



The Relevance of Behavior of Law Theory to Law Enforcement in Indonesia

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Abstract

This article discusses the discrimination in legal treatment of the community that still occurs today. The principle of equality before the law cannot be fully implemented properly. The theory of behavior of law explains why this problem still occurs. The purpose of this study is to discuss what factors cause legal discrimination to occur. This legal research type is descriptive analysis. The type of data used is secondary data. The data collection method used is literature study, which is a technique to obtain secondary data through documents related to the problem, purpose and benefits of the research. This study uses qualitative data analysis techniques, namely data obtained from literature studies and then arranged systematically and then analyzed qualitatively to achieve clarity of problems to be discussed. The data is then analyzed interpretively using positive theory and law that has been outlined and then inductively drawn conclusions to answer the existing problems. The results of this study, that the factors of stratification, morphology, culture, organization and social control are the main factors in causing stratification. This factor causes people who have power to have easier access to the law than those who do not have power. This problem will continue continuously if law enforcement officers do not fix their morals. Massive, decisive and sustainable efforts are needed from all parties to change this legal culture.

Keywords: behavior of law; enforcement; law

INTRODUCTION

Since the first time the Criminal Code (hereinafter referred to as "KUHP") was enacted in Indonesia by the Netherlands on January 1, 1918 (Sholihin, 2008) as a material criminal law or as the basis for the rule of law that contains provisions of criminal law and the existence of Law No. Criminal Procedure (hereinafter referred to as "KUHP") as a formal criminal law or as a basis for law enforcement to follow up on the Criminal Code, it is known that since the two regulations were issued until now they have not been updated. The existence of the Criminal Code and the Criminal Procedure Code is still recognized today and because of the two rules the author considers a "shirt", where the "shirt" has been produced for a long time until now, so there are "holes" in the "shirt", so it needs to be repaired. Repeat on the "clothes" by "patching" with another cloth. The author makes an analogy with this, that the Criminal Code and the Criminal Procedure Code are old legal products that have experienced several inconsistencies that have resulted in damage, so there are other special criminal rules outside the Criminal Code and Criminal Procedure Code to patch some of the rules on the rules that have been damaged.

The regulation of other criminal regulations outside the Criminal Code and the Criminal Procedure Code is expected to maintain the integrity of the old rules. So, if there is a new crime that is not accommodated in the old criminal law, it can be overcome by a new special criminal law. This step is an action that is still being used until now while the

government is trying to draft a new criminal code in the form of a new Draft Criminal Code (hereinafter referred to as "RKUHP"), which is in accordance with the ideology and philosophy of the Indonesian nation. There are so many criminal crimes that have occurred since the Criminal Code and Criminal Procedure Code came into force until now. In handling, also can't be separated from the controversy that occurred. In fact, in the last few years until now, it is clear that many controversies have been shown in the handling of criminal crimes. The controversy is in the form of differences in the handling of crimes committed by law enforcement officers against people who have positions, positions, education with people who do not have such things.

Several major cases that illustrate the current situation of justice, such as: Indonesia's rejection of Responsibility to Protect ("R2P") on the grounds that national sovereignty and intervention are unfortunate in the efforts to uphold human rights. resolved by the Government of Indonesia, the situation of injustice in Papua that never ends, the handling of COVID-19 that is not carried out fairly, as well as the emergency of impunity for law enforcement officers and the urgency of protecting human rights (Maulidiyanti, 2021) defenders are examples of major cases of criminal handling in Indonesia.

There are still several other small cases, but even though these cases are considered minor cases, they have angered the conscience of the community regarding the handling of the criminal law given, such as: a grandmother was sentenced to 1 month for stealing 3 cocoa beans, a grandmother was sentenced to 1 year for eating wood, 4 people Kapok seed thief was convicted and several similar cases in recent years (Hanifah, 2020). When compared with the phenomenon of the fugitive case of the corruption case of illegal logging, Adelin Lis who was picked up exclusively by the Attorney General after running away for 10 years, of course, this creates a contrast in the handling of the law.

