



ISSN 2809-672X (Online)

IUS POSITUM (Journal of Law Theory and Law Enforcement)

<https://journal.ifpublisher.com/index.php/jlte>

Vol. 2 Issue. 1, January 2023

doi.org/10.56943/jlte.v2i1.227

Legal Culture Deconstruction in Indonesian Legal System

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ABSTRACT

Along with the reformation development in Indonesia, the new demand was created and realized with the implementation of law in society. The implementation of laws and regulations is a critical component of law enforcement. It entails legal officers' and society's willingness to enforce the law in order to maintain social order and establish justice. This research is normative juridical research that provides a qualitative analysis of discussed material by analyzing theories, legal principles, and law. From the research result, it found that the law and regulation in Indonesia is still weak and need to be improved. With the implementation of law and regulations in Indonesia, there are many obstacles and problems faced in its enforcement. As an example, the court justice is still doubt in issuing the law or regulations for the government or any political parties. Legal system consists of three components: legal structure, legal substance, and legal culture. These three elements are interconnected and have positive implications for the development of a responsive legal system. According to the research findings, the Indonesian legal system is repressive because the three elements of the legal system demonstrate its equality.

Keywords: *Law Enforcement, Legal Culture, Legal System*

INTRODUCTION

The reformation movement in Indonesia made new demands in society, one of which was the desire to reform all the products and law implementation that only stood for the government. Nowadays, those demands begin to be realized with the emergence of a new government believed to have strong legitimacy for the implementation of law with a strong regulation in the country.

These demands and expectations are seen as reasonable. In addition, to implement the legitimacy, this new government is also equipped with guidelines as a direction for determining policies in the field of law. The guidelines outlined in the ten points of legal policy direction are summarized with other policy directions in the Outlines of State Policy (GBHN) formulation. Thus, throughout the five years of the legitimation, citizens only have to observe all the successes of the new government's performance.

There are four major issues from the regulations in GBHN that emphasize an effort to reform legal policy in a country. First, it concerns the development of legal culture at all levels of society to create awareness and compliance with the law as a consequence of its implementation. Second, regarding the reform of legal institutions, the GBHN create an independent judiciary that is free from the influence of the authorities and any party. Third, regarding the improvement of the law enforcement apparatus, it is necessary to improve the moral integrity and professionalism of law enforcement officials, including the police, to build public trust. Fourth, concerning reforming the legal process and guaranteeing legal certainty and justice, it also has a place in the entire legal process. What is stated in the GBHN is still conceptual. However, as a policy direction, all of these regulations will be adequate as the solution for all the problems in the country. The main obstacle is how to implement these policies into concrete government regulations.

As the efforts to develop a legal culture in society, several issues show how mass behavior is becoming increasingly anarchic when dealing with crime incidents. For them, law is no longer an option in solving crime problems. Then, the criminal action is solved through violence. For example, in Jakarta for the past year, at least there are 42 cases of crime suspects died as a result of beatings and arson. In some of these cases, there is no more humanity in society. The case of theft of cayenne pepper in Bogor Pier area ended in beatings and burning of the perpetrators. Unfortunately, the police apparatus's role in solving and investigating a case like this is unclear.

Arif Sidartha stated in his dissertation on legal substance at Nusa Cendana University in 1995 that repressive laws dominated the history of legal life in Indonesia during the New Order era. One characteristic of repressive law is that the legal system is built to perpetuate government power. Materials, processes and legal institutions (including judicial processes) are part of maintaining the status

quo. This phenomenon is why Indonesians still staunchly defended colonial legal and legislative products during the independence period, which were very partial to the government's interests. The phrase "judges as mouthpieces of law" is inherent in this repressive law. When the law contains elements of corruption, collusion, and nepotism (KKN) or is often called "unjust law," the judicial process that only enforces the law will decrease into a repressive legal system that is more concerned with power. This was also confirmed by Harkristuti Harkrisnowo that stated "the law is often used as a tool to regulate people, and not used as an acknowledgement for the government".

