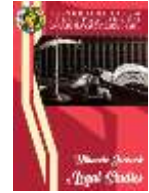




ULTIMATE JOURNAL OF LEGAL STUDIES (ULJLS)

Journal homepage: <https://talenta.usu.ac.id/uljls>



Implementation of Legal Culture toward Law Enforcement of Child Trafficking (Comparative Study of Indonesia and Australia)

Eva Syahfitri Nasution^{*1}, Topo Santoso², Marlina³, Rosmalinda⁴

^{1,3,4} Law Faculty Universitas Sumatera Utara, Medan, 20155, Indonesia

² Law Faculty Universitas Indonesia, Depok, 16424, Indonesia

*Corresponding Author: evanasutionfhusu@usu.ac.id

ARTICLE INFO

Article history:

Received April 17, 2023

Revised May 2, 2023

Accepted May 30, 2023

Available online June 15, 2023

E-ISSN: -

P-ISSN: -

How to cite:

Nasution, Eva Syahfitri. (2023). Implementation of Legal Culture toward Law Enforcement of Child Trafficking (Comparative Study of Indonesia and Australia). Journal Ultimate Journal of Legal Studies, 1(1), 1-12.

ABSTRACT

This paper aims to analyze the influence of legal culture on criminal law enforcement of child trafficking by conducting comparative studies in Indonesia and Australia. This research is normative legal research and uses literature studies to obtain secondary data. This research is limited only to how the implementation of legal culture affects enforcing the law on the crime of trafficking in children by conducting comparative studies in Indonesia and Australia. From the research, it was found that the legal culture is very influential on law enforcement in a country. When implemented in law enforcement, the effectiveness of the legal culture can be seen. Law enforcement itself has three concepts, namely the total concept (full enforcement concept), which is full (full enforcement concept). A comparison of the legal culture in enforcing the law on the crime of trafficking in children between Indonesia and Australia can be seen from the first two perspectives, from the cultural point of view of law enforcement officers. Second, it can be seen from the legal culture of Indonesian society that most of them still adhere to a patriarchal culture, while Australia adheres to what is called an egalitarian culture. Recommendation of this research is by comparing the legal culture of Indonesia and Australia, it is hoped that it can be used as a reference to reform the regulation of child trafficking by adjusting the legal principles in Indonesia.

Keyword: Child Trafficking; Enforcement; Legal Culture.

ABSTRAK

Tulisan ini bertujuan untuk menganalisa pengaruh budaya hukum dalam penegakan hukum pidana di Indonesia dan implementasi budaya hukum terhadap penegakan hukum tindak pidana perdagangan anak dengan melakukan studi komparatif di Negara Indonesia dan Australia. Penelitian ini adalah penelitian deskriptif kualitatif dan menggunakan studi literatur untuk mendapatkan data sekunder. Penelitian ini dibatasi hanya pada bagaimana implementasi budaya hukum terhadap penegakan hukum tindak pidana perdagangan anak dengan melakukan studi komparatif di Negara Indonesia dan Negara Australia. Dari penelitian di dapatkan bahwa budaya hukum sangat mempengaruhi penegakan hukum yang ada di suatu negara. Apabila diimplementasikan ke dalam penegakan hukum, budaya hukum itu dapat dilihat efektifitasnya. Penegakan hukum itu sendiri terdapat 3 konsep, yaitu konsep total (*full enforcement concept*), yang bersifat penuh (*full enforcement concept*) menyadari bahwa konsep total harus dibatasi dengan hukum acara dan sebagainya demi perlindungan kepentingan individu serta konsep penegakan hukum aktual (*actual enforcement concept*). Perbandingan budaya hukum dalam penegakan hukum tindak pidana perdagangan anak antara negara Indonesia dengan Australia dapat dilihat dari 2 (dua) sudut pandang yang pertama dari sudut pandang budaya aparat penegak hukum. Kedua, dapat dilihat dari budaya hukum masyarakat Indonesia yang sebagian besar masih menganut budaya patriarki, sedangkan Australia menganut apa yang disebut dengan budaya egalitarian. Rekomendasi penelitian ini adalah dengan membandingkan budaya hukum antara Indonesia dan Australia diharapkan dapat dijadikan acuan untuk pembaharuan pengaturan tindak pidana perdagangan anak dengan menyesuaikan asas hukum di Indonesia.

Kata Kunci: Budaya Hukum, Penegakan, Perdagangan Anak.



This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International.

