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Legal Economic Culture in the Context of Judges Settling Criminal Cases in Courts: What Can We Learn from Indonesia?

Teddy Asmara[1]

Abstract

Under the context of judges resolving criminal cases in Indonesian courts, this research article analyses the concept of legal and economic culture. Nevertheless, the study also demonstrates a collusive aspect of the bargaining process, which indicates that there has been a degradation of morals in the practice of law. It is recommended that the government of Indonesia and the Supreme Court encourage legal education that emphasizes ethical behaviour and a compassionate approach to judgement; establish a code of conduct that promotes ethical behaviour and a humanitarian approach to judgement; create a monitoring and assessment system; and encourage community participation in the administration of criminal justice. These steps will help address this crisis of morality and promote a more humane approach to judging. Unfortunately, the findings of this research cannot be applied to other courts or situations. Also, future research is required to investigate the perspectives of other actors involved in the administration of criminal justice. Researchers need to use various qualitative and quantitative research methods to fully comprehend the complexities and nuances of the social dynamics involved in the administration of criminal justice. Additionally, researchers need to investigate cutting-edge methods for encouraging ethical behaviour and a humane approach to judging to comprehend these topics fully.

Keywords: Legal Economic Culture, Economic Rationality, Indonesian Courts, Criminal Justice, Judge Settling, Criminal Case.

Introduction

Judges must reflect on noble ideals and goals using justice principles to fulfil their ethical vocation (Asmara, 2011). However, like the court in the Bank Indonesia Liquidity Assistance case, his conduct may reflect an instrumental mindset. This mentality seeks worldly advantages like cash remuneration for efforts that help others. It does not preclude the development of a practical manner of thinking, a mix of ideal and instrumental thinking that weighs the pros and cons of each component. Imagine judges' thinking pattern propensities vary. This

[1] Faculty of Law, Universitas Swadaya Gunung Jati, Jalan Terusan Pemuda No.01 A, Cirebon City, West Java 45132, Indonesia. teddyasmara25@yahoo.com

phenomenon can be explained by Talcott Parsons' (1951) voluntaristic action idea. This study refers to legal and economic culture through an ideational approach; as Mudjahirin Thohir (2007) stated: “Ideas, ideas, knowledge, and beliefs form the foundation of culture”.

Culture is community behaviour and action. In Pierre Bourdieu's (1977) meaning, judges' legal, economic culture is a habitus. In this sense, habits are economic rationalities that judges have internalized and institutionalized. Therefore, judges' legal and economic culture highlights its existence as a pattern for judicial decision-making. Meanwhile, the judge's law's economic culture reflects its economic behaviour as a pattern. The court is where participants pick "victory." Court is the field where the habitus or activity occurs, is kept, and is updated.

The term "victory" can refer to being exonerated or receiving relief from criminal punishments, both of which are linked to the enhancement of one's economic capital, particularly to court-granted monetary incentives. Judges can acquit or sentence lightly. If the reward is an award, all the habitus mentioned above is 'logical fairness.' For at least 30 years, individuals have debated the morality of law enforcers and the courts' performance, which is thought to work like business organizations (Parker, 2006).

Suppose economic rationality symptoms have the potential to pattern as a network of meanings in legal, economic culture. In that case, the key questions are whether, how, and why they have been internalized and socialized, which leads to a habitus in the community of judges and whether they have been internalized and socialized in the past. Based on current empirical realities, the reaction must be altered. Instead, an investigation must reveal the meanings of that reality. Qualitatively, there is unanimity that social reality is based on an elaborate meaning-making system.

A thorough and specific understanding of justice needs first simplifying the development of a legal, economic culture for judges to utilize in criminal cases. This fact must be understood thoroughly. Judges may use economic culture analysis to guide their sentencing.

Research Methods

I employed qualitative and quantitative methods to assess qualitative symptom distribution, differences, and sentence correlation weights. Quantitative and qualitative analyses were used. By analysing judges' sentence judgments in various court categories, researchers have tried to find patterns in how economic criteria are balanced against other factors like crime severity and criminal history. These judgments were examined to establish economic weighting.

Economic Rationality, Legal Economic Culture and Freedom of Judges

Why does duty-related thinking shape economic rationality? How does experience shape this thinking? Max Weber's (1968) perspective on rationality, subjective elements in social action, and interpretive methods (verstehen) in studying social phenomena illuminates how, when, why, and how far actors (judges) can express their rationality potential in social interaction. This concerns Weber's (1968) views on social action's logic and subjectivity. Potential patterns of economic rationality that emerge in action are judges' subjectivity. Thus, the setting for choosing approaches and goals might vary. In this case, Talcott Parsons' theory of voluntaristic action and Weber's categorisation of rationality may help classify the chosen way and purpose as a habit or cognitive pattern (economic rationality) legitimised by the judges' social life. Talcott Parsons developed the notion of voluntaristic action, and Weber (1968) categorises reason.