The explanation above shows that legal culture as an important element in law enforcement in Indonesia still needs to be executed from what was expected. Thus, the researcher analyzes the implementation of legal culture along with its problems in Indonesia based on law, regulation and its enforcement in society.

LITERATURE REVIEW

Law Enforcement

Law enforcement is a series of processes that define values, ideas, ideals, and, ultimately, legal goals. The moral values of justice (*Rechtsvaardigheid*), certainty (*Rechtszekerheid*), and expediency are included in the ideals of law or legal purpose. When moral values contained in law can be implemented, the existence of law is recognized. The failure of law to recognize this legal value threatens the "bankruptcy" of existing law. Laws with "poor" moral value implementation will be distant and isolated from the community.¹

Indonesia, as a state of law, must implement its laws in accordance with the requirements of a state of law. Article 27 Paragraph (1) of the constitution guarantees that every citizen has the same legal standing as everyone else. According to Article 27 Paragraph (1), the rule of law requires the application of the principle of equality before the law.²

Law enforcement that can be implemented properly and effectively is one of the parameters of a country's success as an effort to raise the nation's dignity in law, especially in providing legal protection to its citizens. The weakness of law enforcement in Indonesia has caused a decrease in public trust in the apparatus; one of its indications is there are many actions ordinary people who commit acts of vigilante (*eigenrichting*).

Law enforcement in Indonesia is still very formalistic. It adheres to the existence of laws, where legal certainty is prioritized over substantive justice.

¹ Derita Prapti Rahayu et al., "Law Enforcement in the Context of Legal Culture in Society," *LAW REFORM* 16, no. 2 (September 27, 2020): 276–289, <https://ejournal.undip.ac.id/index.php/lawreform/article/view/33780>.

² Rofingi Rofingi, Umi Rozah, and Adifyan Rahmat Asga, "Problems of Law Enforcement in Realizing The Principle of Equality Before The Law in Indonesia," *LAW REFORM* 18, no. 2 (August 22, 2022): 222–237, <https://ejournal.undip.ac.id/index.php/lawreform/article/view/47477>.

Thus, the public does not feel justice. This condition is also heavily influenced by the legal paradigm adopted in Indonesia, namely positivist law, also known as the systemic law paradigm, in which the truth adopted is truth derived from reason rather than law derived from God.³

Legal Culture

Friedman views the legal culture from a variety of perspectives. National legal culture differs from legal subcultures that positively or negatively impact national law. Furthermore, Friedman distinguishes between internal and external legal culture. The internal legal culture is the legal culture of community members who conduct specific legal duties, such as police, prosecutors, and judges. In contrast, the external legal culture is the legal culture of a society in general, such as how the public's attitude and knowledge of tax provisions, divorce, and others.⁴

Legal culture can be defined as a type of community behavior that is related to the law. Legal culture, like legal norms, is influenced by the community's values or norms. As Friedman emphasizes, society has values that are related to the institutions that it has adopted as its legal culture. This legal culture will be followed because it serves as a driving force in achieving the goal of the law, which is justice. Justice is a link between the legal system and human behavior as a part of society.⁵

Legal culture in society undoubtedly has a goal related to the law's main goal, namely, the creation of justice. Through a good legal culture, beginning with the community's understanding of the law and the culture of law enforcement in carrying out law enforcement, everything must, of course, be based on the principle of justice. A good legal culture will help to form a healthy legal system, whereas a bad legal culture will promote the emergence of a sick legal system.⁶

³ Siti Kasiyati, "Law Enforcement in Indonesia in Perspective of Transcendental Legal Justice Paradigm," *Journal of Transcendental Law* 2, no. 2 (December 15, 2020): 100–114, <https://journals.ums.ac.id/index.php/jtl/article/view/11855>.

