet et al., 2023).

The situation in Papua provides a darker picture of repressive instrumentalism, where the deployment of thousands of Indonesian National Police (Polri) and Indonesian National Armed Forces (TNI) personnel from January to August 2025 has created a climate of deep fear among civilians. Arbitrary arrests, torture, and shootings of citizens opposing extractive projects demonstrate that the law is being used not to protect human rights, but rather to secure the economic interests of state-backed corporations. The phenomenon of "short-term enforced disappearances" during the August 2025 protest wave also marks a new method of repression that ignores criminal procedure law (KUHAP) and the rights of suspects. All this factual data confirms that the devaluation of the concept of law has reached its nadir, where legal instruments and security forces have merged into a highly effective force of oppression for those in power.

The root of the devaluation of the concept of development law lies in the absence of serious efforts to mature the legal culture and strengthen public control, as required by Mochtar Kusumaatmadja. A healthy legal culture should be characterized by the values of integrity, transparency, and respect for human rights that permeate the hearts of law enforcement officials and the wider public. However, we currently witness a sluggish legal culture where compliance with the law is based solely on fear of sanctions, rather than on a sense of truth and substantive justice. Regulatory uncertainty and weak integrity of officials cause the law to lose its moral binding force and be seen merely as an administrative burden to be avoided or manipulated (Fajar & Luthfi, 2026).

The root of the devaluation and conceptual decay of the Development Law Theory lies in the absence of systematic and serious efforts by the state to mature the legal culture and strengthen public scrutiny, two main pillars that were actually strictly required by Mochtar Kusumaatmadja. In his original blueprint, Mochtar viewed that legal reform would never be effective without the evolution of public awareness that goes hand in hand with the renewal of the text of the law. A healthy and ideal legal culture should be characterized by the strengthening of the values of integrity, transparency, accountability, and sincere respect for human rights, which values should be deeply ingrained in the hearts of law enforcement officials as implementers, and the wider community as legal subjects. When these fundamental values are internalized, the law will be organically obeyed because it is considered to contain emancipatory justice and serve the common good.

However, in today's sociological reality, we are witnessing a worrying decline in legal culture (legal apathy) across various aspects of national life. Public compliance with regulations is no longer based on an ethical awareness of substantive truth and justice, but rather driven solely by pragmatic calculations and fear of repressive criminal sanctions (deterrent effect). This condition is exacerbated by hyper-regulation, which has triggered legal uncertainty and the collapse of the morality and integrity of some law enforcement officers in the field. As a result, the law has lost its noble moral binding force and has suffered a reduction in meaning in the eyes of the public; it is no longer respected as a guide to just social order, but is instead seen as a barricade of tedious administrative burdens, which must be avoided, circumvented, or even manipulated whenever possible to facilitate transactional interests.

The absence of effective public oversight is also fueled by a legislative process that is increasingly closed to public criticism. Revisions to key laws, such as the TNI Law in March 2025, were carried out very quickly and with minimal participation, which actually expanded military authority into the civilian sphere without adequate oversight. (Humah, 2025) This poses a serious threat to civilian supremacy and democracy that development law should safeguard. The lack of concrete measuring tools to assess the success of development law causes the government to continue producing top-down regulations without considering their long-term social impact on people's welfare and freedom.

The Hegemony of Legal Positivism and the Crisis of Substantive Justice: A Critique of the Politicization of the Principle of Legality and the Obscurity of Lex Certa

The existence of the modern legal system in Indonesia cannot be separated from the significant influence of the legal positivism paradigm, which has been ingrained since the colonial era and continues through the contemporary era. Legal positivism, historically rooted in the 19th-century thought of Auguste Comte, emphasizes that valid knowledge must be based on verifiable empirical facts and strictly separated from metaphysical speculation and moral values. In the legal realm, this doctrine manifests itself through a clear separation between existing law (is) and ought law (ought), where the validity of a legal norm is determined solely by the formal procedures for its creation by a legitimate authority, rather than by its moral content. The dominance of this thinking in Indonesia has created a legal structure that relies heavily on legal certainty as its main pillar, while at the same time often neglecting the substantive justice aspects that are the expectations of the wider community (Afifi, 2022).