Potential patterns of economic rationality that emerge in action are judges' subjectivity. Thus, the setting for choosing approaches and goals might vary. In this case, Talcott Parsons' (1951) theory of voluntaristic action and Weber's (1968) categorisation of rationality may help classify the chosen path and purpose as a habit or cognitive pattern (economic rationality) validated by the judges' social life. This would be true if Talcott Parsons created the voluntaristic action theory and Weber (1968) categorised reason. Economic rationality is a public manner of thought among judges and could reach the courts. This understanding shows how judges' legal and economic culture affects the social world of courts, or as Clifford Geertz (1973) says, "culture consists of socially constructed structures of meaning," with an emphasis on "culture." Economic rationality is a way of thinking that court members can accept and practice. Latif controls how judges issue penalties and meet standards.

The present legal economics controversy centres on whether economic rationality is objective, subjective, or both convergent mental constructs and their usefulness. Since judges' economic logic is based on the benefits they internalise and practice in case treatment, the question is how it might become a pattern and a legal, economic culture. After explaining that economic rationality may be cognitive, emotional, and intuitive, legal and economic culture is the next topic.

The discussion of judges' economic rationality—how they reflect on how they judge and why such rationality is accepted, agreed upon, and practised by the community of judges—will undoubtedly reference ideational culture. This approach will reveal whether judges' legal, economic culture is a system of meaning of ideas and knowledge acquired through learning, as described by James P. Spradley (2016), or structural internalisation (unconscious). A way of thinking that should be accepted without question, as in Pierre Bourdieu's (1977) concept

of habitus and Geertz's (1973) view that culture is a structure of meaning (fabric of meaning) that helps humans interpret experiences and directions of action. The potential of a community of judges and courts having their own legal culture makes their cultural notions relevant. These cultural notions highlight judges' intensity or regularity of disappointing, damaging, and shameful legal actions.

The shameful legal practices such as legal buying and selling, case brokers, court mafia, and others have been approved or linked to how judges arrange their communities in court and give penalties. Judges appear stable in themselves and work interactions, which rarely involve competing opinions. This context allows judges' legal and economic culture to discipline behaviour because, as Geertz (1973) stated, cultural patterns determine programs for social institutions and psychological processes that shape people's behaviour, or as Parsudi Suparlan (1996) stated, culture functions as a blueprint for human life. According to Geertz (1973), cultural patterns shape social structures and psychological processes that influence behaviour.

Tracing judges' beliefs, thoughts, desires, motives, and other subjectivity to manage legal life in court may reveal their legal and economic culture. Judges manage court life using their views, thoughts, wants, and reasons, which could be more obvious. Symbols are expressed in words and deeds and judged by a community. How to trace to get a complete picture of reality (thick description) and where to reach the innermost reality, which Mudjahirin Thohir (2007) calls values or world view. These questions will be answered in this chapter. This explanation states that to reach the worldview level, one must pursue the phases of reality: empirical, symbolic, meaning, and concept.

Legal, economic culture (habitus) is a system of economic rationality (dispositions) internalised or socialised by judges. It is integrated into judicial life here. This includes habitus, domain, and capital relations. Legal and economic habitus is an economic reason. Case handling is a social realm that puts judges, lawyers, defendants, and other players and regulates their interactions to obtain capital to advance their interests. Thus, only through battle can economic rationality endure or change (Hayes, 2020).

Bourdieu (1977) states that a person's habitus is "as an open system of dispositions which are constantly subject to experience, so constantly influenced by these experiences, either in strengthening or modifying the structure of the structure." It endures, but not indefinitely. Thus, legal and economic culture in the dimension of ideas (economic rationality) as a product of legal praxis and structured praxis of thought and legal action in case handling have a dialectical relationship. Thus, legal praxis creates a legal, economic culture. Given such a

relationship, the community of judges will create its social domain (self-regulation).

On the ideological level, there is no debate about the freedom and independence of judges as a core value for a nation based on the rule of law, a democratic rule of law, and a system to protect human rights. Therefore, a court exists only if the judge has discretion over the options. However, actual applications and utilisation of the structure are commonly highlighted. Charles Gardner Geyh (2012) suggests examining judge freedom from a doctrinal and practical perspective because what is ideologically agreed upon is a myth when applied to an administration of governance that is usually a network of complex power functions. Stephen B. Burbank and Barry Friedman (2002) proposed a micropolitical study around this time. They intended to study judges' reactions and behaviours.

