



LAW AND CIVILIZATION: NORBERT LIAS AS A REGULATION THEORIST

Jusmadi¹, Haironi², Masyduki³, Jusnaldi⁴, Mhd Helman⁵, Misran⁶, Anera Irinsyahinta Cuadmadja⁷, KMS. Novyar Satriawan Fikri^{8*}

^{1,2,3,4,5,6,7,8}Fakultas Hukum, Universitas Islam Indragiri, Indonesia

Corresponden Email: novyarsatriawan3@gmail.com⁸

Abstract

German sociologist Norbert Elias devised a comprehensive sociological analysis of the interconnections between the processes of state formation, institutional dynamics, individual subjectivity, habitus, and the logic of their transformation over time. The historical sociology of the self, violence, crime and punishment, organizations, emotions, sexuality, social control, and sports are just a few of the many areas in which his work has significantly influenced social scientific thinking. His views have only sometimes been applied to other areas of law and social science study, with his influence in legal academia centered on criminology.

This review emphasizes the potential future directions in which Elias's process-figurational approach could advance in sociolegal research and scholarship by outlining (a) the core elements of Elias's "process-figurational" sociology and his analysis of processes of civilization and decivilization, (b) Elias's observations on law and state formation; (c) a selection of the sociolegal research related to his sociological approach, in fields such as crime and punishment, evolving modes of regulation, and international relations; and (d) the potential future directions in which Elias's process-configurational approach might move in sociolegal research and scholarship. These encompass the emotive aspects of family law, human rights, and humanitarianism, as well as the interfaces between legal evolution and broader social change, legal pluralism and legal culture, tort law, constitutionalism, and the rule of law.

Keywords: law, civilization, process, figuration, regulation, Elias

INTRODUCTION

The work of German sociologist Norbert Elias should interest scholars interested in social science and law. Why? It is reasonable to conclude that he disregarded an analysis of legal procedures and institutions because he spoke so little about the law and was buried in asides and footnotes. It is especially true compared to the social theorists that legal scholars typically consult. His limited commentary on the law has, not unreasonably, disqualified him as a credible social theorist in the context of a sociological examination of legal processes and institutions.

Nevertheless, among sociologists and social theorists, Elias is frequently considered alongside more prominent figures, and there are other justifications for his inclusion in law and social science studies at a comparable level.

His methodology in sociology significantly enhances the understanding of fundamental conceptual issues within social science; he participated in continuous discourse with Weber, Marx, Freud, and Parsons; theoretically, his work exhibits notable parallels with that of Foucault and Bourdieu; and he has exerted considerable influence across various sociological domains (Dunning & Hughes, 2013; Fletcher, 1997; Loyal & Quilley, 2004; Mennell, 1999; van Krieken, 1998). Garland

(2010:207) contends that Elias's conceptual framework, articulated throughout his oeuvre, "is both a remarkably relevant and powerful synthesis of Weber, Durkheim, Marx, and Freud and an indispensable guide for sociological and comparative research in the 21st century."

Ironically, it is precisely due to his limited explicit discourse on law that his work offers many fruitful opportunities for connecting with legal studies. Bucholc (2015:15) notes that "Elias's radicalism in contemplating the law lies in his refusal to accept the concept of law as a given." This article delineates Elias's analytical and conceptual framework, examining civilization processes and subsequent analysis of decivilization, emphasizing the interrelations with legal concepts, procedures, and institutions.

One significant reason to examine Elias in the context of law and social science research is his provision of crucial insights into a concept central to the rule of law that has not received the necessary analytical scrutiny: civilization. The phrase is not very prevalent in legal or social scientific discourse due to its connotations with imperialism and the ethical rationalization of colonialism as a civilizing endeavor. Elias (1939), observed that civilization had become the "watchword" of Western society's "colonizing movement," perceived solely as a manifestation of Europeans' "superior attributes."

The term "civilization" is frequently enclosed in scare quotation marks to indicate that the author does not genuinely endorse Empire. The relationship between civilization and law has been dismissed for the contrary reason due to law's associations with colonialism, oppression, and the exertion of power locally and as "an enforcer of imperial interests" (Tamanaha, 2017:102). Consequently, any portrayal of law as inherently linked to civilization in a positive light misrepresents law, starkly contrasting the initial viewpoint.