The existence of this controversy raises questions in the community, how exactly is the handling of law in Indonesia. Why is this still happening in the midst of the transparency of all information that can be received by the public. This article will focus on the practice of legal discrimination in terms of behavior of law theory. An article with a similar theme written by Nurindria Naharista Vidyapramatya entitled "Loss Of Justice In Law Enforcement According To Discrimination Theory" (Vidyapramatya, 2021) has a novelty with what the author currently writes, namely the author will analyze all types of legal problems and then relate them to the theory of behavior of law. Thus, not only one type of problem is studied. This will provide a broader perspective on other legal cases that have experienced discrimination in handling by law enforcement officers

METHOD

The research method used is descriptive analysis, namely by describing the applicable laws and regulations associated with legal theories and the practice of implementing positive law related to the problem. Analytical descriptive research is in accordance with the research conducted by the author, because in this study the author tries to describe the existing facts or existing facts and describe a problem that exists in law enforcement where there is the principle of equality before the law. The type of data used by the author is secondary data, namely data obtained from various existing sources. Secondary data obtained through literature study. Literature study is the collection of data sourced from books, literature, and opinions of legal experts related to this research. The data collection method used in this research is literature study, which is a technique to obtain secondary data through documents related to the problems, objectives and benefits of the research. This study uses qualitative data analysis techniques, qualitative data analysis, namely data obtained from library research and then compiled systematically and then analyzed qualitatively to achieve clarity of problems to be discussed. The data is then analyzed interpretively using theory and positive law that has been poured then inductively drawn conclusions to answer the existing problems (Soemitro, 1994).

RESULT AND DISCUSSION

The Behavior of Law Theory

Gottfredson and Hindelang quoted In Black (1976) sets forth a theory of law that he argues explains variations in law across societies and among individuals within societies. Black argues that law can be conceived of as a quantitative variable, measured by the number and scope of prohibitions, obligations and other standards to which people are subject. Law varies, according to Black, with other aspects of social life, including stratification, morphology, culture, organization, and social control. Many of Black's principal propositions regarding the quantity of law are tested in this paper with National Crime Survey data on the victim's decision to report a crime to the police. An alternative model that views the quantity of law as depending largely on the gravity of the infraction against legal norms is posed and tested against Black's theory. The data are generally inconsistent with the propositions derived from *The Behavior of Law* and strongly suggest that a theory attempting to explain the criminal law cannot ignore the gravity of the infraction against legal norms (Gottfredson & Hindelang, 1979).

In describing stratification, morphology, culture, organization and social control, the author will quote the writings of Shih-Ya Kuo et al entitled "Crime reporting behavior and Black's Behavior of Law" (Kuo et al., 2012) where they quote Donald Black's 1976 article entitled the behavior of law. which explains some of the behaviors that affect legal behavior:

Stratification refers to the 'vertical aspect of social life' and occurs when wealth and rank are unequal. To elaborate, people with less wealth and lower social rank are, thus, less likely than those with wealthier and higher rank to mobilize the legal system. In the literature, gender, race, age and income have been associated with the concept of stratification. Women, people of color, the young and the less affluent are less likely to access (or have access to) legal resources than men, whites, adults and the more affluent.

The second social dimension is morphology, which is defined as 'the horizontal aspect of social life, the distribution of people in relation to one another'. Black suggests that the degree of integration or participation in social life affects whether individuals will use legal resources or not. It is assumed that people who are more socially integrated are more likely to mobilize law than those who are less socially integrated. People who are working or married, for example, are more integrated into the social mainstream than people who are unemployed or single. This leads to the expectation that victims who are employed or married are more likely to report the crime to the police than victims who are unemployed or unmarried.

Another dimension proposed by Black is culture. Culture is defined as 'the symbolic aspects of social life, including the expression of what is right, good, and beautiful'. Black theorizes that law varies directly with culture. Black uses education as a cultural indicator and suggests that 'literate and educated people are more likely to file lawsuits against others'.

Organization is expressed as 'the corporate aspect of social life, the capacity for collective action'. This is measured by 'presence and number of administrative officers, centralization and continuity of decision-making, and quantity of collective action itself'. A more organized society will have a wider legal activity than a less organized society. Also, people who are more integrated into the organization will tend to be more litigious than those who are less integrated.

The last dimension is social control, which means 'normative aspect of social life' which defines 'what is right, what is transgression, obligation, disorder, or disturbance'. Social control contrasts with law as social pressure to conform rather than government legal action. Social control prevents some deviation, so the law is inversely proportional to social control.

Black conceptualizes legal behavior from a socio-structural perspective that ignores unobservable motivations and human perceptions. While Black's legal theory appears to have created a 'new explanatory strategy' in criminology that has inspired considerable intellectual discussion, it has also attracted a great deal of controversy. Greenberg strongly criticized Black's purely sociological approach for rejecting conventional approaches that could better explain social behavior. Black's legal theory is still not fully understood through

empirical verification, and requires further investigation.

