

APPLICATION OF THE PRINCIPLE OF EQUALITY BEFORE THE LAW TO LAW ENFORCEMENT FOR THE REALIZATION OF JUSTICE IN SOCIETY

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Abstract

The consequences of the state of the law following the constitution mandate require that the application of law enforcement should be carried out somewhat based on equality before the law. The purpose of this study is to analyze how the principle of equality before the law applies to law enforcement for the realization of justice in society and to analyze the factors that hinder the realization of justice in applying the principle of equality before the law to law enforcement. This research uses normative legal research methods or library research. The results showed that applying the principle of equality before the law in law enforcement has not achieved the justice felt by the community. In terms of legal substance, legal structure, and legal culture

Keywords: *Equality Before The Law; Law Enforcemen; Justice.*

A. INTRODUCTION

The principle of equality before the law comes from the concept of the legal state rule of law in the Anglo Saxon legal system, which emphasizes three benchmarks, namely the first 1). Supremacy of law, 2). Equality before the law (equality before the law), 3). The constitution is based on the individual's rights (the constitution is based on individual rights). When the pediatrician of the Indonesian

State, the founding fathers formulated that the Indonesian State is a state of law (rechstaat.) and not a state based on power (machstaat). Therefore, the law should be used as a basic framework to regulate and solve various problems that run the wheels of life of the nation and state-society to realize a safe, orderly, prosperous, and just national life system. Thus the affirmation contained in the constitution of our

country, namely the Law of the Republic of Indonesia of 1945 article 1 paragraph 3.

As a country of law, Indonesia must implement the concepts of a legal state. In its development to date, it is known the concept of a standard legal state, namely the concept of a *rechtstaat* legal state, which developed in civil law countries (continental Europe), and the concept of the rule of legal law state, which developed in common law (anglo-Saxon) countries.¹

As a country of law, Indonesia must also apply the principle of equality before the law, namely the principle of equality before law. The constitution also explains that every citizen has concurrent positions in law and government and is obliged to uphold the law and government with no authority (Article 27 paragraph (1) of the 1945 Constitution fourth amendment). Thus, all Indonesian citizens receive equal treatment in the eyes of the

law, not distinguished from a position, ethnicity, caste, or social strata. In daily life and in running the government, there must be no citizen who has the privilege of treatment of it the same, as citizens must submit and obey legal decisions and be behaved the same if the law catches them.²

From the concept of the rule of law above, it can be seen that one of the important consequences of the rule of law is the existence of equal treatment before the law or what is commonly known as the principle of equality before the law, be it a country that adheres to the concept of a state of law *Rechtsaats*, as well as the concept of a state of law. Rules of Law. In other words, whoever it is, whether a small community, middle class, high society, or even government officials, must be treated equally, fairly, and impartially before the law.³

The consequences of the rule of law by the constitutional mandate

¹ András Sajó, (2019) 'The Rule of Law', in *The Cambridge Companion to Comparative Constitutional Law*,. <https://doi.org/10.1017/9781316716731.011>

² Muhamaad Ishar Helmi, (2013) "Penerapan asas equality before the law

dalam system peradilan militer" *Jurnal Cita Hukum*. Vol. I No. 2 Desember. Hal. 304

³Beny Yudianto, Tomy Michael. (2021). *Keberlakuan Asas Equality Before The Law Bagi Pejabat Pelaksana Kebijakan PENANGANAN COVID-19 Mimbar Keadilan* Volume 14 Nomor 1 Februari

require that the application of law enforcement should be carried out somewhat based on the principle of equality before the law or equality before the law. This principle is interesting to study because, in law enforcement, it is considered that law enforcers are still weighing choices. So it is true that the famous adage in the community is that the law is like a knife "sharp down and blunt up." This means that in law enforcement, the process is sometimes unfair.

Discrimination in law enforcement is an open secret in society. When poor people conflict with the law, the law looks so powerful. However, when officials rich people, the law looks blunt. Examples of some cases that are not based on the principle of equality before the law, In 2018, Saulina Sitorus, 92 years old, was sentenced to 1 month and 14 days in prison for cutting down a durian tree belonging to his relative, Japaya Sitorus in Toba Samosir, North Sumatra, to build his ancestral

grave. Asian, a 63-year-old woman in Situbondo, East Java, was sentenced to one year in prison with a probationary period of 15 months and a fine of Rp 500 million for stealing teak belonging to Perhutani. This decision is considered unfair compared to corruptors who get low or free laws.

