

INTEGRAL APPROACH TO CULTURAL REFORM: AN INDONESIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

Legal reform requires an approach to various aspects of the law itself. It works the same way in criminal law, the reform does consider not only a collection of written norms but also other aspects such as structure and culture. Furthermore, an integral reform must cover three elements of the legal subsystem because if reforms in other subsystems do not accompany it, the reform will only be a dream. Thus, the reform can create legal effectiveness in providing certainty, benefit, and justice. Based on the urgency and description, this research is considered important to be carried out. This study aims to highlight the renewal of criminal law in legal culture and the various obstacles and concepts offered. Based on this background, several problems will be obtained to be discussed. This legal research uses doctrinal research methods with a conceptual and statutory approach. Various scientific approaches are needed in cultural renewal, including religious scientific, contextual, and comparative juridical approaches. With these three approaches, the cultural renewal will provide new aspects of criminal law and its usefulness, representing a sense of justice in society.

Keywords	Integral Approach; Cultural Reform; law
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INTRODUCTION

There are many ways of looking at criminal law. Dogmatically, criminal law consists of three main problems: crime, criminal liability, and the crime itself;¹ Functionally, criminal law consists of three stages, namely the formulation stage, the application stage, and the execution stage;² Then, in terms of criminal law reform, several main issues emerged, such as scientific issues, global issues, and national issues.³ Besides being seen as a collection of abstract rules and norms, criminal law is an integrated and purposeful unified system.⁴ According to Lawrence M. Friedman, law (including criminal law) consists of three central system units in substance, structure, and culture.⁵ These three factors affect the effectiveness of the law in society.⁶ Of the three systems, according to Friedman, the cultural component is the most decisive for the

¹ Rofiq, A., Disemadi, H. S., & Jaya, N. S. P. (2019). Criminal Objectives Integrality in the Indonesian Criminal Justice System. *Al-Risalah*, 19(2), 179-190.

² Sembiring, R. E. B., & Pujiyono, P. (2020). Reform of corporate criminal liability arrangements in Indonesia and types of sanctions that can be implemented. *Legality: Jurnal Ilmiah Hukum*, 28(1), 11-21.

³ Anakotta, M. Y., & Disemadi, H. S. (2020). Melanjutkan Pembangunan Sistem Keamanan Nasional Indonesia Dalam Kerangka Legal System Penanggulangan Kejahatan Terorisme. *Jurnal Kemanan Nasional*, VI (1), 41-71.

⁴ Abdul Halim, B. (2013). Budaya Hukum Masyarakat Dalam Perspektif Sistem Hukum. *Jurnal UKSW*.

⁵ Hutomo, P., & Soge, M. M. (2021). Perspektif Teori Sistem Hukum Dalam Pembaharuan Pengaturan Sistem Pemasarakatan Militer. *Legacy: Jurnal Hukum dan Perundang-Undangan*, 1(1), 46-68.

⁶ Humulhaer, S. (2019). Kepatuhan Hukum Kawasan Dilarang Merokok Menurut Teori Lawrence M. Friedman. *Supremasi Hukum*, 15(2), 10-17.

effectiveness of the law. It works the same in criminal law. Laws that use culture and take the power of it as a source will be very effective and have considerable power.⁷

Legal culture is defined as everything abstract in nature, including perceptions, attitudes, views, values, opinions, and so on, by the community and subsequently influences the law.⁸ It includes legal goals or ideals that demand well-integrated into each legal subsystem.⁹ Every society has its own legal culture, and even everyone has their own culture in law. In other words, nature is lawful. Indonesian people have their own culture that is different from other societies. The culture of our society has gone through various phases of charting in history.¹⁰ They started from the period before the Europeans peddled their feet in the archipelago, the Dutch colonial period, Japan until the independence period, and then the reformation period. All these levels of history shape the culture of our society in general and in law.

After the Indonesian people proclaimed their independence on August 17, 1945, the Indonesian rule of law period began to gain its stage in history. After this historical event, Indonesia determines its destiny and future in all fields, including the legal field. In criminal law, prior to national criminal law based on Presidential Regulation Number 2 of 1945, the criminal law inherited from the Dutch East Indies was enforced in Indonesia with various restrictions.¹¹ Along the way, many obstacles and anomalies were found in law enforcement, especially criminal law. It is understandable because the Dutch heritage is too old and outdated to keep up with. Since then, began the formation of a national criminal law based on the recommendations of the first national criminal law symposium in 1963. In updating the criminal law, it is not only based on the substance of the regulations. As Friedman said earlier, the legal system consists of three main pillars: substance, structure, and culture. Therefore, it is also necessary to reform the criminal law in these three pillars.

