

## The Existence of *Li* and *Fa* Legal Politics in Chinese Teachings



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**ABSTRACT:** This study aims to examine the existence of *Li* and *Fa* in the *legal system* and *legal politics* that develops in China. This study employs a normative legal approach through a historical approach. The results of the study show that the legal system and legal politics in Chinese highlight the terms *Li* and *Fa*. In essence, *Li's* teachings focus on a set of ethical or moral rules that regulate patterns of human behaviour that must be obeyed and upheld by every human being. Meanwhile, the term *Fa* is known as a written law that every Chinese citizen must obey. In essence, *Fa* is a law inherent in a nation, generally applies equally to all human beings, and is formed into statutory regulations. These two terms become the benchmark for the legal system and legal politics that develops in China. Indirectly, China, which adheres to communism, applies the rules of moral ethics and legislation as a guide to life.

**KEYWORDS:** Legal system, Legal Politics, *Li*, and *Fa*

### I. INTRODUCTION

The State of Indonesia is referred to as a Unitary State with Republic form. This is in accordance with Article 1, paragraph 1 of the 1945 Constitution of the Republic of Indonesia. On the other hand, we know that Indonesia is also known as an archipelagic state because many small islands surround Indonesia. This is also stated in Article 25A of the 1945. Constitution of the Republic of Indonesia. Indonesia has 17,508 islands that stretch from Sabang to Merauke. As a unitary state, of course, Indonesia is inhabited by various tribes and ethnicities. The latest data obtained is about 700 ethnic groups from Indonesia or other nations but have long lived in Indonesia. Each ethnic group must have its own language, culture, customs, and religion or belief. One of the most prominent is the ethnic Chinese residing in Indonesia.

Ethnic Chinese who came to Indonesia crowded since several centuries ago became part of the important history of the Indonesian nation. Even though the Chinese are considered immigrants, their existence is very dominant, and this ethnic group can live side-by-side with the Indonesian people. As a nation of Buddhism and Confucianism, the Chinese are developed with their own culture and beliefs. The Chinese freely releases themselves to develop the Anglo-American (*Anglo-Saxon*) legal system or *continental* European system (*civil law*). However, from the law adopted by China, some intersections appear to be in line with the legal system. Even though China is separated from the legal system commonly used by other countries in general, China proves to be able to stand on its own with basic capital, legal source foundations, and institutions that are different from other legal systems in the world. In this way, China is able to present itself as a legal system of its own making.

### II. RESEARCH METHODS

Based on the issue described above, the researcher is interested in discussing in-depth about the existence of *Li* and *Fa* related to the legal system and legal politics that develops in China. The researcher uses the normative legal method accompanied by the historical approach. The historical approach is referred to as an approach to find out various historical values and their role as the background and influence on various values in law. This historical approach is often used in research and historical studies related to legal research topics. The researcher wants the right thing based on history with a dogmatic nature, but she wants the truth with a historical nature in law. This approach is carried out to understand the philosophical meaning of regulations based on time and understand the development and changes in the philosophical basis of regulation. This approach is carried out through a background study and the development of rules related to China's legal problems when running its state.

Based on the description of the background above, the problems in this study can be formulated as follows:

1. *How are the development of the legal system and legal politics in China?*
2. *What is the position of *Li* and *Fa* in Chinese society?*

## The Existence of *Li* and *Fa* Legal Politics in Chinese Teachings

### III. RESULTS AND DISCUSSION

#### A. Definition of Legal System

The term *legal system* means not only merging the understanding of the system and the law directly. The term legal system means specifically in the science of law. For more detail, the researcher describes as follows:

1. According to JH. Merryman, in his book entitled "*The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*", on page 1, stated that the legal system is an operating set of legal institutions, procedures, and rules).
2. According to Friedman, the legal system is referred to as a system that includes structure, substance, and legal culture. The legal structure is referred to as the institutionalization of various legal entities. For example, judicial power structure (in Indonesia) includes courts of level I, Appeals, Cassation Levels, all judges and an integrated justice system. In addition, there are also General Courts, Military, Religion, Taxes, and State Administration. Then, Friedman mentions that law has three components, namely institutional arrangements, legal structures, and institutional performance. The purpose of legal substance is a regulation or norm with the scope of human patterns when they behave in society in an applicable legal system. For example, divers exceeding the normal speed will be fined. An individual who gives goods needs to give money to the seller concerned. The state has material law consisting of constitutional, civil, administrative, criminal law and formal law, including criminal procedural law, civil procedure, and other procedural law. Finally, legal culture is referred to as various values and attitudes related to shared behaviour related to law and its institutions.