The case of an online motorcycle taxi that was robbed and managed to kill the robbers was made a suspect. However, a marine received an award for shooting a dead robber, so it is necessary to study how to apply the principle of equality before the law in the application of law enforcement.

The formation and enforcement of laws based on the values of justice and order and their effectiveness in society by law enforcers cannot be separated from the linking of three influences which refer to the factors of law enforcement described by Friedman, which include legal structure, legal substance, and culture. Law. The three of them attract each other to society.⁴

⁴ Ucuk Agiyanto, Penegakan Hukum Di Indonesia: Eksplorasi Konsep Keadilan Berdimensi Ketuhanan. Prosiding Seminar

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The essence of law enforcement is to achieve what the law wants to achieve. The essence of the purpose of the law is to achieve justice. Justice is the desire of every community, and justice will be achieved in the law enforcement process if every law enforcer applies the principle of equality before the law. This means that from a legal perspective, all have the same position, regardless of community background.

In the results of previous writings relating to the application of the principle of equality before the law in corruption, it shows that the application of the principle of equality before the law in the enforcement of criminal law has not yet been implemented, as has been the spirit outlined by the Criminal Procedure Code which upholds human rights by putting aside all forms of differences and backgrounds that exist in the defendants of criminal acts of corruption.⁵

⁵ Abdul Selamat Nazar, (2012.) Penerapan Asas Equality Before The Law Dalam Tindak Pidana Korupsi (Studi Tentang Bentuk Penahanan Pada Sidang

The principle of equality before the law is not just a principle but must be applied in people's lives in law enforcement. If people do not feel justice, there will distrust law enforcement. All are equal before the law, just a principle, but in practice, not all are equal before the law. So that it is essential to be careful that in law enforcement, law enforcers must implement the principle that everyone is equal before the law. Conversely, if law enforcement in its application upholds the principle of equality before the law, justice in society will be achieved and foster public confidence in law enforcement.

This study aims to analyze how applying the principle of equality before the law in law enforcement achieves justice in society. The quick answer in this study is that applying this principle has not gone well because some people do not get justice when dealing with the law.

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B. Problem Research

For the discussion of this research to be more focused and obtain the expected results, there are two questions, first, how to apply the principle of equality before the law to law enforcement for the realization of justice in society, 2). What factors hinder law enforcement so that justice is not achieved in society.

The purpose of this study is to analyze how the application of the concept of the principle of equality before the law to law enforcement for the realization of justice in society, 2). the factors that hinder the realization of justice in the application of the principle of equality before the law to law enforcement

C. Research Method

To achieve the above objectives, this research will use a normative legal research method using library research related to how the application of the principle of quality before the law to law enforcement in order to achieve justice in society

ANALYSIS and DISCUSSION

A. Application of the principle of equality before the law to law enforcement in order to realize justice in society.

In reality, the law in Indonesia is not quiet about the term equality before the law. Be it from farmers, laborers, street vendors, and vulnerable groups. Nor from groups that commit human rights violations, corruption, and abuse of power. However, these two groups have different interests. However, in the legal context, both use their rights as legal subjects to claim and defend them.

The term is elementary, but it needs to be studied critically. Because the application of the principle of equality before the law depends on the paradigm of the legal subject itself. It was derived into a legal theory adopted by the eliminator. In addition, the most important thing is the law apparatus in its enforcement. The perspective of law enforcement officers in their role can be seen from; First; Defendant/Legal

Counsel, Subjective view from a subjective position. Second, the Public Prosecutor has, Subjective view from an objective position (representing the interests of the state/society). Third, Judge, An objective view of an objective position. However, the apparatus has a perspective in interpreting the principle in the case being worked on. However, as a sovereign state, it is necessary to understand the principles of law in the context of state goals. Here it can be referred to as the principle of equality before the law.⁶

