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The Dynamics of Law Enforcement in Indonesia: According to Donald Black's Legal Discrimination Theory

Dwi Rahmawati[a*], Hikmatul Abibah[b]

[a,] Faculty of Law, Universitas Jenderal Soedirman, Purwokerto, Indonesia.
[b,] Faculty of Economics and Politics, Jiangxi University Finance and Economics, Nanchang, China.
: dwi18.rahma@gmail.com
Corresponding Author*

Abstract

Introduction: *This article analyzes the justice crisis of several cases of law enforcement due to legal stratification Donald Black`s Teheory and explains integrative steps to overcome the problem of law enforcement discrimination in Indonesia.*
Purposes of the Research: *This research identifies the dynamics of law enforcement due to the existance of legal stratification Donald Black and factors that legal discrimination.*
Methods of the Research: *Normative research method that conducts library research through varios library materials such as books, academic articles, and official reports related to the object under study.*
Results Main Findings of the Research: *Law enforcement discrimination in Indonesia often occurs based on social stratification. The rich have better access to litigation and are more likely to win legal cases, while the poor have difficulty obtaining justice. This reflects bias within the legal system, which has the potential to hinder the creation of social order and justice. To overcome discrimination in law enforcement must prioritize improvements in three main parts: legal substance, legal structure, and legal culture. These three parts must run synergistically, because weaknesses in one part will weaken the legal system as a whole. Pancasila as the basis of the state must be the main guideline in law formation and enforcement. To achieve a legal unbiased system in Indonesia, a commitmen is needed from lawmakers and law enforcement officials. With a balance between substance, structure, and legal culture, a fair and effective legal system can be achieved.*

Keywords: Discrimination; Law Enforcement; Legal Stratification.

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INTRODUCTION

Indonesia is a state of law that is ideally able to overcome the ambitions of individuals and groups that can harm the representation of the majority of the community in the implementation of government policies. The jurisdiction is carried out for a government based on legal principles and the constitution, with implementation that follows legal principles, equality before the law, and respect for the basis of human rights. The system of government is required to meet the needs of the majority of the people without discrimination based on origin, religion, or social strata. All individuals are treated equally before the laws of the

country.[1] Gustaf Radbruch emphasized that there are three ideas of the essence of law, namely justice, utility, and legal certainty. Justice is a fundamental aspect of the three elements. However, this does not mean that the other two things should be ignored outright. An effective law is a law that can integrate all three things, namely the welfare and prosperity of the community. Radbruch stated that the expected justice is justice in the narrow sense, that is, equality of authority for each individual before the law. Utility reflects the substance of the law that is in line with the direction that the law wants to be realized, while legal certainty is interpreted as a situation in which the law plays a similar role to the rules that must be obeyed.[2]

The essence and substance of law enforcement is justice, namely justice for each individual. Law enforcers, especially judges, are obliged to consider the mandate in every rule, namely justice that is always awaited by the litigants and the public. Prof. Satjipto Rahardjo stated, "There is no law that is permanent, because the law is a conclusive trigger, even though it is mandatory to adapt to life that is constantly changing. "The laws that are bound by the formulation are always lagging behind the transformation that exists in society, which should be able to be controlled.[3] On the contrary, the law in Indonesia today tends to favor power that is exercised according to the will of individuals or groups who claim to be the holders of power. The state of power is solely inclined to the will of individuals, individuals, or minority groups that claim to be the upper class. The management of its government is carried out by individuals who claim to be in power, so they do not serve the people, but take advantage of the interests of the people for their own benefit.[4] Prof. Satjipto Raharjo argued, "Whatever is carried out in the law, it cannot even forget the human perspective as an important part of the law. Because the law was created for humans, not the other way around. Therefore, every human legal process must occupy a fundamental position, including providing opportunities for individuals to participate in the rule-making process.[5]

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[1] N Qamar et al., *Negara Hukum Atau Negara Kekuasaan (Rechtsstaat or Machtstaat)* (Social Politic Genius (SIGn), 2018), https://books.google.co.id/books?id=3DWdDwAAQBAJ.

[2] Siti Halilah and Mhd Fakhrurrahman Arif, "Asas Kepastian Hukum Menurut Para Ahli," *Siyasah: Jurnal Hukum Tata Negara* 4, no. II (2021).

[3] Yohanes Suhardin, "Fenomena Mengabaikan Keadilan Dalam Penegakan Hukum," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 21, no. 2 (2009): 341–54.

[4] Qamar et al., *Negara Hukum Atau Negara Kekuasaan (Rechtsstaat or Machtstaat)*.

[5] Satjipto Sajipto Rahardjo, *Sisi-Sisi Lain Dari Hukum Di Indonesia* (Jakarta: Kompas, 2003). p. 6-10

Today, Indonesia is experiencing a crisis of law enforcement. This condition takes place due to the fact that only prioritizes the direction of formal legality over justice. The legal principle of justice no longer reflects the real reality, because a law and regulation should be applied fairly, but in practice there is injustice.[6] In line with that, the enforcement of the legal system in Indonesia also triggers several problems. An example of this problem is the thought in society to always achieve victory by all means. The community will use various methods to avoid punishment for criminal acts that have been committed. The method that is often adopted by the community is through the use of material resources and the application of power. The presence of less credible law enforcement officials tends to make it easier for people to take bribes to achieve the desired victory. The next issue relates to the use of materials in the context of law enforcement. Money can alleviate the punishment imposed on individuals. During the legal process, law enforcement officials who have received bribes will treat the community very well.[7]

