

COMPARISON OF LEGAL SYSTEMS IN THE PERSPECTIVE OF CONTEMPORARY ISSUES AND THEIR APPLICATION IN INDONESIA

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ABSTRACT

This study aims to explore how the Indonesian legal system can adapt to contemporary issues through comparative analysis with legal systems in other countries. The study first uses secondary data collection methods and case studies to identify the differences and similarities between Indonesia's legal system and the common law and civil law legal systems. The results of this analysis are expected to not only provide insight into the best practices that can be adopted by Indonesia to be able to increase the effectiveness of law enforcement in the face of modern challenges, but also offer a solid foundation for reforming legal policies to be more responsive and adaptive to the challenges of digitalization and globalization.

INTRODUCTION

Indonesia is a country with a civil law legal system adopted from the legal system of Continental Europe, especially the Netherlands, as a legacy of the colonial era. This system is based on the principle of legal codification where the applicable legal regulations are outlined in the form of a comprehensive and structured written law. This codification is reflected in a number of Indonesian constitutional laws, such as in the Civil Code (KUHPerdata) and also the Criminal Code (KUHP), which functions as a legal basis in regulating the rights and obligations of citizens in the civil and criminal fields (Merryman & Pérez-Perdomo, 2018). This codification provides strong legal certainty, because everyone will be able to access, understand, and follow the rules that have been clearly stipulated in legal texts. However, this codification of law also brings challenges, especially in the context of a diverse society such as in Indonesia, where the pluralistic legal system plays an important role in the diversity of cultures and existing social values, in a democratic country legal pluralism is a means to protect the rights of individuals and various groups (Yanti & Irwansyah, 2023).

The legal system in Indonesia is the result of the influence of various legal traditions, including common law and civil law, which is reflected in the structure, substance, and also of the existing legal culture. Colonial influences and adaptations to local needs have shaped Indonesia's unique legal system, which requires in-depth analysis to understand how these elements interact in the context of contemporary issues. In the face of the challenges of globalization and digitalization, Indonesia's legal system is required to adapt to remain relevant and effective in overcoming rapid social, economic, and political changes.

From the perspective of legal reform, this law is seen as a dynamic entity, not static, so that it is able to become an agent of change in the face of the complexity of social transformation. The law must orient itself to the future, with the past only used as a benchmark for continuous improvement. This view reflects that the social system should be understood as a condition of equilibrium underlying responsive legal reform, which is always able to adapt to the social changes that take place. In this context, the law functions as a reflection of the collective will of society. This is in line with the thought of Lawrence M. Friedman who stated that law does not stand as a free force, but is a response to social

pressure that occurs, which then reflects the will and also the social force that exerts this influence (Friedman, 1975).

The legal system theory proposed by Friedman offers a holistic and in-depth framework for analyzing the Indonesian legal system in the face of contemporary challenges and issues. This theory highlights the important role of three fundamental elements in the legal system, namely legal structure, legal substance, and also legal culture, which interact with each other in determining the effectiveness of law enforcement (Friedman, 1969). The legal structure includes existing legal institutions, as well as mechanisms that regulate the implementation of the law, while the substance of the law focuses on the content and substance of the legal norms applied. Then legal culture, as the third element, plays a very significant role in determining the extent to which the law can be accepted and implemented in society.

In the Indonesian context, a pluralistic legal culture, which is influenced by various local, cultural, and religious factors, plays a very important role in the process of accepting and implementing laws. Local values and religious teachings that live in Indonesian society often provide different nuances in the interpretation and application of the law, thus making the law a product that not only depends on formal written norms, but also on broader social influences (Yanti & Irwansyah, 2023). Therefore, a deep understanding of Indonesian legal culture is crucial in designing and developing a legal reform that is not only theoretically relevant, but also acceptable and able to be applied effectively by the entire community.