Based on the explanation above, it can be concluded that a system cannot be separated from the various supporting principles. Thus, the law is referred to as a system in which there is an orderly arrangement based on the rules of life covering various parts with attachments between each other. In other words, the legal system is a whole thing from various arrangements that include various parts or elements closely interrelated. Cooperation from these various elements is needed to realize a unified goal based on patterns and plans.

#### B. Definition of Legal Politics

The term *legal politics* (*rechtspolitiek*) can be used in two different meanings, and have a broad and theoretical meaning, namely as legal politics and as legal policy. Legal politics are related to the understanding of legal political science, which is an element of political science with research topics related to various changes that the law requires to be in line with the political development of a nation.

Furthermore, legal politics are based on legal wisdom, which means choosing expectations related to law and trying earnestly in realizing the ideals associated with the law. Legal politics can also be referred to as policies related to the direction of the development of law. Therefore, legal politics have a legal attachment to what it aspires to and the formation of law or *ius constituendum*.

Based on another point of view, legal politics are referred to as law by focusing on efforts to play the role of law to realize society's ideals. Legal politics is a discipline that uses legal philosophy material (related to the intended desire) and scientific material related to dogmatics and legal reality (related to steps in achieving goals).

This matter is very relevant to discovery activities and law formation. Based on this matter, there are 2 (two) relevances to legal politics, namely discovery activities and law formation. Politics of law formation means policies related to reform, development, and law creation. The law formation includes the formation of laws, the formation of judges' decisions or jurisprudence law, as well as policies on other unwritten regulations.

During the policy formation in the law, there are a number of matters used as elements of the policy, including the implementers and policymakers, the policy environment, the policies made and the parties who are the targets for making the policy. Legal policies are influenced by implementers and parties who make laws, the environment, and the policies that are made.

This legal policy will lead to the development, renewal, and creation of laws. The purpose of the policy environment is the conditions that form the background for the emergence of policy problems, which influence and receive influence from all policymakers and those policies. Implementers and policymakers are groups or individuals with a role in the policy process and system.<sup>1</sup> This policy is referred to as a provision regarding all choices that are more or less interrelated with the intent in order to realize a goal. Moreover, the policy's target group is an individual or group of organizations whose behaviour and conditions want to influence the policy.

Therefore, it can be concluded that *rechtspolitiek* or legal politics form positive law or *ius constitutum* from legal provisions or *ius constituendum* to meet change needs during social life. It can also be said that legal politics is public policy, or in other terms, namely, social policy that becomes one and cannot be separated from social welfare or community protection.

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<sup>1</sup> There are 3 agencies with roles in policy aspects in this country, namely the legislative, executive, and judicial. The executive or government agency is the institution with the largest role related to implementing state policies. However, the steps taken can often be directly or indirectly, working on them independently or delegating them to other parties, working with other parties or only delegating some parts to other parties, where the government only carries out supervision. A detail explanation can be found in Zaidan Nawawi's book, (Jakarta: PT Raja Grafindo Persada, 2013), 69.

## The Existence of *Li* and *Fa* Legal Politics in Chinese Teachings

### C. *Li* and *Fa* Teachings as the Chinese Legal System and Politics

#### 1. *Li*'s teachings

The Chinese legal system consists of two major teachings, namely, first, teachings based on the Confucian philosophy teachings with the core containing the rules of moral law (called *li* = 禮 [礼] «禮»). Confucianism is teaching brought by philosophers to provide teachings related to various moral values and policies. People who adhere to various Confucian values by prioritizing moral values (*Li*) are more inclined to be together with nature. The unification and harmony of human life make the Confucian society stay away from problems between the environment and humans.

Second, the legal order is based on statutory regulations (*fa*=法), including the Criminal Code Law, which is referred to as a legal product that the kings work on with the assistance of various scholars in the field of law. *Li*'s concept emerges based on *Li*'s Confucian Philosophy, various principles that determine the universe's rules, including the human world or nature itself. *Li* gives rules to all nature. Therefore, *Li* is synonymous with a sense of justice. The word *Li* means pattern. According to Chu Hsi, the pattern is called the root that underlies all things (substance, norm). Norms or patterns in an object determine its development and condition. Based on the structure of Chinese society, the Chinese legal system in the royal era is based on ethics with 3 schools of thought, namely: Taoism, Confucianism, and Buddhism. Confucianism is actually something recognized as the religion of educated people who tend to be a philosophical order of a religion based on its true meaning. In addition, Buddhism and Taoism are known as common people's religions. The Chinese uphold tolerance in religious aspects, even to Christianity or Islam.