1. Introduction.

Trafficking in persons is a modern form of human slavery and violates human dignity. This trade does not only occur within the country but also in other countries, both sending countries, transit countries, and receiving countries. In cases of trafficking in persons, especially children, it is an iceberg phenomenon, where there are far more cases that do not or have not surfaced. (Indriati, 2014)

In 2021, the Indonesian Child Protection Commission (KPAI) has recorded case reports based on child protection clusters. Trafficking and exploitation cases that occupy cluster 9 have a total of 1,409 cases. The case consists of six categories: children as victims of trafficking, children as victims of child prostitution, children as victims of commercial sexual exploitation of children (CSEC), children as victims of child labor exploitation, children as victims of illegal adoption, and children as perpetrators of commercial sex recruitment as children or pimps. In this case, it is emphasized that the crime of trafficking in children should require every victim or heir to obtain the right of restitution from the perpetrator. (Pungky et al., 2021) However, in reality, many judges' decisions regarding the criminal act of trafficking children do not grant them their right to restitution. (Jaelani et al., 2020) This adds to the concern about law enforcement that is felt by the community.

Victims and practices of trafficking in children are not treated humanely. Children are exploited in forms such as treating victims to work, which leads to practices of sexual exploitation, slavery and other forms of slavery, organ transplants for the sale of organs, and people to get huge profits for traffickers. (Farhana, 2012)

Trafficking in Persons Report 2021 emits a report annually to control and address trafficking in persons, categorizing countries in the world into 4 tiers (layers), tier 1 For countries that at best meet the standards of the Trafficking Victims Protection Act's (TVPA), tier 2 for countries that have not fully met the minimum standards and victims are increasing, failing to prove that there have been efforts to tackle trafficking in persons and the country's commitment, and tier 3 for countries that do not meet the standard and there is no effort to fulfil it. The TVPA itself is a provision or law that regulates minimum standards to reduce human trafficking issued by the United States. The purpose of this TVPA is to prevent exploitation, punish traffickers, and protect human trafficking.

According to the report, Indonesia is included in tier 2 (two), where the Indonesian government's handling and eradication of trafficking in persons has not fully met the standards in TVPA, but his administration is making significant efforts to address and eradicate trading in persons. Aside from that, the government has provided temporary shelter for victims, as well as training for anti-trade personnel for both the official public and the government, as well as increased public awareness of trading personnel.

The crime of trafficking in children generally leads to the process of moving or placing a person in an exploited situation. The crime of trafficking in children usually occurs in vulnerable groups. In the crime of trafficking in children, children are usually used as commercial sex workers. (Mishra & Abhisek, 2021) This weakness must be felt by the government because protection for children's human rights must be upheld based on regulations and law, not only on political tendencies, situations, and the wishes of a few parties. (Fasihah & Nordin, 2021)

However, the government is not making progress in collecting accurate data and comprehensive information on law enforcement and victim identification in an effort to combat trafficking. para-official government There is no consistent use of proactive procedures to identify victims among vulnerable groups and refer them to protective services. Existing laws enable victims to obtain restitution from traffickers who trafficked them, but the granting of this restitution just happened in at least three cases. Coordination, which is inadequate in all government agencies, and the influence

of legal culture in a country contribute to weakening the efforts of the Indonesian state in anti-trafficking, including the national anti-trafficking strategy.

One of the countries occupying *tier 1* (one) is Australia, and included in this layer are countries whose governments have met the minimum standards of the TVPA. Australia, a country that also borders Indonesia, is one of the destination countries for trafficking in persons originating from several Asian, Eastern European, and African countries. The victims were recruited by their employers to be forced to work in several fields as well as the sex trade. Employers force students to work beyond the conditions of their visa, which makes them vulnerable to trading out of fear of being deported for an immigration offense. The Australian government is already prosecuting more human trafficking suspects from the period reported previously, although it fails to punish every culprit. Moreover, the government of Australia also increased the number of victims identified and directed para-victims to program support, which was funded by the government. In addition, the government has launched a five-year national action plan to combat trading.

Legal culture is a defining process. This covers the beginning of the start formation law until the law that applies by enforcer law. As a system, the legal culture is procedural, which will influence the legal culture substantially. In enforcement law, it can be seen clearly how the legal culture (substantial and procedural) interacts positively and negatively with the local legal culture. Here, it is clearly seen that the rule of law in society is greatly influenced by legal culture. Therefore, development law, whose component is culture law, will transform values—not only *the rule of law* but also *the rule of morals*. Thus, supremacy law puts forward supremacy morals and justice. Indonesia and Australia both signed and ratified the UNCTOC and Protocol to Prevent, Crack Down On, And Punish Trading Persons, Especially Women and Children. However, trafficking in persons in Australia is somewhat less than in Indonesia. One of the factors causing the low number of trafficking cases in Indonesia is the legal culture applied in Australia. So that in this research study, the author wants to see how the implementation of legal culture is in enforcing the law on the crime of trafficking in children by conducting a comparative study in Indonesia and Australia.