The tension between formal legal certainty and substantive justice is a central issue in the development of national criminal law. Legal positivism ensures social stability by providing clear legal texts as guidelines for citizens' behavior and limits for those in power. However, the logical implication of this thesis is that even unjust or cruel laws are still considered valid as long as they are issued through proper legislative procedures. In Indonesia, this is reflected in the way law enforcement officials and judicial institutions are often trapped in normative texts without being able to explore the values of justice that exist in society, as mandated by broader legal principles. This characteristic of positivism, which tends to be monolithic and mechanistic, ultimately gives rise to a system that prioritizes adherence to procedures over achieving material truth (Kamil, 2025).

In the context of law enforcement in Indonesia, this positivistic rigidity is very clearly reflected in how law enforcement officers and judicial institutions carry out their daily functions. They are often trapped in the shackles of rigid and mechanical normative texts, acting like a dry "mouthpiece of the law" (bouche de la loi), lacking the courage or methodological capacity to explore, follow, and understand the values of justice and legal awareness that live dynamically in society—even though this noble mandate has been affirmed by the broader legal principles in our justice system. This characteristic of positivism, which tends to be monolithic and linear, ultimately gives rise to a highly artificial judicial ecosystem, where all law enforcement energy is spent pursuing formal legality and compliance with bureaucratic-administrative procedures, rather than taking the trouble to uncover the facts to achieve material truth and substantive justice for justice seekers.

The application of Hans Kelsen's theory of Stufentheorie, or the hierarchy of norms, in Indonesia further reinforces the hegemony of this positivism. Within this framework, legal validity is determined by its relationship to higher norms, up to the Grundnorm, without the need to consider extralegal factors such as morality, religion, or ethics. This creates a closed and self-sufficient legal system, yet it is vulnerable to criticism because it often fails to respond to rapidly changing social dynamics. As a result, a paradox arises where formally legitimate laws are perceived by society as instruments of injustice because they ignore basic rights or a sense of collective justice (Depari & Hadiyanto, 2024).

The dominance of rigid legal positivism has transformed law enforcement officials, from police and prosecutors to judges, into mere "prisoners of the law." This term refers to a condition in which legal practitioners act mechanically, as if they were machines tasked solely with inserting facts into statutory articles to produce a verdict. In this mindset, legal truth is reduced to procedural certainty, so that conscience and empathy for substantive justice are often set aside in favor of maintaining the integrity of the regulatory text. This condition is particularly dangerous in the criminal justice system, as law enforcement officers trapped in extreme positivism tend to pursue witness or suspect testimony as the primary formal evidence, often ignoring scientific evidence or deeper material truths (Mareati, 2026).

This phenomenon is rooted in legal education and a judicial bureaucratic culture that glorifies linear legal syllogisms. Law enforcement officials are educated to view the law as an autonomous and final entity, where their task is simply to apply the rules without room for creative, humanitarian interpretation. As a result, the law loses its soul and becomes merely an administrative tool of power. Judges, who should be the last bastion of justice, often feel constrained by the text of the law even though their conscience cries out for injustice. This reliance on technical procedures leads to a "breakdown" in the pursuit of justice, where courts no longer seek who is substantively right, but rather who wins procedurally (Kurniyawan et al., 2024).

Dogmatic criticism of this model highlights that criminal law should not only be retributive-formal, but also must have a humanistic character oriented towards human happiness. Satjipto Rahardjo reminds us that law is for humans, not humans for the law. When the law fails to make the people happy and instead

becomes a tool of oppression through its procedural rigidity, then that is when the hegemony of positivism has reached its crisis point. Law enforcement that only relies on intellectual intelligence without the moral courage to find a way out of the deadlock of the statutory text will continue to give rise to legal paradoxes that harm human dignity.

One of the most tragic manifestations of the failure of this rigid-positivistic legal approach is the case of wrongful arrest in the murder of Asrori in Jombang in 2008. This case became a "monument" to the failure of the Indonesian justice system when Imam Hambali (alias Kemat) and Devid Eko Priyanto were convicted and sentenced to 17 years and 12 years in prison respectively on the basis of an investigation process that was procedurally considered legitimate, but factually totally wrong. Law enforcement in this case acted as prisoners of the law that prioritized the confession of the suspect obtained through intimidation and violence rather than seeking material truth through the support of strong forensic evidence.