LITERATURE REVIEW

Relational and Processual Thinking

According to Elias, sociologists must refrain from misinterpreting dynamic social relationships regarding immutable states, objects, or things. A dual trajectory characterized his endeavor to surpass reification in sociological theory: The first was a consistent emphasis on the relational nature of social life. In contrast, the second emphasized its processual nature. Individuals are not self-sufficient; they exist solely as components inside a network of relationships with other individuals. This principle is equally relevant to families, communities, organizations, nations, economic systems, and legal systems. For Elias, interpersonal relationships and the connections that unite individuals constitute the fundamental focus of sociological inquiry and the essence of historical transformation. The same principle pertains to using the term law as though it were an entity capable of thought and action. Therefore, elucidating any sociolegal inquiry must concentrate on the social interactions that comprise it rather than on any of its components in isolation.

Elias contended that individuals, families, and communities should be perceived as integrated within a relational network rather than as isolated entities and should also be regarded as dynamic,

undergoing continuous flux and transformation, as processes. We can only comprehend and elucidate any problem by perceiving it as the result of an extended developmental process, provided we examine its sociogenesis. Elias posited that contrary to the notion of stability as the typical condition of a legal system, with reform and change occurring sporadically, continual change and evolution are the prevailing norms. He also underscored the presence of multiple interrelated processes, none of which is afforded causal primacy over the others. Changes in social interactions are thus linked to several other methods of transformation, such as legal, economic, political, psychological, or geographical factors.

Elias consistently sought to recognize the processual nature of concepts such as civilization, capitalism, rationality, bureaucracy, modernity, and postmodernity, framing his analysis in terms of rationalization, modernization, bureaucratization, and the process of civilization. It is frequently challenging to design a suitable concept. The rule of law is notably brutal to articulate in this manner resulting in unappealing constructs like the rule of law-ization of society but this is what Elias aims to achieve: to identify the interconnected processes that underpin the historical evolution of various forms of the rule of law across different contexts, alongside the opposing processes that influence the functioning of legal institutions in divergent directions.

Interdependence – Figurations – Habitus –Power

A fundamental concept for Elias was interdependence. Elias asserted that human beings' fundamental "relatedness" commences with birth as a vulnerable child, an uncontrollable circumstance: All deliberate actions and interactions among humans are predicated on their unintentional dependency. He believed it was crucial to shift away from the perception of humans as inherently independent, engaging in collaboration and cooperation only after relinquishing a portion of their autonomy. He underscored the importance of perceiving human beings as part of collectives, groups, and networks, asserting that their identities as unique individuals are realized solely within and through these networks or figurations.

He elaborated on this concept partially through his critique of the philosophical interpretation of individual human beings, which he referred to as the *homo clausus*, or "closed personality," a notion that constructs a barrier around personal experience, segregating the inner world from the external world and individuals from society. He advocated for the substitution of the *homo clausus* paradigm, which prioritizes autonomy, freedom, and independent agency, with a framework of human beings as *homines aperti*, or "open personalities," interconnected and fundamentally shaped by the web of interdependencies that constitute "the nexus of what is referred to as the figuration, a structure of mutually oriented and dependent individuals" Elias 2012 (1939)

The term *habitus*, frequently interpreted as personality structure or psychological and emotional inclination, denotes the process by which external regulatory mechanisms are transformed into self-

regulation. Every social group and historical period exhibits a balance of these elements; nonetheless, Elias contended that, over time, the growing size, complexity, and differentiation of social groups result in heightened individualization and an augmented emphasis on self-regulation. He characterized habitus as "second nature" or "an automatic, unthinking mechanism of self-regulation" [Elias 2012 (1939), p. 406]. Structuring psychological disposition into a habitus was an ongoing process that commenced at birth and persisted throughout an individual's life.