*Li* is the closest keyword to the definition of "law" based on his conception in various western countries. However, *Li* is sometimes interpreted as moral, ritual, certainty, etiquette. *Li* is a set of decency and propriety rules humans need to obey. Thus, *Li* represents more of a code of ethics (moral rules).

The rule of life (*Li*) does not become a provision with general applicability. *Li* has different substance and is in accordance with the form of groups and relationships of various parties, and people are required to obey him. However, a stipulation generally applies to *Li*, namely the finding of a stipulation that states that humans generally do not have subjective rights. However, it only has various obligations to all superiors or society.

The determination of obligations with a subordinate nature is needed to be an element of effort in ensuring the implementation of the five balances and relationships that Mencius and Confucius put forward, namely:

- a. **men to their fathers;**
- b. **the young to the old;**
- c. **friend to friend;**
- d. **state subject to the King;**
- e. **wife to her husband.**

The existence of an obligation with a subordinate nature cannot be separated from the most basic social institution, namely the family, in its broadest sense. The head of the family is referred to as the oldest party over the oldest generation and has unlimited power over all its members. The family is grouped into various breeds, and the latter is known to be based on the domain of feudalism, with one being ruled by a ruler, a king. The principle of feudalism was discovered in the time of Confucius and still exists.

This condition is used as the basis for the application of *Li* from a family head to his family, a tribal head to a family head, various kings or officials to tribal chiefs. In this context, each party must avoid conflict because conflict tends to destroy respect and disrupt public order. Thus, each party needs to carry out reconciliation and find a peaceful solution. If reconciliation does not produce results, then the existing conflict will be resolved through the law, the last resort.

The existence of this perspective is based on the opinion of Confucius; namely, humans are considered righteous if humans are moral (*Li*) in all aspects of their lives. Through upholding moral values, humans tend to be considered perfect and thus are not required to have legal guidelines. The written law of its founders (legalists) makes humans behave badly. The law becomes a place for bad people to gather; it makes them greedy. Humans with perfect morals do not need laws in the life they live. Confucius' thinking is based on a belief that humans are basically born in good conditions because there are moral values at birth.

During the 3<sup>rd</sup> century AD, more precisely during the Tsyin Dynasty (256-207), Confucianism, in which there is a *Li*, is refuted by many jurists (legis), based on a perspective that mentions *Fa*. It means that law, including criminal law, is needed by the people. *Facia* (the mecca of the law for the legislators) experiences great development during the *Ch'in Shih Huang Ti* empire in 221 BC, which creates unity over all places in China and then continues by Mao Tse Tung and those who lead the communist coalition.

Confucius's opposition is based on the Legalists' understanding, which states that humans are born with evil qualities and dispositions. Humans will feel more unwilling to lose and act as wolves for other humans. In these conditions, humans need laws to regulate them. Legalists says that the King get legitimate power from God (*Thian*), and when he comes to power, he means that he is endowed with the law so that he can make human's strong character become submissive so that there is nothing against a human being. Therefore, in order to create orderly conditions, humans must obey the law, and those who violate it need to be

## The Existence of *Li* and *Fa* Legal Politics in Chinese Teachings

given threats with various aggravating punishments so that they will be afraid. The *Fa* is the inherent law in a country, generally and absolutely applies to all humans equally.

In accordance with what *Facia* suggested, China then makes a rule that takes the form of a law. There are at least 18 laws in China. The oldest laws date back to the IV century BC, in which almost all dynasties issued laws in the form of books, although they are the same as the previous manuscripts and are only acquired with or without additions.

However, the legal point of view of this *fa-cia* cannot be forced into it. Since the reign of the Han Dynasty (II century BC), there has certainly been a stage of "confusianization" of regulations. Various laws substantially refer to *Li* as the source of the law they adhere to. Even so, legism still influences and becomes a culture for all emperors in the formation of legal regulations, including laws in the field of criminal law and state administration. However, the process never touched on the private law aspect.

In private law, custom plays a large role and remains valid even though it is contrary to the rule of law. *Based on Chinese law*, *Li* and *Fa*'s legal subsystem is not enforced in a unified manner to all groups of people. The enactment of *Li* and *Fa* must be in accordance with the structure of Chinese society, which includes 4 classes, namely: first class (learned people and officials); second class (farmers); third class (workers) and fourth class (traders). People in lower classes submit to those in higher classes. The family class and family groups become a basis for the social and juridical organization.