Donald Black, author of The Behavior of Law, reveals that "This concept brings with it an uncertain component resulting in legal inequality." Stratification is the perpendicular perspective of social life, or any incomparable division of resources, such as food, land, air, and money. Morphology, in this context, refers to the horizontal aspect including the distribution of work with each other, incorporation and proximity. Furthermore, it refers to the symbolic part, such as religion, decoration and folklore. Furthermore, the organization is part of the entity for collective action. Finally, social supervision refers to the normative part of community life, namely deviant actions and answers to them. A kind of abstinence, accusations, condemnation, and indemnification.[8] Black stated that legal changes are influenced by various aspects, one of which is legal stratification. Stratification refers to the perpendicular dimension of people's lives and is present when the distribution of wealth and levels is uneven. The poor are less likely to mobilize the law. Classification by gender, race, age and income is also related

[6] Nurindria Naharista Vidyapramatya, "Hilangnya Keadilan Dalam Penegakan Hukum Menurut," *Jurnal Pascasarjana Hukum UNS* VIII, no. 2 (2020): 141–55.

[7] Putri Cahya Sufiyah, "Penegakan Hukum Di Indonesia Untuk Si Kaya Dan Si Miskin," *Dinamika Hukum & Masyarakat* 3, no. 2 (2020).

[8] Roy Marthen Moonti, "Diskriminasi Hukum Dalam Pemberantasan Korupsi Politik," *Jurnal Hukum Bisnis Dan Investasi* 11, no. November (2019): 114–31.

to the concept of stratification. Women of color, young and poor tend to be less respected in the eyes of the law than men, whites, adults and the wealthy. Thus, social stratification is a vertical segmentation of society. Black's theory introduced the term "vertical distance" of society due to wealth disparities, directing "Laws immediately change with stratification". Vertical distance between people from different social backgrounds. It is measured by the difference in average wealth, between each person or group and also by the difference between the lowest and the highest among them, or the weight point of distribution. There is little or no social stratification among the tribes, and what the leader or chief says is the law. But the more the society is stratified, the more laws, and in the modern era, the role of tribal chiefs as a source of law is slowly eroding. So, the more stratification of a society occurs, the more laws it has.[9] The problem of discrimination that takes place in social life is very vulnerable considering that Indonesia is the cause of clashes, among others, in law enforcement in Indonesia. The legal decision handed down in the tin corruption case that shocked the public, involved actress Sandra Dewi's husband, Harvey Moeis, who was sentenced to six years and six months in prison and was required to pay compensation of 210 Million Rupiah. Prosecutor asks panel of judges to sentence Harvey to 12 years in prison.[10] The verdict has become a significant public concern. The problem involving Harvey Moeis, Sandra Dewi's husband, resulted in financial and ecological losses to the state of 300 trillion rupiah.[11]

The second case, the Suharto Case, which lasted for almost 10 years, is an example of legal discrimination. The law of the former ruler of the new order is in a state of status quo. "From a criminal point of view, Mr. Harto's legal status is still unresolved." According to Denny Indrayana, a legal expert from Universitas Gadjah Mada, "the Suharto case is a powerful representation of legal discrimination. The problem has been left unsolved for the past ten years.[12] The third case is the acquittal handed down by the Surabaya District Court against Gregorius Ronald Tannur on the issue of presumption of presumption of premature murder of Sera. The trial for the settlement of the presumption of Dini Sera's murder involving Ronald's detention was held at the Surabaya District Court. The panel of judges who tried the case was

[9] Donald Black, *The Behaviour Of Law* (Jakarta: Emerald Publishing Limited, 2010).
[10] Dian Rahma Fika Dinda Shabrina, "Harvey Moeis: Vonis Ringan Yang Mengecewakan Dan Tanpa Keadilan," *Tempo.Com*, 2024.
[11] CNN Indonesia, "Rusaknya Kepercayaan Publik Di Balik Vonis Ringan Harvey Moeis Dkk," *CNN NEWS*, 2024.
[12] Detik News, "Kasus Soeharto Contoh Nyata Diskriminasi Hukum," *Detikknews.Com*, 2008.

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led by Erintuan Damanik. The court stated that Ronald Tannur was not proven to have carried out the murder as the prosecutor suspected. The judge removed Ronald from the murder charge and sentenced him to twelve years of imprisonment and compensation of 263.6 million rupiah, in lieu of 6 months of imprisonment that was revoked by the prosecutor. [13] On the contrary, it is inversely proportional to the concept of justice of the sentence handed down to Asiani's grandmother for 1 year imprisonment for 15 months probation. On the other hand, he was fined IDR 500 million in lieu of 1 day in prison.[14] Seeing the verdict further strengthens the stigma that there is discrimination in Indonesia for the bourgeoisie and not. The number of legal cases in Indonesia involving poor groups as victims of criminalization by more powerful parties. However, all parties are trying to put the problem aside. The poor are criminalized, while the dominant group has the ambition to criminalize, but the state does not provide protection. The occurrence of legal discrimination in Indonesia is caused by a lack of firmness in the law and law enforcement officials. As a result, it allows individuals with economic authority and capabilities to seek to "pay" legal immunity in order to avoid sanctions. On the other hand, individuals who do not have supremacy and material, cannot protect themselves and must accept the consequences of legal interference. The presence of the assumption that "the law is blunt upwards and sharp downwards" is indeed valid.[15] This article will outline the dynamics of law enforcement in Indonesia according to Donald Black's legal discrimination theory, as well as how to implement integrative strategies to overcome discrimination against law enforcement in Indonesia. This aims to find out the extent of the injustice of law enforcement in Indonesia according to Donald Black's theory of legal discrimination and identify integrative steps that must be taken so that law enforcement in Indonesia is more oriented towards justice for all levels of society in Indonesia without exception.

