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# Reevaluating the Principle of Legal Fiction: Balancing Legal Certainty and Social Justice

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## Abstract

The principle of legal fiction is widely recognized for its role in legitimizing laws and ensuring legal certainty. However, while it contributes to the stability and predictability of legal applications, it also has inherent weaknesses that may lead to unjust outcomes, particularly for vulnerable groups who are unaware of the law. In the context of Indonesia's vast territory, the lack of widespread socialization and public awareness of new legal regulations exacerbates these issues. Consequently, individuals, especially from lower socioeconomic classes, may become inadvertently entangled in legal processes due to their ignorance of applicable laws, leading to potential injustices. The principle of legal fiction, therefore, may inadvertently serve as a tool of oppression, particularly when used to position suspects as defendants without adequate awareness or understanding of their legal rights. This paper argues for a re-evaluation and improvement of the principle to ensure a more just and transparent application. A more nuanced approach is needed, distinguishing between its absolute application in criminal cases and its non-absolute use in regulatory offenses. By

refining the concept of legal fiction, we can enhance both its legitimacy and its capacity to uphold justice for all members of society.

**KEYWORDS** *Principles of Legal Fiction, Justice, Society*

# Introduction

The legal fiction principle posits that all individuals are presumed to know the law, regardless of their circumstances. This principle applies uniformly, implying that every citizen is deemed aware of the law from the moment it is promulgated, whether they reside in remote forested regions or in urban areas.[1] Even in cases where the government fails to disseminate information to secluded and underdeveloped areas with limited communication infrastructure, the legal fiction principle is still enforced to ensure the effective implementation of law and legal certainty. From the perspective of the principle of equality before the law, which asserts that all citizens are equal in the eyes of the law, the legal fiction principle can be seen as fair since it positions all members of society on an equal footing under the law. However, when viewed from the angle of the law's application, particularly regarding legislation, there appears to be an incongruity. It is unjust for those in remote areas who have not been exposed to the dissemination of legal information and for those who are ignorant of the law due to a lack of legal education.

The legal fiction principle, employed to legitimize the formation of new laws, becomes problematic when the legal products fail to reflect societal values. This dissonance results in a form of oppression for the populace, who not only do not comprehend the new laws but also find that the sources of these laws do not align with their cultural practices, thereby complicating the implementation of law within society. This concern was echoed by Satjipto Rahardjo, who asserted that law encapsulates the recorded ideas selected by the society where it

[1] *See* Ali Marwan HSB. "Mengkritisi Pemberlakuan Teori Fiksi Hukum." *Jurnal Penelitian Hukum De Jure* 16, no. 3 (2016): 251-264; Fathul Hamdani, et al. "Fiksi Hukum: Idealita, Realita, dan Problematikanya di Masyarakat." *Primagraha Law Review* 1, no. 2 (2023): 71-83; Adhi Putra Satria, and Eugenia Brandao. "Understanding the Nature of Legal Knowledge: In-Depth Critique of the Legal Fiction Principle." *Walisongo Law Review (Walrev)* 5, no. 2 (2023): 203-220.

is created.[2] Society will become increasingly disadvantaged if they remain unaware of the values embedded within the law. If the social fabric of society is already in decline and the law does not provide protection but instead exacerbates this decline, such a law can be deemed unjust.

Law must not marginalize the vulnerable, as they too are protected by the constitution. Yet, in practice, the law often disproportionately affects the lower classes, a phenomenon that was also highlighted by the ancient Greek philosopher Plato, who stated that "*laws are spider webs; they hold the weak and delicate who are caught in their meshes but are torn in pieces by the rich and powerful.*" [3] The differential application of the law is evident in numerous cases, particularly those that have gained widespread public attention. For example, the punishment of a poor individual for stealing sandals can be contrasted with the lenient sanctions imposed on high-profile criminals such as corrupt officials. The disparity lies in the application of the law: the elite are often afforded special treatment due to their access to elite legal counsel, resulting in a protracted legal process, whereas the marginalized, unable to afford such representation, are subjected to swift and often legally questionable proceedings. Lacking legal knowledge, they are compelled to accept the process, including the mistreatment they may endure during investigations.

The primary purpose of law is to deliver justice to society, which entails impartiality, whether concerning the upper or lower classes. In Indonesia, the purpose of law is to establish a state that can protect all its citizens and promote the general welfare. This indicates that if the law fails to achieve these objectives, it is the law that must be reformed, not the people who should be forced to conform to it.[4] Legal reform is imperative when the law fails to meet its intended goals.

Roscoe Pound once articulated that law serves as a tool of social engineering.[5]It is crucial to understand that legal reform should not be narrowly interpreted as merely the replacement or revision of laws but should also encompass a broader rethinking of legal paradigms. This rethinking should prioritize justice over legal certainty, as the pursuit of certainty can often lead to

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2 Satjipto Rahardjo, *Ilmu Hukuim*, 8th ed. (Bandung: PT. Citra Aditya Bakti, 2014).

3 Mahfud M.D, "Keniscayaan Reformasi Hukum: Upaya Menjaga Jati Diri Dan Martabat Bangsa" (Forum Rektor Indonesia, 2010).

4 Mahfud M.D., p. 4. *See also* Ridwan Arifin, "Translating the Meaning of Justice and Legal Protection: What Exactly Is Justice?". *Journal of Indonesian Legal Studies* 7, no. 1 (June 1, 2022): i-iv.

5 Bernard Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum* (Bandung: Mandar Maju, 2000).

the sacrifice of justice, which may not be applied at all. This issue is evident within the enforcement of law itself, where legal practitioners frequently prioritize the letter of the law over justice. This can be described as robotic thinking, where legal practitioners are unable to use their judgment to interpret the law, operating in a manner akin to machinery that only responds to the push of the legislative button—indicative of overly literal thinking

# The History of Legal Fiction Principle

One of the objectives of our constitution is to establish a just and prosperous society.[6] The constitution provides limits and guidance for all policies within our beloved nation, Indonesia. However, it is important to remember that a well-organized concept can be disrupted by the intrusion of political interests. Each individual in the legislative body has their own agenda, which they strive to advance. One way they pursue this is by incorporating provisions into laws that serve their interests. This phenomenon is a manifestation of legal politics, a view echoed by Awaludin Marwan, who argues that law cannot stand alone without the presence of other disciplines.