Reforms that only touch the legal substance will not have any effectiveness in society, and even such a thing is almost impossible without creating a terrible polemic in society.¹² The law will only be a dead letter with no binding power and is not obeyed. Reforms that touch the legal structure without updating other aspects will not give law enforcers the freedom to present a just law. Furthermore, reforming the legal culture without being accompanied by reforms in other subsystems will only be a dream. In the end, legal reform must include the three types of legal subsystems if what is desired is the effectiveness of the law in providing certainty, benefit, and justice in society. This study aims to highlight the renewal of criminal law in legal culture and the various obstacles and concepts offered. Based on this background, several problems will be obtained to be discussed.

RESEACRH METHOD

The study of the discipline of Law is ideally based on the perspective of epistemology and its methodological consequences, how the theory of legal thought takes position in the scientific paradigm and meta-methodology. However, it is often ignored or not touched at all. Consequently, law students are not invited to understand academic thinking (academic, scientific thinking) to be

⁷ Sudjana, S. (2019). Penerapan Sistem Hukum Menurut Lawrence W Friedman Terhadap Efektivitas Perlindungan Desain Tata Letak Sirkuit Terpadu Berdasarkan Undang-Undang Nomor 32 Tahun 2000. *Al Amwal (Hukum Ekonomi Syariah)*, 2(2), 78-94.

⁸ Warassih, E. (2016). *Pranata Hukum : Sebuah Telaah Sosiologis*, Semarang: Pustaka Magister, 72

⁹ Rofiq, A., Disemadi, H. S., & Jaya, N. S. P. (2019). *Ibid*.

¹⁰ Adhayanto, O. (2014). Perkembangan Sistem Hukum Nasional. *Jurnal Ilmu Hukum*, 5(2), 163-171.

¹¹ Arief, B.N. (2017). *Reformasi Sistem Peradilan (Sistem Penegakan Hukum di Indonesia)*, Semarang: Badan Penerbit Universitas Diponegoro, 54

¹² Jaya, N. S. P. (2016). Hukum (Sanksi) Pidana Adat Dalam Pembaharuan Hukum Pidana Nasional. *Masalah-Masalah Hukum*, 45(2), 123-130.

able to build logical thinking as outlined in writing articles and scientific works.¹³ Essentially, research is a logical building, which from beginning to end, must be a series that explains each other. There must be a unified flow from start to finish. The plot unity comes from the thesis, which is the backbone of the whole research. Research using scientific steps and stages that are systematic, logical, and rational makes the whole process of scientific writing an explanation of the logic of thought, a dialectical process between theory and data. There is no criterion for which type of research is better than other types.¹⁴ Like other research methods, all research designs have advantages and disadvantages. Different types of research will not only provide more information about the Law. However, they will also provide legal information of a different character than might be obtained through other types of research.¹⁵ This legal research using normative juridical research (also known as doctrinal legal research) can be interpreted simply as research asking whether the Law is in a particular jurisdiction. This legal research is normative because it aims to describe the norms that apply in a particular legal system. The data used in this study is secondary data obtained indirectly. The data is processed qualitatively, and it is called data analysis which produces analytical descriptive data that describes the problems around the title. This study interprets the data and then relates it to the concepts used, which are based on the applicable laws and regulations, as well as the opinions of experts/legal experts, including the researcher's own experience, and is then linked to research problems to obtain conclusions from the research results.

RESULTS AND DISCUSSION

Integral Approach in Criminal Law

Integral thinking in criminal law can be interpreted as a way of thinking or viewing or studying an object of criminal law phenomena from a comprehensive (integral/contextual) unit. In other words, integrative thinking is thinking "in part or as a whole"; it also means "thinking holistically/contextually" without seeing things separately from a balanced and contextual unity. It can also be summed up as "balance thinking" or "contextual thinking".¹⁶ The integral thinking approach demands a harmony of legal subsystems where each subsystem must take its role.¹⁷ Then, the judicial system is an integral part of various subsystems (components) consisting of the components of "legal substance," "legal structure," and "legal culture." As a law enforcement system, the judicial process/law enforcement is closely related to the three components: legal norms/statutory regulations (substantive/normative components), institutions/structures/law enforcement officials (structural/institutional components and procedural mechanisms/administration), and legal cultural values (cultural component).¹⁸