As officials with judicial power, judges' position signifies their judicial freedom. In criminal justice, judicial freedom is based on the judge's authority, which gives him the authority and inspiration to interpret the facts of the cases he handles. As a decision-maker, only his interpretation is valid. The judge's stance inspires and guides fact interpretation in situations. Rightly so. Since the judge's subjectivity, meaning, and self-orientation affect how they decide criminal cases, we can see their importance.

Judges can use their convictions when sentencing or acquitting criminal defendants under Articles 183 and 191 paragraph (1) of the Criminal Procedure Code and the Judicial Powers Act (Article 6 paragraph (2) of Law No. 4 of 2004 and Article 6 paragraph (2) of Law No. 48 of 2009 as a replacement). These legal provisions will theoretically increase the appearance of economic rationality of judges in the context of their freedom to impose sentences and make judges' subjectivity more dominant in sentencing, in addition to the theoretical basis or justification (Lumbanraja, 2022).

Opportunities for judges to represent economic reason in their freedom to impose punishments are linked to their beliefs when reading legal facts. This is because judges' beliefs are thought to affect their punishments. The judge can set the length of the sentence as long as it does not exceed the maximum limit when determining the severity of criminal sanctions based on the number or duration of criminal threats or practices. Criminal law and criminology literature often use discretion to describe the judge's authority. Sentence discretion, penalty discretion, and discretionary power are examples. The term "discretion" has been defined from numerous angles. This view defines *discretion* as a decision-making power based on reason, judgment, and personal opinion rather than the law. The emphasis is on "more," meaning the judge is not lawless. Within the law, they

might express their thoughts and opinions in their verdict. Values and ethics should allow discretionary use and product. According to Roscoe Pound (1923), they will be virtuous and serve society. In this case, judges' economic common sense dominates sentence discretion.

Other characteristics of discretion include no defined tradition. A legal norm intended for abstract application never mentions "discretion". This authority comes from concrete legal practice, so Lawrence M. Friedman (1975) views discretion solely as a form of legal behaviour that does not result in formal sanctions or is relatively uncorrected. According to Lawrence M. Friedman (1975), discretion is a legal activity that cannot be punished. Roeslan Saleh (1983), who agrees with Hoefnagels that criminal law has a top, middle, and bottom, explains that judges' discretion in the sentence is necessary. Society's views on emotions and social responses to crime and punishment are stressed in the lower punishment. Norms, values, theories, and rationality determine the upper punishment level. The judge must reconcile the opposing views of the other two sectors with his free power. The central part plays this job.

This judge's belief in sentencing appears throughout the criminal case processing process, especially when interpreting (Steffensmeier & Hebert, 1999). Thus, judges' flexibility in imposing sanctions is part of their theoretical judicial freedom in criminal proceedings. Judicial freedom derives from the judge's decision-making role. Judges can exercise judicial independence because their authority can justify their belief in the facts and rules they interpret. Alternatively, sentencing judgments are a product of judicial freedom and manifest in the severity of criminal sanctions. This is realistic (Allan, 2013).

The legal provisions that serve as a reference for judges may include ideas, concepts, or legal principles. This may be the case concerning a religious principle, such as the notion that justice should be based on a belief in the One and Only God or the concept of humanizing or individualizing criminal behavior. In the meantime, factual conditions include the results of their interpretation of the events that took place during the trial, both symbolically referring to the attitude of the accused, witnesses, victims, advocates, and public prosecutors, as well as to situations outside the trial, for example, the defendant's family, the family of the victim, and could also be principal actors (defendants, advocates, and public prosecutors), other parties with interest in the case being investigated, and could also be principal actors (defendants, advocates The variations in legal construction from (1) to (n) are the result of the judge's application of economic rationality within the context of the process of accomplishing the desired goal, which can take the form of a decision that acquits the defendant or pertain to the issue of determining the length of the sentence. Despite this, concerning the motives,

goals, and other subjective thoughts of judges that are hidden behind or hidden in the text of court decisions (legal constructions along with the rulings), they will still need to be traced to reality in the form of symbols, meanings, ideas, and world views. As a result, it was developed with a legal, economic, and cultural point of view; the core of its mission is to explain how and why economic rationality can exist, and it is a mode of thought that can interpret or become a guideline for making use of judicial freedom when dealing with criminal situations.

