

The Republic of Indonesia National Police Department: Legal Culture and Law Enforcement

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The aim of this article was to work out whether a change has also followed the National Police legal culture after the 1945 Constitutional amendment and the emergence of the new Police Law in the National Police legal culture. Many perceptions led us to the fact that arrangements and structural changes before and after the reform era have brought little change to the National Police legal culture. To test this hypothesis, the article discusses how the constitutional arrangements and laws regarding the Indonesian National Police effected the changes. The analysis is conducted using a normative research method and a sociological-juridical approach. The research found that legal culture-shifting occurred in the National Police following its separation from the National Army to become an independent organ. However, the military culture had become rooted in the National Police identity and needs to shift into the civilian culture.

Key words: *National Police, Law enforcement, Legal culture, Reform era.*

Introduction

Friedman mentions that “without a legal culture, there is no legal system”. According to Friedman (Carrillo, 2007), the legal system always contains three components: structure, substance and legal culture. The *structure* of a legal system includes various institutions and functions, within the framework of the operation of the legal system. One of these institutions

is the court. The element of *substance* includes everything that results from the state organ, namely legal norms in the form of laws and regulations, and judges' verdicts.

Friedman further states that if they pondered a little, people would admit that the elements of the legal system were not only composed of structure and substance. A third element is still needed for the operation of the legal system: legal culture (Friedman, 2017; Cotterrell, 2017). Legal culture includes people's perceptions of the law or the values they recognize that determine the operation of the legal system. These values will influence both positive and negative behaviours related to the law so that legal culture is an embodiment of community perceptions and social forces that determine how the law is used, avoided or abused (Friedman, 2019). Every community, every region and every group has a legal culture and perceptions of the law that are not always the same as one another.

In other words, people's ideas, perceptions, and attitudes towards the law are influenced by subcultural factors such as ethnicity, age, gender, socio-economic status, nationality, occupation and income, position and interests, environment and religion (Friedman, 2019). As a form of thought in society, legal culture will change according to changes in social attitudes, views and values as they are lived by community members. An understanding of the legal culture will therefore be determined by the community structure and the process of change and development that occurs in it (Simon, 1999).

Sociologists view the law as a cultural product. Law is an inanimate object, which is meaningless if it is not made with an awareness of its sincerity and the urgency of its action. The law is only a joke if the person who made it is the lawbreaker, and the one who is implementing it is a lawless nation. Friedman has an amusing anecdote about this: "Without legal culture, the legal system is inert – a dead fish lying in a basketball, not a living fish swimming in its sea" (Friedman & Hayden, 2017).

The law in this country is undoubtedly helpless, like a dead fish, if it is not supported by the legal culture of our nation. Friedman's writings about elements of the legal system are often a standard reference for measuring law enforcement in a country. There is no doubt about the three main elements of the Friedman-style legal system, which are daily consumption for law students. Structure – namely the institutional structure – and substance – which is nothing but the laws and regulations themselves – are topics that are more familiar to jurists than the last element, legal culture. The importance of legal culture in forming a legal system is sometimes forgotten, even though, according to Friedman, culture determines "how the law is used, avoided, or abused" (Friedman & Hayden, 2017).

In line with Friedman's thoughts, Soerjono Soekanto emphasises these three components as factors that influence law enforcement. They encompass the law itself, law enforcement,

facilities, society and culture. Society and culture constitute a single element in the legal culture, which has a significant influence in the operation of the legal system (Zulfadli et al., 2016). To clarify, Magen (2015) argues that culture and legal awareness are the only binding source and power of law.

Legal Substance Amendment of the Indonesian Police Regulations

The Preamble of the 1945 Constitution states that the purpose of the Indonesian state is to “protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation’s intellectual life, so as to realize social justice for all the people of Indonesia”. The purpose of the Indonesian state became the basis for the governance and development direction conducted by the Government of the Republic of Indonesia.