Processes of Civilization and Decivilization

This collection of notions formed the foundation of Elias's most renowned work, his thesis regarding the protracted process of civilization, to which he subsequently incorporated an analysis of associated processes of decivilization. His methodology is unique, which renders his application of the term civilization beneficial for academic inquiry in law and social science, as he conceptualizes civilization as a dynamic process throughout time rather than a fixed collection of certain traits. Elias [2008 (1988), p. 8] sought to elucidate "long-term changes in human feeling and behavior," or human habitus, through the lens of evolving patterns of social interdependence. He recognized the "ideologically charged" nature of the idea of civilization yet continued to employ it since it encapsulated what current Europeans perceived as self-evident regarding their character and behavior, distinguishing them from prior generations. He aimed to elucidate that concept and trace its ancestry, which he believed was crucial to examining the historicity of human emotion and conduct.

Utilizing Foucauldian terminology, he was intrigued by the genealogy and archaeology of contemporary perceptions, experiences, and emotions associated with civilization, distinguishing them from barbarism: individuals deemed worthy of acknowledgment and respect, not solely for their intrinsic value, but also to comprehend the circumstances under which humans fulfill their individual or collective needs "without reciprocally destroying, frustrating, demeaning or in other ways harming each other time and time again in their search for this satisfaction" [Elias 2013 (1989), p. 35]. His narrative of "the civilizing process" is an archaeology of the behavioral modes and standards presently regarded as natural and self-evident, uncovering their historical context and profound connections to broader social, political, and economic changes. His more striking examples encompass the establishment of standards related to bodily functions—defecation, urination, spitting, table manners, and eating habits—while also including more nuanced norms regarding suitable appearance, behavior, and communication in professional settings, public spaces, and within familial and social circles, which Erving Goffman referred to as "the presentation of self in everyday life," influencing emotions such as shame, embarrassment, or disgust (Goffman 1959, 1963; Miller, 1997).

He entitled his book "The Process of Civilization" to assert that the characteristics or habits of contemporary individuals must be regarded as the result of an extensive historical process rather than a nation's or cultural group's inherent nature. He indicated that a significant portion of his motivation for writing *On the Process of Civilization* was to attain a deeper comprehension of the brutality of the

Nazi regime, asserting that "one cannot understand the breakdown of civilized behavior and feeling as long as one cannot understand and explain how civilized behavior and feeling came to be constructed and developed in European societies in the first place" [Elias 2013 (1989), pp. 444–45].

RESULTS AND DISCUSSION

Crime and Punishment.

Elias's examination of civilization's historical evolution has significantly influenced criminology literature and punishment studies, particularly regarding his insights into the correlation between the decline of interpersonal violence and criminal behavior over time and the broader transformations in social institutions and social relations. This body of research (Garland 1986, 1990, 1991, 2010; Pratt 1998, 1999, 2002, 2005; Spierenburg 1984, 2001, 2004, 2013; Vaughan, 2000) has not been based on Elias's explicit theory of crime and punishment, because he mentions "judicial punishment" precisely once [Elias 2012 (1939), p. 15]. Criminologists find Elias's theory of civilization processes appealing due to its elucidation of the evolution of punishment techniques and the accompanying sensibilities, which have progressively become less publicly brutal and cruel, without resorting to a Whig interpretation of history or perceiving this evolution merely as a strategic maneuver in the exercise of power.

In contrast to Foucault, he did not specifically address crime or punishment; however, various aspects of the history of crime and its regulation from the thirteenth to the twentieth centuries serve as pertinent examples of Elias's depiction of the progressive rationalization of human behavior, its alignment with long-term objectives, and the growing internalization of social constraints. There is widespread agreement that the historical trajectory of criminal violence has seen a prolonged fall and that societal tolerance for violence, aggression, cruelty, and brutality has usually diminished. It did not imply that violence and brutality in prisons ceased; on the contrary (Pratt, 1998; Strange, 2001; Vaughan, 2000). Nonetheless, this indicated a progressive decline in the tolerance for cruelty and the infliction of pain, propelled by an expanding mutual identification, resulting in a growing segment of the population in Western European countries becoming averse to the "spectacle of suffering" (Spierenburg, 1984). This shift in attitude, sensibility, and culture has resulted in an ostensibly irreconcilable "conflict between a perceived necessity of punishment and an unease regarding its implementation" (Spierenburg, 1984, p. 207).