METHODS OF THE RESEARCH

This paper uses a normative legal research method, namely literature observation carried out by analyzing literary causes that intersect with the theme being analyzed. Because the focus

[13] Haris Fadil, "Kontroversi Vonis Bebas Ronald Tannur Kini Hakim Ditangkap Kejagung," *Detik News*, 2024.
[14] Helmi Firdaus, "Nenek Asiani Dinyatakan Bersalah," *CNN News*, April 2015.
[15] Vidyapramatya, "Hilangnya Keadilan Dalam Penegakan Hukum Menurut."

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of the research is based on the ambiguity of norms, it requires a relevant legislative approach and case approach. The method applied in this study involves the topic of legal norms, which is carried out through the process of identifying legal rules, legal basis, and legal dogma that will be used in response to legal events. Normative research is a legal approach that embeds secondary data, including laws and regulations, court decisions, and the ideas of renowned legal experts.[16] Secondary data analysis is implemented in a qualitative normative way that is qualitative juridical. Ronny Hanitijo stated that "Data analysis in a Qualitative Juridical way is a means of observation that creates descriptive data." Analysis, which is delivered from the respondents in a written or oral way as well as the behavior that is researched and studied as a unit without using mathematical formulas.[17] This research uses an analytical descriptive method, which aims to explain or define the object being studied through data or examples that have been collected, accompanied by analysis and drawing conclusions. The object description aims to obtain a comprehensive and systematic description of the problem being studied, where the analysis is carried out in response to the problem.[18]

RESULTS AND DISCUSSION

A. The Dynamics of Law Enforcement in Indonesia According to Donald Black's Legal Discrimination Theory

Law for society is a crucial aspect to create order and harmony. As a country based on the law, law enforcement must always be prioritized. Law enforcement in various aspects, the existence of the law is always necessary. The law exists to anticipate the resolution and prevention of various problems and obstacles that may arise in society related to rights and obligations, as well as other regulations.[19] Law enforcement aims to strengthen compliance and interpretation of the law in the community. This situation is done by establishing the roles, obligations and agreements of organizations that enforce the law in accordance with the

[16] Ahmad Rosidi, M Zainuddin, and Ismi Arifiana, "Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research)," *Journal Law and Government* 2, no. 1 (2024): 46–58.

[17] Agus Pranata Sinaga, Anggreini Atmei Lubis, and Riswan Munthe, "Tinjauan Yuridis Permufakatan Jahat Penyalahgunaan Narkotika Berdasarkan Undang-Undang No : 35 Tahun 2009 Tentang Narkotika (Studi Putusan Nomor : 423/Pid/2018/PN. Mdn)," *JUNCTO: Jurnal Ilmiah Hukum* 1, no. 1 (2019): 10–18, https://doi.org/10.31289/juncto.v1i1.190.

[18] Jawade Hafidz Arsyad, "Perlindungan Hukum Korban Kekerasan Berbasis Gender Online (KBGO) Dalam Hukum Positif Indonesia," *Jurnal Cakrawala Informasi* 2, no. 2 (2022): 26–41, https://doi.org/10.54066/jci.v2i2.241.

[19] Alvin, Surya Sadewa, and Dkk Penerbit, "Dinamika Perkembangan Hukum Di Indonesia," 2022.

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principles of individual coverage. The development of society related to the law is influenced by the law enforcement model. Modern society is more logical with specialization and higher differentiation. The regulation of law enforcement officials has also become better and bureaucratic. Structured analysis on law enforcement and justice theory will run well if the five legal pillars function optimally, namely: legal instruments, law enforcement officials, people who understand the rule of law, legal culture, and infrastructure that can hinder the application of the law.[20] The State of the Republic of Indonesia must guarantee protection against discriminatory treatment of similar rights in accordance with the law enshrined in Article 28 I Paragraph (2) of the Constitution of the Republic of Indonesia of 1945. However, in practice, there are many discriminatory acts, especially for vulnerable groups, small groups, and marginalized groups of people. Various measures to reject discrimination and sustainable structured actions continue to be implemented. In principle, the community urges to provide guarantees of legal protection and provide the right to escape discriminatory treatment.[21]

Law enforcement is not just about snatching vertical lines, which is solved through lawmaking. The implementation is like an automatic instrument, therefore it looks simple and easy. Many law enforcement problems result from the participation of individuals in the mechanism. The point of view of individual participation is based on Black's opinion, known as legal mobilization. The mechanism by which the law acquires the legal authority. Without individual mobilization or intervention, the law will not be present as a result of which the law only wants to be useful like an empty symbol. [22]

The law tends to develop first in the city before spreading to the interior, where tradition and deliberation-based justice are still dominant. Black threatens the phenomenon of "law up" and "law down," in which the law is quick to respond to crimes committed by individuals who commit low fraud against individuals who commit high fraud, but slow in cases the opposite. This problem contradicts the principle of "equality before the law" which is supposed to

[20] Santoyo, "Penegakan Hukum Di Indonesia," *Jurnal Dinamika Hukum* 8, no. 3 (2008): 199–204.

[21] Hesti Armiwulan, "Diskriminasi Rasial Dan Etnis Sebagai Persoalan Hukum Dan Hak Asasi Manusia," *Masalah-Masalah Hukum* 44, no. 4 (2015): 493, https://doi.org/10.14710/mmh.44.4.2015.493-502.