Based on the understanding of an integral system, the judicial system (law enforcement system) can be defined from various aspects: (1) Judging from the aspect of legal substance, the judicial system or law enforcement system is essentially a system for enforcing legal substance (in criminal law, it includes material criminal law, formal criminal law, and criminal law enforcement). Thus, this system includes an "integrated legal system" or "integrated legal substance".¹⁹ The legal substance that is not integral both horizontally and vertically and multiple interpretations will provide legal uncertainty to the point of causing injustice.²⁰ Ultimately this

¹³ Adiyanta, F. S. (2019). Hukum dan studi penelitian empiris: Penggunaan metode survey sebagai instrumen penelitian hukum empiris. *Administrative Law & Governance Journal*, 2(4), 697-709.

¹⁴ Adiyanta, F. S. (2019). *Ibid*.

¹⁵ Tan, D. (2021). Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum. *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, 8(8), 2463-2478.

¹⁶ Arief, B.N. (2015). *Ilmu Hukum Pidana Integralistik*, Semarang : Pustaka Magister, 13

¹⁷ Anakotta, M.Y. (2019). Kebijakan Sistem Penegakan Hukum Terhadap Penanggulangan Tindak Pidana Terorisme Melalui Pendekatan Integral. *Jurnal Belo*, 5(1) 46-66.

¹⁸ Lawrence M. Friedman. *Loc. Cit*.

¹⁹ Arief, B.N. (2018). *Pembaharuan Sistem Penegakan Hukum dengan Pendekatan Religius dalam Konteks Siskumnas dan Bangkumnas*, www.bardanawawi.wordpress.com, 15 December 2018.

²⁰ Purnomo, M. Aris, & Soponyono, E. (2015). Rekonseptualisasi Penyidikan Tindak Pidana Korupsi Oleh Polri Dalam Rangka Efektifitas Pemberantasan Tindak Pidana Korupsi. *Law Reform*, 11(2), 230-240.

subsystem will affect the criminal justice system as a whole; (2) Judging from the structural aspect, the judicial system/law enforcement system is a system for the operation/functioning of law enforcement agencies/applicants in carrying out their respective functions and authorities. Thus, structurally, the judicial system/law enforcement system (In Indonesia: *SPH/Sistem Penegakan Hukum*) is also an "administrative system" or a "functional/operational system" of various law enforcement structures/professions.²¹ In carrying out their respective functions/authorities, Institutions/law enforcement officers must always be in line with each other in harmony without being accompanied by a conflict of interest. In particular, they must always use their conscience to carry out the legal structure²²; (3) Judging from the aspect of legal culture, the judicial system or law enforcement system is an embodiment of the "legal culture values" system (which may include legal philosophy, legal principles, legal theory, legal science, and awareness/attitude of legal behavior). Thus, from the point of view of legal culture, the judicial system can be said to be an "integrated legal culture" or an "integrated cultural, legal system." However, there is an opinion that it is not easy to define a "legal culture".²³

Cultural Reformation Definition

Reform has a meaning that is more than just renewal. Reform implicitly gives the meaning of "leading to better things" or "to make better." In this case, reform of the judicial system implies reforming the criminal justice system in a better direction.²⁴ Furthermore, suppose it is connected with the term "cultural." It will give meaning to a cultural renewal to a better direction or increase the quality of justice in the cultural realm. It has been stated in the introduction that law as a system consists of three major subsystems, namely legal substance, legal structure, and legal culture. It means that judicial system reform can include the three subsystems, namely substantial reform (legal substance reform), structural reform (legal structure reform), and cultural reform (legal culture reform). The reform also includes legal ethics and legal science/education (legal ethics and legal science/education reform).²⁵

Indicators of Declining Quality of Legal Culture

According to Barda Nawawi Arief, indicators of the decline in legal culture in Indonesia are the phenomenon of envelope culture, bringing in expert witnesses, and tend to think partial in law enforcement. It was further stated that these three indicators reflect that the weakening of the scientific culture in law enforcement could potentially hinder law enforcement from a scientific perspective. In essence, law enforcement cannot be separated from efforts to improve the quality of people's lives, and public trust is a non-physical aspect of the required resources. Therefore, these indicators lead to a weakening of public confidence in law enforcement.²⁶

These phenomena are not something that stands alone without a starter or a series of causes. The phenomenon is only a final symptom that is finally visible to the human senses. Far from it all, there are essential things that need more attention and improvement. This phenomenon will become the object of discussion of knowledge, and the rest (noumena) related to the world of values are more familiar in the discussion of culture.²⁷ Moreover, as stated by Barda, the decline

²¹ Arief, B.N. *Pembaharuan Sistem... Loc. Cit.*

²² Parman, L. (2017). Reorientasi Pemikiran Penggunaan Hukum Pidana Sebagai Sarana Penanggulangan kejahatan. *Jatiswara* 27(1), 168-190.