As a general order, *Li* only applies to the upper classes of society. It's different for the lower classes, it can't be done, and they apply the *Fa*. In this context, educated people and state officials are able to escape from the criminal law, and if they are required to receive punishment, they can do penance through the payment of money.

The difference is based on the fact that various members of the upper class are knowledgeable and educated, so they can understand *Li*'s way of life, unlike ordinary people who are uneducated and lived a modest life who can not act like this, and thus they are required to obey the law, including criminal law.

Traditional Chinese law is synonymous with inequality before the law, and judges' decisions tend to be arbitrary. The high-class may object to the enactment of a law on them, for which reason the enactment of a law is proof of weakness.

### 2. *Fa*'s teachings

The closure of China from foreign influence in various aspects (including law) cannot last forever. In line with the regime of the fallen emperor and the Republican government formed in 1912, it marked the beginning of the unification of various Western legal systems into China. This matter was very visible after Tsiang Kai Tsyek excelled from various groups with the direction of the left party, namely the Kuo Min Tang party during 1925-1928. During this time, the Constitution began to be drafted, although initially, it was temporary (1931), then it was definitive in 1936 with several codexes referring to the structure of Western countries.

In 1949, there was a change due to the victory of the Communist party leader Mao Tse Tung. China's latest regime abolished all laws to remove the influence of the feudal and middle class and replace it, and a new legal order was created based on legislation. The formation of the new legal order based on the law shows the *Fa* that has won (legistenants/jurists) and tends to show the dominance of Marxism-Leninism. The law's enactment was based on strengthening the dictator's power. It is the strict and strict enforcement of laws in the context of enforcing communism.

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Therefore, many laws were issued from 1950 to 1958, mostly based on Soviet law. However, it still has the characteristics of China. In 1958, there was a reaction regarding the hegemony of the law. The Chinese government disagreed with Russia's influence and has reverted to a traditional approach. The sovereignty of the dominating law began to be removed and was subsequently replaced with a model of arrangement based on state leadership and was influenced by a general ethic with its interpretation carried out by the state itself and its various party cadres. In this phase, China reshaped a *Li*, but it was recent in line with the communist party's perspective, referring to the ideas of Mao Tse Tung (better known as the "red book"). *Li* was applied to "honest people", namely the communists, another case that relies on cruelty (criminal code) is still maintained and applies to "*counterrevolutionaries*" as well as "*Barbarians*", as well as non-Chinese.

The cultural revolution of the Proletariat that occurred in 1966-1968 made the process of change. The process in the communism formation gave rise to the desire to enter into "non-legal" conditions without being penalized. Ideology needs to be able to make state power work. In addition, the people were required to follow and accept the ideas of the parties and those who led them. This ideology must be followed even if they disagree with creating unity and union. Each party hoped to be able to carry out various existing ideas, even through coercion. Therefore, the legal order form is no longer based on laws, but all matters focus on slogans or slogans with an ideological nature.

## The Existence of *Li* and *Fa* Legal Politics in Chinese Teachings

In 1970, precisely after Mao's (1976) death, the Cultural Revolution's views on the state and law were gradually withdrawn. When there was resistance to Lin Biao in 1973, with a combination of attacks on Confucianism and *fa-chia*, Hua Kuo Feng and Feng Hsiao Ping (the Cultural Revolution ousted both of them), had made China return to legalism, an element of the *fa*, but not at odds with Mao's ideology.

In today's era, one Constitution was drafted in 1954, it was replaced with a new constitution, had been prepared since 1970 and completed so that it was published in 1975. The Constitution tended to be shortened to just 30 articles, unlike the old Constitution, which contained 106 articles. The new constitution sought to simplify the structure of the state, but on the other hand, provided a constitutional basis for the communist party. Thus, the state of China became a socialist country called the "dictatorship of the proletariat", with its power under the leadership of the communist party.

The 1975 Constitution was amended in March 1975 (60 articles) and replaced by the 1982 Constitution. However, the changes tended to be small. The *fa* subsystem re-adopted did not result in the law dominating. In 1972-1976, the law was placed subordinate and used as a medium of politicization. Although land ownership rights have been recognized, the ownership structure was based on Marxist ownership rights, accompanied by an emphasis on collective and socialist state property rights.

The judiciary is fully available under the supervision of the party body and its supervisor. The goal is to resolve the conflict in society. In the majority of the legal fields, disputes are sought to be resolved amicably with the services of intermediaries. In order to support this purpose, a Community Intermediary Commission is formed with the essence to subordinate the judiciary's role. This mechanism is considered a substitute for the previous benchmark, which is obligated to guarantee harmony. Subsequent life was changed into conditions of loyalty to Mao Tse Tung's version of Marxism.