This situation often leads to differing perspectives between the public and the legislature. When legal politics infiltrate a bill, the content or substance of the law may diverge from the objectives and expectations of both the legislature and the public. When this occurs, the result is legislation that fails to align with the interests of the people, which can be deemed unjust. The failure of the law to achieve justice becomes a critical issue that must be addressed urgently, as ignoring it can disrupt the established legal system. While the definition of justice is still subject to debate, it is worth providing a brief overview.

Using conventional logic, justice can be understood as equality in distribution—equal shares and equal experiences. However, this is not an absolute definition that cannot be challenged. Gunawan Setiarja offers a more objective definition of social justice as a condition where all individuals and groups receive what is rightfully theirs. This perspective is grounded in the principle that every Indonesian citizen has rights that the state must fulfill, especially the right to life, which is inherent from birth.

Discussions on justice reveal intriguing insights. Maginis Suseno, for instance, suggests that justice can be understood in two fundamental senses: formally, where the law applies universally, and materially, where every law must align with the ideals of societal justice. The concept of justice is difficult

[6] Todung Mulya Lubis, *Catatan Hukum* (Jakarta: Kompas, 2007).

to prove empirically, even using scientific methods, because it is abstract and subjective. Different groups may view the same situation as either just or unjust.

Addressing justice within the law is particularly complex because legal discussions inevitably involve other disciplines, including the values embedded within them. This means that the law cannot be entirely separated from external interests. While the law should uphold justice, in reality, other values can infiltrate due to external pressures. Gerald Turkel reinforces this notion by stating:

> *"People create, implement, and take account of the law in their actions under conditions that include scarcity of material resources, inequalities of status, knowledge, financial resources, power, and opportunities for participation."*[7]

This brings us to a discussion on legal principles. When the law fails to provide justice for society and imposes rules on people who are unaware of them—rules that may even harm them—yet they are still expected to comply, this is an example of perceived injustice. Ideally, the principle of legal fiction should be applied only when the legal product is already familiar to society (derived from the local values that have evolved within the community). When the law originates from the community itself, people can understand what is prohibited by law, even if they are not fully aware of it. They inherently know and do not violate the law because they have already internalized their cultural values. This idea that law should reflect the will of the people is also supported by Rousseau, who advocated for the general will as the final authority in all legal decisions.[8] Thus, when a legal product is created and implemented, the community is already familiar with its substance.

Cultural values within society also contain commandments and prohibitions similar to the law. However, these values are not always explicit, and to make them clearer, they must be formalized into concrete laws. This process helps the public understand what is prohibited, even if they are unaware that the prohibition is enshrined in positive law. Law should indeed reflect society, as it is well-known that unacceptable behavior within a community is influenced by its underlying social context. This notion is validated by the

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[7] Gerard Turkel, *Law and Society; Critical Aproaches* (London: University of Delaware Press, 1996).

[8] Carl Joachim Friedrich, *The Philosophy of Law in Historical Perspective* (Chicago: Universty of Chicago Press, 1969).

international community and was acknowledged during the sixth United Nations Congress in 1980:

*"...that the root causes of crime in many countries are social inequality, racial and national* discrimination*, low standards of living, unemployment, and illiteracy among large segments of the population..."*[9]

This statement suggests that legal products should address these issues, whether in criminal, civil, or other legal fields. Therefore, a legal product cannot be divorced from the culture that exists within society.

When the law does not align with the societal context, it can lead to conflicts that have the potential to escalate into vertical conflicts. Currently, Indonesian legal products do not fully embody the unique characteristics of Indonesia; they are still heavily influenced by Western culture. This reality often results in clashes between Western laws and local communities.[10][11] This situation should serve as a critique for lawmakers to improve their performance so that the lengthy and costly process of law-making does not go to waste and the resulting laws can be effectively utilized by society.

This approach can reinforce the idea that the law has a consistent and enduring character because it aligns with the spirit and ethos of the society itself. The transition of societal values into normative law also legitimizes the law, as societal recognition of the law confers legitimacy. If the law is not accepted by the general public, it cannot be considered ideal. Hart, a legal positivist, implied that "the general belief of those subject to legal commands can lead to the enforcement of those commands."[12]

Legal positivism advocates for the application of legal fiction to confer authority on the state, ensuring that the law enacted by the state is widely obeyed by society. When the law is implemented and obeyed by citizens, it signifies that the law is effective. At this stage, the only requirement is the firmness of state apparatus in its enforcement, as legal positivism views state law

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[9] Abdul Kalam Limbong And Abd. Mukhsin, "Domestic Violence as aCause of Divorce: A Legal Analysis of the Sidikalang Religious Court Considering Law Number 23 of 2004," *Al-Risalah Jurnal Ilmu Syariah Dan Hukum*, October 17, 2024, 134–46, https://doi.org/10.24252/al-risalah.vi.51737.

[10] Agus Prihartono P.S., Lia Riesta Dewi, and Fatkhul Muin, "Smart And Green Campus Regulatory Design As Untirta's Legal Policy To Improve the Quality of Participatory Higher Education," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 1 (April 1, 2023), https://doi.org/10.31941/pj.v22i1.2265.

[11] Gerardus Gegen and Aris Prio Agus Santoso, "Perlindungan Hukum Tenaga Kesehatan Di Masa Pandemi Covid-19," *QISTIE* 14, no. 2 (March 22, 2022): 25, https://doi.org/10.31942/jqi.v14i2.5589.

[12] H. L. A. Hart, *The Concept of Law* (New York: Clarendon Pres-Oxford, 1997).

as an absolute ideology encapsulated in the statement "*Gesetz ist Gesetz*" or "the law is the law."[13] This doctrine is intended to prevent society from using ignorance of the law as an excuse for non-compliance. When the commands of the state are no longer followed by society, it negatively impacts the legitimacy of the state.

However, there is a suspicion that the principle of legal fiction can be used as a tool of oppression. Since the creation of laws in the legislature is inherently political, the law can become an instrument of oppression. As Frederic Bastiat noted from an economic perspective: *"...In my view, the law not only strays from its rightful purpose but is used to pursue an opposing objective; the law becomes a weapon for greed..."* [14] This raises the concern that the principle of legal fiction is employed by the authorities to hasten the implementation of laws with negative tendencies, leaving society with little opportunity to challenge legal products that disadvantage certain groups.

