



THE IMPLICATIONS OF LEGAL CULTURE IN LAW ENFORCEMENT BY JUDGES ON JUSTICE PERSPECTIVE

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ABSTRACT

This study aims to examine the relationship between judges' legal culture and its implications for justice in law enforcement in Indonesia, judges' legal culture includes values, beliefs, norms and practices that influence judges' decision-making in the judicial process and the implications of this judges' legal culture can have a significant impact on justice in the justice system. This research uses normative legal research methods with a legislative approach and literature study, and uses descriptive analysis by applying the deductive method. Legal culture greatly influences the way judges think and their decision-making. Judges' legal culture refers to the norms, values, and views they espouse in carrying out their duties as law enforcers. This includes how they view the law, justice, and their moral duties as judges.

A. INTRODUCTION

The history of the development of legal science always reflects the different views that influence the legal system. One of the schools that has a major influence in the formation of the Indonesian legal system is legal positivism or analytical positivism, also known as *rechtsdogmatiek*.¹ It began to develop in the nineteenth century and contradicted the concept of naturalism that preceded it.² Legal naturalism emphasized that positive law should be derived from principles of reason drawn from Natural Law.³ The modern concept of law has positivism as its main approach, but it has to deal with the complexity of social problems that cannot always be addressed

1 Sigit Somadiyono, "Perbandingan Sejarah Positivisme Hukum Di Indonesia Sebagai Penentu Politik Hukum Dimasa Yang Akan Datang," *Legalitas: Jurnal Hukum* 12, No. 1 (June 25, 2020): 13

2 Pierluigi Chiassoni, *From Savigny to Linguistic Analysis: Legal Positivism through Bobbio's Eyes*, in (The Cambridge Companion to Legal Positivism: Cambridge University Press, 2021), 325–48

3 Veronica Rodriguez-Blanco and Pilar Zambrano, "One Myth of the Classical Natural Law Theory: Reflecting on the 'Thin' View of Legal Positivism," *Ratio Juris* 31, No. 1 (March 27, 2018): 9–32

in a black-and-white way based on legislation. Primarily, positivism believes that law is a closed logical system⁴.

When it comes to law, legal positivism is concerned with positive law which is a product of the legislative process and is considered concrete. This school rejects the existence of natural law because it considers it only abstract and cannot be measured concretely.⁵ When this school of positivism examines law as its object of study, it only sees it as a social symptom. Legal positivism tends to prioritize positive science. Similarly, in the view of legal positivism, positive law is the only recognized form of law. The school of legal positivism then gave rise to various schools such as analytical legal positivism, analytical jurisprudence, pragmatic positivism, and Kelsen's pure theory of law.⁶

However, critics of legal positivism have argued that a legal system cannot be completely closed. A system that is too closed will have difficulty adapting to changes in society.⁷ The legal system must also receive support from the wider society to survive. Therefore, the legal system must be open as it cannot be separated from the wider social system. Separating law from moral considerations, such as the sense of justice as viewed by positivism, is no longer considered relevant as the sense of justice is a reflection of values in society and is an important element in the application of codified law.⁸ This reflects Hart's critique of the views of Jhon Austin, who despite his adherence to positivism, recognized the importance of morals in the modern understanding of law.⁹

Moving on from the different views in the legal sciences, it becomes important to evaluate whether these differences also affect the implementation of the law in everyday life. Especially in terms of court decisions as the last guardian of the quest for justice, there is still criticism that expectations of the judiciary have not fully satisfied all parties.¹⁰ Criticism of judicial institutions is automatically directed at judges as the main party in the court process.

4 Novi Eka Saputri and Eny Kusdarini, "Kontribusi Sistem Hukum Eropa Kontinental Terhadap Pembangunan Sistem Hukum Nasional Di Indonesia," *Masalah-Masalah Hukum* 50, No. 4 (October 30, 2021): 363–72

5 Rodriguez-Blanco, Veronica, and Pilar Zambrano. "One Myth of the Classical Natural Law Theory: Reflecting on the 'Thin' View of Legal Positivism." *Ratio Juris* 31, No. 1 (March 27, 2018): 9–32

6 Arief Budiono et al., "Jhon Austin's Positivism Legal Policy: Convergence of Natural Law," *International Journal of Multicultural and Multireligious Understanding* 8, No. 9 (September 24, 2021): 401

7 Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, No. 2 (November 30, 2022): 289,

8 Giorgio Pino, "Positivism, Legal Validity, and the Separation of Law and Morals," *Ratio Juris* 27, No. 2 (June 19, 2014): 190–217,

9 Muhammad Rusydi, "Hukum Dan Moral: Mengulik Ulang Perdebatan Positivisme Hukum Dan Teori Hukum Kodrat H.L.A Hart & Amp; Lon F. Fuller," *Al Wasath Jurnal Ilmu Hukum* 2, No. 1 (April 21, 2021): 1–8

