

LEGAL CULTURE AND LAW ENFORCEMENT IN INDONESIA: A NORMATIVE JURIDICAL PERSPECTIVE

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ABSTRACT

Legal culture plays a very important role in law enforcement because the law is heavily influenced by the legal culture in the form of values, views, and attitudes within society. Therefore, legal culture and law enforcement are two interconnected elements. One of the problems currently faced by the Indonesian nation is the low legal culture among its citizens. This is clearly reflected in the situations that are currently prevalent in Indonesia. The method in this study is library research, which involves collecting data through scientific literature. The results of this study are as follows: First, legal culture is the overall attitude of citizens, which is general in nature, along with societal values that determine how the law should apply in society; Second, the characteristics of legal culture include public awareness of the importance of law as a foundation for just and orderly community life; Third, the application of legal culture is crucial in the context of international relations, as each country has a different legal system, and understanding and appreciating the legal culture of other countries will facilitate cooperation and relations between nations.

KEYWORDS *Legal Culture; Characteristics; Application*



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INTRODUCTION

Law is, in fact, very closely related to culture. Law itself is a cultural product because, ultimately, a legal product is a product created by humans (Adityo, 2023; Mahadewi, 2023; Nuswanto, 2023). In the study of law, legal structures, legal substance, and legal culture are well known. The law was created to have different characteristics from one region to another, according to the local culture. That is, culture shapes law. According to Prof. Satjipto Rahardjo (2004), the law is not a final scheme (*finite scheme*) but continues to evolve, changing according to the dynamics and development of the human era. This means that the law will continue to change according to the development of the times and the dynamics of human beings, which are born in different cultural processes (Nuswanto, 2021; Rohman & Harkrisnowo, 2022; Sudiarmaka, 2022; Windari, 2022).

F.C. von Savigny, in Smits, stated that cultural aspects play a role in setting the color of law in society. The argument is that each individual who shares the same background and frame of mind will have the same goals and ideals within a community (Adityo, 2021; Hosnah, 2021). This was agreed upon by Leon Duguit, a French academic, who stated that social solidarity will affect the functioning of the legal system. His argument was that the proper law is not formed by the law of the ruler, but by mutual sympathy and empathy reflected in social solidarity (Mahadewi, 2021; Nuswanto, 2020; Sudiarmaka, 2020).

Legal culture is a subsystem in the optimization of the national legal system in Indonesia, but legal culture is also known to have a high level of complexity. Another subsystem that

supports the optimization of the national legal system is the substance of the law and the legal structure. In short, legal substance is related to written law and legal norms, while legal structure is related to elements of law enforcement. Unlike legal culture, according to Friedman (1975), this subsystem is a pattern formed in society and directly reflects the legal system at work. Therefore, by observing the legal culture formed in society, one can identify the work of the legal system in a certain dimension. Legal culture contains all forms of information about the functioning of the legal system in society (Rohman & Harkrisnowo, 2020; Windari, 2020).

There are two possibilities related to the formation of legal culture. First, legal culture can be produced from the intersection of elements of legal structure with legal substance. Second, legal culture is born within its own society, which then forms a certain pattern of habits that create a pattern of legal structure and also form the arrangement of legal substance. Judging from the subjects that shape legal culture, Friedman distinguishes them into two categories. First, an external legal culture that involves the wider community in general, and second, an internal legal culture, which is a culture developed by law enforcement officials. These two types of legal cultures influence each other. If the external legal culture is healthy, then automatically the internal legal culture will adjust because law enforcement officials are essentially products of their own society.

Thus, legal culture plays a very important role in law enforcement, as the law is heavily determined by legal culture in the form of values, views, and attitudes from the community. Therefore, legal culture and law enforcement are two interconnected elements (Hosnah, 2020).

However, the fact is that one of the problems faced by the Indonesian nation today is the low legal culture of its citizens. This is clearly evident in the situations that are currently rampant in Indonesia. The incident that went viral in the mass media and social media about the burning of a technician to death after praying in a mosque and being accused of stealing a mosque amplifier is an example of how Indonesian people still prioritize emotions over intellect, let alone the authority of the law. There are still many examples of cases that have occurred in this republic, all of which happened because of the low legal culture of the community. Meanwhile, the recognition that Indonesia is a state of law can be seen in Article 1, paragraph 3 of the 1945 Constitution of the Republic of Indonesia.

Based on the problems described above, the author is interested in further researching this issue and conducting a study in the form of a journal titled "Legal Culture."