2. Method

This research is normative legal research. Secondary data can be obtained by using a literature study. This research is limited to how the legal culture is implemented in enforcing the law on the crime of trafficking in children by conducting comparative studies in Indonesia and Australia. Australia occupies *tier 1* in the TVPA standard. Based on data from the 2021 *Trafficking in Persons Report*, it is stated that the number of cases of trafficking in persons, especially children, in Australia is less than in Indonesia due to strict conditions and limited opportunities to traffic people, especially children, into or out of Australia. This is due to their strong immigration control, geographic isolation, and very high regulations on trafficking in persons. The sense of community compliance and law enforcement in Australia is quite good. This is in accordance with research studies that look at how the legal culture compares with legal issues related to child trafficking.

3. Result and Discussion

This research is qualitative and descriptive. Secondary data can be obtained by using a literature study. This research is limited to how the legal culture is implemented in enforcing the law on the crime of trafficking in children by conducting comparative studies in Indonesia and Australia. This is in accordance with research studies that look at how the legal culture compares with legal issues related to the crime of trafficking children.

According to Mueller, as quoted by Sidhartha, a foundation of the cultural system is the moral *order*,

which contains values as the fruit of commitment and mutual agreement. Virtuous morality (moral righteousness) is in this domain. Mueller also stated that the virtue subdomain of morality is ethics, whose position is side by side with ideological views (ideology worldview) and solidarity allegiance. (Shidarta, 2022)

In the domain of moral order, people question moral right and wrong, ideological good and bad, and social solidarity. Just for the record, Mueller uses the terms true-false for the parameters of science, right-wrong *for* ethics, and *bad* for ideology. The use of terms for parameters like this is slightly different from what is commonly known in philosophy. Ethics, for example, often uses good or bad parameters rather than right and wrong.

All of the things mentioned above are aspects of social awareness. This orientation is formed in social situations. In other words, there will be no social orientation without a social basis that refers to a certain time and space. Mueller divides the social situation into two categories: natural basis and social order. On a natural basis, there are also three subdomains, namely demography, ecology, and geophysics. Meanwhile, there are three sub-domains of social order, each of which occurs in the state power structure, the capital/social class structure, and the job structure. Then there is a social basis in the form of human resources (demography), the environment (ecology), and materials (geophysics). By using this basis of thinking, legal culture, at its most basic level, departs from this natural situation. This base is very energizing. There are human resources (demography), the environment (ecology), and materials (geophysics). Where a person or group of people were born, when, and from which family will frame their natural base situation.

The development of legal culture must be carried out through a directed and measurable development strategy through the formulation of policies, strategies for cultivating law, and efforts to develop legal culture. Related to the legal culture, the steps taken to support reforming the legal system and politics are elaborated into the legal awareness-raising program, And rightly so. Program This addressed the need to develop as well as increase awareness of the law and human rights of society, including countries, so that they not only know and are aware of rights and obligations but are also capable of acting according to the law and respecting the rights of the basic man. With this program, it is hoped that its implementation by the state administration will result in a clean and respectful protection of human rights. (Jawardi, 2016)

For the public to have legal awareness and culture in order to create a rule of law state as well as a democratic public life, it needs to be made a grand design (strategy) of development culture law as a reference for cadre legal counselling in order to improve awareness of law so that they know And realize their rights and obligations and are capable of acting in accordance with the rule of law as well as respecting human rights.

It is possible to identify the problem of national development law from the description given. It not only concerns material law and structure law but Also problem enhancement awareness in society and the legal culture of society. In carrying out legal development in the future, in fact, what needs attention is problem awareness, public policy, and the culture of the laws of this society. This is due to the fact that Indonesia is a pluralistic society that is aware of good personal or group characteristics. Thus, there is awareness that laws are not single or uniform, though it must be acknowledged that, based on the base study comparison; there are various similarities inside the plural society.

In law enforcement, the criminal act of trafficking in children also plays an important role. The birth of law enforcement for the crime of trafficking in children was due to differences in perceptions between law enforcement officials regarding the crime of trafficking in children. This condition proves that the Indonesian nation is currently experiencing a law enforcement crisis *in* which the crisis itself is followed by neglect, disrespect, and distrust by the public towards the law. (Carolina, 2013) The neglect and distrust of certain communities is none other than the attitude and legal culture

carried out by law enforcers in handling cases of the criminal act of trafficking in children.

3.1. The Influence of Legal Culture on Law Enforcement in Indonesia

Legal culture influences law enforcement in Indonesia. Legal culture is the climate of people's minds and the strength of a society that determines how the law is used, avoided, or misused. The concept of legal culture was first discovered by Lawrence M. Friedman to refer to *social* forces that affect the climate of people's minds, which are in the form of elements of community values and attitudes related to legal institutions but need to be transformed into formal demands to mobilize the functioning of the legal system in the courts.