The State of Indonesia has explicitly stated in its constitution the equality of every citizen before the law and the government without exception, as stated in the 1945 Constitution of the Republic of Indonesia both before the amendment and after the amendment, in its 27th article, especially paragraph (1) which states “All citizens have the same position in law and government and are obliged to uphold the law and

government without exception.” Then who is meant by a citizen? The Big Indonesian Dictionary, published by Balai Pustaka 3rd printing in 1990, on page 108, gives the meaning that “citizens are residents of a country or nation based on descent, place of birth, and so on have obligations and obligations. full rights as a citizen of that country”. From this understanding, every citizen is an Indonesian citizen, whether without a government position or as a state government official in the Republic of Indonesia.⁷

For this reason, the community is equal in the eyes of the law itself, so the context of justice is felt by all Indonesian citizens without exception. Similar to the statement made by a lecturer at the Faculty of Law UII, Zairin Harahap, SH., M.Sc., in the "Open Doctoral Promotion Examination," he said that one of the essential principles or principles of the rule of law is the principle of equality before the law (equality before the law). This principle

⁶ Muhamaad Ishar Helmi. *Op.cit.*

⁷ Patrikha Sentot Yusuf, (2015) “Tindakan Upaya Paksa Pada Sistem

Peradilan Pidana Yang Memerlukan Ijin Presiden”, Fakultas Hukum Universitas Wisnuwardhana Malang, , Hal. 92

emphasizes that every citizen is equal before the law, with no exceptions. That is, in law enforcement, all citizens have the same position. There is no term selective logging in its enforcement or even immunity from the law. So that anyone who violates the law, be it the king or the ordinary people, must have equal enforcement in the law. An important principle or principle of the rule of law is the principle of equality before the law (equality before the law). This principle emphasizes that every citizen is equal before the law, with no exceptions. This means that in law enforcement, all citizens have the same position.⁸

Equality before the law is one of the characteristics of the rule of law state. A country can be called a state of law if law enforcement positions everyone equally before the law, so there is no longer legal discrimination. The principle of equality before the law is a must in the law enforcement process for the sake of law enforcement—the

realization of justice in society. The law enforcement process that does not use the principle of equality before the law as a basis or foothold will result in injustice to the community, which will give a negative stigma to law enforcement. Although this principle is familiar in society, not all are equal before the law. It looks like the law is so blunt that it has no power when faced with politics, rulers, the rich, or the elite. In comparison, the law looks so sharp and has power when faced with ordinary people and the poor.

In this study, we will analyze the application of the principle of equality before the law to law enforcement to create justice in society. The focus of this paper is to see how the reality of the law enforcement process in society is, whether people have felt justice or not. This paper discusses the principle of equality before the law by linking the theory of law enforcement and the theory of justice. It is different from previous research, which discussed the

⁸ Penyampaian oleh seorang Dosen Fakultas Hukum UII, Zairin Harahap,

SH.,M.Si., dalam “Ujian Terbuka Promosi Doktor”

application of the principle of equality before the law only in the judicial process.

In previous research, we discussed applying the Equality Before The Law principle in the view of Corruption Crimes and the Military Justice System. In the discussion of Corruption Crimes, the author will explain how the position of the Principle of Equality Before The Law against the perpetrators of corruption and how the application of this principle to the perpetrators of corruption, then on the second perspective regarding the Military Justice System in the application of the Principle of Equality Before The Law and the position of this principle, especially on Military Justice system.

The problem of law enforcement (law enforcement) must have a will so that the law can be enforced and that the values of legal instruments can be realized. The ideals embodied in law enforcement are not necessarily attainable because the law is used as a

measure to protect the interests of specific people or groups.⁹

An example of a judicial procedure that seriously hurts people's sense of justice can be seen in the report of a 19-year-old girl whom a photographer raped. Then she was named a suspect for damaging the photographer's camera. The case began when he met a photographer to serve as a model. When the shooting time was agreed, it turned out that the girl was taken to an internet cafe on the 3rd floor. After the photo shoot, the photographer asked the girl to take a nude photo. Unexpectedly, the photographer asked the girl to have sex at the end of the session. Under pressure from the photographer, who threatens to publish nude photos of the girl, he is finally forced to have sex with her. In a state of depression, the girl took the photographer's camera to delete her nude photos. However, it is known eventually that there was a camera tug of war between the girl and the

⁹ Liky Faizal, Perilaku Penegak Hukum Menuju Penegakan Hukum Progresif

Dalam Perspektif Pembangunan Hukum Nasional.

photographer, which caused the camera to break.