Understanding behavior is a variable aspect of reality. Everything behaves, living or not, whether molecules, organisms, planets or personalities. This applies to social life as well, to families, organizations and cities, to friendship, conversation, government and revolution. Social life behaves, it is possible to talk about the behavior of art or ideas, the behavior of music, literature, medicine or science (Kinsey & Black, 1978)

The Relevance of Behavior of Law Theory

Legal Behavior Towards Stratification

As stated by Black, the actual legal treatment of litigants is influenced by several factors. Stratification is the first factor proposed by Black. According to Black, underprivileged people, women, different skin colors and even young people (perhaps considered lawless) will find it harder to access the law than people who are otherwise. Phenomena like this are often found through people's tweets on Twitter, especially when it's trending #PercumaLaporPolisi, where people express their frustration with the services provided by law enforcement officers for the crimes they have committed.

For example, the Twitter account @crofflemaine on October 10, 2021 (Anonim, 2021) revealed his experience when he lost his motorbike. After making a report and three days of processing it at the local police station, the complainant finally received news that his motorbike had been found, but the police revealed that the motorbike was in a village where the village was known to be specialists in theft of motor vehicles and their handlers. The police did not take immediate action to take the motorbike and apprehend the culprits, but instead offered to the complainant whether he wanted to follow up on the motorbike or leave it alone. After the incident, the complainant chose to leave his motorbike considering that it would be heavy in costs and administrative matters. Unlike the case that happened to one of his fellow artists, Irfan Hakim, he reported that he had lost his arowana fish worth tens of millions. Not long after the report was made, the police managed to arrest two of the four perpetrators. The other two perpetrators are still in the pursuit stage and the status of the two perpetrators is a fugitive (Nurmansyah, 2021).

The differences in the handling of the theft cases above prove the reality of the differences in the handling carried out by law enforcement officers, in this case the police. What is interesting to note is that in the first case (motorbike theft) it was clear where the vehicle was and who the perpetrator was. However, the police actually reported to the complainant about the existing situation and asked whether the case would still be continued or not. This proves that the police have a fear, whether it is fear from the village because it is already well-known as a specialist in motor crime, or fear that there are influential people in the village so that the police do not act rashly or there are other factors that make the police not immediately take action. move to get things done.

Social stratification and its effect on law enforcement are clear. Ordinary people will be of the view, if a person as in the lower social stratification as said by Black performs actions related to the law such as making a report for the crime he has suffered, then law enforcement will actually do what they can or even be skeptical, because it is considered that the person cannot complete administrative matters. We also know that in carrying out the legal process there must be an obligatory administration. Of course, people with lower stratification will find it difficult. However, it would be a different story if it was the person with the lower stratification who became the criminal. Law enforcement will be easy to investigate. This happens, that the lower stratification is considered not knowing the law, does not have the power to win the law. So that law enforcement does not have a "barrier" to resolve the legal case.

On the other hand, the existence of a village phenomenon with its residents, most of whom are crime specialists, it seems that the residents of the village are experiencing problems, especially in the economic field. It is revealed by Weatherburn and Lind that 'economic pressure' contributes to crime. Besides that, it could also be because the perpetrators tend to commit crimes in areas that are culturally familiar and familiar to them in several ways (Carrabine et al., 2009).

The complaint from one of the Twitter residents seems to need to be a concern for the government, by investigating where the village is, because the root of the biggest problem is in that village. This statement is evidenced by the lack of smooth work of the police who handle cases in the village. If this is allowed to continue, it is not impossible that a new crime will occur in the environment that makes people uncomfortable and loses trust in the police.

Legal Behavior Towards Morphology

Morphological variables are one of the external factors related to the influence on law enforcement discrimination, this event occurs because of sociological conditions that are able to influence the actions of law enforcers, especially investigators in determining suspects. The Relationship between Law and Differentiation is Curvilinear is a law relating to social layers, if it is in a heterogeneous social environment, the number of laws increases and vice versa. The Relationship between Law and Relational Distance Curvilinear is a law related to proximity, so the law occurs more when there is distance or estrangement and does not apply to people who have low relationships. Law Varies Directly with Integration means that people who are in a social center environment will often involve the law compared to people who are in a marginal environment. Concretely, morphology is related to the degree of emotional relationship, friendship, kinship, work, between the parties involved in the case and law enforcers (Vidyapramatya, 2021).