Within the legal culture, there is a social order, which includes the situation in the state power structure, the capital/social class structure, and the job structure. The discrepancy between social basis and social order will in turn give rise to social jealousy. This social basis distrust emerged towards the existing structure in the social order. *The distrust* mentioned above has actually entered another element of the formation of legal culture, namely orientation. Distrust like this shows there is a value orientation that is unhealthy. It is even more complex when this orientation includes distrust of state institutions, religion, and customs. As a result, everything that comes from the state is considered oppression. The views of the clergy are heretical. Invite the traditional elders to lead. At this unhealthy stage, it is certain that there will be disorientation in moral, ideological, and personal choices.

At the next level, there is the cultural system. Because positive law is also an offer of values that come directly from public power holders, it can be presumed that the formation of a healthy legal culture will face serious problems at this level if these offers are continuously rejected on the grounds of distrust of the "positive messages from the positive legal system. The formation of legal culture is essentially the formation of the orientation of values (for example, sacred or profane, right or wrong, beautiful or ugly) that inhabit the subconscious of society. And, as stated by Mueller, this formation has gone through a long journey before finally settling into the cultural system.

When implemented in law enforcement, the effectiveness of the legal culture can be seen. Law enforcement itself has three concepts, namely the total concept (*full enforcement concept*), which demands that all values behind these legal norms must be upheld without exception; the full concept (full enforcement concept), realizing that the total concept must be limited by procedural law and so on for the protection of individual interests; and the concept of actual law enforcement (actual enforcement concept), which emerged after it was believed that there was discretion in law enforcement due to limitations, both related to humans, the quality of human resources, and the lack of community participation.

If something is noticed by the public, it will appear; although the properties of individuals vary, citizens as a whole will react the same way to certain symptoms. With the same reaction, they have the same general demeanor. In cultural anthropology, things that are owned together are referred to as "right cultures." Drawing from this understanding, culture law is the wrong part of the culture, which is so broad. The legal culture is gap-general, which is the same from public certain to symptoms law. Response: That is a united view of values and behavior laws. So a legal culture shows a pattern of behavior in individuals as members of the public, which draws the same response (orientation) to life law, which internalizes public concern. (Sesse, 2013)

It is known that culture, law, and the local community are information materials that are important; it means to know better the arrangement of public, local, system, conception, norms, and behaviour of man. Culture law No, culture is not personal but rather culture that is spread throughout the public, such as the One Unity attitude and behaviour. Therefore, in talking about Legal culture is inseparable from the circumstances, society, system, and social structure containing it. Legal culture is a response to the characteristics of the receipt or rejection of a legal event. He showed attitude and behavior

toward problem law and incident law, which carried over into the public. Of course, the work of legal functionaries in substantively applying legal rules cannot be separated from the legal culture that implements them. This becomes something very important, which reminds us that the law does not exist in a vacuum. Therefore, the structure and substance of the law are very dependent on the legal culture. (Antoni, 2019)

Type culture law can be grouped into three forms of human behaviour in public life, namely: 1). Culture parochial (parochial culture); 2). Culture subject (subject culture), 3 Participant cultures in a parochial (insular) society, the members of the community are still limited, and the response to the law is only limited by the environment. Such a society still survives on tradition and the law. Alone, rule—the rule of law that has been outlined by the ancestors is an amulet that changed abstinence. If there are those who deviate from the norm, they will be cursed. Publicly, it has a high dependency on the leader. If the leader is egocentric, he cares more about himself. On the contrary, If the characteristic of the leader is altruism, then the people get attention because the leader puts himself at the top of the list, which is the main one among the others. In general, the public's simple, characteristic culture of the law is ethnocentric, prioritizing and being proud of its own legal culture and considering its own law better than other people's laws. In public culture (subject), the way of thinking of members of society already attracts attention. There is already a general legal basis for output from a higher ruler. Input from the public is still very small, or Not yet. This caused knowledge, experience, and association among community members to be limited and to exist in fear of threats hidden from the ruler.

Orientation views on new legal aspects already exist. There is an attitude of acceptance or rejection, although method disclosure is characteristically passive, not blatant, or still hidden. The type of society that is conquering this self considers itself to have no influence, especially when trying to change the legal system and the norms of the law that it faces, although it feels contrary to the interests of the people. In public culture, participants' roles, methods, thoughts, and behaviours are different. There is still cultured surrender, yet many feel entitled and obliged to participate because they feel it is part of life in general. The public already feels they have equal status, rights, and obligations under law and government. He does not want to be ostracized from responding to input and output activities under the law, participating in assessing every legal event and justice, or feeling involved in life under the law, which concerns neither the general public nor his family or himself Alone. Usually, in public, the knowledge and experience of its members are already wide. There is an association organization, which is good, in which the arrangement stands Alone and is not related to the area around it, from top to bottom. Cultural law, as described, is only part of the attitude and behaviour that influence the system and conception of law in public life. There are still other factors. Also, there is no small influence on legal cultures, such as systems and arrangements in society, kinship, religion, economics, politics, the environment, and methods of life, besides the characteristic character of a person, which are all mutually exclusive. (Makmur, 2015)