The legal reform in question must be able to harmonize the existing legal structure with the social values that do live in society, as well as take into account the existing cultural diversity. In addition, the reforms need to be designed in such a way as to be responsive to ongoing social, political, and economic changes, and without neglecting the local cultural roots that have become an integral part of Indonesia's legal identity. Within this framework, Friedman's legal system theory then provides valuable guidance for identifying gaps between existing legal norms and social realities on the ground, as well as for formulating a more inclusive approach to the reform of a more adaptive and also sustainable legal system. This study aims to explore how the Indonesian legal system can adapt to contemporary issues through comparative analysis with legal systems in other countries.

Thus, this research is expected to make a real contribution to strengthening the Indonesian legal system as the foundation of sustainable national development. Legal reform based on a deep understanding of the structure, substance, and culture of law will provide a solid foundation to be able to face the challenges of the 21st century. By using secondary data collection methods and case studies, this study will identify the differences and similarities between the Indonesian legal system and the common law and civil law legal systems.

The results of this analysis are expected to not only provide insight into the best practices that can be adopted by Indonesia to be able to increase the effectiveness of law enforcement in the face of modern challenges, but also be able to offer a solid foundation for reforming legal policies to be more responsive and adaptive to the challenges of digitalization and globalization. With a comprehensive and structured approach, it can certainly provide recommendations for the development of more responsive and adaptive legal policies in facing the increasingly complex challenges of digitalization and globalization in the contemporary era, as well as being able to ensure sustainable legal stability in the future.

METHODS

In this study, the author employs a normative juridical law research method, focusing on legal norms within laws and regulations to uncover principles and doctrines in positive legal norms. Data collection involves literature studies, which include searching documents, books, and various other literature from both private and public libraries. The data sources comprise scientific journals, books, research reports, and official documents from government agencies and international organizations. After data collection, a critical evaluation of the quality and relevance of the sources is conducted, followed by thematic analysis to identify emerging trends.

A comparative analysis of the legal system is performed by examining key elements of various legal systems, such as common law and civil law, in relation to the Indonesian legal system. The collected data is utilized to create a comparative matrix that aids in analyzing contemporary issues such as digitalization and globalization. Additionally, an analysis of legal culture is conducted to identify cultural elements influencing the application of law in Indonesia, emphasizing the interaction between legal culture and other components of the legal system. This approach enhances understanding of how legal culture shapes attitudes towards the law and the effectiveness of law enforcement.

RESULTS

Comparative Analysis of Legal Structures: Common Law vs Civil Law and Its Implications in Indonesia

A comparative analysis of the legal structure between common law and civil law shows a fundamental difference in their approach to law formation (Law, 2016). Common law, which developed in the United Kingdom, relies heavily on judicial precedent and court decisions as the primary source of law. In contrast, civil law, which originated in the Roman tradition, favored codification and written laws as the main guide. In Indonesia, which has a mixed legal heritage, the influence of these two systems is seen in the legal structure that combines elements of both.

In the context of globalization, the influence of these two legal systems is increasingly seen in various aspects of law in Indonesia. For example, within the field of international commercial and business law, the common law approach is often preferred because of its flexibility and ability to adapt quickly to changes in the global market. On the other hand, in family and criminal law, a more structured and systematic approach to civil law can often provide a clearer and more predictable framework. This shows that Indonesia has not only adopted elements of the two legal systems, but also adapted them to specific needs in various areas of law.

The implications of the differences in the legal system in Indonesia have a significant effect. In the context of common law, flexibility in the interpretation of law allows for a faster adaptation to contemporary issues. However, this can also cause inconsistencies in the application of the law. Meanwhile, a more structured and systematic approach to civil law can provide greater legal certainty, but it may also be less responsive to rapid changes. Responsive law considers social pressures as a source of knowledge and an opportunity for self-correction. Therefore, according to Satjipto Rahardjo, it is necessary to have a guide in the form of goals, these goals set standards to criticize established actions and therefore also open up opportunities for change to occur (Rahardjo, 2006). Indonesia, with its legal structure influenced by these two systems, faces the challenge of balancing the need for legal certainty and flexibility.