RESEARCH METHOD

This research is a normative juridical research or *library research*, which is a series of activities related to collecting library data, reading, recording, and processing research materials. Since this type of research is literature-based, the data obtained are in the form of books, recorded documents, articles, and other sources from the internet related to the problems raised by the author. This research uses an approach that analyzes the definition, characteristics, and application of legal culture, connecting the literature in accordance with the studies discussed, in order to gain a deep understanding of *legal culture*.

RESULT AND DISCUSSION

Definition of Legal Culture

The concept of *legal culture* was first initiated by Lawrence M. Friedman in (1969). According to Friedman (1975), *legal culture* is the overall attitude of citizens in general and values in society that will determine how the law should apply in society. These attitudes and values influence behavior related to the law and legal institutions, both positively and negatively. *Legal culture* plays a significant role in determining behavior in accepting or rejecting the law, as well as obeying or not obeying the law. According to Satjipto Rahardjo (Rahardjo, 2004), *legal culture* is in the form of values, traditions, and other spiritual forces that determine how the law is carried out in society. A nation can use a certain legal system, but whether or not it will be used in reality is another matter, and this is influenced by its *legal culture*.

According to Lili Rasjidi (2003), *legal culture* is defined as a legal tradition used to regulate the life of a legal community. In a simple legal society, people's lives are tightly bound by mechanical solidarity, equality of interests and consciousness, so that society is more like a big family. Therefore, the law tends to be in the form of unwritten rules. According to Hilman Hadikusuma (1986), *legal culture* is the general response of certain communities to legal phenomena. The response is a unity of views on legal values and behavior. Thus, *legal culture* shows the pattern of individual behavior as members of society, describing a common response (orientation) to the legal life lived by the community concerned.

Lawrence Friedman stated that *legal culture* factors are a determinant of whether a legal offer is meaningful or not for a person. According to him, the views and values followed by a society are social forces that directly or indirectly affect the mechanism of law as a whole. These values are the forces that move people to choose, or not choose, a rule and legal institution to serve their interests. The obstacle that may occur is the possibility that the community considers that the existing legal institutions and systems are not in accordance with the values and habits believed by the community.

The purpose of discussing *legal culture* is to recognize its basic characteristics (attributes), in order to examine the processes that continue, change, or align with development, since the nature of social controversy is not always fixed. Changes in *legal culture* do not only apply to modern societies but also to simple societies or rural communities, although the change does not always occur at the same speed, depending on the circumstances, time, and place.

Characteristics of Legal Culture

One of the characteristics of *legal culture* is public awareness of the importance of law as the foundation for a fair and orderly social life. *Legal culture* also reflects the level of public trust in the existing legal system. If people have high trust in the legal system, they are more likely to obey the law and respect legal decisions.

Legal culture is characterized by the existence of legal rules that are recognized and obeyed by the community. This shows that law is an important part of social life and the norms followed by individuals in society. Additionally, there are several characteristics of *legal culture* that are distinctive of a country's legal system.

1. Legality

The first characteristic of *legal culture* is legality. This refers to the principle that all actions of a person must be based on the applicable rule of law. In a developing legal system,

legality is the main foundation in carrying out daily life. The community is expected to obey the law and not violate the established rules.

2. Justice

The next characteristic of *legal culture* is justice. The principle of justice is the link that connects the law with society. The law must serve as a tool to ensure justice for every individual. This justice can be seen through the application of law that is objective, proportional, and impartial. In a good *legal culture*, everyone has the same rights before the law, and no one is excluded.

3. Legal Certainty

A strong *legal culture* is also characterized by legal certainty. This means that the rule of law must be clear, understandable, and predictable in its consequences. The community must have confidence that the law will be applied consistently and not arbitrarily. With legal certainty, legal actors can act in accordance with existing rules and avoid unwanted sanctions.

4. Legal Compliance

Another characteristic of *legal culture* is the rule of law. Legal regulation refers to the existence of consistent discipline and law enforcement. Law enforcement must be carried out firmly and fairly against violations that occur. In a good *legal culture*, there is no partiality towards certain parties, and every violation of the law must be responded to with appropriate sanctions.

5. Community Participation

A good *legal culture* is also characterized by the active participation of the community in the formation and application of laws. The public is expected to take an active role in the legislative process, both through participation in public discussions and through the election of people's representatives who represent their interests. Good community participation can create a legal system that is more accountable and responsive to the needs of the community.