Indonesia is a constitutional state (*rechstaats*), which always prioritizes law as the basis for all state and social activities. Indonesia's commitment as a constitutional state has always been and is only stated in writing in Article 1, Paragraph 3, of the amended 1945 Constitution. In any case, a country wants its country to have law enforcers who are fair and firm and not selective. There isn't any sabotage, discrimination, or privilege in handling every legal case, both criminal and civil. Like the term sharp down, blurt up, it is the right term to describe the condition of law enforcement in Indonesia. 15 Conditions Law in Indonesia moment This more often reaps criticism than praise. Various critics directed Good, which related to enforcement law, legal awareness, quality of law, ambiguity in various laws relating to legal proceedings, and also the weak application of various regulations. Critics are often ejected for violations of the enforcement law in Indonesia. Most of our people will talk about the law in Indonesia That can be bought, which wins them, which has position, name, and power, which has lots of money, and which keeps them safe from disturbance laws even though state regulations are violated. There is an acknowledgement in the community that because

the acknowledgment law can be purchased, law enforcement officers cannot be expected to enforce the law thoroughly and fairly. So far, the law has not only been carried out as a mere routine but has also been toyed with like a commodity. The law should be a tool for social reform has changed into a sort of machine murderer. Because driven by messy and messy legal instruments.

An element that is quite important in law enforcement is the human element itself, namely the aspect of legal awareness. Because of the human element in the *legal awareness aspect* of the community, we try to understand and highlight the individual human aspect that forms its legal culture. This is where we have to talk about mentality, morals, and ethics because those are all substances from an individual man, the *—moral of the man—*. Culture, the law of high society, is a society that does not tend to break the law, although There is an apparatus that sees it. Or people who do not take advantage of the law to achieve goals for their own interests or those of their group. Moreover, people who tend to avoid or abuse the law on purpose for Certain goals, which is a final characteristic, are not fair to others. So upright law in the middle class needs upright justice. Hurting the taste of justice for a segment of the public can jeopardize public order and stability. Because flavor and justice are elements of nature from birth for a person, The close link between law and the sociocultural values of the community turns out that a good law is nothing but a law that reflects the values that live in society. (Rasjidi, 2007)

This is where the legal awareness factor of the community plays a very important role in the law enforcement efforts themselves because it is this perspective that needs to be organized so that the rule of law in this country can work. The relevance of law enforcement from the perspective of upholding justice as part of public legal awareness is an alternative effort to our distrust of positive law, and its law enforcement officers are mainstream from a legalistic point of view. So that law, from the perspective of justice, is in the area of ethics or morality and does not address legal issues in any sense. The need for flavor justice for the public in enforcement law is seen from what was expressed by Zudan Arif Fakrullah: "Law enforcement is the center of all legal "life activities," starting from legal planning, law formation, law enforcement, and legal evaluation. Enforcement law, in fact, is an interaction between various behaviors of men that represent interests that are different from the frame rule that has been agreed upon. Because of that, enforcement law cannot be considered solely as a process of applying the law, as the legalists argue. However, the process of law enforcement has a broader dimension than that opinion because it will involve dimensions of human behavior. With this understanding, we can know that legal problems that will always stand out are problems of "*law in action*". So that the court, which is the main representation of the face of law enforcement, is demanded to be able to give birth not only to legal certainty but also to justice, social benefits, and empowerment through the decisions of the judges. The failure of the judiciary to realize the legal objectives above has led to increased public distrust of legal institutions and their laws.

In thought *para juris*, process Justice is often only translated as something to process, inspect, And judge in a manner based solely on positive law. This formal, legal view dominates the thinking of law enforcers, so what the law says will become the law. The main weakness is the occurrence of law enforcement that is rigid, without discretion and tends to ignore people's sense of justice because it prioritizes legal certainty. In reality, the process of appointing a judge is not only a legal one. Process Justice No only process applies articles and sound law, but a process that involves community behavior and takes place in a certain social structure. A study done by Marc Galanter in the United States can show that a judge's decision is like validating an agreement that has been reached by the parties. From a sociological perspective, the court institution is a multifunctional institution and is a place for "record-keeping", "site of administrative processing", "ceremonial changes of status", "settlement negotiations", "mediations and arbitration", and *warfare*. (Nurita & Sugiarto, 2018)

One of the problems facing this nation is a lack of legal certainty. The absence of law enforcement in this country has been photographed in an obvious way, evident in the judiciary. The mass media tells a lot about this, from the judicial mafia, bribes to judges, immoral lawyers, and laws that favor certain

circles. In the end, public attention to legal institutions has reached its lowest point. Almost every moment, we can find news, information, reports, or reviews relating to our legal institutions. One problem that needs our attention is the decline in public respect for authority and the law. phrases This is a reaction from a flavorless justice society that has been torn apart because of the operation of unprofessional legal institutions as well as the decisions of judges and courts that are solely based on juridical aspects. The enactment of the law in the midst of society has the goal of realizing justice, certainty, and social empowerment for the community. For the ideals of the court as the protector of the community, the court must always prioritize the four legal objectives above in every decision it makes. This is in line with what is the basis of the law, namely "*law for the welfare of society*". Thus, in the end, it is not only said as law and order (law and order) but has changed to *law*, order, peace, and *justice* (law, order, peace, and justice). There is a dimension of justice and peace, which manifests itself in the institution of the court. It will be more ambitious to use the court as a protector of the public.