Legal fiction is understood from the perspective of the legislator's desire to achieve brevity in formulation, serving as a tool to economize on the number of regulations and concepts.[15] This can be justified, as the principle of legal fiction helps reduce state budget expenditures. This clearly has an impact, especially in a state governed by law, where every government action must be grounded in legal principles. As a result, numerous new laws emerge to guide government operations. Conducting widespread socialization would be prohibitively expensive, especially in a country with low economic income levels.

The principle of legal fiction is more suitable in societies where information is easily accessible. The internet, mass media, and electronic media are ideal tools for disseminating information about new laws. However, these tools cannot yet be fully implemented in Indonesia, where the population is dispersed across remote regions. Only a portion of the Javanese population has access to these tools, and even then, it is not universal.

A problem arises when many people violate rules or laws because they are unaware that their actions are prohibited by law. As mentioned earlier, the

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[13] Ade Maman Suherman, *Pengantar Perbandingan Sistem Hukum, Civil Law, Cammon Law, Hukum Islam*, vol. II (Bandung: Raja Grafindo Persada, 2006).

[14] Andang Binawan and Maria Grasia Sari Soetopo, "Implementasi Hak Atas Lingkungan Hidup Yang Bersih, Sehat, Dan Berkelanjutan Dalam Konteks Hukum Indonesia," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (February 21, 2023): 121–56, https://doi.org/10.38011/jhli.v9i1.499.

[15] Laurens van Apeldoorn, "The Legal Personality of Foreign States in Civil Law: L'affaire Zappa and the Bequest of the Marquise Du Plessis-Bellière," *Tijdschrift Voor Rechtsgeschiedenis / Revue d'Histoire Du Droit / The Legal History Review* 91, no. 3–4 (December 22, 2023): 560–88, https://doi.org/10.1163/15718190-20233408.

vastness of Indonesia makes it impossible for all citizens to be aware of every law published in the State Gazette.

Indeed, the law is created to protect humans, as every person has the right to security from external threats, a right they hold from birth. To ensure public safety, legal norms are established because these norms protect human interests and must be adhered to by others. This leads to the conclusion that ignorance of the law is not a valid excuse (*ignorantia legis excusat neminem*) for those who violate it, even if they are unaware of the legal norm.

As intellectuals, we must think critically. Therefore, it is not necessary to consider the principle of legal fiction as immutable or irreplaceable in legal science. While the principle of legal fiction is still effective, particularly from the perspective of lawmakers seeking concise formulations, it is important to recognize that there are limits to its application. Lawmakers cannot authoritatively impose the principle of legal fiction indefinitely, as the law's duty is to regulate the lives of people, which should not be reduced to regulations that merely reflect reality. It is the duty of legal theory to minimize the use of fiction in legislation, or in other words, to prepare simplified regulations.[16] Simpler regulations are more likely to be understood by the public.

To this day, the legal field remains complex, with understanding dominated by those who have studied law, even though the law has been promulgated. Ideally, the law should be accessible to the general public. However, this has not yet been achieved, and legal interpretation remains the domain of legal experts. This is partly because the Indonesian legal language has not yet established its own identity and is still searching for its style, unable to fully employ its own language. Additionally, legal terminology is still in flux, with much of it being a standardized translation of Dutch legal terms. This implies that Indonesian legal terms still reflect Dutch legal concepts, and the substance of legal thought is still dominated by Dutch legal understanding. Even Kusumadi Pudjosewojo noted that legal language differs from everyday language or literary language.[17]

Historically, the principle of legal fiction was introduced in France, in the past, laws were made based on values that developed in society, so society already knew that there would be laws that would be made. So because most

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[16] T. Al-Billeh, "Disciplinary Measures Consequent on the Judges' Misuse of Social Media in Jordanian and French Legislation: A Difficult Balance between Freedom of Expression and Restrictions on Judicial Ethics," *Kutafin Law Review* 10, no. 3 (October 11, 2023): 681–719, https://doi.org/10.17803/2713-0533.2023.2.25.681-719.

[17] Kusumadi Pudjosewojo, *Pedoman Pelajaran Tata Hukum Indonesia*, 8th ed. (Jakarta: Sinar Grafika, 1997).

people already knew, everyone was considered to know if a legal product was issued, this is where the reason for legal fiction lies. However, the situation in the past was different from the current situation, laws were made by the state and society was increasing, so the principle of legal fiction is highly questionable if it is still used. It is common for the government to use this principle to take arbitrary action against society, and is lazy to carry out massive socialization activities.[18]

## Legal Fiction and Positive Law

Legal fiction is closely associated with modern law, which tends to lean towards the positivist school of thought. Legal fiction developed in the 20th century, coinciding with the rise of legal positivism in the 19th century.[19] When we discuss legal fiction, we inevitably address legal issues that have arisen in society. Many people are unaware of a legal product, yet they must bear the consequences of its enactment. This can lead to undesirable outcomes when individuals are unaware of a law's existence but are still subject to the sanctions outlined within it.

Legal fiction serves as a tool for the proponents of positive law, who require certainty to ensure that the rules they create are enforced once those norms are declared or enacted. To uphold the rule of law, ignorance of the law cannot be tolerated, as it undermines the goal of legal certainty—this is the purpose behind the creation of legal fiction.[20]

In Indonesia, the positivist legal doctrine is not only theoretically grounded but also legalized through legislation. For example, Law No. 4 of 2004 (later replaced by Law No. 48 of 2009) clearly states that a legal product becomes effective after being enacted by an authorized official, published in the State Gazette, and its explanatory notes included in the State Gazette Supplement. At this point, everyone is deemed to have knowledge of the law, and its contents become binding (legal fiction).

Legal fiction is also recognized in various legal texts. For instance, Article 3 of the Civil Code states, "*A child conceived of a woman is considered born, insofar as its interests require it. If it is born dead, it is regarded as never having*

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[18] Kusumadi Pudjosewojo.

[19] Tempo.co, "Jimly: Fajrul Falaakh Penerobos Hukum Tata Negara," *TEMPO.CO*, February 18, 2014.

[20] Kuhu Badgi, "Unveiling The Fourth Amendment's Digital Compass: Geo-Location Warrants In Modern Jurisprudence," in *Juris Mentem Law Review*, vol. VII (Washington: American University's School of Public Affairs, 2023), 25.