²³ Arief, B.N. *Pembaharuan Sistem... Loc. Cit.*

²⁴ Arief, B.N. *Reformasi... Op. Cit.* 9

²⁵ Arief, B.N. (2018). *Pendekatan Keilmuan dan Pendekatan Reigius dalam Rangka Optimalisasi dan Reformasi Penegakan Hukum (Pidana) Di Indonesia*, Semarang: Badan Penerbit Universitas Diponegoro, 52.

²⁶ Arief, B.N. *Reformasi... Op. Cit.* 45

²⁷ Nirasma, M. R. (2020). Dialami Tanpa Mungkin Diketahui: sebuah Sanggahan atas Penafsiran Noumena Immanuel Kant sebagai Entitas Metafisik. *Human Narratives*, 1(2), 76-87.

of this culture will also affect the quality of people's lives. From here, it can be seen how significant the influence of legal culture is on legal life itself and especially on human life in general.

In the following, we will examine the phenomena or symptoms of the decline in the quality of the legal culture as stated by Barda: (1) **Envelope Culture** (bribery culture of bribing law enforcers), the culture of envelopes or bribery is the buying and selling of interests by parties who have a case to get facilities that they should not get. In this case, law enforcement/the party receiving the bribe can provide convenience and relief to the party giving the bribe. Therefore, it is not wrong if Fletcher calls the crime of bribery a transactional crime.²⁸ The phenomenon of such transactional crimes shows a complicated legal face with uncertainty here and there. In the end, a multidimensional crisis was created in Indonesia.²⁹ This kind of crisis further distances the law from the position of commander in chief because it is a crisis rooted in law enforcement's misunderstanding of moral ethics in law; (2) **Culture of Bringing in Expert Witnesses**. This kind of culture is common in law enforcement, especially in providing expert testimony before the court on matters related to certain branches of law. It means that the ability of law enforcers to understand the law theories and various kinds of opinions needed in making final decisions has decreased. Law enforcers prefer to listen to expert witnesses rather than explore the legal principles and values contained in a statutory rule in a more straightforward language. It is the second form of decline in addition to the morale of law enforcement, academic decline in the form of a lack of ability of law enforcement to understand the law itself; (3) **Partial Thinking Culture in Law** means seeing the law not in a systemic structure but only from one subsystem. It has been said before that law is a systemic unit of three major subsystems: substance, structure, and legal culture. In addition to seeing the law from a systemic structure, law enforcement must also see the law as an integral policy that must always be in harmony with social policies.

The Concept of Cultural Reform in Criminal Law

Suppose the quality of the criminal law enforcement culture is to be improved. In that case, it is necessary to make essential efforts to improve the quality of science in the manufacturing and the enforcement process. This primary effort is a counter to the reality of law enforcers' decline in science and morality in making laws. These efforts can be said to be very basic because of several considerations, which, according to Barda, are:³⁰ (1) Improving the quality of science also means increasing the quality of the products produced. Any product that is produced with a sophisticated will produce a better and quality product. This scientific improvement must be initiated and pursued in the manufacture of legal products so that they can be felt in the form of quality laws and regulations, both dogmatically and sociologically juridically. With these two improvements, a material criminal law will be created which is not only magnificent from a dogmatic point of view but also from a sociological perspective, accepted by the community and then obeyed; (2) If it is made with quality knowledge, then its enforcement also requires qualified knowledge. No matter how good a product is made if it is not operationalized with knowledge, it will slowly reach its demise. Law enforcement is an effort to describe abstract ideas contained in legal regulations in a more concrete life.³¹ The problem of law enforcement is closely related to law enforcement officers because they are the spearheads.³² Mastery of knowledge and self-limitation based on morals will create a balance between science and morality. Both are required to always be present and followed by law enforcement.

²⁸ George P. F. (1985). A Transactional Theory Of Crime, *Columbia Law Review*, 85(5), 921-930

²⁹ Miswardi., Nasfi., &Antoni. (2021). Etika, Moralitas Dan Penegak Hukum. *Menara Ilmu*, 15(2)

³⁰ Arief, B.N. *Pendekatan Keilmuan... Op. Cit.* Hlm. 69

³¹ Rahardjo, S. (2009). *Penegakan Hukum: Suatu Tinjauan Sosiologis*, 17.