Reflections on the Economic Law Culture of Judges in the Freedom of Judges to Convict: Reality in Indonesia

Friedman (1975) considered the trial a social comedy. The stage is a somewhat independent social sphere created by the court community's ideas and actions in processing criminal cases. As with the preceding concept, the social domain entails interaction and the collection of many subjective traits from each habitus from which the actor arises. Professional legal actors in criminal cases include non-professional journalistic law, social organizations, non-governmental organizations, entrepreneurs, lecturers or experts, and other professions that build a rule of competition (practice) to obtain capital.

Omar Lizardo explained that habitus, a social product (structured structure), can also be socially constructed. This concept resembles Berger and Luckmann's (1966) micro foundation and institutional theory. "Bourdieu believed that the agent's perception of practice constructs reality by defining their worldview and order. Since practice is the agent's conception of action, it constructs reality. Their principles included economic capital, which means that all actors were focused on material benefits except the accused and his family, who fought for the judiciary's social and symbolic capital, or justice and social dignity. Pierre Bourdieu (1977) defined this materialistic mental structure or habitus as a product of structural internalization and not ahistorical. It has become part of their lives and is not ahistorical. Some judges rationalize their motives and goals due to financial constraints (such as low wages). In contrast, others, advocates, prosecutors, and clerks rationalize them through cultural enhancement (such as cars, clothing, and well-known branded golf equipment).

Rather than implying that judges are unconstrained by laws, judicial freedom refers to how they interpret the law and analyze evidence in the context of legal reasoning. Technically, misapplying the law includes unfair, cruel, and other inhumanities that violate justice or society. The symbol of the court of appeal and cassation legitimizing legal corrections illustrates this aspect of judge freedom. Freedom of judges means they can be wrong or have different opinions.

Articles 183 and 191, paragraph (1) of the Criminal Procedure Code, define judicial freedom as the judge's conviction. The judge believes that judges evaluate facts and evidence to determine if a crime happened and to convict or acquit the accused. An ad hoc judge at the Corruption Court declared that "Judges' beliefs are paramount when deciding cases. It can be difficult to tell if a decision is right or wrong. Exceptions aside, God knows." With independence and impartiality as their foundation, judges can make decisions. They can follow Supreme Court Justice Bismar Siregar, known for making popular decisions, or his seniors, who like to acquit or reduce sentences for defendants who harm the state's finances.

As can be seen from the instances of the two-judge figures presented earlier, there is, in fact, some form of categorization or patterning phenomena at play, in particular concerning the application of subjective economic considerations in the exercise of the judge's independence. Classification or labelling with word symbols of the judge's behaviour in handling a case, such as 'Buser' judges, 'KKO' judges, 'straightforward' judges, and 'excellent' judges are some examples (bageur). The term "need money immediately" is an acronym for the word "buser," which defines the behaviour of judges who tend to be oriented towards the exchange of services and monetary benefits when discussing the cases they are managing. "buser" is an acronym for "need money urgently." KKO is an abbreviation for "right left okay," indicating that the organization does not mind receiving money in exchange for the two opposing parties and will award victory to the party that donates the most. The behaviour of such judges was admitted by the Supreme Court Chief Judge, Bagir Manan, who was quoted as saying, "It is more troubling because facilitation payments come or are brought in from right and left, and higher payers establish legal settlements." A judge is said to be "straight" if he or she does not wish to discuss monetary reward. However, in certain situations, the judge does not refuse to accept gifts from other judges or particular parties after the judge has reached a judgment. One is said to be a "good" judge when they have this final attitude, but this "good" judge genuinely has something like that. Thus it is not a permutation of the "correct" ones. Because the attitude of tolerance is one of the defining characteristics of the 'good' judge, we also use the word 'tolerant judge' in this context.

Because both a "buser judge" and a "KKO judge" are often materialistic and have significant potential in the legal industry, there is no significant difference between the two types of judges. Regarding the mentality of judges, Satjipto Rahardjo pretty well nails it on the head when he describes the materialist judge as the individual who, while conducting an examination, first consults his "gut" and then seeks articles to establish validity. He is idealistic because he is not interested in becoming involved in legal business problems. This distinguishes it from the

concept of the "right judge," which, in Rahardjo's (2011) opinion, refers to a judge who will first consult his heart before making a decision. However, there is a circumstance in which the straight type of judge cannot be exempt from receiving compensation money. If he is in the position of being a member judge, it will be difficult for him to refuse compensation from a colleague who is the chief judge. This is the condition under which the straight type of judge cannot be exempt from receiving compensation money. In the meantime, there are other circumstances in which he finds himself in a difficult financial situation, particularly due to an immediate requirement. In these instances, he is willing to receive compensation from participants. However, he believes that the gift is not connected to the result of his decision, which is essential. Therefore, in essence, he is a "straight" judge who, when placed in a circumstance that is difficult to escape or when confronted with a decision that is a conundrum, is compelled to adopt adaptive behaviours that transform him into someone who is "tolerant."