Laws in China are based on 2 legislative boards, namely the state legislature and party institutions. Regarding this matter, the party determines the content, and the state determines the legislation. Since 1979, more than 100 laws have been issued, including those related to state institutions and more specifically related to economic law. Also, laws and regulations in various other branches of law are published, such as civil and civil procedural law and criminal and criminal procedural law.

The current Chinese legal groupings are as follows:

- a) Party law has been contained in the party statutes and various party revolutions. Regarding this matter, each person is obliged to comply with the law. The highest institution of the party is called the Central Committee. The role is to be the controller of society and the state.
- b) Constitutional Law. The rules for this law are contained in the Constitution and the implementing law. The 1982 Constitution is accepted through the National Deliberation. The general principles of the economic and state order contain various obligations and rights as citizens, being equal in the eyes of the law and managing the structuration of a country. The highest power rests with the National People's Deliberation.
- c) Government law includes the determination of the statutes of the population committee.
- d) Related to private law, Chinese law groups legal institutions and private parties. Foreign parties get protection for their interests and legal rights. Regarding family law, both the wife and the husband have the same rights. The 1980 marriage law stipulates the conditions for a marriage to take place, obligations and rights related to this matter, including requirements for divorce. Children born without marriage have equal rights with children born from marriage, especially the marriage law in 1950. The legislature draws up a provision with traditional culture. Regarding this matter, marriage is an issue that the head of the family needs to manage. Furthermore, through a stipulation that states that marriage needs to be based on the freedom of will of both parties, this matter must be carried out in front of civil officials. Both the wife and husband have the right equally and based on democratic reasons to undergo the family planning program.
- e) In the rules related to *eigendom*, the law is grouped into 3 forms, namely: collective property rights state and private property rights. The first and second include land, natural resources, and many production media. In contrast, the individual eigendom includes goods consumed (furniture, houses, savings) and production media, such as transporting animals and towing loads. With "socialistic" property rights, sacred goods cannot be contested.
- f) Although the Constitution does not state intellectual property rights, new copyright was issued on April 1, 1985.
- g) Various state, individual and collective companies are found in the economic field. In addition, various mixed Chinese and foreign companies are enshrined in a wide-ranging law. Since 1980, there have been 4 "Special Economic Zones" in Southern China, where foreign investors are treated with privileges in the form of privileges related to taxes, exports and imports of foreign exchange, and others.
- h) In the justice field is found:
  1. Various community intermediary committees and formed based on various resident committees; some judges are still foreign and less skilled in handling criminal or civil cases;
  2. Various ordinary and special people's courts are at the end of the judicial pyramid, a Court for the people;
  3. Arbitration commissions for the settlement of economic problems;
  4. *Parquet*, with its task of supervising the implementation of the law;

## The Existence of *Li* and *Fa* Legal Politics in Chinese Teachings

5. Room for defenders (*balie*) includes advocates who work under the state and are required to provide legal assistance.
6. Judicial power has various professionals, assistants, or who are still lay.
7. The procedural law at a court hearing is carried out with 2 institutions, namely the decision and examination of cases at the first level and appeals. Judicial proceedings are open to the general public. However, the total number of cases is relatively small, and more cases are held related to the so-called enemies of society and "recidivists" or the law of marriage.

### IV. CONCLUSIONS

At the beginning of its formation, China's legal system is able to prove itself to be able to survive and exist even though it has a legal system and politics that is different from most systems and laws in other countries. *Li* and *Fa*'s teachings can prove that Chinese Legal Politics is inclined to a general order with a moral foundation that only applies to the upper classes of society. As for the lowest classes, the teachings of the *Fa* law are enforced as a legal order in the form of statutory regulations made and enforced by the state for the lower classes.

Throughout its history, the legal development model in China has experienced a shift between a law-based legal order, which is based on Marxism-Leninism, and a legal system based on morals (*general ethics*) based on a traditional Chinese approach. In the final stages of its development, China re-adopts legalism and subordinated law to political goals without denying Mao's ideology.

In other words, China shows its existence through the *Li* and *Fa* teachings, which can dominate a set of legal rules or legal policies based on moral ethics and make legislation as a source of law other than Morals, Ethics which are highly upheld by the Chinese nation.

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## The Existence of *Li* and *Fa* Legal Politics in Chinese Teachings

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