According to Musakkir (Musakkir, 2013), through his research, it shows that there is a morphological influence on cases of discrimination by law enforcement, data shows that from 80 law enforcers and community members, there are 54 people or 67.5% who think that there is a morphological influence or relationship closeness, while 26 others state that it has no effect. Based on this description, it is found that several cases of discrimination by law enforcement are currently taking place in Indonesia related to the morphological aspect, namely the case of political corruption committed by the former Chief Justice of the Constitutional Court Akil Mochtar and former Chairperson of the DPR Setya Novanto. These two cases are two of the major corruption cases that occurred in Indonesia which greatly harmed the state budget by state officials, but the morphological differences were found in the results of the decisions.

The case of Akil Mochtar as the former Chief Justice of the Constitutional Court is a case of bribery and gratification related to the handling of a number of election disputes at the Constitutional Court and the crime of money laundering of up to hundreds of billions. Akil Mochtar was proven guilty of violating Article 12 of Law Number 31 of 1999 which was amended in Law Number 20 of 2001 of 2001 concerning the Eradication of Criminal Acts of Corruption. The criminal sentence imposed on Akil Mochtar is life imprisonment without paying a fine of 10 billion rupiah. The panel of judges explained that Akil Mochtar was sentenced to the maximum sentence so that the fine was waived. The sentence that was determined by the judge against Akil Mochtar was the *inkracht* decision according to the cassation decision number 336 K/Pid.Sus/2015. The bribery cases carried out by Akil Mochtar include bribery related to the Pilkada of Gunung Mas Regency, Central Kalimantan Province, bribery related to the Pilkada of Lebak Regency, Banten Province, bribery related to the Empat Lawang Regency Election, South Sumatra Province, bribery related to the Palembang City Election, bribery related to the Pilkada of South Lampung Regency, Lampung Province. , bribes related to the Buton Regency Election, Southeast Sulawesi Province, bribes related to the Morotai Island Regency Election, North Maluku Province, bribes related to the East Java Provincial Election, bribes related to the Banten Province Pilkada and money laundering cases (BBC, 2014).

Meanwhile, in the case of corruption by state officials carried out by the former chairman of the DPR, namely Setya Novanto, who was proven to have corrupted the electronic-based Identity Card (E-KTP) project in the 2011-2013 fiscal year. Setyo Novanto's E-KTP corruption case cost the state Rp 2.314 trillion. These cases include major cases that are not only detrimental to the state but also losses that have an impact on the community, namely many community members who are constrained or have not received their identity cards. Therefore, Setya Novanto was sentenced to 15 years in prison

and paid a fine of IDR 500 million rupiah, 3 months in prison, and was required to pay a replacement money of 7.3 million US dollars minus 5 billion which had been deposited with investigators ([Kompas.com, 2018](#)).

Setya Novanto was named a suspect in the E-KTP corruption case by the KPK on July 17, 2017, he is suspected of having helped arrange the Rp 5.9 trillion budget for the E-KTP project to be approved by the DPR. Setya Novanto's actions are suspected under Article 3 or Article 2 paragraph 1 of the Corruption Eradication Law. On September 4, 2017 Setya Novanto registered a pretrial lawsuit against the KPK at the South Jakarta District Court, in a pretrial hearing with a single judge, Judge Chepi Iskandar. On September 29, 2017 after undergoing a series of trials and investigations, judge Chepi Iskandar partially granted Setya Novanto's request. The determination of Setya Novanto as a suspect by the KPK is considered invalid or null, this is because it was carried out at the beginning of the investigation, not at the end of the investigation. The judge asked the KPK to stop the investigation of Setya Novanto. The judge also questioned the evidence used by the KPK to ensnare Setya Novanto, because the evidence had been used in the investigation of Irman and Sugiharto, namely two officials from the Ministry of Home Affairs who had been sentenced in court. On November 10, 2017 the KPK conducted a new investigation related to the development of the E-KTP case until in this investigation process Setya Novanto was named a suspect in a corruption case, but this was again challenged for the validity of his suspect status. On December 13, 2017, the trial of Setya Novanto's court decision was held at the South Jakarta District Court. On the same day, the inaugural trial of the principal case of Setya Novanto will also be held at the Corruption Court. Pretrial Sole Judge Setyo Novanto, Kusno stated that Setya Novanto's lawsuit was declared void when the judge began examining the main subject of the E-KTP case at the Corruption Court, Central Jakarta ([Liestiarini, 2019](#)).