Judges or law enforcement officials often "play by the rules and procedures." Law is not run by reaching welfare and justice, but by reaching justice, which is wanted by law enforcers alone and defendants on the pretext of the law written. Whereas law, citing Satjipto Rahardjo's opinion, is not a paper document project but a cultural and anthropological project that has a spirit of justice. Therefore, read and understand them as sentences that are dry, linear, and massive. Logic and justice can be found by reading the rules, but it takes some reflection and a deeper understanding of what is written. Because behind the black and white regulation of law is spirit, that is justice, which becomes the main mission of law, which is referred to as conscience law. Basically, culture forms a structure, which in turn influences attitudes because structure defines what may take place and determines what is considered common. (Friedman, 2009)

Executing and practicing the law is not the same as simply applying the letters of the regulations; it involves trying to seek and find the true meaning of a written rule. Thus, the decisions taken are truly conscientious and objective. As Paul Schoten said, the law does exist in the statutes, but it has yet to be discovered. Because the law is not a telephone book that only lists regulations and chapters, but something loaded with meaning and value. Legal decisions based solely on what is stated in the written regulations generally result in decisions that are dry, lack conscience, and have no moral value. Thus, the results are often disappointing. According to Satjipto Rahardjo's opinion, justice even applies to similar blind people who always stumble on the stupidity of the power system and the mental breakdown of state apparatus and law enforcers. That is, supporters of systems and devices have taken care of their consciences to defend the interests of the people. The state and its apparatus are not like what the philosopher Nietzsche said, like a monster that is the coldest of the coldest because they operate to steal treasure from residents for various reasons.

A situation of injustice or failure to achieve justice through law becomes a one-point problem that must be quickly handled, and the country must already have a paper blueprint so it can realize what it aspires to as a founding father nation. However, due to mentally and morally corrupt and destructive attitudes, as well as attitudes of ignorance or lack of respect for the system of law and legal objectives of the Indonesian nation, which has a good legal order, The decline in public trust in the law is due to high egoism and opportunism. (Utama, 2019) As a description, enforcement law is the character or identity of the Indonesian nation according to what is contained in the contents of Pancasila and the Preamble to the 1945 Constitution. With the current situation and conditions, the norms and rules have shifted to a sense of egoism and individualism without thinking about others, and this is the value of injustice that will increase action anarchism. Violence, which obviously is not in line with full national character, has the principle of deliberation for consensus as contained and implied in the contents of Pancasila.

3.2. Comparison of the Legal Cultures of Indonesia and Australia Regarding Law Enforcement of Child Trafficking

This sub-discussion discusses the legal culture that applies in Indonesia and Australia related to law enforcement on the crime of trafficking in children. In the *Trafficking in Persons Report 2021* data that was presented in the introduction, Indonesia is in *tier 2*, while Australia occupies *tier 1*. *Tier 2* shows that *the watch list* does not fully meet the standards of *the Trafficking Victims Protection Act* (TVPA), which we are working on. According to *the Trafficking in Persons Report 2021* data report, Indonesia is included in *Tier 2*, where the Indonesian government's handling and eradication of trafficking in persons have not fully met the standards in TVPA, but his administration is making significant efforts to address and eradicate trafficking in persons. Based on the annual report, aside from that, the government has provided temporary shelter for victims as well as training for anti-trade personnel for both the official public and the government, as well as increased public awareness of trading personnel. However, the government is not making progress in collecting accurate data and comprehensive information on law enforcement and victim identification in an effort to combat trafficking. Existing laws enable victims to obtain restitution from the traffickers who traded them, but the provision of restitution is minimal. Currently, the punishment for the perpetrators of the crime of trafficking in children is imprisonment and fines. (Suartha, 2020) Coordination, which is inadequate across government agencies, and officials' lack of knowledge of trafficking indicators and laws undermine Indonesia's efforts in anti-trafficking activities, including its national anti-trafficking strategy. (AS, 2021)

Australia occupies *tier 1* in the TVPA standard. Based on data from the 2021 *Trafficking in Persons Report*, it is stated that the number of cases of trafficking in persons, especially children, in Australia is less than in Indonesia due to strict conditions and limited opportunities to traffic people, especially children, into or out of Australia. This is due to their strong immigration control, geographic isolation, and very high regulations on trafficking in persons. The sense of community compliance and law enforcement in Australia is quite good.