[22] Agus Raharjo and Angkasa Angkasa, "Profesionalisme Polisi Dalam Penegakan Hukum," *Jurnal Dinamika Hukum* 11, no. 3 (2011): 389–401.

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guarantee justice for all parties. However, in practice, the law is often influenced by socioeconomic factors, resulting in inequality that many people complain about. Therefore, as a case goes through various stages of legal process, such as complaints, arrests, summonses, or lawsuits, stratification can undergo changes. Underprivileged individuals may be prosecuted on serious charges by more financially capable law enforcement officials. [23]

Lower ranks have a small number of laws compared to high ranks, and the lower the rank, the fewer laws there are. Among them, financially disadvantaged individuals have fewer laws. They tend to avoid legal paths in their interactions with each other. As a result, if they do, the results are less than satisfactory. If individuals with low economic status commit crimes against individuals with low economic status, this is considered less serious than if both are from the wealthy. If a low-economic individual kills or injures another low-economic person in a vehicle accident, the likelihood of a lawsuit is likely to be lower. Then the life or limb of the injured body also receives a lesser peace. Movement can arise from the upper level to the lower level, and on the other hand, from the lower level to the upper level.[24] In the case of a crime that occurred, for example, a victim who was above the perpetrator in his rank was more likely to call the police than a victim whose social status was lower than the perpetrator. In aggregate, more calls to the police were related to crime upwards than downward crimes. For example, the controversial case involving actresses Nikita Mirzani and dr. Reza Gladys because the police have decided the actress as a suspect for extortion of dr. Reza Gladys. It is known that this case started from a story post on Instagram which allegedly contained continuous reproach and slander from Nikita to dr. Reza Gladys about skincare products. Initially, dr. Reza did not respond, but decided to take the legal route. Her lawyer, Julianus, revealed that dr. Reza Gladys complained about Nikita to the Police on December Three, 2024. This matter has been followed up, until Nikita is named as a suspect.[25]

However, in the determination of actress Nikita Mirzani as a suspect, it was considered strange because it happened so quickly. Attorney dr. Reza Gladys spoke up and emphasized

[23] Donald Black, *The Behaviour Of Law*.
[24] Donald Black.
[25] Zaky Al-Yaman Siska Permata Sari, "Kronologi Kasus Nikita Mirzani Jadi Tersangka, Berawal Dari Live TikTok," *Viva.Com*, 2025.

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that he did not bribe police investigators. "News circulated that our client made a payment so that the case could be handled quickly. The police are reviewing the imprisonment of Nikita Mirzani in connection with the extortion case against dr. Reza Gladys. Dr. Reza Gladys' report on Nikita Mirzani and his employees was prepared on December 3, 2024. Furthermore, during the event, they received information about the Notice of Investigation Commencement on December Thirty. The mechanism of the case title lasts for one month. The process has been in accordance with the applicable legal provisions. During this month, the summoning of parties involved in the investigation process is completely commonplace," concluded Julianus.[26] Law enforcement officials who handle Dr. Reza's case tend to move faster. This further strengthens Donald Black's theory that the law is often influenced by socioeconomic factors, resulting in inequality in law enforcement that is widely complained about by the public.[27]

As a rule of law, wealthier perpetrators can directly buy cases for their own benefit in one way or another. Similarly, legal cases occur in societies where it is easy to hire lawyers, and a lawyer representing wealthier clients is more likely to have a better chance of winning. As an example of the case that befell Busrin, a 48-year-old poor farmer from Probolinggo was sentenced to two years of imprisonment and compensation of two billion. As a result of cutting down mangrove trees that will be used as firewood. Busrin was arrested by officers of the Probolinggo Police Water Unit in the mangrove forest of Pesisir village, on July 16, 2014. The man who had not completed his basic education cut down mangrove trees that would be used as firewood to keep his kitchen functioning. Busrin was proven to have violated Article 35 letters e, f, and g of Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands in conjunction with Article 73. The penalty for violating this article is imprisonment for a maximum of two years and a maximum of ten years of imprisonment. The compensation is at least two billion and the compensation is not even ten billion. The Probolinggo District Court further sentenced him to 2 years of imprisonment and compensation of Rp 2 billion in lieu of 1 month.[28]

[26] Dian Maharan Melvina Tionardus, "Nikita Mirzani Tersangka, Reza Gladys Bantah Sogok Polisi," *Kompas.Com*, 2025.
[27] Donald Black, *The Behaviour Of Law*.
[28] Kompas, "Si Miskin Dibui 2 Tahun, Si Kaya Perusak Lingkungan Hanya Digugat Perdata," *Kompas.Com*, November 2014.

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The difference between ranks, or vertical distance can predict and explain the quantity of law, is considered serious violations by the lower strata of society against the strata of the upper class due to the difference in wealth between the parties to the dispute. Meanwhile, the seriousness of violations by the upper strata of society against the lower class is not considered serious. Due to this distance. The richer a thief is, the less serious his theft is.[29] This is very clearly seen, in the legal case that befell Busrin. Another incident experienced by Busrin was another law enforcement imposed on PT SI and PT SPI. The company has been exploiting coastal areas in Simpang Pesak Village, Bangka Belitung province since the 2000s. These parties made protected forests into sand, clay and building land mining areas. The soil was taken and dredged to a depth of 7 to 13 meters. Then it was taken using a large truck. After being excavated, the former excavation was abandoned. The impact of heavy mining has caused the landscape in protected forests to be severely destroyed. As a result of the actions committed by PT SI and PT SPI, the Minister of Environment sued these parties in a civil court for thirty-two billion. On February 3, 2010, the North Jakarta District Court granted all the demands of the Minister of Environment and Forestry. The verdict handed down was supported by the High Court. Another Busrin, also PT SI and PT SPI, although these parties have dredged, dug and damaged hundreds of hectares of land, but the law enforcement officials did not criminalize the related companies.[30] In the majority of the community, property can be paid as compensation in lieu of punishment or as compensation in lieu of heavier punishments. A wealthier perpetrator can be punished less severely, even when he has to face the death penalty, and he is less likely to be tortured or reproached on the day of his execution. Based on the strata of the offender, rich people will easily complain about everything. The richer the people, the more they are aware of their laws, and the more successful they are in litigation. [31]