Based on the examples of the two cases that have been described, it shows that Indonesia is prone to criminal acts of corruption. The perpetrators of corruption in Indonesia are currently dominated by state officials. This shows that the frequent occurrence of corrupt practices is caused by the light factor of punishment for corruptors so that it does not cause a deterrent effect and also does not give fear to potential corruptors. The judge's verdict is a symbol of the adherence to the principle of the rule of law and the affirmation that Indonesia is a state of law. According to the examples of the two corruption cases, there are differences in the handling of cases where in the Akil Mochtar case he was sentenced to life in prison and free of a fine, while the Setyo Novanto case was sentenced to 15 years in prison with the fines described above. In handling the crime in the Akil Mochtar case, the criminal witness was sentenced to life imprisonment for the criminal witness in accordance with the provisions of the Corruption Eradication Law, namely the judge imposed a severe sentence based on the type of crime committed and the position of a state official which was sufficient reason to be subject to life imprisonment for the perpetrator. corruption.

However, in the Setya Novanto corruption case, there was a very long trial due to his absence from the trial, in addition to the E-KTP corruption case, Setya Novanto was assisted by many other officials, such as when Setya Novanto sent a letter to the KPK through the deputy chairman of the DPR Fadli Zon to ask the KPK. to postpone the pretrial process against him until the pretrial decision is issued, the letter was sent using the DPR's KOP. So this shows that Setya Novanto uses his network or power relations in handling the E-KTP corruption case. In addition to this, it is suspected that Setya Novanto used relationships when undergoing a series of trials until finally the KPK's determination of Setya Novanto as a suspect was considered invalid or invalid. Not only that, because Setya Novanto also asked to be appointed as a justice collaborator and asked the KPK Prosecutor to give leniency in charges, because he felt that he was taking cooperative action to the KPK by revealing other perpetrators in the corruption case of the E-KTP case. The use of these relationships and networks as intended by Black in the morphological concept, with a close relationship, in the case of Setyo Novanto, can ask for leniency or assistance to law enforcement for the witnesses obtained.

The form of morphological differences or relations also has an effect and occurred in

two corruption cases of Akil Mochtar and Setya Novanto in the lives of corruptors in Sukamiskin Prison, Bandung. An inspection carried out by the Indonesian Ombudsman led by Ombudsman Ninik Rahayu and accompanied by 12 other members showed that it was known that the cell inhabited by Setya Novanto was larger in size and had adequate facilities than other inmates, including the prison occupied by Akil Mochtar. For some corruptors who have been convicted, they still keep money and property resulting from corruption and they have extensive relationships and networks or their own close relationship with other officials, so it is very likely that this is used by corruptors for their own benefit.

Legal Behavior Towards Organization

Non-legal factors related to discrimination in the application and implementation of the law are the influence of organizational aspects. The organizational aspect is the corporate aspect in social life, the capacity to take collective action. Organizational forms include the state, government, companies, political parties, community institutions, and other institutions. Law varies directly with organization, i.e. the more laws there are, the more the state intervenes in society. Law is greater in direction toward less organization than toward more organization, i.e. the law is more directed at individuals than organizations, more organizations tend to report individuals to law enforcement officials than individuals report organizations, and organizations tend to win more in a case than individuals (Gottfredson & Hindelang, 1979).

Based on this description, it is related to the organizational aspects of several cases of law enforcement discrimination that often occur in Indonesia, for example in agrarian cases. Comparison between cases of discrimination that occurred in indigenous groups or groups of environmental fighters who often receive criminalization treatment and the case of the Supreme Court ruling that acquitted PT Kumai Sentosa in the forest fire incident in Central Kalimantan in 2019.

Indigenous peoples in Indonesia are categorized as indigenous people which are specifically listed in the Declaration on the Right of Indigenous People which was inaugurated in 2007. In addition, the rights of indigenous peoples are contained in the Covenant on Economic, Social and Cultural Rights, while land rights are contained in the Covenant. International Civil and Political Rights where land rights are included with the term right to property. The rights of indigenous peoples in national policies are contained in the 1945 Constitution Article 18B paragraph 2, the 1945 Constitution Chapter XA concerning Human Rights Article 28I paragraph 3 and Law No.39 of 1999. Criminalization cases that occur in Indonesia related to forestry, plantations, and mining have increased every year, where indigenous peoples are used as perpetrators of criminal acts. The criminalization events that occurred were that two indigenous people in West Kotawaringin, Central Kalimantan were criminalized for burning land, then 27 residents in Wahoni Regency, Southeast Sulawesi and 6 traders in Sintang, West Kalimantan, were charged with the Environmental Law No. 32 Plantations and the Criminal Code, and the case of arrest of traditional community leaders, one of them is Effendi Buhing, Chairman of the Laman Kinipan Indigenous Community in Central Kalimantan who is accused of participating in seizing assets belonging to PT Sawit Mandiri Lestari (SML) on August 26, 2020 (Diantoro, 2020).