Further constitutional provisions governing defence and security as stipulated in Article 30 of the 1945 Constitution (the result of the second amendment, which is in Chapter XII on National Defense and Security, which regulates changes in the duties, functions, and roles of the Indonesian National Police and the institutional separation of the Army and the Indonesian National Police in accordance with their respective roles and functions). Article 30 Chapter XII of the 1945 Constitution stipulates that:

1. Each citizen has the right and the duty to participate in the defence and security of the state.
2. The defence and security of the state undertaken through a defence and security system that encompasses the entire population with the Indonesian National Army and the Indonesian National Police as the main power, and the population as the supporting power.
3. The Indonesian National Army comprises the land forces, the navy and the air force as the state’s instruments to defend, protect and maintain the state’s integrity and sovereignty.
4. The Indonesia National Police is the state’s instrument to safeguard security along with law and order among the population and has the duty to protect, shield and serve the population, as well as to uphold the law.
5. The structure and the authority of Indonesian National Army, the Indonesia National Police, the relations as to the authorities of each other in exercising their duties, the conditions under which the citizen can partake in the state’s defence and security, as well as other aspects regarding defence and security are to be regulated by law.

Amendments to the 1945 Constitution regarding defence and security arrangements as a duty of the state are seen in terms of legal sociology, as they have occurred due to social changes.

The growth and development of society always bring growth and development, in all aspects of life. New discoveries in the field of science and technology will directly influence the outlook of human beings, which can ultimately change how human life is lived. These changes always result in the emergence of new interests for survival, requiring protection against disturbances that may come from fellow human beings. This protection is given by the state in the form of legal regulations (Muradi, 2017, 2014).

With the progress of the community, there will be a change in demand for protection of the interests of community members. After the reform era in 1998, the demand for change continued to grow, touching even on things previously considered taboo. This included reforms within the Indonesia National Army Police body. The demand for protection is directed to the government, leading to a public requirement for the separation of the National Police from the National Army. As an institution, the National Police has separated itself from the National Army, based on Presidential Instruction Number 2 of 1999 regarding Policy Steps in the Context of Separation of the Indonesian National Police from the National Army, providing a formal foundation for reformation in the Indonesian National Police organisation.

In 2000, Presidential Decree Number 89 was issued regarding the position of the National Police, which was directly under the President and then confirmed by the issuance of TAP MPR Number IV/MPR/2000 regarding the separation of the Indonesian National Army from the National Police and TAP MPR Number VII/MPR/2000 regarding the role of the National Army and the National Police. The aforementioned formal grounds provide the background to the drafting of Law No. 2 of 2002 regarding the Indonesian National Police (Kelana, 2002).

The implementation of these tasks, as well as the participation of the National Police that had been prepared and determined in Law Number 2 of 2002 concerning the Indonesian National Police have determined the position of the National Police as a state instrument in accordance with the TAP MPR Number: VII/MPR/2000 regarding the Indonesian National Police, which mentions that in the life of the community, security forces are required to provide protection and law enforcement by means of the National Police of the Republic of Indonesia. Therefore, the National Police is a state tool that operates through state power in the field of preventive and repressive acts in the criminal justice system framework. The National Police is also a state tool that maintains domestic security.

Since separating from the National Army in 1999, the face of the National Police has changed from a military-based institution to a civil-based institution. This paradigm shift has not only given the National Police a softer image, and the appearance of being friendly with the public, but also emphasised the National Police as a state tool that functions as a keeper of

security and public order, as well as upholding the rule of law based on the protection of the civil rights of citizens.

Related to the sense of community justice, respondents to a popular consultation conducted by *Daily Kompas* considered that the steps taken by the National Police reflected their alignments with certain interests. This was the view of 56.3 per cent of respondents, who considered the actions of the National Police to be more concerned with the interests of the authorities than the interests of the community, but also the independence of the National Police institution itself (Kompas, 2009). The public was hoping for a change in the structure of the National Police followed by changes in culture or (legal) culture among the police.

Changing the Police Paradigm from Military to Civil Requires Law Awareness

The existence and function of the National Police in the community are a product of community interest in ensuring security and protection from crime, so that productive activities can be undertaken without any harmful interference affecting the welfare of citizens and the sustainability of their communities. The National Police is a state tool that was established to prevent and fight crime. The main function of the National Police is to prevent the occurrence of crime, as well as to maintain social order so life in society is civilised (Suparlan, 2004). In the life of a civil society characterised by democracy and the rule of law, the police must be able to provide security, order and protection of human rights to the community, and to be able to demonstrate transparency in every action by upholding truth, honesty, justice and certainty and providing benefits as a form of accountability towards the public.