6. Legal Education

Finally, a strong *legal culture* also requires good legal education. Legal education aims to increase public understanding of the law and the importance of complying with applicable rules. Through legal education, people can become more aware of their rights and obligations as well as the consequences of unlawful actions. Legal education can also create awareness of the importance of maintaining and strengthening *legal culture* in society.

Culture has characteristics, namely:

1. Culture is a product of humans. This means that culture is a human creation, not a creation of God. Humans are the actors of history and culture.
2. Culture is social. This means that culture is never produced individually but by humans collectively. Culture is a collective work, not an individual work.
3. Culture is passed on through the learning process. This means that culture is inherited from one generation to another through a learning process. Culture develops over time due to human learning ability. It can be seen here that culture is always historical, meaning a process that is always evolving.
4. Culture is symbolic. Because culture is an expression of human presence. As a human expression, culture is not the same as humans. Culture is called symbolic because it expresses human beings and all their efforts to realize themselves.

5. Culture is a system that fulfills various human needs. Unlike animals, humans meet all their needs in civilized ways, or in humane ways. Animals, for example, are unable to change food to make it taste good and delicious to eat. When an animal is hungry, it immediately consumes the raw materials that nature provides for it.

Meanwhile, humans must first process food ingredients from the fields they cultivate with certain techniques, so that the food is suitable for eating. Even when very hungry, humans can restrain themselves if food is not available at the dinner table. Anyway, the way humans meet their needs is different from the way animals meet their needs. The distinctive characteristics of *legal culture* include several aspects, namely:

- a. Laws are unwritten;
- b. Always consider and pay attention to the psychological condition of local community members;
- c. Always take into account the legal feelings, justice, and legal needs of the community;
- d. Formed and applied by the community where the law is to be enforced;
- e. The process of forming laws is more likely to become a habit.

Application of Legal Culture

In practice, *legal culture* can vary from country to country. Each country has a distinctive *legal culture* in accordance with the values, traditions, and beliefs that exist in its society. *Legal culture* can also change over time, especially with social, political, and economic changes in society.

In this era of globalization, the application of *legal culture* is also becoming increasingly important in the context of international relations. Each country has a different legal system, and understanding and respecting the *legal culture* of other countries will facilitate cooperation and relations between countries.

The *legal culture* of the Indonesian nation that upholds moral, religious, and cultural values is reflected in the precepts of *Pancasila* as an ideology that is ontologically, epistemologically, and axiologically rooted in noble values that are upheld and lived by the Indonesian nation. The new *Criminal Code Bill* should be formed in accordance with the *legal culture* based on *Pancasila* as a *legal culture* and ideology that is ontologically, epistemologically, and axiologically rooted in noble values that are upheld and lived by the Indonesian nation and must be based on the consideration of sociological jurisprudence thinking, namely good law should be in accordance with the law that lives in society. The community must also play a role in building a *legal culture* in the context of criminal law enforcement in Indonesia in the form of public awareness and compliance, both individually and within their respective social communities.

People seeking justice must avoid criminal practices such as corruption, collusion, nepotism, bribery, money laundering, and various other criminal acts. Law enforcement in Indonesia ultimately returns to the pattern of a *legal culture* that is built and chosen by the community, law enforcement officials, and the government.

Culture has a very big function in human life and society. Various forces must be faced by society, such as natural forces and other forces. Besides that, humans also need satisfaction in the form of spiritual and material needs. Therefore, human beings cannot be separated from

religion and culture. One part of culture is local wisdom, which includes all views or teachings of life, admonitions, proverbs, and traditional values that are alive and respected, practiced by the community, both those that have customary sanctions and those that do not.

Local wisdom that still exists and applies in the community is very strategic for realizing the desire to live in harmony and peace because local wisdom essentially teaches peace with others, the environment, and God. Conflict resolution using local wisdom instruments has been cultured in the community and is the right step. Local wisdom is something that has taken root and is usually not only profane-oriented but also sacred-oriented, so its implementation can be faster and more easily accepted by the community. Through this local custom, it is hoped that conflict resolution can be quickly realized, and customs are accepted by all groups so that there are no more latent conflicts hidden in society.