The chronology of the case that occurred to Effendi Buhing and other traditional community leaders, the Laman Kinipan Community, claimed that their 2,627 hectares of customary territory was claimed by PT Sawit Mandiri which controlled 9,424.71 hectares of land, which was more than the permit from the Ministry of Agrarian Affairs and Spatial Planning. In reality, the Customary Territory Registration Agency (BRWA) has verified that the customary area controlled by PT Sawit Mandiri covering an area of 3,689 hectares has been converted into plantations. Criminalization of indigenous peoples and land grabbing through the issuance of permits by the Minister of Forestry, National Land Agency or Regents and Governors on the grounds that if PTPN increases the area or expands plantation land from the area contained in the HGU certificate and if it is a forest area, by including customary community management areas into the state forest. The conflict

occurred due to the weakening of the position of indigenous peoples and their sovereign rights in line with the establishment of a constitutional state based on the 1945 Constitution. Through the doctrine of the state's right to control natural resources, the concept of property rights (property rights) of customary law on their sovereign rights became incomplete or autonomous. Therefore, the existence of indigenous peoples related to cases of defending land often experiences discrimination or criminalization of criminal acts.

In connection with cases or agrarian conflicts that have occurred to indigenous peoples, it is inversely proportional to criminal acts in the forest fire case in Central Kalimantan in 2019 where the Supreme Court decision stated that PT Kumai Sentosa acquitted in the forest fire case. Palm oil company PT Kumai Sentosa, located in West Kotawaringin Regency, Central Kalimantan, was found guilty of forest and land fires (*karhutla*) in 2019 and was sentenced to a civil penalty. PT Kumai Sentosa is one of the corporations whose concession land burned and caused a haze disaster in the 2019 dry season, as a result of which many losses had to be borne by villagers and the wider community. However, in the decision of the Bun Base District Court Number 233/ID.B/LH/2020/PN PBU on 17 February 2021, the panel of judges decided that PT Kumai Sentosa was free from criminal charges. In the decision of the cassation judge, the Supreme Court acquitted the company PT Kumai Sentosa because the company had installed a warning sign not to burn the land.

Based on the two agrarian conflicts that have been described, there is a comparison that can be seen in the verdicts for handling criminal cases of environmental crimes in Indonesia. According to Black, in the discrimination theory, from the organizational aspect that has been put forward, namely through the results of the analysis in the two cases, there are differences in the discrimination of criminal acts received by organizations or groups of indigenous peoples with PT Kumai Sentosa corporation. Crimes that are often directed at indigenous groups are entering PTPN land without a permit, vandalism, use of plantation land without a permit, persecution, committing violence against people or goods and controlling land without a permit. The articles used to criminalize indigenous peoples are the theft article (363 (1), in conjunction with article 64 (1) of the Criminal Code), several articles of Law 41/1999, relating to P3H, namely article 82 paragraph (1) letter c, article 12 letter c, Article 94 paragraph 1 letters a and b. In these criminal cases, the judges sentenced an average of one to two years in prison. Criminalization of agrarian fighters is one form of human rights violations and violations of the law. Article 6 of Law No. 39 of 1999 on human rights also provides protection for indigenous peoples and their land rights, including criminalization. This is in contrast to the decision of the Supreme Court cassation judge who acquitted PT Kumai Sentosa on the grounds that the company had installed a warning sign prohibiting burning land, the judge should have used the approach of Article 88 of Law Number 32 of 2009 concerning absolute liability. The decision shows the weakness of environmental protection and causes the vulnerability of the right to a good environment and makes other corporations imitate by only installing prohibition boards. In the decision, the judge did not consider the consequences of the fire because if it refers to the existing rules, the responsibility of the concession owner company is not only in the form of a warning board but there are officers to mitigate fire disasters.

Legal Behavior Towards Social Control

Donald Black, in his e-book entitled *The Behavior of Law* defines social control as follows: Law is governmental social control, in other words, the normative life of a state and citizens, such as legislation, litigation, and adjudication. By contrast, it does not include social control in the everyday life of a government service, such as a post office or fire department, since this is the social control of employees, not of citizens as such (Black, 2010). Muliadi quoted from Gunaryo, that in detail, the law really depends on the social conditions that surround it. This means that the social context always influences the character of the law, in other words, the appearance of the law is never static, but dynamic (Ma'u & Nur, 2016). Because of its dynamic nature, this creates a view in the community that everything that is considered to have "strength" and it is attached to a person, then the person who has and attaches it to himself is considered to have "strength".