A comparison of data on *the Trafficking in Persons Report 2021* illustrates the importance of legal culture in enforcing the law on the crime of trafficking in children. When examined from the point of view of optimizing the role of law enforcement officials in enforcing the law on the crime of trafficking in persons, it will be found that law enforcement officials, both police, prosecutors, and judges, in dealing with the crime of trafficking in persons still adhere to the teachings of positivism, which only makes a superficial interpretation based on the textual interpretation, so that in several cases the perpetrators of the crime of trafficking in children were acquitted because they were declared innocent. In addition, there appears to be selective logging, where a person should be involved in the crime of trafficking in children but is only used as a witness. According to the teachings of positivism, what law enforcement officials have achieved so far in dealing with the crime of child trafficking is legal certainty by finding only textual truths and not paying attention to the interests of society and justice.

Australia adopted *the Australian Criminal Code* in 1995 to eradicate human trafficking. The *Australian Criminal Code of 1995* Also has a number of advantages for human trafficking arrangements. Australia's legal system, that is, the *common law*, influences location arrangements in the law. Australia put arrangements about trading persons in the *Australian Criminal Code 1995*, not in a law country part. Because trading persons is the wrong form of crime, which is thorough. Excessive regulation regarding the crime of insider The *Australian Criminal Code 1995* makes it easier for para judges to determine and consider which criminal acts can be imposed on the perpetrator. The judges are also not bound by *the Australian Criminal Code 1995*, but the judge's decision will use "*jury*".

In Indonesia, law enforcement agencies, in carrying out their duties, will always be in contact with other law enforcement agencies. The police, judges, and prosecutors have different legal cultures

when handling a case. The legal culture of a policeman who directly interacts with the community by receiving reports or complaints about the occurrence of a crime of trafficking in children and then working on the case into a file that is ready to be examined and deserves to be transferred to the prosecutor's office. In contrast to the legal culture of the judiciary. A prosecutor in interaction who receives a large number of cases from the police and handles cases so that they can be transferred to court and finally sit in court and submit charges. Likewise, a judge in his interaction has his own legal culture in receiving a case file for the crime of trafficking in children, then examining it at trial until he makes a decision against the defendant who committed the crime of trafficking in children, and finally in the penitentiary as the place of execution for the defendant while serving his sentence. Correctional officers themselves, in dealing with various kinds of defendants, certainly have their own legal culture that is not the same as that of the police, prosecutors, and judges. (Anwar & Adang, 2011)

The interactions carried out by each law enforcement apparatus cannot be separated from the environment that shapes it, both the internal environment of the law enforcement officers themselves and the external environment. This can be strengthened by the theory put forward by Herbert Blummer, namely the theory of symbolic social interaction, where each law enforcement officer, in addition to existing regulations, must also understand the existing culture of human behavior, which is reflected in the communication that occurs on the part of the victim of a crime. Trafficking in children, other law enforcement officials, and the message to be achieved in Law No. 21 of 2007 concerning the Eradication of Trafficking in Persons. Symbolic interaction emphasizes the meaning of cultural interaction in a community.

In addition to differences in the legal culture of law enforcement officials related to law enforcement on the crime of trafficking in persons in Indonesia and Australia, differences in legal culture are also related to the factors that cause the crime of trafficking in persons. Factors causing trafficking in persons in Indonesia are related to legal culture, which can be seen in terms of patriarchal culture. Victims of criminal acts of child trafficking are increasing because society upholds patriarchal culture. A patriarchal culture or culture that considers that boys have advantages and superiority compared to girls, especially in relation to access to family assets and education, is one of the factors causing the crime of child trafficking. In Indonesia, victims of child trafficking are often used for the purpose of sexual exploitation and work in menial jobs that pay low wages. (Indah, 2014)

Such a perspective causes girls to become second-class citizens or not prioritized. This gender gap makes girls vulnerable to becoming victims of child trafficking due to several factors, such as women's weak economic empowerment, a lack of knowledge of women and children in the era of globalization, and the fact that women tend to lack the right to make family decisions. In addition, often in society, early marriages are forced to be carried out as a way to get out of poverty, and it is not uncommon for these girls to be trapped in child trafficking.

In general, Australia is an egalitarian society. This does not mean that everyone is equal or has equal wealth or possessions. Australian society respects the equal rights of all people, regardless of gender, sexual orientation, age, disability, religion, race, or national or ethnic origin. There are a number of laws in Australia that protect people from being treated differently from other people. The laws in Australia are enforced so that people from different backgrounds are not given preferential treatment. Men and women have equal rights in Australia and should be given equal opportunities to pursue their goals and interests. It is against the law to discriminate against people because of their gender. Both men and women have the right to make their own choices about personal matters, such as marriage and religion, and are protected by law from intimidation or violence.