The appeal of Elias's work was unsettled, however, by the shift toward increasingly punitive forms of punishment described by Garland (2001), which he saw as "confounding" not only the interpretation based on Elias but also those of the earlier Foucault Marx and Durkheim. "Not even the most inventive reading of Foucault, Marx, Durkheim, and Elias on punishment could have predicted these recent developments," wrote Garland (2001:3). It is a misinterpretation of the concept of civilization processes to perceive it merely as an assertion for the steady decline of emotional

retribution in light of advancing civilization and rationalism. Human emotional existence becomes intricately intertwined in ever-complicated networks of interdependence; however, this does not imply that passion yields to rationality. The tension between the demands of punishment and the unease regarding its actuality persists: Despite the persistent implementation of the death penalty in certain US states, the pursuit of more humane methods of execution persists, regardless of the inherent contradiction in that concept. Although public humiliation of prisoners occasionally resurfaces, it remains uncommon. When it does occur, it can be elucidated by the particular social, political, and economic history of the relevant localized area (Pratt, 2002, pp. 146–48).

Utilizing Elias's analysis of the interplay between decivilization and civilization, the inclination towards "emotive and ostentatious" punishment (Pratt, 2000) can be interpreted as a sign of decivilization, reflecting a growing dis-identification within society, contrary to the rising mutual identification (Pratt, 2000:422), a consequence of specific approaches to managing the expanding chains of interdependence (Breuer, 1991, pp. 405–6). A significant factor in the rise of behaviors deemed illegal is the continuous evolution of our expectations of one another, which is intrinsically linked to the shifting structure and dynamics of social relations. Wouters (1999:420; see also Wood 2006) contends that "the evolution of more egalitarian relationships has intensified the demand for elevated moral standards and greater mutual self-restraint," resulting in "deviations and violations being subjected to more stringent social sanctions."

Regulation as "Order Without Law" and as Process

Elias's views regarding the historical development of social and self-regulation raise the issue of the degree to which "regulation" should be equated with "law." Gordon (1984, pp. 103, 109) asserts that "[t]he fundamental operations of this world originate before the law and proceed independently of it," yet paradoxically contends that law is essential to all social relationships and "omnipresent in the very marrow of society." In his advocacy for "order without law," Ellickson critiques the inclination to perceive all social order as governed by law, which he terms a legal centralist perspective that overstates the impact of law on human behavior while minimizing the importance of various other factors that regulate human conduct and social interaction. In discussions of legal culture (Merry, 2010; Silbey, 2010), emphasizing both "law in action" and "law on the books" (Friedman, 1975), the presumption persists that law serves as the principal source of norms and regulations. Regarding social control, regulation has consistently been analyzed beyond its manifestation in legal processes and institutions (Black, 1993). Parker (2008, pp. 350–51) contends that the notion of "regulation" must be "pluralized" to encompass nonlegal dimensions of social existence, including market dynamics, informal norms, language, and technology. The function of reflexive regulation is "to catalyze the processes of self-regulation by which individuals, organizations, and social systems align themselves with the broader world and even that is a considerable demand". The nonlegal aspects of regulation encompass the evolving and varied methods through which social norms are assimilated before and