The description of law as social control based on Black's explanation can be seen from the reality that exists in society. For example, there was an incident where one Kopassus member fought eight thugs. This incident was experienced by Sertu Wahyu returning to his hometown dressed in non-service or plain clothes in Sumedang to get married, who at that time was passing on Jalan Tanjung Sari, Sumedang, West Java. On the road, Sertu Wahyu, who was riding a motorcycle, saw a young man who was also riding a motorcycle, was suddenly confronted by eight youths, and then ganged up on him. Sertu Wahyu also decided to intervene. Spontaneously, Sergeant Wahyu came down and gave an appeal to the eight youths not to do this and at that time Sergeant Wahyu revealed that he was a member of the TNI. However, at that time his appeal was ignored and the eight people turned around to gang up on Sertu Wahyu. As a result, Sertu Wahyu fought and the unequal fight ended with Sertu Wahyu as the winner. This incident was also confirmed by Lt. Col. Inf. Joko Tri Hadimantoyo as the Head of Information for Kopassus in a press release ([Admin, 2020](#)).

It is different with a video circulating on the Youtube channel uploaded by a car driver. The video, which is less than 2 minutes long, recorded the incident of 2 people who were in a car and were stopped by the traffic police on the side of the road. Then after being stopped, the driver took the cellphone and turned on the camera to record. When the window was opened, it can be seen in the video, the traffic police who wanted to check or ticket the car looked shocked and immediately saluted and shook hands with the two people who were in the car and after that the traffic police immediately left. After the traffic police left, the driver who uploaded the video showed that sitting next to him was a person wearing a light blue military uniform and having a Military Police emblem on his arm. The video also recorded 2 people who were in the car, neither the driver nor the Military Police next to him, not wearing seat belts ([Suara Rakyat Channel Official, 2021](#)).

Based on the two examples above, the law as a social control in society shows that the law is not always normative. This implies that the nature of the law is dynamic according to what Gunaryo said is true. People assume that the law also lies in a symbol. Those who wear the symbol have "power", and those who do not wear the symbol are considered to have no "power". The case of beatings experienced by Sertu Wahyu is an example, in his case Sertu Wahyu has admitted that he is a member of a military unit. However, because he wasn't wearing his uniform or any attributes, the gangster didn't believe him and instead continued to beat him. Meanwhile, the case of a car driver who is free from a fine because he is driving with a member of the military is also an example, if the public, even a traffic policeman, understands the meaning of the symbol worn by the passenger beside the driver. Even though the 2 people in the car had actually violated traffic rules, because the symbols as social control that existed on the passengers made them escape from legal sanctions.

In addition to the uniform symbol as an example of social control, there is another example, namely the use of sirens in vehicles. The use of sirens in vehicles also becomes a "strength" for vehicles that turn on the siren and will get priority on the highway. In order to regulate the use of sirens so that not all vehicles have "strength" and it is feared that in the future it will be misused by irresponsible drivers, this has issued a regulation on the use of sirens as regulated in Articles 134 and 135 of Law Number 22 of 2009 concerning Traffic and road transport.

Legal Behavior Towards Culture

The non-legal aspect that affects the discrimination of criminal acts is culture. Culture is a symbolic aspect, such as religion, decoration and folklore. According to Black, the definition of culture is categorized into four, namely, Law varies directly with culture, namely people with a high level of culture are more powerful in owning the law. The law is greater in a direction toward less conventionally than more conventionally, namely crimes committed by minority groups against the victims of the majority group, the law will be more severe and vice versa. The law is greater toward less culture than toward more culture, namely crimes committed by individuals who are not cultured or have low education against cultured and highly educated individuals, the punishment obtained will be heavier than the

perpetrators who are highly educated people against people who are not educated or low educated. Centrifugal law is greater than centripetal law, namely cases of criminal acts committed by individuals from marginal circles or unemployment against people who are in the social center circle or who have high positions and have an image in the community, they will receive severe penalties and vice versa.