10 Ismail Rumadan, "Peran Lembaga Peradilan Sebagai Institusi Penegak Hukum Dalam Menegakkan Keadilan Bagi Terwujudnya Perdamaian," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, No. 1 (May 29, 2017): 69

The role of judges as a form of legal profession is often described as a dispenser of justice.¹¹ Therefore, judges are also considered a noble profession (*officium nobile*). Judges, as central figures in the judicial process, are always expected to hone moral sensitivity, maintain moral integrity, and improve professionalism in applying law and justice to the community. Especially in a position that is always faced with the statement "For the Sake of Justice Based on God Almighty".¹² The judge's freedom in deciding a case is an absolute right owned by the judge in accordance with Law Number 48 of 2009 concerning Judicial Power Article 5 paragraph (1).¹³

One of the criticisms directed at the judges is the frequent occurrence of decisions that are not in accordance with the substantial justice of the community due to the use of the positivism paradigm in handling cases.¹⁴ There are still many judges who in making decisions only follow a positivistic mindset that is strongly influenced by the perspectives of legalism, formalism, and dogmatism, where all decisions must be based on regulatory text alone.¹⁵ However, there is a defense of judges who view the principle of legality above all else, a concept inspired by Hans Kelsen's understanding of "justice based on law".¹⁶ According to him, justice in the context of legality is the absolutely consistent application of general rules to all cases that should be subject to those rules. This justice is concerned with how the law is applied, not just with the legal text itself. A person's actions are considered fair or unfair based on whether or not they conform to legal norms that are considered legitimate by those who judge them.¹⁷

Injustice often occurs in the judicial process in Indonesia. For example, an elderly woman from the lower middle class was convicted of theft for taking three cocoa pods, while her sentence was much lighter than those given to corrupt individuals who misappropriated large amounts of funds that did not belong to them.¹⁸ The shortcomings in Indonesia's legal

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- 11 Rosita Indrayati, "Revitalisasi Peran Hakim Sebagai Pelaku Kekuasaan Kehakiman Dalam Sistem Ketatanegaraan Indonesia," *Kertha Patrika* 38, No. 2 (August 1, 2016)
 - 12 Bahri Yamin, Ady Supryadi, and Fahrurrozi Fahrurrozi, "Mempertanyakan' Irah-Irah Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa Dalam Putusan Perkara Pidana," *Unizar Law Review* 5, No. 2 (November 16, 2022)
 - 13 Andi Suherman, "Implementasi Independensi Hakim Dalam Pelaksanaan Kekuasaan Kehakiman," *SIGn Jurnal Hukum* 1, no. 1 (September 27, 2019): 42–51
 - 14 Arnanda Yusliwidaka, Muhammad Ardhi Razaq Abqa, and Tri Agus Gunawan, "Measuring Positivism In Legal Science And Legal Practice In Indonesia," *Journal Of Law And Policy Transformation* 7, No. 2 (January 1, 2023): 75
 - 15 Pratiwi Suci Rosalin, "Kebebasan Hakim Dalam Memutus Perkara Tindak Pidana Perdagangan Orang Dikaitkan Dengan Paradigma Positivisme Hukum," *Jurnal Panji Keadilan: Jurnal Ilmiah Nasional Mahasiswa Hukum* 3, No. 2 (December 1, 2020),
 - 16 Mukhlisin Mukhlisin and Sarip Sarip, "Keadilan Dan Kepastian Hukum: Menyoal Konsep Keadilan Hukum Hans Kelsen Perspektif 'Al-'Adl' Dalam Al-Qur'an," *Media Keadilan: Jurnal Ilmu Hukum* 11, No. 1 (April 30, 2020): 55
 - 17 Muhtadi Muhtadi, "Penerapan Teori Hans Kelsen Dalam Tertib Hukum Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 5, No. 3 (March 26, 2014)
 - 18 Gaudensius Suhardi, "Nenek Minah Namamu Disebut," 2021, https://mediaindonesia.com/podiums/detail_podiums/2050-nenek-minah-namamu-disebut.

system may stem from its consistency in retaining Belanda colonial¹⁹ legal principles. This has resulted in a very positivistic approach to law in the Indonesian justice system.