beyond any clearly defined legal frameworks, as seen in family dynamics, education, peer interactions, gossip, media, and popular culture. Ellickson illustrates the factors that deter individuals from committing assaults against one another: A legal centralist approach, predominant in legal studies, would focus on individuals' apprehension of legally imposed penalties. Ellickson (2017, p. 50) contends that individuals are primarily constrained by "their own internalized norms of proper conduct, fear of retaliation, and reputational concerns," as well as the extralegal sanctions imposed by the associations and organizations to which they belong—such as their employer or civil society groups rather than by legal frameworks. Ellickson delineates five categories of rules governing human behavior, referred to as social control: (a) internalized norms and personal ethics, (b) second-party norms and contracts, (c) third-party or societal norms, (d) organizational rules, and finally, (e) law (Ellickson, 1991, p. 282; 2017, pp. 55–56). Legal centralism, described as the "pervasive disease" afflicting legal scholarship (Ellickson, 2017:58), is fundamentally rooted in the significant diminishment of the diverse forms of nonlegal rule enforcement by individuals; their family, friends, and acquaintances the various communities and associations to which they belong; and their workplaces (Ellickson, 1998) to the legal "skeleton" that undoubtedly underpins all such rules. A blend of informal sanctions influences the forms of regulation; however, a significant oversight in the legal centralist emphasis on sanctions is the disregard for the role of rewards as a facet of regulation, encompassing esteem, attention, recognition, honor, friendship, love, support, affirmation of ongoing relationships, reciprocity, collaboration, and enriched social interaction the list is exhaustive, encompassing all that is affirmative in life on Earth.

Social theory has long recognized that the exercise of power should not be exclusively focused on the state or the legal system. Legal forms of regulation represent but one aspect of a broader spectrum of regulatory mechanisms and processes. Rose (1987:67) stated, "Critical approaches to law must confront the paradox that, in numerous instances, analyzing law is not the appropriate starting point for comprehending regulatory strategies." Black (2002) utilizes that literature to advocate for a decentered perspective on regulation, acknowledging the methods by which regulation occurs beyond the state's "command and control" legal frameworks. The functioning and historical evolution of regulatory forms can only be comprehensively understood in conjunction with the operation and historical development of broader social modes that shape human subjectivity and their integration within social relations in society and culture. Subjectivity is essential for forming "institutional isomorphism" among organizations and the "deep structure" of the implicit norms regulating human behavior. Elias's methodology is especially beneficial for analyzing informal structures and dynamics and the characteristics of the living individuals that comprise them, which Selznick (1992:235) refers to as "thick" institutionalization.

Rubin's (2010) essay, "The Regulatizing Process and the Boundaries of New Public Governance," provides a compelling framework for analyzing the evolution of regulatory regimes

through Elias's approach. Rubin utilizes Elias's examination of the civilization process in Western Europe to contend that the transformation of individual behavior and habitus over time can similarly be applied to organizational behavior, raising the identical inquiry regarding the shift in the equilibrium between external constraints and internalized self-constraints in this context. Rubin contends that the regulation of industries or functions, as discussed in the literature on "new public governance" and "smart" or "responsive" regulation, should be perceived as a dynamic process rather than a static condition characterized by a relatively predictable logic following the introduction of new regulations.

CONCLUSION

These arguments can enhance our understanding of the interrelations among governance, law, and civilization. We can examine inquiries regarding the essence of law and culture. For example, in civilizing the state (rule of law), may we discern an intrinsic barbarism inside that process? What are the colonial aspects of what we have defined as civilization and the rule of law? How can the restriction of violence, which civilization and law aim to promote, be addressed without merely replicating alternative kinds of violence? How are the interrelationships between liberal democratic government and culture shaped by specific legal contexts and foundational legislative and judicial frameworks?. What type of discourse can be conducted regarding the definition of civility in highly diversified societies concerning its homogeneity or heterogeneity level? The practical implementation of responses to such inquiries will significantly contribute to the evolution of legal and governmental frameworks more likely to foster a genuinely peaceful and civil social and political existence.

Due to the constraints of this article's length, it is infeasible to adequately delineate, even in a condensed manner, the myriad options for applying Elias's sociology to critical issues in legal and social scientific research. We highlight a few possibilities, expecting this to represent the initial hesitant steps toward establishing a process-figuration research agenda. The existing literature on crime and punishment that directly references Elias might be expanded to include more comprehensive assessments of the evolution of criminal responsibility as a component of the civilizing process. This shift aligns with the Foucauldian concept of self-conduct, positioning the object of punishment as central to civilization: the cultivation of self-regulation capacity. The evolving notion of responsibility that supports organized efforts to promote civility within the populace via the criminal justice system was a fundamental aspect of the civilization process, as analyzed by Elias, and a deeper understanding of responsibility would be achieved by explicitly reflecting on these connections.

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