Among the local wisdom that has existed since ancient times and is still preserved today include: *Behudan Baakuran* (South Kalimantan), *Ethnic density* (West Sumatra), *muakhi* (Lampung), *setungku tiga batu* (Papua), *dalihan natolu* (Tapanuli, North Sumatra), *rumah betang* (Central Kalimantan), *menyama braya* (Bali), *mutual jot* and *mutual prohibition* (NTB), *siro yo ingsun, ingsun yo siro* (East Java), *alon-alon from kelakon* (Central Java and Yogyakarta), and *basusun betel* (Malay/Sumatra).

Lev (1990) said that because assumptions are constantly changing with society, the concept of *material culture* has a dynamic nature. The dynamics of *legal culture* are found in ideological views regarding politics, economics, and society, reflected in material legal behavior. Referring to Lev's opinion that culture is dynamic, it is necessary to examine the picture of *legal culture* in Indonesia from independence to the present.

1. Old Order Period

The character of *legal culture* during the Old Order period was greatly influenced by colonialism. The problem occurred with the transplantation of Western law into society through colonialism and modernization, including the transplantation of the concept of the *state of law* (*Rechtsstaat* or *Rule of Law*). Colonialism caused the transplantation of the concept of the *State of Law* into the legal system of the country it colonized. The transplantation process through such colonialism has occurred in Indonesia since the first time the concept of *Rechtsstaat* was contained in the *Regerings Reglement* (RR) 1854.

After independence, the two ideas of the *legal state* from the founders of the country experienced a contest that went hand in hand with the process of decolonization and modernization in Indonesia. After independence, the founders of the country did not abolish the colonial legal system that prevailed before independence. This is reflected in the provisions of Article II of the Transitional Rules, which states, "All existing state bodies and regulations are still in effect immediately, as long as no new ones have been held according to this constitution." This provision expressly enforces the colonial system until a new national legal system is formed. The implication is that the concept of the *state of law* during the colonial period was recognized as applicable in the Indonesian legal system after independence until the concept of a new *state of law* was formed.

2. New Order Period

During the New Order period, the idea of the *state of law* was formally revived in line with the spirit of "pure implementation of the 1945 Constitution." Although normatively, the

articles of the 1945 Constitution do not explicitly mention the *state of law*, in the authentic explanation of the 1945 Constitution, it is stated that "the Indonesian state is based on law (*rechtsstaat*), not based on mere power (*machtsstaat*)." Thus, the New Order restored the idea of a *State of Law* in accordance with the "Authentic Explanation of the 1945 Constitution."

During the New Order period, there was *TAP MPR Number II/MPR/1978* concerning Guidelines for the Appreciation and Practice of *Pancasila*. Through these Guidelines, the Indonesian nation can find values for Indonesia. The values were extracted into 36 to 45 items. A number of these value items were socialized with the aim of being lived and practiced by the entire Indonesian nation. The process of internalizing the points of *Pancasila* was carried out through various processes. Among them was through the program of the Guidelines for the Appreciation and Practice of *Pancasila* (abbreviated as *P4*) or *Eka Prasetya Pancakarsa*. This training was mandatory and used as a program for several institutions. This *P4* material was also given through orientation to new students during the orientation period at universities, teachers, lecturers, and high school students.

During the New Order period, through the policy of economic growth as commander, the executive institution controlled the judiciary. Both regimes strengthened executive power over the judiciary through the issuance of various laws.

Currently, there is a double-roofed-bilistis system. Judges, in the technical aspects of the judiciary, are under the Supreme Court. However, in organizational, administrative, and financial matters, judges are under the government bureaucracy, *cq* the Ministry of Justice. The executive power is so strong that it is difficult to distinguish whether a judge is serving the government or a political party in power. In practice, judges are more subservient to executives who determine their welfare and careers. In fact, the executive can use its political power to gain the loyalty of judges. At that time, judges were given the status of civil servants, whose mono-loyalty was directed to the government.

3. Reformation Period

The state power structure (*constitution*) has changed significantly after the 1945 Constitution of the Republic of Indonesia (*1945 Constitution of the Republic of Indonesia*) was amended four times, first in 1999 and then in 2000. As a result of these changes, some high state institutions have been eliminated or changed their functions, and some have emerged. This change is intended to support the principle of checks and balances.

The Reform Order that ended the New Order's rule was very significant in its influence on court reform in Indonesia in general. *Law Number 35 of 1999* is a milestone in the policy of unifying the one-roof system. The Supreme Court now takes care of all aspects by taking over all the affairs of judges that were previously in the hands of the executive. The transfer was carried out in stages for general, religious, military, and state administrative courts.