When the girl arrived at her house, she reported the incident to her parents. Moreover, with his parents, he reported to the police. The police eventually arrested the photographer, but due to insufficient evidence, he was released. This case then continued with the photographer reporting the rape victim on suspicion of tampering with the camera, and finally, she was named a suspect.¹⁰

The police is a law enforcement agency that is decisive in achieving justice. The determination of suspects is the authority of the police, so if the process is not carried out in the community's interest, justice will not be achieved.

Discrimination in the determination of suspects in the police gives a negative stigma to law enforcement officers in this case, the

police, for example, the case of discrimination in treatment in the case of a member of the Navy Kopaska, Major Tunggul Waluyo who shot dead two motorbike thieves at his home, after undergoing a primary Navy examination. If this is stated, his actions are not contrary to applicable law. In a state of threat. For this action, the police chief gave them an award for his action,¹¹ This is different from the case of an online motorcycle taxi from Lombok that killed a begal, who was named a suspect.

The two cases above exemplify how the law enforcement process in the police is contrary to the principle of equality before the law. The Navy is declared innocent and even gets an award because it is considered an achievement.

There is a wrong view that the measure of success in law

¹⁰ Malthuf Siroj, Ismail Marzuki.(2017). Penegakan Hukum Progresif: Upaya Mewujudkan Keadilan Substantif. Jurnal HAKAM. Volume 1 Nomor 2, Desember 2017, hal 244

¹¹<https://regional.kompas.com/read/2017/07/05/16321501/polisi.sebut.anggota.kopaska.yang.tembak.pencuri.tak.melanggar.aturan>. Di akses pada tanggal 8/7/2022.15:26

enforcement is often only marked by the success of bringing a suspect to court and then being sentenced. The measure of the success of law enforcement by law enforcement officers is marked by the achievement of the values of justice in society.¹²

Case in point in a court decision In 2018, 92-year-old Saulina Sitorus was sentenced to 1 month and 14 days in prison for cutting down a durian tree belonging to her relative, Japaya Sitorus, in Toba Samosir, North Sumatra, to build the tomb of her ancestor. Asyani, a 63-year-old woman in Situbondo, East Java, was sentenced to one year in prison with a probationary period of 15 months and a fine of Rp 500 million for stealing teak belonging to Perhutani.

Meanwhile, data from ICW throughout 2019, 842 defendants were sentenced to light, 173 people were moderately sentenced, and 54b

were acquitted.¹³ From the description of the case above, these are just a few of the many examples of law enforcement court decisions that contradict the principle of equality before the law. A small community of an older women cutting trees with the excuse of building her ancestral grave is still found guilty. However, it differs from the defendant in a corruption case who was acquitted even though it had harmed the state's finances.

When the process is still discriminatory in law enforcement and violates the principle of equality before the law, the community will not feel justice. Justice is one of the theories of the purpose of the law. From the beginning, humans were created human nature to want always to get justice, so this is what is demanded by all humanity. The concept of justice has advantages and disadvantages. The community responds with distrust even in its application, especially in law

¹² Konar Zuber, (2017) Peranan Lembaga Polri Dalam Penegakan Hukum, jurnal Solusi Volume 15, Nomor 3, Bulan September, hal 389

¹³ Desca Lidya Natalia. (2020). ICW: Terdakwa korupsi divonis bebas dan lepas

pada 2019 meningkat
<https://www.antaraneews.com/berita/1430748/icw-terdakwa-korupsi-divonis-bebas-dan-lepas-pada-2019-meningkat>

enforcement. Justice is considered to only belong to a specific group of people such as rulers, officials, rich people, nobles, etc.

This skepticism emerged when in the law enforcement process, law enforcement officers, police, prosecutors, and judges, no longer made the basis for the principle of equality before the law in the law enforcement process. In addition, several law enforcers accept bribes in carrying out their duties. So it is necessary to examine what causes people not to feel justice.

Justice is one of the law's goals because an excellent legal system must be based on justice. Even though the meaning of justice varies from one value system to another, a legal system cannot last long if it is not perceived as fair by the people governed by the law. That law. In other words, injustice will disturb the order, which is the goal of the legal order. Disrupted order means that order and certainty are no longer guaranteed, so a legal order cannot be separated from justice.¹⁴

¹⁴ Mochtar dan B. Arief Sidharta Kusumaatmadja, *Pengantar Ilmu Hukum* (Bandung: Alumni, 2000), 52.