⁴ Dian Latifiani, "Human Attitude and Technology: Analyzing a Legal Culture on Electronic Court System in Indonesia (Case of Religious Court)," *Journal of Indonesian Legal Studies* 6, no. 1 (May 31, 2021): 157–184, <https://journal.unnes.ac.id/sju/index.php/jils/article/view/44450>.

⁵ Supriyadi Supriyadi and Forbis Ahamed, "The Legal Culture in The Distribution of Heritage Property Among The Muslim Community in Karas Kepoh Village, Pancur District, Rembang, Central Java," *AL-'ADALAH* 18, no. 1 (October 28, 2021): 77–96, <http://ejournal.radenintan.ac.id/index.php/adalah/article/view/5422>.

⁶ Agus Riwanto, "Construction of Legal Culture Model For Corruption Prevention Through Social Media in Indonesia," *Jurnal Hukum dan Peradilan* 11, no. 3 (December 1, 2022): 385, <https://jurnalhukumdanperadilan.org/index.php/jurnalhukumperadilan/article/view/640>.

Legal System

The legal system consists of more than just rules, regulations, orders, and prohibitions. There are rules within the legal system that govern the rules. There are procedural rules and rules that distinguish rules from non-rules.⁷ Legal system is a system in which rules and norms govern human behavior or actions, both orally and in written form. For example, when someone makes a mistake, commits an immoral act, or intentionally violates the norms, he deserves sanction in accordance with the applicable rules. Therefore, Indonesia must have an equitable, appropriate and balanced or applies legal system to all of its citizen.⁸

In Indonesia, the legal system is based on Pancasila and 1945 Constitution, and it strives for justice for all of its citizens. Indonesia's legal system recognizes the existence of legal pluralism, Islamic law, and customary law that cannot found in other countries' legal systems.⁹ Indonesian legal system is divided into three parts, such as customary legal system, Islamic legal system, and western legal system. Customary law is a legal system is the oldest legal system based on the norms of local customary community. The Islamic legal system is a legal device based on primary Islamic sources, called Qur'an and Hadith.¹⁰

RESEARCH METHODOLOGY

This research is normative juridical research that provides a qualitative analysis of discussed material by analyzing theories, legal principles, and law.¹¹ A normative research initiates a search for legal materials for making legal decisions on legal cases. Normative legal research examines the law as an object and excludes any non-legal material from the scope of the study. Normative legal research is a study of documents that employs a qualitative method in data analysis and relies on secondary data sources such as regulations, court decisions, books, legal theories, and doctrines. This research examines the legal system in Indonesia through the law and several regulations in Indonesia. The main data in this research is the law and legislation in Indonesia, with the secondary data the main problem and obstacles in implementing the legal system in Indonesia

⁷ Siti Zuliyah, "Comparison of Indonesian and Malaysian Legal Systems in Rules, Traditions, and Community Behavior," *Journal of Transcendental Law* 3, no. 1 (October 14, 2021): 15–29, <https://journals.ums.ac.id/index.php/jtl/article/view/15169>.

⁸ Ramadhani Puji Astutik and Anita Trisiana, "Formation of Indonesia's National Law System," *Jurnal Hukum Prasada* 7, no. 2 (2020).

⁹ Nur Rohim Yunus, Fitriyani Zein, and Amrizal Siagian, "Civil Law System in Indonesia and Its Comparison with Other Legal Systems," *SALAM: Jurnal Sosial dan Budaya Syar-i* 9, no. 5 (June 19, 2022): 1629–1650, <https://journal.uinjkt.ac.id/index.php/salam/article/view/26168>.

¹⁰ Yeni Salma Barlinti, "Inheritance Legal System In Indonesia: A Legal Justice For People," *Indonesia Law Review* 3, no. 1 (April 30, 2013), <https://scholarhub.ui.ac.id/ilrev/vol3/iss1/3>.

¹¹ Fairus Nur Fitriana and Herma Setiasih, "The Enforcement of Wanprestasi on Debt Recognition in Debt Agreements A Case Study of District Court Decision No. 9/Pdt.G.S/2021/Pn.Srl," *YURIS (Journal of Court and Justice)* 1, no. 4 (2022).