Nonetheless, we should keep in mind that there are theoretical and practical alternatives suggested by authors such as Hart, who proposes a "middle ground" approach between formalism and realism.²⁰ This concept emphasizes the importance of treating each case accordingly, as there are certain aspects that need to be considered in each case. Hart states that treating the same case in a similar way and different cases differently is important because humans have similarities and differences in various aspects, and the relevant ones should be identified.²¹

In the context of this case, we can analyze whether the judges have fulfilled the principle of "treat like cases alike and different cases differently" to determine whether the elements of justice have been met in their decision.²² This can be seen in the application of different sentences for two defendants in the same case. Therefore, Judges in deciding cases must consider not only the law, but also the norms prevailing in society. This becomes a key aspect in achieving justice in the judicial process. In complex cases, as described in the Grandma Minah case, judges' discretion is needed to overcome the conflict between law and morality, as proposed by Hart.²³

In a legal culture, individual behaviors reflect similar responses to their legal life experiences.²⁴ The influence of legal culture plays a significant role in a judge's thinking and decision-making process. Judges' legal culture refers to the norms, values and views they hold in carrying out their role as law enforcers. This includes their views on the law, their concept of justice, and their moral responsibilities as judges.²⁵ Most judges in Indonesia have received a very positivistic legal education, which is emphasized in their legal education system. This results in a more formalistic attitude towards the law, where the text of legal regulations is considered as the only guide to be followed in the decision-making process. As a result, some judges have a tendency to prioritize strict interpretation of legal texts in rendering

19 Bhavani Raman, "Law and Identity in Colonial South Asia," *Law & Social Inquiry* 42, no. 04 (December 27, 2017): 1210–14

20 Paul Troop, "Why Legal Formalism Is Not a Stupid Thing," *Ratio Juris* 31, No. 4 (December 19, 2018): 428–43

21 Tom Campbell, "Rewriting Hart's Postscript: Thoughts on the Development of Legal Positivism," *Problema. Anuario de Filosofía y Teoría Del Derecho* 1, No. 5 (January 1, 2011),

22 Edward S.W. Ti, "Justice as Fairness: A Rawlsian Perspective in Compensating Regulatory Land Takings," *Journal of Property, Planning and Environmental Law* 14, No. 2/3 (October 27, 2022): 45–60

23 Muhammad Rusydi, "Hukum Dan Moral: Mengulik Ulang Perdebatan Positivisme Hukum Dan Teori Hukum Kodrat H.L.A Hart & Amp; Lon F. Fuller," *Al Wasath Jurnal Ilmu Hukum* 2, No. 1 (April 21, 2021): 1–8

24 Prima Angkupi, "Rekonstruksi Penegakan Hukum Lingkungan Hidup Melalui Pendekatan Religius," *Jurnal Pemikiran Islam* 19, No. 02 (2014)

25 Abdul Kholiq, "Kajian Budaya Hukum Progresif Terhadap Hakim Dalam Penegakan Hukum Pada Mafia Peradilan (Judicial Corruption) Di Indonesia," *Justisi Jurnal Ilmu Hukum* 2, No. 1 (December 10, 2018).

decisions.²⁶ However, judges' legal culture views also indicate the extent of their understanding of the importance of incorporating moral and justice aspects in decision-making. Especially when they are faced with complex or "hard cases" involving conflicts between positive law and moral values in society, judges' legal culture may influence whether they are willing to consider social values and justice in making decisions. For judges who are more open to the influence of legal culture, they may be more inclined to render decisions that take into account aspects of substantial justice and morality in society.²⁷

The legal culture of judges is an important theme to study, given that it is clear that the legal culture of judges plays an important role in determining the quality of justice in Indonesia. The quality of justice in the courts depends to a large extent on the extent to which the legal culture of judges enables decision-making that is in accordance with the sense of substantial justice and moral values in society.

The Study aimed to examine the relationship between judges' legal culture and its implications for justice in law enforcement in Indonesia, judges' legal culture includes values, beliefs, norms and practices that influence judges' decision-making in the judicial process and the implications of this judges' legal culture can have a significant impact on justice in the justice system

B. RESEARCH METHODS

This research applies qualitative research methods, specifically using normative juridical research methods. The normative juridical approach in legal research is based on analyzing various literature sources or other secondary sources to identify concepts, theories, principles, and laws and regulations relevant to the research topic. The data in this research is obtained through literature studies as well as various secondary sources such as laws and regulations, literature reviews, journal articles, books, websites, and other sources of information relevant to the issues discussed.

C. RESULTS AND DISCUSSION

1. The Judges and Public Justice

Law does not work in a vacuum as it must reflect the social values, attitudes and behaviors of society. Societal values and norms influence the law, both directly and indirectly. Law tries to shape and control values, attitudes and behavior patterns so that they flow in the right channels. Law supports the social system and can change the situation and social relations of society through its formal processes. However, sometimes the law, which should be a tool and a goal in society, nation and state, is paralyzed by repressive power and policies

26 Muhammad Rusydi, "Hukum Dan Moral: Mengulik Ulang Perdebatan Positivisme Hukum Dan Teori Hukum Kodrat H.L.A Hart & Amp; Lon F. Fuller," *Al Wasath Jurnal Ilmu Hukum* 2, No. 1 (April 21, 2021): 1–8