*existed.*" This legal fiction aims to protect a legal subject (i.e., a human being) even before birth. Legal fiction also serves as a force for the application of laws that impose obligations and sanctions on society, even if the public is unaware of these duties and penalties. Every individual is legally obliged to comply with the prescribed behavior, even if they are unaware of the legal norms requiring it. As long as the principle of positive law exists, ignorance of the law cannot be used as an excuse.[21] This approach reinforces the authority of normative law, ensuring that no one can evade legal obligations by claiming ignorance of the law.

In essence, the law is created not to perpetrate injustice but to serve a beneficial purpose. However, in practice, the law can sometimes be used as a tool for legitimizing "theft" and "oppression" of those who are ignorant of the law. Legal norms are formed with good intentions, as acknowledged by Dietmar:

> "*Nobody can deny that modern law is comprised of norms or rules or principles. But not only in normal but especially in hard cases, concepts like human dignity, life, liberty, art, science, religion, property, contract, fraud, negligence, and murder, as well as their interpretation, play a decisive role.*"[22]

Law is created to reflect the conditions of a particular region, meaning it adapts to the circumstances and state of society and the nation. When a country is in the process of rebuilding after destruction and unrest due to war or is in a state of emergency, the laws created may be repressive. In such situations, the law is used as a tool to predict and may frequently change, as the law in a still unstable country is positioned as a temporary solution. Ramsey defines law as "terminology we say that legal norms are variable hypotheticals."[23] This is indeed an analysis, but it is risky if applied.

Concerns become reality when legal fiction is applied to someone involved with the law, particularly when the law falls into the category of prescriptive law. Prescriptive law is aimed at directing human behavior and can be identified

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[21] Hans Kelsen, *Pure Theory of Law* (Callifornia: Barkely University of California Press, 1978).

[22] Bruce Michael Rushing, "Decision and Theories in Ramsey's Philosophy" ( University of California, 2023).

[23] Shanmuga Sundaram Angamuthu Dr.P.R.L. Rajavenkatesan, "The Role of 'Legislative Intent' and 'Legal Fiction' in Retrospective Law - Justification and Limitation," *Law & Society: Public Law - Courts EJournal* 16, no. 1 (2024).

by deontic terms such as "must," "prohibited," and so on.[24] This kind of law is inherently punitive. People in remote villages may not be aware of the Traffic Law, which requires all vehicles to have two rearview mirrors. Due to their location, far from sources of information like the internet and other media, they may not know about this law. If they use a motorbike with only one mirror and are then ticketed, the principle of legal fiction means that they cannot escape punishment because they are presumed to know the contents of the law.

The above scenario could be exploited by unscrupulous officials to conduct raids in rural areas where people are unaware of the regulations. This opportunistic behavior, exploiting the ignorance of the law by the public, is often referred to as taking advantage of the situation. However, the actions of these officials cannot be legally condemned because they are protected by the principle of legal fiction. Thus, the public's ignorance of the law cannot be excused (*ignorantia juris non excusat*). Legal fiction can be seen as a principle that justifies the state's imposition of anything—including arbitrary actions—on its citizens.

The legal fiction adage clearly does not reflect humanity, as the law appears coercive. In contrast, the ideal law is one that serves humanity, not the other way around. This underscores the need for communicative action between the legal subject and the law itself. Communicative action involves mutual guidance or intersubjective understanding.[25] In practice, this communicative action is carried out by law enforcement officers with those who violate the law but are completely unaware of it.

Such communicative action also serves as a tool to protect the parties involved (legal subjects and law enforcement officers) in the legal process. According to Satjipto Rahardjo, this protection of interests within the realm of law is the target of rights because the law protects an individual's interests by granting them the authority to act in the interest of those rights.[26] Law enforcement officers have a duty to enforce regulations because they are created by law to provide firmness and uphold the strength of normative law. However, in enforcing their duties, they must not ignore the interests of legal subjects, who have the right to be informed and educated about the law so that they can act in accordance with existing rules.

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[24] Widodo Dwi Putro, *Kritik Terhadap Paradigma Positivisme Hukum* (Yogyakarta: Genta Publising, 2011).

[25] J. Chidozie Chukwuokolo, Victor O Jeko, and Nnamdi Ambrose Nwankwo, "A Critical Examination of Communicative Action in the Political Philosophy of Habermas," *Journal of African Studies and Sustainable Development.* 7, no. 2 (2024): 123–39.

[26] Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya, 2000).

In legal discussions, legal fiction is not considered harmful to anyone's interests. It must be assumed to exist so as not to endanger anyone's interests. Thus, it is easy to say that legal fiction is not truly a fiction but is formulated as such. In a legal system that adheres to written law (civil law, as in the Continental European system), principles such as "*ignorare legis est lata culpa*" or legal fiction mandate that everyone is presumed to know the law once it has been enacted. This principle has become a fundamental concept and is applied within the Continental European legal system, which highly values written law (civil law). By using the civil law approach, this principle is implemented. Therefore, for an official who "claims" ignorance of a regulation by citing a lack of awareness, such an excuse is deemed invalid

## Legal Fiction Principle Harms Lower Class People

The civil law system (Continental Europe) is founded on the principle of "*ignorare legis est lata culpa*," or more commonly known as the principle of legal fiction, which mandates that every person must obey the law even if they are unaware of it. This principle is crucial in ensuring legal certainty, as it is used to ensure that every new law, once promulgated by the state, can be followed by all. Legal certainty is a key characteristic of the civil law system, especially in law enforcement.

A fiction is something that is not true but is accepted as true. This definition is similar to the concept of simulacra in popular culture, where individuals oppressed by circumstances seem to accept and even justify their oppression. In other words, fiction involves accepting something that does not exist as though it does or denying the existence of something that does exist. The term "fiction" is typically used when someone consciously accepts something as true that is not true. The concept of fiction, which also implies falsehood, plays an important role in law and has been used for centuries.

The principle of legal fiction seems to command citizens to always obey the state, regardless of the form that obedience takes. From the perspective of criminal law, legal fiction suggests that citizens have surrendered their freedom to the state to protect that freedom. The law created by the state to protect its citizens must be based on legal certainty, and to enforce that certainty, the principle of legal fiction is used. The principle of legal fiction, along with the surrender of individual freedom to the state, is also related to Beccaria's views on the functional approach in criminal law:

> *"They* have *done this (surrendered liberty) because they were convinced that these limitations are essential to prevent private interests from abusing their influence and thus encroaching on the liberties of others in society. This is the tangible and actual raison d'être of each law."*[27]

Modern law indeed emphasizes the importance of individuals being more responsive because the modern legal system in Indonesia is derived from the civil law system, which is inherently individualistic rather than socialist. Therefore, the language used in legal provisions often contains phrases like "every person," indicating a tendency to protect those who possess property or wealth, as seen in the articles of the Indonesian Penal Code (KUHP), where each provision begins with "whoever." This implies that the law is designed to protect those who own assets, ensuring their property is safe from the depredations of the marginalized.