Thus, there is a close relationship between realizing a prosperous society and the purpose of law, namely justice.

In Rawls' book entitled "A Theory Of Justice," better known as "Theory of Justice," there are main critical ideas, namely: Justice as Fairness, Classical Utilitarianism, Two Principles of Justice, The Main Foundation of Two Principles of Justice, Benefit as Rationalism, Sense of Justice, And the last is the Benefits of Justice. Justice is meant by Francis Fukuyama as a value to be achieved with abstract parameters. Because it is still difficult to spread the attitude of fairness to the community, the actual value of justice to be achieved is justice as fairness. Contribution to these values or understandings should be the responsibility and an obligation that must be conveyed and applied by parties who understand the law and have fair values of justice, such as legal apparatus, as those who understand the law should provide

an example in the form of attitude. Alternatively, efforts to handle a case that often arises in the general public, where in fact, they increasingly underestimate the concerns or obstacles conveyed by some people because they look at the background of the community who are classified as underprivileged or poor, so it is clear here that the law only favors people who have assets or power (positions) which at the end of the many complaints or reports from the public submitted to the legal apparatus are considered trivial or seem picky.¹⁵

Empirically proven facts, injustice in society, and the difference in handling a case that is striking between the rich and the poor or the ruler and the ordinary people have become a picture that is considered normal. Of course, in terms of principle, this is contrary to

the principle of equality before the law, even to human dignity.¹⁶

B. Factors That Hinder Law Enforcement for the Achievement of Justice in society.

Asas *equality before the law* akan mewujudkan keadilan dimasyarakat dalam Penegakan hukum, idealnya harus dilakukan melalui pendekatan sistem hukum (*legal system*). Lawrence M. Friedman mengemukakan bahwa efektif dan berhasil tidaknya penegakan hukum tergantung tiga unsur sistem hukum, yakni substansi hukum (*substance of the law*) struktur hukum (*struktur of law*), dan budaya hukum (*legal culture*).¹⁷

The legal substance includes legal material, which includes statutory regulations. The legal structure concerns law-implementing institutions

¹⁵ La Ode Muhammad Iman Abdi Anantomo Uke. (2017). Teori Keadilan Kontemporer (Sebuah Kajian Teori Hukum. Jurnal Al-'Adl Vol. 10 No. 1, Januari),hal.88

¹⁶Agus Budi Susilo.(2011). Penegakan Hukum Yang Berkeadilan Dalam Perspektif Filsafat Hermeneutika Hukum: Suatu Alternatif Solusi Terhadap Problematika Penegakan Hukum Di Indonesia. Jurnal

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¹⁷ Lawrence M. Friedman,(2001) Hukum Amerika: Sebuah Pengantar, Terjemahan dari American Law An Introduction, 2nd Edition, Alih Bahasa: Wisnu Basuki, Jakarta: Tatanusa, , hlm. 6-8

(institutions), the authority of institutions, and personnel (law enforcement officers). Meanwhile, legal culture concerns the behavior (law) of the community. These three elements influence the success of law enforcement in a society (state), which synergize with each other to achieve the goal of law enforcement itself, namely justice.

The substance of the law is an integral part of the process of law enforcement. What is meant by the substance is the rules, norms, and patterns of actual human behavior in the system. So the substance of the law concerns the applicable laws and regulations that have binding power and become guidelines for law enforcement officers. Concerning law enforcement, it will be implemented and provide justice to the community when the laws and regulations made by lawmakers, in this case, the legislators, do not tend to be interesting, meaning that the law must also be based on equality before the law. The invitation was

not formed based on the interests of certain elites, groups, or groups but for the entire Indonesian people.