27 Faiqah Nur Azizah, Nur Kholifah, and Athari Farhani, "Penguatan Etika Profesi Hakim Dalam Mewujudkan Penegakan Hukum," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 10, No. 2 (May 4, 2023): 661–82

that do not reflect social values. As a result, the existing law becomes repressive and serves the interests of the ruler. Under these conditions, the hope of realizing a just and prosperous society through law is limited.²⁸

Law and justice should be intertwined. Although a definition of justice is difficult to find, and formulations of justice are tentative, understandings of justice are influenced by the environment, customs, norms and ideologies of society. In this context, there is difficulty in formulating justice, so some legal positivists leave the formulation of justice to lawmakers based on their own sense of justice.²⁹ Law must be able to realize justice in society. For that, the law must be formulated fairly. Unfair laws are not considered laws, because how can law enforcement realize justice if the rule of law itself is unfair. Law and justice are described as two sides of a coin that cannot be separated. Law aims to realize justice, and justice cannot be realized without law. However, sometimes in an effort to seek justice, justice seekers must go through unfair procedures, so the law is considered terrible by the community. The rule of law only becomes a sign without meaning if the rule of law only becomes a deceptive and disappointing language game.³⁰

The issue of law and justice arises when law becomes a state matter. There is a polarization between the state and its laws and society and its justice. In this context, the question arises whether law has replaced justice. There is a complex relationship between law and justice. Law is the answer to human needs as a free individual, but remains relevant in the next stage of human development.³¹

The interests and welfare of society and citizens are the highest law. This means that the law should not be subject to power or rulers.³² Even in doubtful situations, the weak should not be sacrificed, although the general purpose of the law must still be upheld. This principle emphasizes the need for a creative balance between the interests of the weak and those of society as a whole. Justice as the goal of law no longer means that everyone must be treated equally, but the principle of "equally before the law" is applied by taking into account the interests of each component of society as a form of legal justice.³³

28 Laurensius Arliman. S, "Mewujudkan Penegakan Hukum Yang Baik Di Negara Hukum Indonesia," *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 11, No. 1 (November 19, 2019): 1–20

29 Al. Andang L. Binawan, "Empat Problematik Filosofis Hukum Dalam Dinamika Hubungan Keadilan Dan Kepastian," *Masalah-Masalah Hukum* 51, No. 3 (July 30, 2022): 314–24

30 Cucuk Endratno, "Refleksi Filsafat Hukum: Telaah Sintesa Keadilan," *Yustitiabelen* 8, No. 2 (August 19, 2022): 97–117

31 Tody Sasmitha Jiwa Utama, "'Hukum Yang Hidup' Dalam Rancangan Kitab Undang-Undang Hukum Pidana (Kuhp): Antara Akomodasi Dan Negasi," *Masalah-Masalah Hukum* 49, No. 1 (January 31, 2020): 14

32 Shandi Patria Airlangga, "Hakikat Penguasa Dalam Negara Hukum Demokratis," *Cepalo* 3, No. 1 (September 17, 2019): 1

33 Jeremias Lemek, *Mencari Keadilan: Pandangan Kritis Terhadap Penegakan Hukum Di Indonesia* (Jakarta: Galang Press, 2007).

The sociological legal justice model, as expressed by B. Arief Sidharta, leads to the achievement of the values of justice and benefit simultaneously, which is then followed by legal certainty.³⁴ These two values become the goal in the search process (context of discovery), while legal certainty becomes the goal in its application (context of justification). Justice intervention in law with this approach becomes important while maintaining a balance for the interests of lawbreakers, victims of law violations, society, and the state, so that law can enhance human dignity.

The issue of justice is a complex issue and always arises in every problem in society. Roscoe Pound, a legal sociology thinker, stated that justice is not only a juridical issue, but also a social issue of concern in the sociology of law.³⁵ Pound distinguished between legal justice and social justice. According to Soerjono Soekanto, justice is the harmony of relationships between people in society and between people and their society, which is in accordance with the morals prevailing in society.³⁶ This is known as sociological justice, which is justice based on customs, culture, patterns of behavior, and human relations in society.

Legal justice for society is not only formal-procedural, but also substantive. Substantive justice is based on public morality and human values, and is able to provide satisfaction and happiness for the community. This is in contrast to formal-procedural justice which is only quantitative and based on rigid rules, which are far from morality and human values.³⁷ However, each judge has different backgrounds, experiences, beliefs and legal approaches, which can influence how they perceive justice. Judges' views on justice are influenced by various factors, including their personal values, legal views and philosophical approaches. Some judges tend to view justice substantively, i.e. they are concerned with fair outcomes and consider social needs and justice in making decisions. Whereas other judges may be more inclined to a formalistic view, which emphasizes legal principles and compliance with applicable rules. In addition, the influence of culture, religion and social norms can also influence a judge's view of justice.³⁸

Judges' views on justice are an important factor that influences the decisions they make. However, this view may vary from judge to judge depending on their interpretation of the law, their personal values and their view of the principles of justice. In this context, each judge

34 B. Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum Indonesia. Sebuah Penelitian Tentang Fundasi Kefilsafatan Dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia* (Bandung: Mandar Maju, 2009).