Legal fiction, which states that everyone is presumed to know the law, would be meaningless if laws were not widely publicized. Legal fiction and the concept of publication (publicity) seem to be at odds, as publicity tends to undermine the strength of the legal fiction principle in providing legal certainty.

In Indonesia, the principle of legal fiction is found in Article 3 of the Civil Code, which states: "A child conceived by a pregnant woman shall be deemed to have been born whenever his interests so require. If he is born dead, he shall be deemed never to have existed." The principle of "*ignorare legis est lata culpa*" or legal fiction, which implies that everyone is presumed to know the law once it has been promulgated, is an interesting subject of discussion because legal fiction cannot stand alone without an institution to enforce it. A characteristic of positive law is the existence of an institution that serves as a tool to make the law powerful and certain.

The legal system in Indonesia appears private because it is derived from continental European law. Historically, law emerged from social contracts influenced by mercantile societies. Rousseau's social contract promises reciprocity and mutual effort among parties involved in the contract, where obligations are designed to satisfy the interests of the other parties. If the parties entering into the social contract are capitalist citizens, who are inherently individualistic, the contract will also favor individualistic interests.[28] During the

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[27] Konstantinos Grigoriadis, *The Concept of Equality in Benjamin Constant's Political Thought* (University of York: University of York, 2023).

[28] Daya Negri Wijaya, "Jean-Jaques Rousseau Dalam Demokrasi," *Politik Indonesia: Indonesian Political Science Review* 1, no. 1 (January 15, 2016), https://doi.org/10.15294/jpi.v1i1.9075.

18th century, influenced by the massive industrialization movement, this also impacted the development of knowledge and contributed ideas to the emergence of the modern state. In modern state systems, one characteristic is the generality of a public legal system. To fulfill this generality, everyone within the state's territory must be subject to laws created by public bodies, such as the legislative, which are then enacted by the legislature itself. This serves to strengthen public institutions. Here is where the principle of legal fiction is used by the state to increase its power in governing.[29]

The principle of legal fiction is very effective in European countries because the law does not need to be extensively socialized, as citizens have known the law since the social contract was established, and they benefit from a small population and a limited geographical area. However, there would be a different story if the principle of legal fiction were applied in Indonesia, with its large population and vast territory.

In Indonesia, the legal-making process conducted by the legislature is intended to represent the public, but as a true intellectual, the validity of legal products produced by the legislature must be critically examined, especially considering the involvement of remote communities far from centers of power, such as Papua, Maluku, and other regions with limited access to information. Access to the public network in a modern legal state is indeed limited. This is due to the representative system used in the formulation and even the formation of laws, meaning that the legislature symbolizes the aspirations of the people throughout the country.

This remains a topic of debate because the government's obligation to socialize the law is still questionable in terms of its effectiveness, and laws can easily come into effect once they are enacted in the official gazette. Observing this situation, it is clear that in practice, many people do not understand or even know about newly issued laws and regulations. This might seem insignificant at first glance, but it becomes a problem when many citizens unknowingly violate these laws. They violate the laws because they do not know that their actions are prohibited by the regulations. This is highly likely in a country as vast as Indonesia.

Poor access to information among the population, coupled with the remoteness of certain areas, means that not all laws and regulations are widely socialized, resulting in a lack of awareness among the public. It is quite dramatic because the government relies solely on methods such as publication in the

[29] Andre Santos Campos, "The Idea of the Social Contract in the History of 'Agreementism,'" *The European Legacy* 24, no. 6 (August 18, 2019): 579–96, https://doi.org/10.1080/10848770.2019.1608049.

Official Gazette, Supplements, and State News. The government's and its apparatus's inability to properly socialize new and newly promulgated regulations also contributes to the public's lack of awareness of laws and regulations. Ideally, before using legal fiction as a tool, the government must conduct maximum socialization and develop scientific methods to measure the public's awareness and knowledge of the law.

Therefore, it would also be wrong to completely eliminate the principle of legal fiction. However, its existence as a mere tool of legitimacy should be questioned. Nevertheless, the principle of legal fiction can be understood from the perspective of lawmakers who seek brevity in legal formulations. Indeed, there are times when lawmakers must use the principle of legal fiction. Laws, which inherently regulate social life, should not be formulated in ways that contradict reality. In other words, to avoid the misuse of the principle of legal fiction, laws should be drafted as simply as possible and be easily understood by everyone.

In fact, the use of legal fiction in legislation and legal doctrine can cause significant harm. The use of legal fiction has led to the habitual misuse of fiction by legal experts. In laws and legal literature, legal scholars often use fiction. As a result, because they are accustomed to using legal fiction, legal scholars become very adept at using it. That is why legal fiction also plays a role in court proceedings and sometimes plays a very dangerous role. For judges, fiction is an enticing tool because it gives them the ability to achieve a desired outcome. With fiction, they can make black appear white and vice versa. This is dangerous in the process of seeking truth and justice.[30] For example, in presumption. Presumption must be distinguished from fiction. Fiction is inherently false, while presumption may or may not be true.

Law is a vital system for implementing power within an institution. In this category, it essentially falls under the category of administrative law because administrative law determines the position of each state institution. While earlier, law was viewed from the perspective of institutional power, law can also be examined in terms of abuse of power, meaning that law can be used to legitimize power in political, economic, and social matters in various ways and actions. Law is a vital and effective tool for being the primary intermediary in social relations between communities, and it can also be used for criminalization in the form of criminal law.

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[30] E. Fernando M. Manulang, *Menggapai Hukum Berkeadilan; Tinjauan Hukum Kodrat Dan Antinomi Nilai* (Jakarta: Kompas, 2007).

Criminal law is the means by which the state prosecutes criminals who have violated legal norms, providing a framework for law creation, human rights protection, and the expansion of political power, as well as a mechanism for representation in elections. Meanwhile, administrative law is actually enforced to review or reconsider government decisions. Indonesian law, as a tool of society, functions to integrate the interests of community members, thereby creating order and stability. Since law regulates relationships between humans and society, the measure of these relationships is justice.