4. Conclusion

Culture and law have a role, which is vital. And law enforcement is important because the law is largely determined by the legal culture in the form of the values, views, and attitudes of the people concerned. If cultural law is ignored, it will fail the modern legal system and raise a variety of new problems. In the context of law enforcement in Indonesia, it is necessary to improve the quality of the role of legal culture, among other things, through the work culture and professional behavior of law enforcement officials, education, and fostering individual and social behavior, which is wide, not only to apparatus enforcer law but to all community elements of government.

A comparison of the legal cultures regarding law enforcement of trafficking in persons in Indonesia and Australia can be seen from two points of view. First, related to law enforcement officials In Indonesia, law enforcement officials, including the police, prosecutors, and judges, in dealing with the crime of trafficking in persons still adhere to the teachings of positivism, which only make superficial interpretations based on textual interpretation. Meanwhile, in Australia, based on data *from the Trafficking in Persons Report 2021*, law enforcement officials are classified as having a very strict legal culture regarding cases of child trafficking. Second, the majority of Indonesian society still adheres to a patriarchal culture, whereas in general, Australian society is an egalitarian society. Recommendation of this research is by comparing the legal culture of Indonesia and Australia, it is hoped that it can be used as a reference to reform the regulation of child trafficking by adjusting the legal principles in Indonesia.

References

- Antoni. (2019). Menuju Budaya Hukum Penegak Hukum yang Progresif. *Nurani*, 19(2), 237–250.
- Anwar, Y., & Adang. (2011). *Sistem Peradilan Pidana Konsep, Komponen, dan Pelaksanaannya dalam Penegakan Hukum di Indonesia*. Widya Padjajaran.
- AS, D. L. N. (2021). *Trafficking in Person Report*.
- Carolina. (2013). Rekulturasi Penegakan Hukum dalam Pencegahan dan Pemberantasan Tindak Pidana Perdagangan Orang. *MMH*, 42(4), 576–582.
- Farhana. (2012). *Aspek Hukum Perdagangan Orang*. Sinar Grafika.
- Fasihah, S., & Nordin, R. (2021). 'Kebebasan atau Ekspresi di dalam Malaysia: Kompatibilitas dengan Standar Hak Asasi Manusia Internasional. *Tata Kelola*, 9(1), 34–42.
- Friedman, L. M. (2009). *Sistem Hukum Perspektif Ilmu Sosial*. Nusa Media.
- Indah, S. M. (2014). *Korban: Satu Perspektif Victimologi dan Kriminologi*. Prenadamedia Group.
- Indriati, N. (2014). Pengembangan Model Perlindungan Hukum Terhadap Anak Sebagai Korban Perdagangan di Indonesia. *Jurnal Dinamika Hukum*, 14(3), 406–418.
- Jaelani, A. K., I Gusti Ayu Ketut Rachmi, H., & Karjoko, L. (2020). "Politik Hukum Mahkamah Konstitusi Dalam Pembatalan Konsep Empat Pilar sebagai Pancasila sebagai Dasar Negara." *Pengembangan Bakat Dan Unggul*, 12(2), 13–21.
- Jawardi. (2016). Strategi Pembangunan Budaya Hukum. *De Jure*, 16(1), 77–93.
- Makmur, S. (2015). No TitleBudaya Hukum Dalam Masyarakat Multi Kultural. *Sosial Dan Budaya Syar'i*, 2(2), 383–410.
- Mishra, U. K., & Abhisek. (2021). 'Negatif Transgender Dan itu Benar ke Pekerjaan di dalam India: Analitik Lintasan Diskriminasi. *Tata Kelola*, 9(1), 26–33.
- Nurita, R. F., & Sugiarto, L. (2018). Membangun Budaya Hukum Indonesia di Era Globalisasi. *Cahaya Keadilan*, 6(1), 90–109.
- Pungky, M., Wijaya, H., & Ali, M. Z. (2021). 'Hambatan Legislasi dalam Menata Kembali Badan Pemerintahan di Indonesia. *Bestuur*, 9(1), 1–12.
- Rasjidi, L. (2007). *Dasar-dasar Filsafat dan Teori Hukum*. Alumnus.
- Sesse, M. S. (2013). Budaya Hukum dan Implikasinya Terhadap Pembangunan Hukum Nasional. *Hukum Diktum*, 11(2), 171–179.

- Shidarta. (2022). *Pembentukan Budaya Hukum*. Binus. https://business-law-binus.ac.id/2019/10/04/pembentukan_budaya_hukum/
- Suartha, I. D. M. (2020). Formulasi Kebijakan Pidana tentang Pengaturan Hukuman Mati Bagi Pelaku Pidana. *Moralitas Dan Budaya Hukum*, 1(1), 12.
- Utama, A. S. (2019). Kepercayaan Masyarakat Terhadap Penegakan Hukum di Indonesia. *Ensiklopedia Sosial Review*, 1(3), 306–313.