35 Stanford M. Lyman, "Toward A Renewed Sociological Jurisprudence: From Roscoe Pound to Herbert Blumer and Beyond," *Symbolic Interaction* 25, No. 2 (May 22, 2002): 149–74,

36 Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: PT Raja Grafindo Persada, 2011).

37 Angkupi, Prima. "Rekonstruksi Penegakan Hukum Lingkungan Hidup Melalui Pendekatan Religius," *Jurnal Pemikiran Islam* 19, No. 02 (2014).

38 Muhammad Shofwan Taufiq and M. Fahrudin, "The Hermeneutics of Islamic Law in Reviewing Changes to the Minimum Age for Marriage," *Muhammadiyah Law Review* 7, No. 2 (August 7, 2023): 1, <https://doi.org/10.24127/mlr.v7i2.2765>.

has a unique background and understanding of justice. They may have different approaches to handling cases, especially when dealing with complex or controversial cases. Judges' views on justice are influenced by their understanding of the applicable legal norms, the principles underpinning the judiciary, and their ethical considerations.³⁹

In each case, judges will use their legal knowledge and objective judgment to achieve what they believe to be justice in accordance with applicable principles of law and justice. However, as judges' views on justice can vary, it is important for parties involved in litigation to understand the role and attitude of the judge who will decide the case.

2. The Construction of Judges' Legal Culture

a. Judge Interpretation, Law and the Law

According to the definition in the Black Law Dictionary, a judge is a public official appointed or elected to hear and decide legal matters in court. "Jurist as a public official appointed or elected to hear decide legal matters in court or judges is often used interchangeably with court."⁴⁰ Along with the development and complexity of law, it is inevitable that there will be a group of individuals who have knowledge in law (Rechtskundige). They become a resource that can be utilized in the case of disputes, and their role is not only limited to the litigation arena, but also in legal studies, where they will study the accumulated wisdom of the law.⁴¹

Judges have an important role as part of the legal profession to exercise judicial power. The duties of judges include the application of the scope and responsibilities that have been regulated in legislation. The presence of judges is not intended to disrupt the system of legislation and legal codification with decisions that may be considered arbitrary and outside of proper juridical considerations.⁴² Judges are authorized by the state to carry out their duties and obligations in order to achieve the dynamics of law enforcement, namely justice and benefit, not just ensuring legal certainty. However, the authority given to judges in carrying out law enforcement functions through the judiciary does not mean they can act freely and violate legal principles and norms. The honor and nobility of a judge is reflected in the results of his or her thoughts that can have a positive influence on the development of national law. Conversely, if a judge only fulfills professional demands without

39 Muhammad Syamsudin, "Pemaknaan Hakim Tentang Korupsi Dan Implikasinya Pada Putusan: Kajian Perspektif Hermeneutika Hukum," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 22, No. 3 (February 22, 2012): 489

40 Henry Campbell Black, "Black's Law Dictionary," *Virginia Law Review* 20, No. 4 (February 1934): 493

41 Winarno Yudho and Heri Tjandrasari, "Efektivitas Hukum Dalam Masyarakat," *Jurnal Hukum & Pembangunan* 17, No. 1 (June 14, 2017): 57

42 Ismail Rumadan, "Peran Lembaga Peradilan Sebagai Institusi Penegak Hukum Dalam Menegakkan Keadilan Bagi Terwujudnya Perdamaian," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, No. 1 (May 29, 2017): 69

paying attention to aspects of justice, his honor and glory can also be tainted.⁴³

The conduct of judicial proceedings in the courts today reflects the confusion among law enforcers regarding the priority between upholding the law and dispensing justice.⁴⁴ The main effort in handling cases is not to uphold the law and justice, but to win the case. This change in orientation emphasizes pragmatic rationality that obscures ethical values in law enforcement and justice, with deviations related to juridical conceptual issues. The legal positivism paradigm that is the basis of modern law formation tends to prioritize the function of laws and regulations, with an attachment to the formalism and procedures of laws and regulations and a lack of exploration of substantial values in law.⁴⁵ This phenomenon has recently led to sharp criticism of the characteristics of modern law, especially related to how to get out of formalism that has no clear direction and how to unite the principle of legal legality with morality.