In society and state, the gravest behavior is enforcing the law without justice. Law without justice is akin to a body without a soul, moving without direction. The value of justice is a principle that must be upheld, for it ensures that law is not just a collection of textual provisions. Therefore, the process of law enforcement is not merely to fulfill procedures and formalities. Legal procedures and formalities are merely means to seek justice, indicating that justice holds a higher position than procedures and formalities in law. Justice is the ultimate goal of a legal system, closely tied to the system's function as a means to distribute and maintain the allocation of values in society, instilled with a sense of truth that generally refers to justice.[31]

In any legal system, justice is the most important object, particularly sought through the judiciary, because justice is fundamental to the operation of a legal system. Such a legal system is essentially a structure or equipment used to achieve a commonly agreed-upon concept of justice.[32] Regarding the enforcement of criminal law, it can be divided into two categories: enforcement based on time and place.

The enforcement of criminal law based on time is grounded in the provisions of Article 1(2) of the Criminal Code (KUHP), which states: "No act can be punished except by virtue of a criminal provision in existing legislation before the act is committed." This provision indicates that there is no punishment without legal grounds. In legal doctrine, this is known as the principle of *nullum delictum nulla poena sine praevia lege poenali*. This principle means there is no crime and no punishment without prior criminal law in legislation. For this category, the enforcement of the law must be based on prior announcements; otherwise, it could lead to state arbitrariness against its people. Francis Bacon formulated the adage *moneat lex, priusquam feriat* ("the law must first give a warning before realizing the threat contained within"). Therefore, the law should not apply retroactively. The principle is non-retroactivity, which

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[31] Erfandi Muhtar Said, "Tafsir Hakim Judex Facti Dan Judex Juris Terkait Batas Maksimal Upaya Administratif," *Progresif: Jurnal Hukum* XVII, no. 1 (2023): 1–23.

[32] Satjipto Rahardjo, *Membedah Hukum Progresif* (Jakarta: Kompas, 2007).

prohibits the retrospective application of a law. This principle is consistent with Article 2 of the Algemene Bepalingen van Wetgeving voor Indonesie ("AB").

Prof. Dr. Wirjono Prodjodikoro S.H., in his book "Principles of Criminal Law in Indonesia," states that the repetition of this principle in the Criminal Code emphasizes that retroactive prohibition is stressed by lawmakers for criminal provisions. This retroactive prohibition is to ensure legal certainty for the public, who should know which actions are considered crimes.[33] Besides being mentioned in the Criminal Code, the non-retroactive principle is also found in Article 28I of the 1945 Constitution of the Republic of Indonesia:

> *"The right to life, the right not to be tortured, the right to freedom of thought and conscience, the* right *to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted based on a law that applies retroactively are human rights that cannot be reduced under any circumstances."*

Returning to the Criminal Code, which regulates non-retroactivity in Article 1(1), it should be noted that the non-retroactive principle does not have to be fully applied to all laws directed at the public. The Criminal Code also provides room for deviation from the non-retroactive principle, as stated in Article 1(2), which allows a newer law to apply retroactively if the new law is more favorable to the suspect than the old law. This provision applies if a criminal case has not yet been decided by a final judgment. Such enforcement results in legal uncertainty, as it does not uphold legal certainty, or one could say there is always a loophole to exploit the law.

The non-retroactive nature is not only compromised in the Criminal Code but is also embraced in Article 43(1) of Law No. 26 of 2000 on Human Rights Courts (Human Rights Court Law): "*Gross human rights violations that occurred before this law was enacted shall be examined and decided by an ad hoc Human Rights Court.*" The basis for the retroactive application of the Human Rights Court Law to gross human rights violations is explained in Article 4 of Law No. 39 of 1999 on Human Rights, which asserts that "*The right not to be prosecuted based on retroactive law can be excluded in cases of gross violations of human rights categorized as crimes against humanity.*"

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[33] Vicki Dwi Purnomo, Suryawan Raharjo, and Aida Dewi, "It Is Necessary to Limit the Term of Office of the House of Representatives to Prevent Abuse of Authority in Indonesia," *Formosa Journal of Applied Sciences* 2, no. 3 (March 28, 2023): 437–340, https://doi.org/10.55927/fjas.v2i3.3588.

Thus, generally, a law is non-retroactive and should not apply retroactively. However, in certain cases, retroactive application is possible, as exemplified by the provisions of Article 1(2) of the Criminal Code and Article 43(1) of the Human Rights Court Law. The retroactive enforcement of laws is itself a public debate, as it violates the nature of law, which is legal certainty. This also raises questions about the use of the legal fiction principle as a means of legitimizing legal certainty. Or, in other words, the legal fiction principle is always used to follow the state, merely being a follower without the power to provide the key.

Ideally, the adage *moneat lex, priusquam feriat* should be the primary reference in drafting or creating laws that will be enforced upon society, as this adage is far more humane and can be paired with the legal fiction principle, which then extends to the principle of legal certainty.

Criminal sanctions should be imposed on individuals who deliberately commit acts that violate legal regulations, particularly those with criminal sanctions. However, those who unintentionally commit prohibited acts should ideally not be subjected to criminal law because they are unaware of the regulation. In criminal law, intent is part of guilt, as the perpetrator's mental state is closely related to the act committed rather than negligence (culpa).

The Indonesian Criminal Code does not regulate negligence, but we can refer to the *Memorie van Toelichting* (MvT), which defines intent as generally only punishable when someone commits a prohibited act, with intention and knowledge. Here, the meaning of intention is uncolored, where the perpetrator deliberately commits an act but does not know that it is prohibited, while colored intention refers to the perpetrator being aware that the act is prohibited by law.[34]

In colored intent, when linked to the legal fiction principle, there is no significant issue, as the perpetrator is already aware of the law prohibiting the act, which means they know the law and must obey it. However, the legal fiction principle becomes problematic when faced with the theory of uncolored intent, where the perpetrator is unaware that the act is prohibited by law, even though they consciously and rationally carry out the act and realize it, but the difference is that the perpetrator does not know that the act is prohibited by law, because they have no knowledge that their action is prohibited by law, even though it carries severe criminal sanctions, as it falls into the category of crime.