The first case occurred on May 10, 2020, when the Corruption Eradication Commission issued an arrest warrant for Samin Tan and included his name on the Wanted Persons List. Then the case was continued after his arrest on April 5, 2021. However, what is alarming is that

[29] Donald Black, *The Behaviour Of Law*.
[30] Kompas, "Si Miskin Dibui 2 Tahun, Si Kaya Perusak Lingkungan Hanya Digugat Perdata."
[31] Donald Black, *The Behaviour Of Law*.

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after law enforcement officials began to observe, review and weigh all these aspects in the sentence, the Supreme Court actually gave an independent verdict. Samin Tan is suspected of handing over money in the amount of Five Billion to the former Deputy Chairman of Commission VII of the House of Representatives of the Republic of Indonesia regarding the mechanism for terminating the coal mining agreement (Batu Mining Concession Agreement) owned by Samin Tan, but instead of imposing heavy sanctions, the panel of judges actually considered Samin Tan as a victim of extortion.[32] The second case also reaped controversy related to the legal decision handed down in the tin corruption case that shocked the public, involving actress Sandra Dewi's husband, Harvey Moeis, who was sentenced to six years and six months in prison and required to pay compensation of 210 billion Rupiah. The confinement sentence was considered to be light almost half compared to the prosecutor's indictment. Prosecutors ask panel of judges to sentence Harvey to 12 years in prison. [33] The verdict has become a significant public concern. The legal event that dragged Harvey Moeis, resulted in financial and ecological losses of 300 Trillion Rupiah.[34]

The third case, the Soeharto Case, which lasted for almost 10 years, is an example of legal discrimination. The law of the former ruler of the New Order is in a state of status quo. "From a criminal point of view, Mr. Harto's legal status is still unresolved." Denny Indrayana, a legal expert from Gadjah Mada University, stated that the case involving Suharto was a representation that had a great influence on legal discrimination. The case has been left unsolved for decades. Indonesia Corruption Watch has published a study on the trend of corruption throughout 2023. Based on 2023 data, there were 791 corruption cases by 1,695 suspects. Acts of corruption have shown a consistent increase over the past 5 years. In 2023, there will be a significant increase compared to previous years. There were 791 corruption cases and 1,695 individuals convicted as suspects, in the last four years, the corruption rate showed an increase in 2019 there were 271 cases by 580 suspects, in 2020 there were 444 cases by 875 suspects, in 2021 there were 533 cases by 1,173 suspects, and in 2022 there were 579 cases by

[32] Indonesia Corruption Watch, "Putusan Bebas Samin Tan: Tumpulnya Penegakan Hukum Kasus Korupsi," *Indonesia Corruption Watch.Com*, 2022.
[33] Dinda Shabrina, "Harvey Moeis: Vonis Ringan Yang Mengecewakan Dan Tanpa Keadilan."
[34] Indonesia, "Rusaknya Kepercayaan Publik Di Balik Vonis Ringan Harvey Moeis Dkk."

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1,396 suspects.[35] The court's decision against corruption perpetrators so far is also considered weak. In addition to being caused by the non-optimal nature of the general court to process corruption cases. The Corruption Court is considered weak because it provides low punishments for perpetrators. The Indonesia Corruption Watch (ICW) report entitled "The Future of Corruption Eradication is Worrisome", explained according to Chief Justice of the Supreme Court Harifin A Tumpa, emphasizing that the commitment to eradicating corruption in the judiciary has still not succeeded in carrying out a meaningful transformation. The courts have always served as a haven for corrupt individuals. The phenomenon of the general court that does not support the overcoming of acts of corruption and injustice against the lower class implies that the institution of the court is the hope to realize justice.[36]

In contrast to the case experienced by the defendant in the wood theft incident involving Perhutani Situbondo, East Java Province. Asiani's grandmother was found guilty by the Situbondo District Court. Asiani's grandmother was sentenced to 1 year of confinement with a probation period of 15 months. On the other hand, he was ordered to pay compensation of 500 million rupiah in lieu of one day of confinement. The verdict decided by this judge was only slightly lower than that of the prosecutor. Previously, the prosecutor demanded a one-year confinement sentence with a probation period of eighteen months, and compensation of 500 million rupiah which can be replaced by 1 day of confinement.[37]

A similar case was also experienced by Grandma Minah, aged 55, that her act of stealing three cocoa fruits at the PT Rumpun Sari Antan plantation could result in her becoming a defendant in the courtroom. He was sentenced to 1 month and 15 days of confinement, with a probation period of 3 months. Initially, Minah harvested soybeans on her cultivated land in Sidoarjo Village. The land cultivated by Minah also happens to be managed by PT RSA to grow cocoa. While harvesting soybeans, Minah's twilight eyes intersect with three ripe cocoa. Minah immediately rushed to take it to be used as seeds on her farm. Then, the cocoa is not stored, but just put under the cocoa tree. Then, the foreman from PT RSA appeared. The foreman then

[35] Ria Rizky dan Yaumal Rizki, "Angka Korupsi Meningkat Pada 5 Tahun Terakhir, ICW Ungkap Ada Dua Faktor Penyebabnya," *Kompas.Com*, 2024.
[36] Indonesia Corruption Watch, "Putusan Pengadilan Atas Koruptor Makin Melemah," *Indonesia Corruption Watch.Com*, 2010.
[37] Helmi Firdaus, "Nenek Asiani Dinyatakan Bersalah," *CNN News*, April 2025.