After the 1998 reformation, which was marked by the fall of the new order regime, change was demanded in various aspects of Indonesian people's lives. Issues such as democratisation, the promotion of human rights, eradicating corruption and recognising equality among ethnic groups and their cultures are some of the many guidelines for reform in Indonesia. The spirit of this reform era also influenced the style of policing performed by the Indonesian National Police. In the pre-reform era, the National Police seemed militaristic because they were a part of the National Army. This influenced the attitudes and behaviour of police officers in operations, and in the training for policing. The community was considered a legal object, not a legal subject that must be treated as a partner in the policing performed (Kadarmanta, 2008).

The initial stage of the separation of the Indonesian National Police from the Indonesian National Army, and its restructure under presidential was a remarkable movement. Instrumental and cultural reforms have also begun to be performed by the National Police. Attitudes that once highlighted the law enforcement role of the police began to shift to

prioritising efforts to maintain security and order, service, and personal and community protection (Kadarmanta, 2008).

Given that it is undergoing a process of reform to become a democratic civilian police, the Indonesian National Police needs to adjust to the development of people's lives by changing its operational paradigm, which previously focused on reactive and conventional approaches, towards a proactive approach and obtaining public support by promoting partnerships in the context of solving social problems.

The civilian police paradigm as legal cultural reform, which is being implemented by the National Police, requires all National Police personnel to be oriented towards a service approach, respecting human rights and building harmonious cooperation with the community. The harmonious cooperation will be realised if the National Police cultural reform continues to be directed towards efforts to change the attitudes and behaviour of its members and implement new strategies that are able to build public trust in the police.

As mentioned previously, and in line with Friedman's thinking, Soerjono Soekanto in Rosana, 2014) emphasises several components as factors that influence law enforcement: the law itself, law enforcement, facilities or facilities, society and culture. Soerjono Soekanto argues for the importance of society and culture involvement. Society and culture are only a single part of the legal culture element, which has a very important influence in the operation of the legal system. Famous legal experts, such as Krabbe and Kranenburg, maintain that culture and legal awareness are the only binding source and power of law.

The problem that will emerge regarding the increase in the degree of legal culture will be challenging (Meliala, 2017). The legal awareness of a nation is sourced from individual legal feelings and beliefs, so the task of convincing the individuals that make up Indonesian society that these changes to the law are a milestone in this country will not be easy.

The legal culture is not only a monopoly of the people. It includes the role of the authorities and legislators as teachers who should deserve to be "imitated", as well as being wise and virtuous. Increasing the degree of legal culture can occur in several ways. The first is by making legal products that are in line with the people's aspirations, rather than the reverse, which makes people frustrated and miserable. These laws and regulations should come from the grassroots, not be a product of the interests of the authorities to rob the people below. The law should be a result of the embodiment of the values of society. Historical jurisprudence, represented by Friedrich Karl von Savigny, shows that law is not something that can be created arbitrarily and planned by lawmakers, but must be internal and autonomous and public.

Law is like a language: it grows and develops in a nation and becomes the common property of that nation. Therefore, law is based on the national character and spirit of the nation (*volkgeist*). It must also absorb the sociological view of law, which considers law as a manifestation of society; this means the formation of law cannot be separated from the community. Eugene Erlich argues that living law is the inner order of society (Tamanaha, 2011) and that “the center of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decisions, but in society itself” (Antonov, 2013; Maliska, 2019).

Equally important is that the legal awareness of the community is actually in line with the legal awareness of the ruler. The people need to be taught that the law is worth enforcing, that omissions and a permissive attitude towards violating the law will not be tolerated. The law should be reliable and examples (role models) provided for law enforcement. Legal protection provides protection for human rights harmed by others and the protection is given to the community so everyone can enjoy all the rights granted by law (Erlina et al., 2019).

Conclusions

Based on this description, the regulatory change regarding the position of the Indonesian National Police and its separation from the Indonesian National Army simultaneously demands a change in legal culture among the National Police and change in public legal awareness. The most important change must be away from “police as law enforcers” so they become an example for the community as the users and legal owners of this country. The paradigm shift involved in changing the culture of the National Police from military to civilian culture must be pursued by continuing to conduct internal coaching among the National Police structurally from the top down. The example must start from the National Police Chief, through to individual members of the National Police so they become an example for the community. Legal culture and public legal awareness also play an important role in maintaining the intention of the National Police to change (its paradigm). As Friedman argues, without legal culture there is no legal system – “like a dead fish in a basket or a basin instead of live fish in the high seas”.

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