Normative criminal law seeks to create a legal rule that can be enforced strictly and impartially. Therefore, to ensure certainty in its enforcement, the

[34] Sudarto, *Hukum Pidana I* (Semarang: Undip, 1990), p. 70

legal fiction principle is needed, where everyone is considered to know the law. Hence, those who are unaware of the law cannot refuse when they are arrested and prosecuted under criminal law; there is no reason to reject it. Criminal offenders must first go through the process, and for defense, it can be done in court, where the court is the pinnacle of legal decision-making. If they feel they are not treated fairly, it must be proven in court because the court is an institution to seek justice. Although the positivist legal paradigm tends to overlook the substance of justice, it does not forget the principle of justice. This is because one form of the normative legal approach places criminal offenders as legal subjects who must be protected and have the right to a fair and impartial trial.[35] However, in the social reality, society already views someone as evil when they are prosecuted by law enforcement, without much consideration of the court's decision, even though in modern law, whether the offender is guilty or not can only be known after a court verdict.

This clearly becomes a problem for the lower class, where many people are still found who do not fully understand the law because they lack access to information. It is not only the lower class but also the middle class, who are too busy with their activities, so they do not have time to update and follow the flow of information regarding legal products issued by the state. However, in the positivist legal perspective, the reason for someone's ignorance of the law cannot be used as an excuse not to apply the law to all people.

A state based on law indeed guarantees that all social strata are treated equally before the law, meaning the government must also provide or complement facilities that can support the public, particularly regarding legal information. It cannot be said that equality before the law is achieved when there is inequality in social life, especially in access to information, because if the flow of information does not reach all levels, the middle-to-upper classes will benefit. Thus, if such conditions prevail, it can be said that the principle of equality before the law has not been fully achieved.

Looking at this situation, it seems that the legal fiction principle can be perceived as an oppressive tool for those who are unaware of or do not understand a legal product, whether it is a new or old law. It may not be much of an issue when an action has a minor impact, but it becomes torturous when the consequences of that action are categorized as severe, leading to harsh legal penalties, including life imprisonment or even the death penalty.

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[35] Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer* (Jakarta: Kencana Prenada Media Group, 2011).

Many behaviors have become ingrained habits in society but are prohibited by law. For example, accepting gifts, which has long been a cultural norm and is considered perfectly acceptable behavior between subordinates and superiors, is now illegal. This is evident in Article 11 of Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999 on the Eradication of Corruption, which states:

"A state official or public servant who receives gifts or promises, knowing or reasonably suspecting that the gift or promise was given because of their power or authority related to their position, or because the person giving the gift or promise believed it was related to their position, shall be sentenced to a minimum of 1 (one) year and a maximum of 5 (five) years of imprisonment, and/or a fine of at least Rp 50,000,000.00 (fifty million rupiah) and at most Rp 250,000,000.00 (two hundred fifty million rupiah)."

In Indonesia's bureaucratic culture, which still largely follows a feudal system inherited from the Dutch colonial era, offering tributes is seen as a symbol of loyalty and obedience to superiors. This practice has been mutually expected by both parties (superiors and subordinates), indicating that such behavior can be described as a form of mutualism.

The system of offering tributes began with local leaders (*Adipati*) presenting gifts to the king (the ruler who conquered their territory). In return, the king provided protection to the small kingdoms governed by these local leaders. This is similar to the bureaucratic system in Indonesia, where subordinates give something to their superiors to gain favor, ensuring their work is not hindered and their programs are supported by their superiors.

This hierarchical power structure has adapted to Indonesia's modern bureaucratic system, where the centuries-old practice of tribute remains a pattern of power transfer between the people and the rulers, even as Indonesian bureaucrats are required to work within a modern administrative system.

Since ancient times, this patron-client pattern, where tributes serve as a power-exchange tool, has been considered standard among modern bureaucrats or civil servants in Indonesia. Because it is deeply rooted in the bureaucratic culture, bribery—or what society understands as tributes—is very difficult to eradicate or perhaps does not need to be eradicated, as it is seen as a cultural practice. However, when discussing culture, two questions arise: should it be preserved or reformed? Many argue that because the tribute system is considered normal, corruption has become ingrained in Indonesian society.

To understand the influence of the tribute culture on the spread of bureaucratic corruption in Indonesia, two factors must be considered: 1) an administrative system that allows the exchange of official positions for material

rewards, and 2) a societal misconception about the meaning of tribute or gratuity.[36]

The tradition of expressing gratitude with a gift is an old practice and is indeed natural, but nowadays, such actions can be prosecuted under anti-corruption laws. Looking back, bribery in Indonesia (today) is not a new phenomenon. During the era of kingdoms in the archipelago, bribery was implemented in the form of tribute. Tribute was given as a sign of loyalty between subordinates, who at that time were kings or rulers. This developed into a deeply rooted paternalistic culture that persists to this day.

In the Indonesian language, there are many terms for bribery, but the one that seems most culturally rooted is the term "*tribute*," derived from the Sanskrit word "*utpatti*," which roughly means proof of loyalty.[37] According to history, tribute was a form of offering from local rulers or small kings to the emperor.

The community and the rulers of small kingdoms often paid tribute to appear important and gain "recognition" from central government officials. Significant amounts of money were spent on tribute to increase the "recognition" they received. This historical aspect provides an initial picture of corruption in the form of bribery in Indonesia. Structural factors are not the determinants of the development of bribery; instead, the cultural conditions that have been established since ancient times have significantly contributed to the persistence of bribery to this day.[38] The enormous power held by an individual is the cause. However, this situation has emerged as a form of historical discontinuity, deeply rooted in the desire to gain "*recognition*," even at great cost.

The form of corrupt behavior varies in its implementation, but the underlying principle remains the same: the pursuit of power is the trigger. Tribute as a form of acknowledgment of higher authority has been deconstructed into a means of exploiting legitimacy. Legitimacy is used to amass wealth by taking advantage of opportunities or authority that comes with one's position. This poses a significant question for academics and practitioners alike to provide a scientific and rational explanation for this phenomenon, as tribute

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[36] Hülya Mısır and Gülay Akın, "Navigating Power and Impoliteness in Criminal Court Discourse," *International Journal of Legal Discourse* 9, no. 2 (December 17, 2024): 289–312, https://doi.org/10.1515/ijld-2024-2013.

[37] Mısır and Akın.

[38] Sjors Ligthart et al., "Rethinking the Right to Freedom of Thought: A Multidisciplinary Analysis," *Human Rights Law Review* 22, no. 4 (September 7, 2022), https://doi.org/10.1093/hrlr/ngac028.

is a cultural tradition but is also a crime. It seems to present a choice between preserving culture or destroying it.