Kemat and Devid were forced to serve years in prison before Asrori's true identity was finally revealed as one of the victims of serial killer Ryan Jombang through irrefutable DNA evidence. This tragedy demonstrates that the legal certainty glorified by positivism can be a mirage if separated from the search for true truth. The judge who decided the case failed to carry out his function of exploring the values of justice and only focused on the formal text on the court. The reluctance to step outside narrow procedural channels caused the judicial institution to lose its critical ability to spot potential fabrications or errors in the investigative process.

The Asrori case serves as a stark reminder that laws enforced solely according to the letter without understanding their spirit and deepest meaning will always risk giving rise to systematic oppression of innocent individuals. This crisis demonstrates the need for a paradigm shift from formal legalism to a more progressive and humanistic legal system. Progressive law enforcement demands the courage of judges to undertake "rule-breaking" or legal breakthroughs when the text of the law can no longer provide a sense of justice for the public. Judges should not refuse to explore material truths on the grounds of time constraints or administrative rigidity, because the primary duty of the judiciary is to uphold the law and justice in its entirety, not merely to rubber-stamp legislative policies or flawed investigative results.

The principle of legality is the main foundation of criminal law which aims to protect individuals from the arbitrariness of the authorities through the principle of nullum delictum nulla poena sine praevia lege poenali. In this principle, there are crucial elements, namely lex certa (the law must be clear and definite) and lex stricta (the law must be interpreted strictly without analogy). However, in legislative practice in Indonesia, there is often a degradation of the lex certa principle through the formulation of articles that are multi-interpretable or what are popularly known as "rubber articles". The ambiguity of the formulation of these articles is not merely a technical omission in the legislative process, but is often suspected of being an instrumental design (by design) to give too broad discretion to the authorities in ensnaring parties considered political opponents or civil dissidents (Puspito & Masyhar, 2023).

The use of vague articles, such as those in the Electronic Information and Transactions Law (UU ITE) and the blasphemy articles, demonstrates how vaguely worded offenses lead to extreme legal uncertainty. For example, the terms "insult," "defamation," or "feelings of hostility" often lack clear objective parameters, leaving their application largely dependent on the subjectivity of law enforcement officials and complainants. This creates a situation where citizens cannot predict which actions are prohibited and which are permitted, fundamentally contradicting the very essence of the principle of legality itself. Rather than protecting human rights, these vaguely worded laws serve as a tool to repress freedom of expression and religion in Indonesia.

This tendency to politicize the principle of legality reflects the use of law as a mere tool of power (instrumentalism). In this context, the law is no longer seen as a means to achieve justice, but rather as a weapon to maintain the status quo or suppress democratic dynamics. The strategy of "legal obscurity" through vague formulations of crimes allows those in power to make opportunistic interpretations according to the political needs of the time. This degradation of lex certa slowly erodes public trust in legal institutions, because the law is no longer perceived as a protector, but rather as a threat that lurks every critical citizen. This is exacerbated by the tendency of the legislature to often ignore constitutional principles in favor of speed in the formation of repressive laws.

In the discourse of legal sociology, the social engineering theory proposed by Roscoe Pound views law as an instrument for reform and directing societal behavior toward a better order. However, in Indonesia, the application of this theory is often reduced to the illusion that the threat of imprisonment is a "silver bullet" that

can instantly solve all kinds of social problems. This view is very simplistic because it assumes that changes in human behavior are influenced only by the fear of punishment, without considering the complexity of the social, economic, and cultural factors behind an action. As a result, criminalization inflation occurs where almost every social deviation is responded to by the addition of new criminal articles and tightening prison sanctions (Andreas et al., 2025).

The main criticism of this approach is that without the internalization of legal values in the collective consciousness of society, criminal law will function only as a tool of terror, not as a tool of civilized social engineering. When a law is imposed without conformity to the social reality and morality that exist in society, the law loses its sociological legitimacy. Massive criminalization without rehabilitation and structural improvements actually creates an excessive burden on the justice system and correctional institutions, and often fails to provide a true deterrent effect. This failure of internalization of values is clearly evident in cases where criminal law is used to regulate personal morality or digital expression, yet violations continue to occur massively because society does not see the law as a reflection of the justice they believe in (Winarno, 2025).