For example, in the Draft Criminal Code, which until now has reached polemic in the community, various responses have been received from various circles of society, including students. The students thought that the substance of the Draft Criminal Code was feared to be against the value of justice and did not accommodate the people's interests. The Criminal Code Bill is also controversial and contains many unclear articles, making it relatively easy to criminalize the public.¹⁸

Law enforcement is very influential on legal products produced from the legislative process, so it is hoped that lawmakers in the formation of laws and regulations must know the social dynamics and culture of Indonesian society so that the resulting law products follow the current state or condition of

¹⁸ Helmalia Cahyani, at all.(2022). Kebijakan Pasal Pasal Kontroversial Dalam Ruu Kuhp Ditinjau Dari Perspektif Dinamika Sosial Kultur Masyarakat

Indonesia. Journal of Law, Administration, and Social Science Volume 2 No.2.hal 83

community culture. , if in the formation of legislation, the lawmaker does not comprehensively understand the conditions and conditions of the community, the resulting legal product will be contrary to the values of justice in society.

The legal structure is a significant part of law enforcement. What is meant by the legal structure is that law enforcement, in this case, consists of law enforcement agencies such as the police, prosecutors, and the supreme court. The structure (legal structure) consists of existing legal institutions that carry out existing legal instruments. The structure is a pattern that shows how the law is carried out according to its formal provisions. This structure shows how the courts, lawmakers, and legal entities and processes operate and are carried out. In Indonesia, for example, if we talk about the structure of the Indonesian legal system, it includes the structure of law enforcement institutions such

as the police, prosecutors, and courts.¹⁹

The operation of the legal structure depends on law enforcement, and legal discrimination occurs because law enforcers do not have integrity and morality. Law enforcers can be significantly influenced in carrying out their duties. For example, the police, prosecutors, judges, and other law enforcers are very vulnerable to getting intervention from certain authorities or elites. In some cases, law enforcers accept bribes.

Negative stigma aimed at law enforcement is commonplace, especially among judges who are decisive in making decisions. For example, when judges give acquittal to corruptors who are detrimental to state finances, sometimes people also have strong enough evidence but do not get justice from the judge.

If this continues to happen, then the justice, which is the goal of the law, will not be felt by the community. Equality before the law

¹⁹ Pupu Sriwulan Sumaya,(2018). Relevansi Penerapan Teori Hukum Dalam Penegakan Hukum Guna Mewujudkan

Nilai Keadilan Sosial. jurnal resposif. Vol. 6 no. 6. November. Hal. 58

will be limited to a principle. Not all are equal before the law. So the Court here is not interpreted solely as a body to judge but as an abstract meaning, namely "delivering justice." This means that judges must provide justice by not discriminating, assuming that all are equal before the law.

Seeing this reality, law enforcers should not only prioritize formal legal aspects. Law enforcement which only starts from the substance of formal legal norms contained in the law (Law In Books), will tend to injure people's sense of justice. The emphasis should also be on the living law. Furthermore, law enforcers must pay attention to legal culture to understand attitudes, beliefs, values, and expectations, as well as people's thoughts about the law in the applicable legal system.²⁰

In the context of law enforcement, legal culture is a crucial element. Legal culture includes the views, habits, and behavior of the community

²⁰ Lutfil Ansori,(2017). Reformasi Penegakan Hukum Perspektif Hukum

regarding the values and expectations of the applicable legal system. Furthermore, in other words, legal culture is the climate of social thinking about how the law is applied, violated, or implemented. Every society, state, and community has its own legal culture, influenced by cultural values in the community, be it tribes or customs or religious influences.²¹

Legal culture concerns legal culture, which is human attitudes (including the legal culture of law enforcement officers) towards the law and the legal system. No matter how good the arrangement of the legal structure to carry out the stipulated legal rules and how good the quality of the legal substance that is made without being supported by legal culture by the people involved in the system and society, law enforcement will not run effectively.

A nasty legal culture will hinder the law enforcement process so that justice which is the goal of the law, will not be achieved, such as when

Progresif,Jurnal Yuridis Vol. 4 No. 2, Desember: Hal.159

²¹ ibid

law enforcement and the community have a terrible legal culture. For example, they like to accept and give bribes.

CONCLUSION

The application of the principle of equality before the law in law enforcement has not fully provided justice that is felt by the community. This is influenced in terms of legal substance, and statutory regulations must be made for the benefit of the people, not the interests of the elite or particular groups. In terms of the legal structure, namely, law enforcement is expected to have integrity and morality in carrying out their duties, and in terms of the legal culture of society and law enforcers are expected to become accustomed to good habits so that justice is the goal of law will be achieved.

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