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asked who took the cocoa. Minah bluntly admitted her actions. Minah was reminded that this action is not allowed because it is the same as stealing. Minah, realizes her mistake and immediately apologizes to the foreman and promises not to repeat her actions. He handed the three cocoa nuts he took to the foreman, but he thought it was wrong, which turned out to have significant consequences. Therefore, a week later, he received a summons for an examination from the police. The legal mechanism ended until finally he had to face trial as a defendant in the theft case at the Purwokerto District Court.[38]

The legal problems that occur in society are the richer the plaintiff, the more likely the case is to win. On the other hand, people who have nothing are not allowed to complain. The downward law is more punitive than the upward law. In other words, where the victim's stratification status is below the victim, the violation is more likely to be punished as a crime than if the victim's stratification is below the perpetrator. The upward law is more compensatory than the downward law. Thus, a perpetrator whose social status is above his victim is likely to be asked to pay compensation rather than in a case with the opposite direction. We can observe, the difference in enforcement of the legal case that befell Samin Tan and Minah's grandmother is very sad. Samin Tan was ruled free for the bribery case that befell him, while in the case of Minah's grandmother who stole 3 cocoa fruits must be sentenced to 1 month in prison with a probation period of 3 months. This further strengthens that legal stratification according to Donald Black's theory is indeed true in Indonesia. The upward law is also more therapeutic than the downward law. If a transgressor against a person of higher status can be punished, then a transgressor of a person of lower social status is more likely to be defined as a person who is sick and in need of treatment,[39] Thus, the reality of law enforcement in these cases is dominated by legislative and executive authority. The disclosure of this case is really challenging due to sociological perspectives that have an impact on law enforcement, such as Stratification, Morphology, and Intervention. Social position refers to formal positions and positions owned by individuals, close relationships between law enforcement and suspects, and lastly, subordinate intervention to colleagues in law

[38] Detik News, "Mencuri 3 Buah Kakao, Nenek Minah Dihukum 1 Bulan 15 Hari," *Detikknews.Com*, November 2009.
[39] Donald Black, *The Behaviour Of Law*.

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enforcement institutions. Affirming the existence of legal discrimination in the criminal act.[40] Law plays a role in creating order and harmony in society and must be upheld to solve various social problems. The success of law enforcement depends on five main pillars: legal instruments, law enforcement officials, public awareness, legal culture, and supporting facilities. However, in practice, law enforcement is still influenced by social stratification. Wealthy people are more legally aware, have better access to litigation, and are more likely to win in legal cases. Meanwhile, the poor find it more difficult to get justice. The law down tends to be punitive, while the law down is more compensatory or therapeutic, indicating a bias in the legal system.[41]

B. Integrative Strategies to Address Law Enforcement Discrimination in Indonesia

Law enforcement is a task that requires high dedication, commitment, and enthusiasm to uphold justice as a whole. The loss of public trust in law enforcement agencies is a consequence of legal discrimination. Various news reports in various media highlight the poor law enforcement in Indonesia. Law enforcers not only function as implementers of laws and regulations, but are able to contextualize and present the values contained in the text to the existing reality. As a result, the existence of a text that is statistically in accordance with the enthusiasm of the situation is always dynamic, alive, and not of a single meaning.[42] Friedman asserts that the legal system is divided into three parts: the substance of the law, the structure of the law, and the culture of the law. Substance is the result of the legal system, namely the regulations and provisions required for the regulatory or regulated parties. Article 1 of the Criminal Code stipulates: "No criminal act can be sanctioned if there are no provisions governing it." This system has a significant impact on the legal system in Indonesia. Violators of these legal provisions can feel guilty and try to avoid the applicable sanctions. The substance of the law is also applied to the applicable law, not only for the norms that have been set in the law book. A substantial problem arises because Indonesia adopts the Continental European legal system, which has a weakness in handling cases where a person who takes three cocoa

[40] Marthen Moonti, "Diskriminasi Hukum Dalam Pemberantasan Korupsi Politik."
[41] Donald Black, *The Behaviour Of Law*.
[42] Amalia Fadhila Rachmawati, "Dampak Korupsi Dalam Perkembangan Ekonomi Dan Penegakan Hukum Di Indonesia," *Eksaminasi: Jurnal Hukum* 1, no. 1 (2022): 12–19.