In practice, the Indonesian legal system does tend to adopt a civil law approach, especially in the process of forming laws that prioritize the codification of written law as the main source of law. However, the influence of common law is also seen in judicial practice, especially in the recognition of the importance of precedent in the interpretation of law. This dualistic influence creates a unique dynamic in the Indonesian legal system, where judges are not only tasked with applying the law literally, but also play an important role in interpreting and developing the law through rulings that can form guidelines for subsequent cases. Although written laws remain the dominant source of law, judges' interpretation of laws through these precedents provides a certain room for flexibility in responding to dynamic legal developments.

This combination of civil law and common law principles allows the Indonesian legal system to be more responsive in accommodating local needs, while remaining open to international influences that are increasingly strengthened due to globalization. However, this dynamic often requires further adjustments to ensure consistency and effectiveness in the application of the law. With this dual influence, a sustainable approach to legal reform is needed, which not only maintains the characteristics of written law, but also strengthens the ability of the judicial system to be able to face new challenges, thereby creating a more adaptive and harmonious legal system in the face of changing social and political dynamics.

The comparison also highlights the need for reforms in Indonesia's legal structure to be able to face modern challenges. With the increasing complexity of contemporary legal issues, such as digitalization and globalization, the Indonesian legal system needs to develop more adaptive mechanisms. This includes increasing the capacity of legal institutions and strengthening legal frameworks that can respond quickly to changes without sacrificing legal certainty. This reform must also consider the uniqueness of Indonesia's legal culture so that it can be accepted and implemented effectively (Howard, 2005).

Overall, a comparative analysis of the legal structure of common law and civil law offers invaluable insights for Indonesia in its efforts to develop a more responsive and efficient legal system. The combination of the power of codification structured in civil law and the flexibility of interpretation through precedents that characterize common law can create a more adaptive balance in responding to social, economic, and technological changes that assemble legal reforms that not only maintain legal certainty through codification. This analysis opens up opportunities to improve Indonesia's legal system

to meet local needs while also integrating global standards in order to create a more efficient, fair, and progressive legal system. This approach is not only important to address contemporary issues, but also to ensure that the legal system in Indonesia can continue to evolve in line with social, economic, and political changes that occur at the global and local levels (Santoso, 2019).

The Impact of Globalization and Digitalization on Legal Substance in Indonesia: Case Studies and Lessons from Other Legal Systems

Globalization has brought significant changes in the substance of law in Indonesia, especially in the context of harmonization of law with international standards. Case studies on the application of law to international trade show that Indonesia in this case must adjust its local regulations to meet global requirements (Wilding et al., 2018). For example, in terms of the protection of intellectual property rights, Indonesia has adopted several international treaties that give influence to the substance of national law. Lessons from legal systems in other countries, such as the European Union, show the importance of a flexible legal framework while maintaining legal certainty.

In addition, globalization has brought demands for Indonesia to strengthen legal substance in the field of the environment, considering the urgency of climate change and environmental damage that are increasingly urgent. Case studies on environmental regulation in Indonesia show that a more progressive approach is needed to address these challenges effectively. One of the key strategies is to adopt and adjust international standards that have proven successful in tackling global environmental problems. In this regard, the lessons learned from the legal systems of Scandinavian countries, which are known for their very strict and sustainable environmental regulations, can be an important reference for Indonesia in formulating more proactive and long-term policies.

The approach taken by the Scandinavian countries then emphasizes science-based regulation, the application of green technology, and consistent law enforcement (Anker et al., 2009), all of which can then be a model for Indonesia to improve its legal substance in the field of the environment. The adoption of best practices from these countries will not only strengthen the legal framework in Indonesia, but can also encourage the creation of policies that are more in line with global commitments to sustainability and carbon emission reduction. Thus, strengthening the legal substance that is responsive to global issues such as climate change is very crucial for Indonesia, not only to face environmental challenges, but also to be able to strengthen the country's position in the international legal arena.