The judiciary should play a broader social role by encouraging the courts to address legal issues in society rather than simply applying laws that emphasize legal certainty. The understanding of law as a text of applied legislation is often based on a structured deductive logic that follows a methodological syllogism. However, this approach can imprison moral ethical values in the context of deductive-logical logic. As a result, when a judge gives a legal decision, it is often simply the result of deduction from a statutory text applied to a concrete situation. In such a framework, the consideration of whether the decision is fair or unfair becomes relative, as the legal argumentation used by the judge is more focused on creating legal certainty and ignores the moral values of justice present in the case.⁴⁶

Based on the above explanation of how judges construct legal arguments in decision-making, there is a strong potential for the emergence of judicial mafia (judicial corruption) and it can even develop quickly in practice. The legal arguments constructed by judges often appear to be legally valid and can be accounted for without flaws in their final decision products. So far, corrections to decisions have only occurred internally within the vertical structure, such as through appeals by the High Court and Cassation and Judicial Review (PK) by the Supreme Court. These conclusive legal

43 Rosita Indrayati, "Revitalisasi Peran Hakim Sebagai Pelaku Kekuasaan Kehakiman Dalam Sistem Ketatanegaraan Indonesia," *Kertha Patrika* 38, No. 2 (August 1, 2016)

44 Maria Delastrada Rina Kolin, "Penegakan Hukum Yang Lemah Dan Reformasi Sistem Peradilan Di Indonesia," 2018,

45 Arnanda Yusliwidaka, Muhammad Ardhi Razaq Abqa, and Tri Agus Gunawan, "Measuring Positivism In Legal Science And Legal Practice In Indonesia," *Journal Of Law And Policy Transformation* 7, No. 2 (January 1, 2023): 75

46 Miftahul Qodri, "Benang Merah' Penalaran Hukum, Argumentasi Hukum Dan Penegakan Hukum," *Jurnal Hukum Progresif* 7, No. 2 (October 31, 2019): 182

decisions are often carefully crafted, making it difficult for them to be examined or corrected externally by the public to whom they are directed.⁴⁷

Sudikno Mertokusumo explained that the duties of judges are not only limited to giving decisions, but also include the implementation of these decisions. The judge's task in adjudicating a case is divided into three stages, namely: (a) constatirizing, namely recognizing or confirming that a legal event occurred and was submitted by parties seeking justice to the trial process; (b) qualifying, namely assessing events that are considered to have occurred and determining the related legal relationship; (c) constituting, namely providing decisions based on the law in accordance with statutory provisions and providing justice to the litigants.⁴⁸ The author argues that this explanation may vary depending on the perspective used. However, overall, the paper provides a clear picture of the roles and responsibilities of judges in the judicial process, and emphasizes the importance of judges performing their duties accurately and fairly.

The judge in the trial process has a leadership role, which gives him or her the right to manage the proceedings and take action when there is disorder in the courtroom. To make a decision, the judge has the right and obligation to gather information from all parties, especially witnesses and defendants, including their legal counsel. Judges, who are the leaders in the trial process, must be aware of their responsibilities in applying the law to achieve justice. The judge's decision is not merely to determine the punishment, but must also always be directed towards realizing justice based on the principle of God Almighty. This is part of the judge's responsibility as the determinant of the case.⁴⁹ However, in reality, judges' decisions often cause controversy. Sometimes, perpetrators of criminal offenses who violate the same article can receive heavy or light sentences, and even be acquitted. This shows that there are disparities in judges' decisions that often hurt people's sense of justice. Judges tend to decide based strictly on the text of the law, which is procedural and positivistic, without considering the community's sense of justice. Such decisions often spark debate in the community and reduce trust in the justice system.⁵⁰

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- 47 Slamet Haryadi and Nurlaili Husna. *Judicial Corruption: A Paradox of the Criminal Justice System in the Law Enforcement on Corruption Crime in Indonesia* (Bandar Lampung, Lampung: Proceedings of the 2nd International Conference on Fundamental Rights, I-Coffees, 2021)
- 48 Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Cahaya Atma Pustaka, 2013).
- 49 Rosita Indrayati, "Revitalisasi Peran Hakim Sebagai Pelaku Kekuasaan Kehakiman Dalam Sistem Ketatanegaraan Indonesia," *Kertha Patrika* 38, No. 2 (August 1, 2016)
- 50 Sajipto Rahardjo, *Membedah Hukum Progresi* (Jakarta: Kompas, 2006).

b. The Freedom of Judges

In the discourse of judicial power in Indonesia, the term "freedom" is often associated with an independent judiciary and the role of judges as the main pillar of judicial power. Although the concept of judges' freedom is a principle stipulated in the constitution, its implementation often leads to various interpretations, both from a personal and social perspective. Some argue that the freedom of judges is not absolute, given that the duty of judges is to uphold law and justice based on the values of Pancasila.⁵¹ Therefore, the freedom of judges must be balanced with responsibility, so it should not be an excuse to act arbitrarily.