RESULT AND DISCUSSION

Legal System in Indonesia

Legal system in the rule of law is very important in law development and its enforcement since the legal system is an integral part of the legal culture. Therefore, in the research of legal scholarship, the system is often referred to as the determinant of legal supremacy growth and development. According to Lawrence Meir Freidman, there are three elements of the legal system, such as legal structure, legal substance, and legal culture.¹² The legal structure is the framework or a part that has a boundary to the whole system. When contextualized in Indonesian law, the legal structure includes the structure of law enforcement institutions such as police, judiciary, prosecutors and so on. Meanwhile, the substance of the law is the rules, norms, and real human behaviour in the system. It also means the products are regulated by people who are in the legal system, including the issued decisions and drafted rules. The substance also includes of living law and not just the rules contained in law books. Then, the last element of legal system is legal culture that simply defined as human attitudes towards law and the legal system, beliefs, values, thoughts and expectations.

Based on the description above, the Indonesian legal system needs to be improved in dealing with the problem complexity that must be resolved as soon as possible. The government and all Indonesian citizens should reform the legal system inclusively. It is important to remember that legal reform cannot be separated from political issues. Legal reform requires a force that has authoritative authority, vision, and high dedication to democracy. Thus, the law development must be handled politically. This is not an exaggeration considering that law is a product of politics; although politics must be subject to law ideally, then the political interests in power or those who have authority will determine whether an old legal system will be replaced or maintained.

Because of these assumptions, the political configuration will influence the legal product's character. An authoritarian political structure will certainly produce orthodox or conservative legal products. A democratic political configuration, on the other hand, will produce responsive or autonomous legal products. Then, the citizen should support the democratic processes and democratic forces that have the vision and commitment to establish a democratic rule of law. Legal reform is an absolute necessity, especially when citizens believe that democracy is the face of Indonesia's future since legal certainty will strengthen democracy, guaranteeing the rights and obligations of citizens, as well as controlling government activities.

¹² Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *Jurnal Yuridis* 4, no. 2 (2017): 148–163.

The law is an important factor in implementing good governance. The deficiencies or weaknesses in the legal system will greatly affect the government's performance which will not implement well in a weak legal system. Therefore, strengthening the legal system or legal reform is an absolute necessity for the realization of good governance. Meanwhile, the position and role of law in Indonesia are still in its lowest point, because law is currently considered as a commodity than a justice enforcement institution. This fact causes distrust and disobedience to the law by society.

Legal Culture in Indonesia

Repressive law is the polar opposite of responsive law. Responsive law is a legal product that reflects a sense of justice based on public expectation and was created with a role and participation from society when regulating it. The outcomes will be responsive to the interests of all elements, both in the community and in law enforcement. The outcomes of these legal products serve the interests of both the people and their rulers. The concept of checks and balances will always evolve in response to the dynamics of people's lives.

The repressive law, which is a legal product reflects to political elite's social vision, government goal and positively instrumental that becomes a tools of implementing the state program's ideology. Repressive laws tend to emphasize the aspect of coercion in order to achieve specific goals.¹³ Conservative law, in contrast to responsive law, is more closed to the demands of groups and individuals in society. As previously stated, legal culture is one of the legal system components. The law should be discussed in terms of its structure, substance, and its culture. According to Satjipto Rahardjo, legal culture is originated with the term of demand or request, which was defined into legal culture. These demands are made by people who use legal services, called courts. Since it has the potential as a source of information to explain the legal system, legal culture required to be included in legal discussions. Sometimes, it is difficult to explain why the legal system cannot be properly implemented in accordance with its original pattern without engaging in a discussion of its legal culture.¹⁴

Among the 'depravity' of Indonesian legal culture is the lack of awareness from the law enforcers. Law enforcement officers, who are the pillars of law enforcement are suffering from the consciousness. When it comes to narcotics investigations, the police are rarely honest. According to the facts, the police are not making any progress in investigating the drug dealers that resulting in the widespread narcotics in Indonesia.