The use of criminal law as an instrument of repressive social control often neglects other, more humanistic approaches, such as restorative justice, which focuses on restoring relationships between perpetrators, victims, and the community. A positivistic approach that relies too heavily on imprisonment also tends to widen structural inequalities, as those with access to power and resources are often able to evade legal action, while marginalized groups become the primary targets of such rigid legal implementation. Therefore, the challenge for national law going forward is how to break away from reliance on the "silver bullet" of punishment and begin building a legal system that is responsive to humanitarian values and capable of social engineering through more educational and integrative means (Flora, 2025).

Legal instrumentalism combined with the hegemony of positivism creates ample room for the politicization of law. Under these conditions, the principle of legality no longer serves as a protector of citizens' human rights, but rather as a formal justification for the political actions of those in power. When an article is formulated vaguely, it grants power holders "license" to define who is guilty based on momentary pragmatic interests. This is particularly evident in law enforcement against activists or critics, who are often charged with articles for spreading fake news or hate speech, the elements of which are highly fluid and subjective. This politicization results in the law losing its dignity as a fair arbiter and instead becoming a player in conflicts of power interests. The impact on social cohesion is devastating. Communities that witness the law being used selectively will experience legal apathy. They no longer view the courts as a place to seek justice, but rather as a stage for displays of power. The failure of the law to provide a sense of security and justice has fueled the emergence of vigilantism or the pursuit of justice outside the existing formal system. This deliberate maintenance of the ambiguity of norms (lex certa) ultimately destroys the foundations of a democratic state of law, because the supremacy of law has been replaced by the supremacy of power disguised as law (Chas, 2023).

The crisis of substantive justice in Indonesia is not only a matter of legal text, but also a legal culture that has been dehumanized by decades of rigid positivist logic. Law enforcement officers acting as "prisoners of the law" reflects the loss of moral courage in our judicial institutions. Therefore, the transformation of legal culture must begin by restoring the role of conscience and integrity in every stage of law enforcement. Judges, prosecutors, and police must no longer hide behind the phrase "carrying out the dictates of the law" to justify actions that morally violate the public's sense of justice.

Criminal law, which has been used as a "tool of terror" through the threat of massive imprisonment, must immediately be restored to its function as a protector of civilized public interests. Internalization of the values of Pancasila as the source of all sources of law must be the spirit of every court decision. If the law is no longer able to reflect the soul of the nation and only becomes a rigid copy of unresponsive foreign doctrines, then the law will always face resistance from its own society. The future of Indonesian law depends on our ability to synthesize formal legal certainty with substantive justice, in order to create a society that is not only legally orderly, but also happy and dignified in terms of humanity (Mahfud, 1998).

Overall, criticism of the hegemony of legal positivism in Indonesia reveals deep wounds in our justice system. Cases like Asrori's and the existence of loose provisions in the ITE Law are clear evidence that laws divorced from morality and sociological reality will ultimately lead to oppression. Efforts to make imprisonment a "silver bullet" without addressing the root causes will only perpetuate the existing crisis. The primary recommendation for legal practitioners and academics is to boldly deconstruct old, narrow

perspectives and embrace a progressive legal vision that prioritizes human rights above all else. Legal certainty is essential for stability, but legal certainty without justice is a tyranny hidden behind the cloak of legality. By strengthening the lex certa principle and prioritizing material truth, Indonesia can move toward a more responsive, inclusive legal system that truly guarantees substantive justice for all its citizens without exception (Rahardjo, 2009).

CONCLUSION

The devaluation of the concept of Law as a Tool of Social Engineering and the distortion of the Development Law School have transformed Indonesian law from a means of social emancipation into a repressive instrument serving the pragmatic interests of power and economic oligarchy. This phenomenon is exacerbated by the hegemony of rigid legal positivism, where law enforcement officers are trapped as "prisoners of the law" that prioritizes procedural certainty over substantive justice, thus giving rise to a law enforcement crisis characterized by "legal liquidity," the degradation of the lex certa principle through elastic articles, and the shift of the criminal function into a primum remedium to silence public criticism. Thus, the national legal system is now at a nadir that urgently requires fundamental reform by abandoning formal legalism in favor of restoring the autonomous character of humanistic and progressive law, where moral integrity and material truth must be placed above the logic of power to prevent tyranny that hides behind the cloak of legality.

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