In an academic context, analysis of the freedom of judges can be traced from various laws, including the 1945 Constitution, the Law on the Principles of Judicial Power, and the Supreme Court, which has undergone several amendments. For example, Article 32 paragraph (5) of Law No. 14 of 1986 on the Supreme Court does not provide a more detailed and technical explanation of "freedom of judges". Therefore, it is important to consider the context of the principle of independence of judicial power in interpreting and understanding the principle of judges' independence. Judges, as part of the subsystem of the judiciary, are organizationally responsible for exercising judicial power. Therefore, the freedom of judges must always be within the limits of the independence of the judicial power institution, as stipulated in Article 3 of Law No. 48/2009 on Judicial Power which emphasizes that judges must maintain judicial independence in carrying out their duties and functions.⁵²

From a philosophical perspective, it is important to realize that the decision taken by a judge or panel of judges, although initially an individual or collective decision, undergoes a transformation when the judge's gavel is tapped as a sign of decision. At that point, the judge's decision must be considered as the result of a court institution that has an institutional nature. The decision has authority and far-reaching impact in society. With the public announcement of the decision, the judge's decision becomes an integral part of the judiciary, closely linked to the legal system, and affects the rights and obligations of the individuals involved in the case.⁵³

Judicial power is regulated in Article 24 of the 1945 Constitution by stipulating that judicial power is exercised by a Supreme Court and other judicial bodies in accordance with applicable laws. The definition of judicial power indicates that it is

51 Farida Sekti Pahlevi, "Revitalisasi Pancasila Dalam Penegakan Hukum Yang Berkeadilan Di Indonesia," *Justicia Islamica* 13, No. 2 (December 31, 2016): 173,

52 Andi Suherman, "Implementasi Independensi Hakim Dalam Pelaksanaan Kekuasaan Kehakiman," *SIGn Jurnal Hukum* 1, no. 1 (September 27, 2019): 42–51

53 Ucuk Agiyanto, "Penegakan Hukum Di Indonesia : Eksplorasi Konsep Keadilan Berdimensi Ketuhanan," No. 4 (2018): 493–503,

an independent state power that aims to run the judicial system to uphold law and justice, based on Pancasila, to realize the rule of law of the Republic of Indonesia.⁵⁴ When we talk about the freedom of judges, this indicates that judges in carrying out their duties are not bound by anything and are not under pressure from any party, but still act according to their own will. However, it is important to emphasize that such freedom should not be interpreted as a right to act arbitrarily. Rather, judges remain bound by the law and must be subordinate to it. This concept of judicial independence is an essential requirement in a rule of law, which requires that there be no interference or intervention from the executive and legislative powers in the judicial function.⁵⁵

The importance of a free and impartial judiciary is one of the main characteristics of the rule of law. The concept of "freedom and impartial judiciary" is a universal criterion that emphasizes the need for courts to be free from interference or intervention, and to maintain neutrality in all actions and attitudes.⁵⁶ In this context, judges must continue to make decisions based on the law, while maintaining their independence. The protection of the independence of the judiciary is an important characteristic of countries that adopt Anglo-Saxon and continental European legal systems, which base the enforcement of the rule of law as a key principle.⁵⁷

The characteristics of the Indonesian rule of law based on the principles of the Rule of Law, as explained by Oemar Seno Adji and Indriyanto, involve three main components:⁵⁸

- 1) Recognition and Protection of Human Rights: The Indonesian rule of law recognizes and protects human rights that include the principle of equality in various aspects of life, including political, legal, social, economic, cultural, and educational.
- 2) Legality: The principle of legality demands compliance with the law in all its forms. This includes the obligation to act in accordance with applicable laws and to refrain from arbitrary action or abuse of power.
- 3) Freedom of the Impartial Judiciary: Judicial independence is an important principle in a rule of law. It refers to the protection of the judiciary from extra-judicial interference and the influence of other powers. This principle emphasizes the need for an

54 Andi Suherman, "Implementasi Independensi Hakim Dalam Pelaksanaan Kekuasaan Kehakiman," *SIGN Jurnal Hukum* 1, No. 1 (September 27, 2019): 42–51

55 Henrey Arianto, "Peranan Hakim Dalam Upaya Penegakan Hukum Di Indonesia," *Lex Jurnalica* 9, No. 3 (2012): 151–63.

56 Fozia Shaheen and Mamoona Khalid, "Judicial Independence and Impartiality of Judiciary: A Comparative Study," *International Journal of Social Sciences and Humanities Invention* 5, No. 2 (February 28, 2018): 4383–86

57 Novi Eka Saputri and Eny Kusdarini, "Kontribusi Sistem Hukum Eropa Kontinental Terhadap Pembangunan Sistem Hukum Nasional Di Indonesia," *Masalah-Masalah Hukum* 50, No. 4 (October 30, 2021): 363–72

58 Oemar Seno Adji and Indriyanto Seno Adji, *Peradilan Bebas Dan Contempt of Court* (Jakarta: Diadit Media, 2007).

independent, fair and neutral judicial system.