The influence of globalization can also be seen in the adjustment of regulations related to technology and information. Case studies on regulation of e-commerce in Indonesia show that the legal substance must continue to evolve to accommodate technological innovation. In this regard, learning from the legal systems of developed countries, such as those in the United States, can provide insights into how to regulate new technologies without hindering economic growth. This adaptation is important to ensure that Indonesian law remains relevant and effective in facing global challenges (Walter, 2024).

In the context of human rights, globalization encourages Indonesia to strengthen the substance of the law that protects individual rights (Lee et al., 2005). Case studies on the protection of the rights of migrant workers show that Indonesia must be able to adapt its domestic regulations to international conventions. Lessons learned from the legal systems of European countries, which do have strong human rights protections, can be a reference for Indonesia to improve the standard of legal protection. This shows the importance of legal substance that is in line with universal values.

Lessons that can be learned from the legal systems of European countries, which have comprehensive human rights protection, especially through instruments such as the European Convention on Human Rights (ECHR), are an important reference for Indonesia. Countries such as Germany and France have strong protection mechanisms including strict oversight of human rights abuses as well as effective law enforcement to protect workers. This can help Indonesia develop stronger policies to guarantee the rights of migrant workers at the national and international levels. Moreover, the human rights protection system in European countries teaches that the success of legal protection is determined not only by the quality of regulations, but also by the consistent implementation and the existence of independent supervisory institutions (Cholewinski, 1997). Therefore, Indonesia needs to ensure that the legal reforms carried out not only include adjusting domestic regulations with international standards, but also strengthening credible and transparent law enforcement mechanisms. This emphasizes the importance of legal substance that is not only in line with universal values, but also able to be applied effectively in domestic social and political contexts.

Overall, the impact of globalization on the substance of Indonesian law requires continuous adjustment. Case studies and lessons learned from other legal systems show that Indonesia must be able to develop legal substance that is adaptive and responsive to global changes. This includes strengthening regulations in the fields of trade, technology, environment, and human rights. Thus, the substance of Indonesian law can be more effective in facing global challenges and can ensure legal certainty for all parties.

The Role of Legal Culture in Adapting Digitalization to the Indonesian Legal System

Humans today live in a modern civilization that demands speed, effectiveness, and efficiency in almost all aspects of life. Modernity has become a kind of identity that is then attached to various elements of everyday life, where everything that does not meet the standards of modernity is often considered ancient, traditional, and also backward. The rapid changes that are happening, driven by advances in science and technology, are bringing us into a digital era marked by advances in advanced technology. One of the implications is the increasingly lost space and time barriers between countries, creating an increasingly connected world and accelerating global interactions (Utomo, 2020).

Modern law that exists today is formed from a historical dynamic that involves a complex interaction between law, society, and the development of modern countries. Modern law has several key characteristics that characterize it. First, modern law is generally written and formalized in laws and regulations. Second, the scope of this law is national, so it can apply in all areas of state jurisdiction. Third, the law is seen as an instrument that is consciously used by the government and political actors to be able to realize decisions that reflect the interests and public policies of the people concerned (Rahardjo, 1982).

In the context of legal modernization in Indonesia, the influence of digitalization has created significant new challenges, especially in efforts to harmonize digital law with diverse local cultures. Legal culture in Indonesia, which is influenced by traditional values, religions, and social norms, has a major impact on how people interact with the law, especially in the digital era. Therefore, the adaptation of the legal system to digitalization cannot be carried out uniformly without paying attention to the cultural context that lives in society.

For example, in some communities, formal legal regulations related to the use of digital technology may face resistance when they go against long-rooted traditional values or customs. People who still hold tightly to customary or religious norms may see digital regulation as something alien or contrary to their spiritual or social values. This creates a challenge for policymakers, where an approach is needed that is indeed able to bridge the gap between the needs of modern regulations and sensitivity to local cultural peculiarities.

To address these challenges, it is important for policymakers to develop digital regulations that are not only based on the principles of international or modern law, but also consider and respect the social structures and beliefs that people can hold. Satjipto Rahardjo stated that technological advances have a significant impact on the dynamics of social interaction in society. Technology has not only changed the way humans communicate, but it has also affected the patterns of social relations and the structure of society itself (Rahardjo, 2009). Thus, technological changes create new challenges for the law to be relevant and accommodate regulatory developments and law enforcement.