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fruits of a sentence that is handed down seems to lack a sense of justice. Meanwhile, on the other hand, the tin corruption case involving Harvey Moeis and costing the state three hundred trillion pesos received a lighter sentence. Moreover, the free verdict in law enforcement, the bribery case involving Samin Tan really does not reflect the sense of justice for all levels of society as it should.[43]

It is necessary that the substance of the law in Indonesia needs to be renewed, which in fact, shows that foreign cultural rules still have a significant impact on positive laws in Indonesia. This situation is exacerbated by Indonesia's inability or powerlessness to carry out legal development reforms based on the values in the precepts of Pancasila. If the institutions authorized in making laws have a strong responsibility and determination to realize it. So the development of laws with Indonesian characteristics will be realized. Laws that are not built based on the character of the nation itself can affect the enforcement of the law. So that the response of the public as a subject and object of law will not be maximized.[44]

Today's technological developments make racial issues more sensitive. As a preventive effort with the existence of Pancasila, Indonesia should be proud of itself considering that the Indonesian nation has a superior formula, and it already exists as a source of law and guidance in the nation-state. The embodiment of noble values in Pancasila should be visible in legal products. Correlation with criminal law policy, Pancasila as Grundnorm is the main source of a legal product.[45]

Ideally, Pancasila should be in its proper position and function. Efforts to overcome this problem should be accompanied by the consolidation of the noble values of Pancasila. Nowadays, the issue of discrimination has become the attention and sentiment of the public. It should be involved in the mechanism of creating up-to-date positive laws. Moreover, the consolidation of Pancasila values can be implemented against law enforcement. The planned special program can provide an opportunity for them to understand the state of Indonesian

[43] Suyatno, "Kelemahan Teori Sistem Hukum Menurut Lawrence M.Friedman Dalam Hukum Indonesia," *Ius Facti: Jurnal Berkala Fakultas Hukum Universitas Bung Karno* 2, no. 1 (2019): p. 199-200.

[44] Aprillia Revathatia Cahyalaguna and Sindi Nur Rahma Putri, "Penegakan Hukum Yang Berlandaskan Pancasila: Menegakkan Keadilan, Kemanusiaan, Dan Demokrasi," *Indigenous Knowledge* 2, no. 1 (2023): 1–9.

[45] Adhi Luhur Wicaksono and Eko Soponyono, "Kebijakan Hukum Pidana Dalam Upaya Penanganan Diskriminasi Rasial Dengan Perspektif Pancasila," *Jurnal Belo* 8, no. 1 (2022): 48–66.

society in other regions. The goal is to strengthen the value of Pancasila for the sake of family and the integrity of the nation. [46]

The legal practice of Pancasila based on Pancasila became the initial agreement of the Indonesian nation to carry out innovation and revise the law in Indonesia. Therefore, the Pancasila legal system should belong to the Indonesian nation. Pancasila is a distinctive legal system and different from the common law legal system. The Pancasila legal system functions tolerantly along with other legal systems. The Pancasila legal system reflects mutual tolerance of the practice of religious law, the practice of western law, the practice of socialist law, the practice of continental law and others. Maintain ethics and comply with globally applicable legal regulations. The Pancasila legal system plays a role as a foundation or paradigm in the formulation of laws and regulations, including in the context of law revision. The Pancasila Legal System refers to the preparation of verses, articles, and elements of Pancasila values that must be codified in every variety of laws and regulations.[47]

The law guided by Pancasila is a law based on the enthusiasm of harmonization. Therefore, the law is directly aimed at manifesting social justice that is conveyed to society towards the unity of each individual. The values contained in each statement are: 1) The principle of the One God includes values related to state regulation, including Integrity, government ethics, policies, laws, regulations, independence, and human rights. So that it must be lived with citizenship values and belief in one God; 2) The principle of just and civilized humanity reflects human values as a cultured, integrity, religious, and just entity in its interactions with others and the environment; 3) The value of the principle of unity and unity that the Indonesian state is a communion described in Bhinneka Tunggal Ika. The values of nationalism must be integrated in all perspectives of state regulation; 4) The general basis based on wisdom The value for the country, the people, and the individual lies in wisdom in deliberation. Democratic values are applied comprehensively in the life of the state, both in the perspective of state morality, politics, or legal and regulatory aspects; 5) The principle of social justice for the whole

[46] Wicaksono and Soponyono.
[47] Suyatno, "Kelemahan Teori Sistem Hukum Menurut Lawrence M.Friedman Dalam Hukum Indonesia."

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of Indonesia includes values that are the goals of the state as a collective goal. The principle of justice is realized in daily life aimed at the welfare of all citizens.[48]

Legal structures are institutions that are formed to create legal practices that provide various benefits to support the operation of the process. This element makes it possible to analyze how legal practice delivers services in the systematic management of legal materials. The law will not be enforced effectively, without law enforcers who are capable, competent, independent, and have integrity. This problem depends on law enforcement in carrying out their duties. All the advantages of regulation, without the support of competent law enforcement officials, will be impossible, from the perspective of the mentality of law enforcement itself. The instability and integrity of corrupt law enforcement and a poor mindset will affect the objectivity of their performance. Problems arising from the legal form of this view include abuse of authority, lack of transparency, and procedural violations. As a law enforcer, it is mandatory to set a good example for the community. However, this actually creates a bad perspective in the community. An effective legal structure will not function optimally without the support of quality legal substance. Thus, a good legal substance will not provide benefits if it is not supported by a good legal structure.[49] The community or law enforcement, if involved and caught carrying out bad acts regarding discrimination, then law enforcement is expected to undergo appropriate criminal punishment. Law enforcement may be in the form of administrative penalties or removal until dishonorable dismissal. Meanwhile, for the community, it can be recommended in the form of social work in certain areas. The goal is to reduce bad views of discrimination. As a result, the noble values of Pancasila can be maintained to overcome the problem of discrimination. [50]