These three principles are fundamental pillars in maintaining the integrity and credibility of Indonesia's rule of law, as well as ensuring the protection of individual rights and justice in its legal system.

The use of the terms "freedom of judges" or judicial independence in national discourse indicates extra-judicial interference. The concept of "freedom of the judiciary" or "independence of the judiciary" is characteristic of countries that adhere to the principle of the rule of law, regardless of the political system, such as liberal, neoliberal or socialist. This principle emphasizes the importance of free and impartial courts as a feature of democratic states that respect the principle of the rule of law.⁵⁹

Furthermore, the independence of judicial power can be defined in four forms, according to H. Franken as cited by Adonara:⁶⁰

- 1) Constitutional Independence (*Constitutionele Onafhankelijkheid*), relating to the separation of powers, whereby the judiciary must be free from political influence.
- 2) Functional Independence (*Zakelijke of Functionele Onafhankelijkheid*), relates to the independence of judges in carrying out their duties and the ability of judges to interpret the law with freedom when the rule of law is unclear.
- 3) Personal Independence of Judges (*Persoonlijke of Rechtspositionele Onafhankelijkheid*), relates to the individual freedom of judges in carrying out their duties.
- 4) Practical Independence (*Praktische of Feitelijke Onafhankelijkheid*), relates to practical independence in running an impartial judiciary and being able to make decisions based on the law without external influence.

These four forms of independence are important principles that must be maintained in maintaining the integrity and autonomy of a country's judiciary. This is necessary to ensure that the judicial system can operate effectively, fairly, and independently, so as to provide confidence to the public in the justice of the law.

Pancasila, as a fundamental value that embodies abstract, general and universal principles, plays an important role in determining the limits and measures of judges' responsibilities and freedoms in carrying out their duties. In the context of the Indonesian judicial system, Pancasila acts as a guideline that directs the independent state power in running the judicial system to

59 *Ibid*

60 Firman Floranta Adonara, "Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi Principles of Freedom of Justice in Decidene The Case as a Constitutional Mandate," *Jurnal Konstitusi* 12, No. 1 (2015): 1–20.

uphold law and justice. Pancasila reflects philosophical values that can be applied in various aspects of life, including in the field of law. These values provide a moral and ethical basis for judges' actions in carrying out their duties. In terms of judges' freedom, Pancasila indicates that such freedom must be realized within the limits and measures that are in accordance with the moral and ethical values held by Pancasila.⁶¹

However, there are different understandings of judges' independence. Some judges may understand judicial independence as unlimited freedom that can lead to arbitrariness. However, in the context of Pancasila, the freedom of judges should not be interpreted as a freedom that means freedom to act as one's heart desires or without obligation. Rather, the freedom of judges in the context of Pancasila must be understood as a freedom that is realized within moral and ethical boundaries that include the values of Pancasila. The freedom of judges must be related to efforts to uphold law and justice based on the principles of Pancasila.⁶²

Although law and morals are different in nature, they are closely related, as law is actually an integral part of the moral demands that humans face in their daily lives. Law often reflects ethical values, where the process of law formation is based on the principle of moral freedom. Law can be thought of as a set of requirements that ensure that individual actions conform to the general moral norms that govern freedom. In this context, law can be interpreted as the result of human moral views. The relationship between law and morals is very close, as abstract differences in moral norms do not always appear separately in real life. Therefore, judges are expected to assess and decide cases by considering moral principles, so that the decisions taken are based on correct and healthy morals. If judges ignore the moral aspect in deciding cases, then the results can be false or produce false justice.

D. CONCLUSION

In carrying out their duties, judges play a key role in the Indonesian judicial system. They are expected to perform their duties fairly, objectively, and in accordance with the applicable law. However, as discussed in this article, the legal culture that exists among judges can have a significant impact on fairness in law enforcement in Indonesia. Judges' legal culture, which includes the attitudes, values and practices held by judges, is an important factor shaping how legal decisions are produced and applied. This legal culture may reflect personal preferences, ideological leanings, or even social pressures that may influence judges' decisions. While most judges in

61 Erfandi Erfandi, "Implementasi Nilai-Nilai Pancasila Dalam Pembangunan Sistem Hukum Pidana Di Indonesia," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 1, no. 1 (June 26, 2016): 23–32

62 Adonara, "Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi Principles of Freedom of Justice in Decidene The Case as a Constitutional Mandate." *Jurnal Konstitusi* 12, No. 1 (2015): 1–20

Indonesia strive to perform their duties fairly and in accordance with the law, a negative or unfavorable legal culture can affect the integrity and fairness of the justice system. In a broader context, an understanding of how judges' legal culture can affect justice is key to ensuring that Indonesia's justice system can provide equal and fair legal protection for all citizens.

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