Based on this description, it is related to the cultural aspects in several cases of discrimination by law enforcement that often occur in Indonesia, such as the majority of racial and ethnic discrimination against minorities. Incidents of racism that occurred in 2019 in a number of areas such as in Surabaya, Malang, Semarang, and in various other places where there were disproportionate repressive acts carried out by police officers against Papuan students. As for these repressive actions, such as raids and beatings of students at the Papua Surabaya dormitory accompanied by the use of tear gas, the officers also arrested 42 students, 3 of whom were women and they used racist and other intimidating words aimed at the Papuan students. The events that occurred in Surabaya, Malang and Semarang sparked disappointment and anger which was manifested in non-violent protests from the Papuan people, including in Manokwari and Sorong. The actions of the police showed a failure to guarantee protection and justify acts of discrimination, intimidation and racism against Papuan students. This action shows that so far the state apparatus or law enforcement has used a repressive and militaristic approach. Discriminatory, racist, violent and repressive approaches to the aspirations of the Papuan people and students are classified as closed security approaches which will make the resolution of Papuan problems worse and trigger an escalation of violence and human rights violations.

The handling of criminal acts that occurred in the incident of racism against Papuan students experienced inequality where the perpetrators of racism received lighter sentences than those who advocated anti-racism. The defendant for spreading hate speech, Andria Adiansyah, was sentenced to 10 months in prison by the Surabaya District Court Judges in early February. The perpetrator was found guilty of spreading a hoax video about the riots that occurred at the Papuan student dormitory in Surabaya on August 16, 2019. The prosecutor demanded a one-year prison sentence, but in early February the judge only sentenced him to seven months in prison. In addition, the perpetrators of racism committed by Syamsul Arifin, an ASN at the Surabaya City Government by swearing racist words resembling an animal, were addressed to the Papuan students. He was proven to have intentionally shown hatred towards others based on racial discrimination and was sentenced to five months in prison and a fine of one million rupiah, the sentence is three months lighter than the prosecutor's demands. And further criminal discrimination was carried out by Serda Serda Unang Rohana where during the siege he shouted and kicked the dormitory fence, the military prosecutor demanded Unang three months in prison where the sentence was one month lighter (Briantika, 2020).

The sentence was in contrast to the arrests of anti-racism demonstrators who staged mass protests in Jayapura, Manokwari and Sorong. Buildings such as the parliament building in Manokwari were burned, public facilities were damaged and cars in the airport parking lot were damaged and the Governor of Papua stated openly that "we are not a nation of monkeys". The police responded to this incident by arresting students and Papuans in various areas and they were detained on charges of treason. For example, the arrests of Arina Elopere, Dano Anes Tabuni, Paulus Suryanta Ginting Surya, Charles Kossay and Ambrosius Start and many others, they demonstrated with the demands of rejecting racism but they were accused of treason and detained for nine months in prison, even 15 years for Agus Kossay and 17 years in prison. for Buchtar Tabuni. The incident of discrimination against racial crimes is contrary to the freedom of assembly, opinion and expression as stated in the 1945 Law.

Based on this case, if analyzed using the cultural aspect, there are inequality or discrimination in criminal acts received by perpetrators of acts of racism and anti-racism advocates who only want to voice and argue. Conflicts such as discriminatory, racist, hate speech and repressive actions that occur to Papuan students are motivated by the impact of marginalization and discrimination against the Papuan people where Papuans are ethnic and racial minorities. The application of treason in law enforcement, especially in

responding to cases of political expression of Papuans, shows that it is far from legal standards and human rights, both in a normative framework, and coherence in understanding judicial decisions. A number of district court decisions, especially those involving dozens of convicted Papuan students and citizens, show that the legal system that guarantees freedom of political expression has not changed much and that law enforcement emphasizes the position of racial discrimination and is far from legal standards and human rights doctrine. The accusation of treason in the legal process actually cannot be proven in court but is still punished, this shows a reflection of the racist character of law enforcement. Efforts to criminalize and imprison Papuan students and citizens for their actions against racism are more influenced by the interests of political power than by legal considerations, so that the character of law enforcement tends to reflect the reality of racial discrimination to the level of institutionalized repression. The case of treason shows the weakness in carrying out the constitutional mandate of Article 28I paragraph 4 of the 1945 Constitution that "protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government" (Wiratraman, 2021).

CONCLUSION

The theory of the behavior of law proposed by Donald Black, since 1976 in fact still has a strong and undeniable relevance, which is actually linked to empirical findings related to legal behavior in society. The factors of stratification, morphology, culture, organization and social control are still closely cultivated by "unscrupulous" law enforcement officers by providing convenience for those who have power and disparaging those without power. Not only in Indonesia, almost all countries still cultivate such a culture.

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