This responsive approach to local culture is important to ensure wider acceptance and more effective enforcement of the law in the field. This harmonization effort allows digital law to not only be accepted as a formal tool of control, but also as a reflection of the collective values of Indonesia's pluralistic society. The analysis shows that legal culture in Indonesia plays an important role in the adaptation of the legal system to digitalization.

Diverse legal cultures, influenced by local and religious values, affect the way society accepts and applies digital law. In this context, there are challenges in efforts to harmonize digital regulations with traditional values that are still strongly held by some people. This requires a rather culturally sensitive approach for digital laws to be accepted and implemented effectively. Past case studies show that public acceptance of digital law is greatly influenced by the level of digital literacy and understanding of technology. In areas with low digital literacy, the implementation of digital law often faces resistance. A legal culture that tends to prioritize an informal approach in the context of dispute resolution is also an obstacle to the implementation of digital law. Therefore, intensive education and socialization efforts are needed to increase public understanding of the importance of digital law.

However, there are challenges in ensuring that adaptation to digitalization does not come at the expense of important cultural values (Manse, 2024). Some parties are worried that the application of digital technology could erode the traditional values that are the basis of Indonesia's legal culture. Therefore, a balance is needed between legal modernization and the preservation of cultural values. This approach ensures that the legal system is not only technically effective, but also socially acceptable. Legal culture is an obstacle as well as a driver in the application of digital law. Therefore, it is important to develop a legal framework that is not only responsive to technological developments, but also sensitive to the local cultural context. This ensures that the legal system functions effectively in the digital age.

Evaluation of Best Practices of the International Legal System for Implementation in Indonesia

In order to improve the quality and effectiveness of law enforcement in Indonesia, it is essential to evaluate and adopt the best practices of the international legal system. The experiences of developed countries can provide valuable insights into how their legal policies have successfully responded to similar global challenges. One significant example is the legal system in Scandinavian countries, as discussed above which is known for its very strict but effective environmental regulations. Their progressive approach to environmental protection, which focuses on sustainability, can serve as a model for Indonesia to improve domestic regulations related to the environment.

By adopting international standards that have been implemented in Scandinavia, Indonesia can be more effective in facing global challenges such as climate change and environmental degradation. A more comprehensive and sustainable policy will not only support the protection of natural resources, but can also strengthen Indonesia's position in international dialogue on environmental issues. As such, it is important for Indonesian policymakers to review the best practices of these countries, so that the resulting legal reforms can be more responsive and aligned with global demands and national interests (Pitaloka, 2021).

In addition, the best practices of the EU legal system in protecting human rights also provide guidance for Indonesia to strengthen domestic regulations. The European Union has a strong legal framework in protecting individual rights, which can be adapted by Indonesia to improve the standard of legal protection for its citizens. This regulatory adjustment is important to ensure that Indonesia can also fulfill its international commitments in protecting human rights.

In the framework of digitalization, the United States then showed a flexible approach but still adhered to legal certainty in technology regulation, especially related to advanced sectors such as AI and biotechnology. This approach provides a valuable example for Indonesia, which can adopt these principles to be able to develop regulations that are responsive to technological innovation without sacrificing economic growth (Krajewski, 2014). A balanced legal framework, which takes into account domestic interests and potential global challenges, would be a strategic step to maintain Indonesia's position in the global technology competition. This approach is not only relevant in the context of technology protection, but also crucial to ensure that Indonesia remains on the path of progress in the midst of the rapid development of the digital world.

An evaluation of the best practices of the international legal system shows that the common law legal system such as the one applied in the UK offers flexibility in the interpretation of the law which can provide important lessons for Indonesia. This approach also allows for quick responses to contemporary issues while maintaining legal consistency. Indonesia in this case can adopt these elements to improve the responsiveness of its legal system to social and economic changes. In addition, this system also encourages the necessary innovation in the face of continuously evolving global challenges. By integrating these principles, Indonesia can ensure that the laws applied remain relevant and effective in the face of the increasingly complex dynamics of the times.