However, this choice cannot be separated from the interaction with the attitudes of actors and users of the law in court who seem to be used to asking for services from judges, or what was stated in the results of Daniel S. Lev's (1985) study from three decades ago is still valid. Table 1 depicts judges because of their independent status and role, and they can be idealistic (straight), idealistic (tolerant), or materialistic (greedy). Because everything takes place within a process of complex social interaction with a variety of interests, the phenomenon of the legal and economic culture of judges is not an explanation of a determinant position. This means that it is impossible to say whether the attitude of the judge or the attitude of the participants is the cause.

This complexity also arises in interactions with the internal judges themselves. For instance, an idealistic judge (member) who is unable to refuse compensation from the chief judge of the panel does not necessarily mean that his idealism becomes kafah if he is in the position of the chief judge of the panel as well as when he is serving as a single judge. This is because an idealistic judge cannot refuse compensation from someone who has authority over him or her. Because as was just discussed, there are times when the issue is with the situation itself; for instance, when one is confronted with a predicament that presents them with a choice between declining compensation and running the risk of being unable to pay the rent or accepting compensation but having to deal with feelings of unease. Therefore, in the sense of Pierre Bourdieu's (1977) concept of habitus, and concurrently with what Jen Webb et. al. (2002) has stated, that habitus is a concept that expresses how a person becomes, the pattern of economic rationality, in this case, is not a categorization in the absolute sense; rather, it is a disposition.

To put it another way: the pattern of economic rationality here is not a categorization.

Table 1. Components of Economic Rationality Patterns of Judge Freedom

JUDGE ACTION			FREEDOM OF JUDGES		
			IDEALISTIC	IDEALIST-REALISTIC	MATERIALISTIC
		Appointment of panel judges	Did not ask	Not asking, but agreeing to a third party's request	Request directly or at the request of a third party
CASE HANDLING	HEARING	Communication	Judge actively asking	Chief Judge: actively asking	Chief Judge: actively asking
				Judge Member: passive	Judge Member: passive
		Trial adjournment	The interests of the parties and procedural	The interests of the parties and procedural	Parties' interests and fulfillment of rewards
		Execution time	Without Any Interference	Without Any Interference	Made according to the agreement and compensation services
		Decision-making	Independent	Independent – persuasive	Depends on the compensation agreement
DETENTION		Imposition	Not if previously not detained	Not if previously not detained	Yes, if negotiations fail
					Sometimes used as pressure to negotiate
		Suspension City/home redirection	Not done in cases of corruption	Done on consideration of humanity and/or compensation	Depends on the results of the agreement with the participants
			Done out of humanitarian considerations		
REW ARD		Determination of size	Not involved	Passively involved	Actively involved and decisive
		Through fellow	Hard to refuse	Accepted	Accepted

	assemblies		
Directly from the participants	Rejected,	Rejected for reasons of decency,	Accepted and must be before making a decision
	Received after decision and in a condition of urgent need	Accepted before the decision if the conditions of urgent need	
NEGOTIATIONS WITH PARTICIPANTS	Eschew	Passive and tend to be a listener	Active or as an initiator

(Source: Processed field data)

The pattern of economic rationality as a self-expression model is equivalent to a choice of practice. Therefore, Bourdieu and Wacquant (1992) contend that habitus is not the predetermined outcome of an individual's predispositions. Katharina Chudzikowski and Wolfgang Mayrhofer (2011) contends that habitus is continually reinforced and modified by and in the individual's subsequent experiences; we can deduce that habitus is not a predetermined outcome of individual predispositions. Nevertheless, God allows humans the freedom to select their course through life, and God also provides humans the ability to think for themselves so that they can differentiate between right and wrong. Fall into disgrace.

Conclusions

Interpretive anthropology and ethnographic data were utilized to study legal and economic culture in criminal court settlements. The research was primarily done in Indonesia's Kotamaju District Court. The research shows that criminal cases involve discussions and informal law. Economic rationality influences these processes and social conventions agreed upon by court judges and attorneys. Negotiation is a kind of self-regulation inside official law enforcement, although it can reduce or complete criminal justice. Negotiation is also collusive, indicating a moral decline in legislation. Urban liberalism, individualism, and hedonism contribute to this degeneration.

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