It is clear that there is a lack of alignment between cultural values and legal regulations. It is common for someone who feels helped by another person to visit the helper's home, bringing food or valuable items as a token of appreciation. In Javanese culture, this is often referred to as "*talang seng dilewati banyu kui teles*" (the water channel that is passed by water will get wet).

Corruption charges are justified if the person is aware of the law that prohibits such actions, as it falls under the category of colored intent. However, the problem arises when it involves uncolored intent, where the person is unaware of the positive law that prohibits receiving items that could lead to corruption charges.

Such cases can occur, especially in remote villages where a village head, who frequently deals with village-level administrative matters, completes their tasks and receives gratitude in the form of goods or money from those they have helped, only to be later charged with corruption. We know that local government officials at the village level, particularly in underdeveloped areas, are often unaware of the existence of anti-corruption laws that prohibit such actions. More ironically, these gifts have become part of their livelihood because village heads are not paid by the state but are only given a few plots of land to cultivate for their living needs and those of their families.

The legal fiction principle, which originated in Western societies, can be seen as individualizing life. This individualistic nature is applied because humans, as rational beings, can control nature and possess a center of consciousness—thoughts. Humans are the masters of nature, making them the subjects of history. History is determined by human reason because humans are the actors in the advancement of knowledge.

Human thought as a subject is reduced to the realm of science, including legal science, where Western legal science reflects the individualization of humanity. The legal fiction principle is influenced by this perspective. A person's understanding and knowledge of the law are left to their dependence on whether they actively seek information. If they are not active in seeking information, they will not keep up with developments, and when a new law emerges, they will be unaware. If they are unaware of the law, the state cannot be blamed for their ignorance.

Habermas, a prominent thinker, argues that the subject paradigm must be dismantled and shifted to an intersubjective paradigm. This is necessary to create balance between both parties, society and the state. In the subjective philosophical perspective, a significant imbalance is evident, as the state's

dominance over society is so vast that it pushes society into a corner.[39] However, Habermas wants to position society and the state as equals, with a dialectic between them.[40]

The current position of the legal fiction principle, when viewed from the perspective of Immanuel Kant's thinking, is monological because it is issued by the state and must be obeyed by society without any conditions. This is what Habermas suspects: Kant's doctrine is totalitarian and absolute. If Kant's doctrine is applied in the modern legal world today, the state is allowed to implement its ideas into laws unilaterally because the assessment of the morality of an action depends on the state's reason.[41] If the state has a liberal/capitalist ideology, it is justified in creating laws that legitimize capitalist movements. Law and ideology cannot be separated; in this sense, law is ideological. Where there is law, there is ideology.

It is this subjectivity that Habermas seeks to challenge, aiming to shift from subjective to intersubjective thinking. In his work, Habermas suggests that Kant's concept of practical reason is no longer applicable in social sciences because it is monological, as explained above. Kant's practical reason in contemporary philosophy is accused of hiding totalitarian tendencies. Clearly, Kant's view could justify the legal fiction principle as empowering the state to be authoritarian.

Habermas's intersubjectivity calls for a relationship between subjects, in this case, the state and its society. So, when the state issues a new law, it does not immediately position society as an object but as a subject. Even though there is already socialization, most people are unaware of the legal system. Therefore, there must be a qualification of the law to be applied. The qualification refers to the distinction between colored and uncolored criminal intent.

In the implementation of the law, it should be selectively applied depending on the law that the public has violated. If the law is minor, there is no need to apply the legal fiction principle, and there should be reciprocal communication between the subjects. To apply this app roach, Habermas's

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[39] melina Constantine Bell, "Children's Right to Access Potentially Critical Learning: Liberating Youth From Propagation of Structural Injustice ," *Review Of Law and Social Justice* 33, no. 1 (2024): 29–87.

[40] E Imafidon, *Habermas' Ethics of Intersubjectivity. In The Ethics of Subjectivity: Perspectives since the Dawn of Modernity* (London: : Palgrave Macmillan UK., 2015).

[41] Sydney Levine et al., "Resource-Rational Contractualism: A Triple Theory of Moral Cognition," *Behavioral and Brain Sciences*, October 28, 2024, 1–38, https://doi.org/10.1017/S0140525X24001067.

method of procedural reason should be used. This concept is applied to address conflicts, including conflicts within the legal system. Legal fiction can potentially be oppressive to the people if it does not pay attention to differences in knowledge between those who are knowledgeable about the law and those who are not.

To create communication between these subjects does require a long time, because justice can only be understood if it is positioned as a party that the law wants to realize. While efforts to realize the law based on justice require a long time.[42] This is done so that the position of the state and its people is balanced, fair and just is the recognition and performance of balance, rights and obligations.[43] Thus, if the principle of legal fiction is applied arbitrarily, the principle of legal fiction does not include the values of justice in its application. By emphasizing communicative actions, legal certainty and justice can be realized in a more civilized manner, in accordance with the values of the Pancasila, the ideology of the Indonesian state

# Conclusion

The principle of legal fiction, which assumes that everyone is aware of the law, often results in significant injustice, particularly for marginalized communities living in poverty who lack the means to access legal information. This assumption is deeply flawed in contexts where access to information is not equitable. In criminal law, this issue is particularly pronounced in cases involving "*unintentional wrongdoing*," where individuals may commit actions intentionally but without the knowledge that such actions are prohibited by law. For instance, a person from a marginalized group might engage in behavior that is part of their cultural or social norm, unaware that it is legally forbidden. The application of legal fiction in such cases is unjust because it punishes individuals who genuinely lack awareness due to their socio-economic status and limited access to legal education or resources.

On the other hand, "intentional wrongdoing" involves individuals who are fully aware that their actions are illegal yet choose to proceed. The principle of legal fiction is more justifiable in such cases, as the individual knowingly violates the law. However, when applied uniformly without considering the

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[42] Carl Joachim Friedrich, *The Philosophy of Law in Historical Perspective*.

[43] Dedy Mainata et al., "Indonesian Migrant Workers: Enhancing Skills Through Short-Training Service Excellence," *International Journal of Community Care of Humanity (IJCCH)* 1, no. 3 (2023): 303–10.

disparity in access to legal knowledge, legal fiction can disproportionately harm those who are already disadvantaged, further entrenching their marginalization. Thus, the principle fails to account for the reality of unequal access to legal information and perpetuates systemic injustice.

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