However, the purpose of unifying the roof to eliminate executive intervention still leaves an important job: the problem of the judicial mafia. The judicial reform that has been going on for 17 years has not brought significant changes to the integrity of judges and clerks. There are still cases such as judicial mafia, case arrangements, strange considerations, and official connections (Judicial Commission, 2017).

In this Reform Era, *Law No. 39 of 1999* concerning Human Rights was also enacted. This law reflects the spirit of reform after the collapse of the New Order, where during its collapse

there were various gross human rights violations. With the enactment of *Law Number 39 of 1999*, it is hoped that the mandate for the protection of human rights contained in the Constitution of the Republic of Indonesia can be guaranteed and implemented. The articles of the law are an extension of Articles 27, 28, and 29 of the Constitution of the Republic of Indonesia. In the reform era, there was a revival of legal cultural values from outside Java, which was historically rooted in the traditions of more egalitarian villages and only experienced the process of *Islamization*—without ever experiencing the process of *Indianization* like in Java and Bali. Therefore, after the reform, there are also signs of strengthening *Islamic law*, such as the enactment of *shari'ah* in Aceh, the *sharia economic* movement which has also become the jurisdiction of the Religious Court, and the movement to enforce *sharia* in various regions through the formation of *shari'a*-nuanced regional regulations.

The systems and values depicted in culture are the relationships between individuals within it. The strengthening of customary law and *Islamic law* shows that law in Indonesia is no longer dominated by meanings in the legal-formalistic Western tradition, but rather emphasizes mediation and flexible settlement models outside the court based on collectivistic Eastern cultural values. The out-of-court mediation settlement models have been adopted by the legal system in the West, so that basically such dispute resolution models integrate the Western legal system transplanted by the Dutch East Indies colonialists with a legal system rooted in the values of *legal culture* that live in Indonesian society.

The choice of dispute resolution by the community is greatly influenced by the *legal culture* of the community. Various considerations underlie people's choices of whether to go to court to resolve their disputes or legal cases, or choose a pattern of settlement outside the court. One of the things that underlies this choice is what is considered important by the community. In the United States, for example, in a society that is very pluralistic in nature, coming from various ethnic groups and socio-cultural strata, the settlement of state law by going to court is an option because of the assumption that the law of the state (and especially the court decision) is more definite, impartial to a certain group, and also written. In addition, social cohesion between community members is not very strong except in small towns, as stated by Macaulay. This will be different from what happens in Asian countries such as Japan. In the context of Japanese society, going to court to resolve legal cases is still considered taboo because it means that the result of the settlement is a condition of winning and losing. For the losing party, it will cause a loss of face. This aspect of losing and then embarrassment is greatly avoided by Japanese people who uphold honor and always try to respect the rights of others. For example, in the case of *Minamata*, where there was mercury pollution in the sea, marine products such as shellfish and fish were consumed by the community, causing health problems and disabilities. In this case, the community was initially reluctant to file a class action. Both in the New Order and Reform periods, a *legal culture* developed that encouraged a modern government organizational system. However, it was only during the Reform period that aspects such as good governance, information disclosure, and human rights protection became a concern. According to Bedner, this can be seen from the presence of the following instruments:

- a. *Ombudsman* (established March 10, 2000)
- b. *National Commission on Women's and Children's Rights (Komnas Perempuan)*, established on October 15, 1998, after the May 1998 riots

- c. The *Corruption Crimes Court (TIPIKOR Court)* established based on *Law Number 30 of 2002 concerning the Corruption Eradication Commission*. In particular, the basis for the presence of the *TIPIKOR Court* is contained in Articles 53 to 62 of *Law No. 30 of 2002*
- d. The *Corruption Eradication Commission (KPK)*, established on December 29, 2023.

CONCLUSION

Legal culture is a legal tradition used to regulate the life of a legal community. In a simple legal society, people's lives are tightly bound by mechanical solidarity, equality of interests and consciousness, so that society is more like a big family, and the law tends to be in the form of unwritten rules. The characteristic of *legal culture* is public awareness of the importance of law as a foundation for a fair and orderly social life. *Legal culture* also reflects the level of public trust in the existing legal system. If people have high trust in the legal system, they are more likely to obey the law and respect legal decisions. In this era of globalization, the application of *legal culture* is very important in the context of international relations. Each country has a different legal system, and understanding and respecting the *legal culture* of other countries will facilitate cooperation and relations between countries.

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