Legal culture, encompasses the values and behaviors that lead to the application of law by Friedman as a legal culture. Legal culture aims to be a link that unites legal provisions with the legal behavior of the entire society. Law as an instrument for social transformation or social engineering is only a manifestation of the idea that the law wants to realize. To ensure the

[48] Cahyalaguna and Putri, "Penegakan Hukum Yang Berlandaskan Pancasila: Menegakkan Keadilan, Kemanusiaan, Dan Demokrasi."
[49] Suyatno, "Kelemahan Teori Sistem Hukum Menurut Lawrence M.Friedman Dalam Hukum Indonesia."
[50] Wicaksono and Soponyono, "Kebijakan Hukum Pidana Dalam Upaya Penanganan Diskriminasi Rasial Dengan Perspektif Pancasila."

benefits of law as a social engineering towards improvement, it is necessary not only the existence of laws in the form of teachings and regulations. but also guarantees for the implementation of legal doctrines in the process, as well as with guarantees of effective enforcement. Therefore, the application of the law does not only function as legislation, but also as a bureaucratic activity that implements it. Then, an effective legal structure and substance will not be able to be felt without adequate support from the legal culture of the community. [51]

A positive legal culture can participate in the formation of an optimal legal system. On the other hand, a negative legal culture will encourage the emergence of a legal system that is not in accordance with the needs of society. Interaction in the midst of social transformation and the legal system can be seen through the formation of a legal culture in society. Social transformation that has a positive influence encourages people to be more vigilant to legal directions and taboos. Then it will create legal awareness among the community.[52]

The three elements of law in practice have an inseparable correlation. Each element is interconnected and influences each other. The formation of an ideal legal substance is due to the function of legal structure and legal culture in implementing definite, fair, and effective substantive rules. Correlation between the structure and substance of law can give birth to an appropriate legal culture in society. On the other hand, the important role of legal culture can shape the legal structure related to the formation and enforcement of legal substance. This third element is like an endless circle and is connected to each other continuously. If a defective legal structure is formed, it will produce a non-optimal legal substance. On the other hand, a good legal substance cannot be implemented. If the legal structure is not good, then the legal culture implications that are created will follow the pattern of the other two components when operating in the legal system.[53] The three aspects of these elements, starting from structure, substance, and culture, must function synergistically so that the legal system can operate effectively, thus as an integrative step to overcome law enforcement discrimination in

[51] Suyatno, "Kelemahan Teori Sistem Hukum Menurut Lawrence M.Friedman Dalam Hukum Indonesia."

[52] Izzy Al Kautsar and Danang Wahyu Muhammad, "Sistem Hukum Modern Lawrance M. Friedman: Budaya Hukum Dan Perubahan Sosial Masyarakat Dari Industrial Ke Digital," *Sapientia Et Virtus* 7, no. 2 (2022): 84–99, https://doi.org/10.37477/sev.v7i2.358.

[53] Al Kautsar and Muhammad.

Indonesia, namely by improving in all aspects ranging from the substance of the law including legal rules and decisions that are a reference in law enforcement. Legal structure refers to the institutions and law enforcement officials who are in charge of running the legal system. Responsibility, capability, honesty, and independence must be possessed by all law enforcement officials, thus determining the effectiveness of the law. Legal culture reflects the values and behavior of the community before the law. Public awareness and legal compliance play an important role in the success of law enforcement, because the law is not only related to the rules, but also the practices and bureaucracy of its implementation. These three elements must run synergism. A weak legal structure will result in an inappropriate legal substance. While a good legal substance, it will not be effective without a strong legal structure. A good legal culture can strengthen the legal system, while a bad legal culture will weaken its effectiveness. Therefore, a balance between the substance, structure, and culture of the law is needed so that the legal system can run optimally and create justice in society.

CONCLUSION

Law enforcement in Indonesia is still dominated by legislative and executive powers, with sociological factors such as social status, personal relationships, and interventions in legal institutions also influencing the process. The success of law enforcement depends on five main pillars: legal instruments, law enforcement officials, public awareness, legal culture, and supporting facilities. However, the reality shows that there is legal discrimination based on social stratification. Rich people have better access to litigation and are more likely to win legal cases, while poor people have difficulty getting justice, in some law enforcement cases in Indonesia, namely the bribery case involving Samin Tan who was acquitted and the case of Minah's grandmother who stole 3 cocoa fruits was sentenced to 1 month in prison and 3 months of probation does not reflect the sense of justice it deserves. The law against the lower society tends to be punitive, while the upper society tends to lead more towards compensation or therapy. This reflects a bias in the legal system, which has the potential to hinder the creation of social order and justice. Addressing discrimination in the legal judiciary in Indonesia requires improvements in three main aspects: the substance of the law, the legal structure, and

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the legal culture. The substance of the law encompasses the rules and decisions that are the basis for law enforcement, while the legal structure is related to the institution and professionalism of law enforcement officials. Legal culture reflects the public's understanding and obedience to the law, so improvements in law enforcement in Indonesia in all aspects ranging from the substance, structure and culture of the law must go hand in hand synergistically, because weaknesses in one aspect will weaken the legal system as a whole. Pancasila as the basis of the state must be the main guideline in the formation and enforcement of laws in Indonesia based on justice, humanity, unity, democracy, and social welfare, to realize a legal system with Indonesian character, a commitment from lawmakers and law enforcement officials is required. If there is discrimination in law enforcement in Indonesia by law enforcement officials, it is expected that there will be strict sanctions that must be applied. Whether in the form of administrative punishments, mutations, dismissals, or social work as a form of education, with a balance between legal substance, structure, and culture, a fair and effective legal system can be achieved.

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