³² Rahardjo, S. (2010). *Penegakan hukum progresif*. Penerbit Buku Kompas, 5

In improving the quality of law enforcement, reform and optimization are needed in three integral scientific approaches, namely: (1) **Religious Scientific Juridical Approach**, an approach that is oriented and guided by science (criminal law) and God's guidance in enforcing positive criminal law. In short, it can be said as an approach to divine law. This approach is felt to be very necessary considering that currently law enforcement is only oriented towards positive law enforcement regardless of scientific aspects. In fact, it is often mixed with dirty approaches such as the envelope approach and the like.³³ The phenomenon of envelopes and other dirty games indicates a weakness in the scientific and divine approach in enforcing criminal law. Whereas in our law enforcement there should be no secularism between law enforcement and the divine aspect considering the first precept of Pancasila is "God Almighty". This means that all agendas in national development efforts and processes, including law enforcement, must always have a divine spirit³⁴; (2) **Contextual Juridical Approach**, an approach in carrying out criminal law enforcement based on positive law in the context of development, legal development and the National legal system. If we look at it in this context, the previous approach can also be classified as a Contextual Juridical approach.³⁵

Law enforcement and criminal law reform are often separated, though both are interrelated units. Criminal law enforcement is part of the national law enforcement policy, an integral part of the national development policy system. It is said so because the criminal law policy (penal policy), both in concreto and in abstracto, is part of the overall policy of the national legal system, which is also part of efforts to support national development policy. It means that criminal law enforcement, both in concreto (law enforcement) and abstracto (law reform), should support the achievement of national development's goals, vision, and mission.³⁶

From the description above, we can conclude that the current positive criminal law enforcement (especially the Dutch Criminal Code) must pay attention to the general guidelines for the judicial process in the national legal system. In other words, positive criminal law enforcement must be in the Indonesian context (in the context of the national legal framework) and even in National Development and National Law Development. It is what is known as law enforcement.³⁷

Comparative Juridical Approach

A global comparative/comparative-oriented legal thought approach is needed in the legal reform process, but it does not rule out the possibility of doing so in law enforcement. It is understandable considering the development of Hitech crime is increasingly massive and organized (hi-tech crime/cybercrime). In addition, according to Sudarto, taking a comparative approach will lead to a critical attitude towards the legal system itself. According to Soerjono Soekanto, this approach can solve legal problems more fairly and precisely.³⁸

In carrying out legal reforms, especially criminal law, both partially and totally, the legislators should pay attention to the study of these integral approaches. Thus, the resulting legal products are indeed agreed upon and desired by the legal address, the community. If not, the resulting law will only become a nuisance, a source of injustice, a bridle instead of providing justice and benefits. This thing is contrary to the main objectives of development as stated in the Indonesian constitution.

³³ Arief, B.N. *Pendekatan Keilmuan...* Op. Cit, 4

³⁴ *Ibid*, 75

³⁵ *Ibid*, 79

³⁶ *Ibid*, 79

³⁷ *Ibid*, 82

³⁸ Arief, B.N. *Reformasi...* Op. Cit, 70

CONCLUSION

Integrative thinking in criminal law can be interpreted as a way of thinking or viewing, or studying an object of the phenomenon of criminal law from a comprehensive (integral/contextual) unit. Then, the judicial system is an integral part of various subsystems (components) consisting of the components of “legal substance,” “legal structure,” and “legal culture.” Reform of the judicial system can also include three subsystems, namely substantial reform (legal substance reform), structural reform (legal structure reform), and cultural reform (legal culture reform). Cultural reform can be interpreted as a renewal in terms of culture or judicial culture in a better direction or improving the quality of justice in the cultural realm. Indicators or measures that can be used to see the phenomenon of the decline in legal culture in Indonesia are: The envelope culture phenomenon; The culture of bringing in expert witnesses; and Tend to think partial in law enforcement.

Fundamental efforts need to be made to improve the quality of science in the manufacturing process and the enforcement process. It is said to be very basic because improving the quality of science also means increasing the quality of the products. In its enforcement or running, it also requires qualified science. There is a need for reform and optimization in three integral scientific approaches: the Juridical Scientific Religious Approach, Contextual Juridical Approach, and a Comparative Juridical Approach. A global comparative/comparative-oriented legal thought approach should indeed be needed in the legal reform process, but it is also possible to do so in terms of law enforcement.

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