¹³ Agam Ibnu Asa, Misnal Munir, and Rr. Siti Murti Ningsih, "Nonet and Selznick's Responsive Law Concept in a Historical Philosophy Perspective," *Jurnal Crepido* 3, no. 2 (2021): 96–109.

¹⁴ Satjipto Raharjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2014).

Solutive Criticism of Legal Culture

The first step is to rebuild the legal higher education system. The public's current criticism of law faculty graduates who are "not ready-to-work" is centered on law offices' desire to accept graduates who can use "legal knowledge" in an analytical professional manner in the cases. This paradigm is concerning that legal higher education should graduate not only professional bachelor, but also graduates people who understand and comprehend the law. This phenomenon is based on several factors, such as:

- 1) The National Curriculum (Special) 1993 (Kep. Mendikbud 17/1993) required the existence of "legal skills" courses in the curriculum of all law faculties. The aims is preparing the better "job readiness" for all the bachelors (Compared with CLE-Clinical Legal Education which was used as a pilot project with Kep. Dikti No. 30/1983 at UNPAD).
- 2) A law bachelor who will use his knowledge in society must have "analytical skills". The inability to carefully analyze a legal case is a common complaint made against (new) law school graduates. The public's criticism of the "not ready-to-work" law faculty graduates is centered on the desire of law offices to accept graduates who are able to use "legal knowledge" in an analytical professional manner in the case(s) they faced.
- 3) A "law laboratory" has been proposed in law faculty organizations that has the responsibilities include: (a) organizing skills education (specifically and separately), (b) encouraging (lecturers) to use an applied approach by providing materials for lecturers and increasing lecturers' use of materials (cases, regulations; contract). The inclusion of Law Lab in law faculty's "organizational structure" is intended to facilitate the acquisition of funds and accountability (especially for state universities).

Second, instil moral values in law enforcement personnel. Law enforcement is an absolute necessity for restoring people's trust in the law. The reformation of the Supreme Court's 'people' by improving the system of recruitment (appointment), dismissal, supervision, and prosecution, which places more emphasis on transparency and public participation aspects. The improvements must be implemented by an Independent Judicial Commission comprised of former chief justices, legal practitioners, academics/legal scholars, and community leaders. The second is the Attorney General's reform. To restore the Attorney General's Office's current performance, particularly in handling Corruption, Collusion and Nepotism (KKN) cases and human rights violations, a fit and proper test on Attorney General and his assistants up to echelon II are required to ensure the personal integrity of the person concerned. In addition to overseeing the performance of the Attorney General's Office, an Independent Prosecutor's Supervisory Commission must be established.

The third step is to create a law-aware society, which begins with ourselves, our families, and society. The reality of chaotic and broken rules in traffic is a concrete example of a society that is still unaware of the law. *Angkot* drivers occasionally violate the rules under the guise of chasing deposits. Similarly, people who believe they have a position can break the rules because they believe there is "law above law", or people with money believe that they can buy the law. On the other hand, drivers are frequently irritated because they believe that many traffic signs are installed solely to trap "peace" on the road still appears to be occurring.

CONCLUSION

There are three elements of legal system, such as legal structure, legal substance, and legal culture. These three elements are interrelated and have positive implications for the creation of a responsive legal system. Based on the research result, Indonesian legal system is a repressive system because the three elements of the legal system show its equality.

Second, legal culture refers to values and its norms that exist in society. Also, legal culture should serve as a guide for law enforcement. The reality that occurs in Indonesian legal system, legal culture is frequently nonsexist in all of Indonesian legal behavior and actions, particularly for law enforcers, who should be the main pillar for good governance implementation. Based on the research result, the three things must be implemented to deconstruct our legal culture as the reconstruction of higher education in law, the instillation of moral values in law enforcers, and the restoration of legal awareness in our society.

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