Challenges and Opportunities for Legal Reform in Indonesia in Facing Contemporary Issues

The challenge faced by Indonesia in the context of legal reform is an effort to harmonize these various existing legal systems with the demands of the times that continue to develop. With the strong influence of the common law and civil law legal systems, Indonesia is then faced with the dilemma of balancing flexibility with legal certainty, a balance that is important to be able to respond to socio-political dynamics and rapid technological development. The tension between these two legal traditions is further exacerbated by the complex socio-political conditions and the diversity of legal culture in Indonesian society.

The legal reform process must be able to overcome these challenges by adopting an approach that considers traditional, local, and contemporary contextual elements. Not only paying attention to technical and legalistic aspects, this reform must be able to bridge the differences of views in society on how the law should be implemented. Therefore, Indonesia's approach to legal reform must be more holistic, including structural changes in legal institutions and a more inclusive process to ensure that legal changes are widely accepted and can be implemented effectively (Itasari & Erwin, 2024). The success of legal reform in Indonesia will depend heavily on its ability to navigate the social and cultural complexities that exist, and ensure that the law is not only a tool of control, but also a means to achieve true justice that is relevant to the changing times.

Indonesia's legal reform opportunities are highly dependent on its ability to leverage the best practices of the existing international legal system. Indonesia can adopt appropriate elements of various legal systems, such as the flexibility possessed by the common law legal system, which allows for rapid adaptation to changing times. On the other hand, a more structured civil law legal system can provide Indonesia with a strong basis for building legal certainty. However, this adaptation must be carried out with full consideration of the local social and cultural context so that the implementation of legal reform can be effective and widely accepted. This process requires a deeper understanding of the local values that shape Indonesia's legal culture, as well as the ability to harmonize foreign elements with domestic conditions. With a careful and systematic approach, Indonesia can build a more responsive and fair legal system.

Legal reform must also be able to pay attention to the impact of globalization and digitalization that increasingly dominate contemporary issues, and domestic policies must consider global impacts and cooperate with international policies (Deni et al., 2024). This globalization requires regulatory adjustments to meet international standards, while digitalization requires a legal framework that is responsive to technological developments. This challenge can provide opportunities for Indonesia to develop more adaptive and innovative regulations. Thus, legal reform must include strengthening the capacity of legal institutions and developing policies that can respond quickly to changes.

Legal culture in Indonesia also plays an important role in legal reform. The diversity of legal cultures influenced by local values and religions can be a challenge in the application of new laws. Law is also more widely understood as an institution that is not too closely related to the social factors that develop in society because attention is indeed focused more on the institution that has already been established and not on the process of creating the law itself (Lukito, 2022). However, with an approach that is sensitive to local culture, legal reform can be more acceptable to the community. It emphasizes the importance of education and socialization in the legal reform process to increase public understanding and acceptance of the proposed changes.

The challenges and opportunities of legal reform in Indonesia in dealing with contemporary issues require a comprehensive and integrated approach. Legal reform includes adjustments to three main dimensions: structural, substantial, and legal culture. This structural aspect includes strengthening institutions that function as pillars of law enforcement. On the other hand, that is, substantially, there needs to be an alignment of legal norms with global, technological, and social changes. In the context of its legal culture, it is important for reforms to respect and also accommodate local values, so that the law not only functions within a formal framework, but is also relevant and accepted by the wider community.

By adopting the best practices of international legal systems, Indonesia can better navigate global challenges, especially by taking lessons from the flexible approach of common law that allows it to be responsive to new developments, as well as the civil law framework that offers legal stability. However, the success of legal reform depends not only on the adoption of international models, but also on the ability to harmonize these elements with local contexts, ensuring that the changes are accepted and implemented effectively domestically. Thus, legal reform in Indonesia can be more responsive to changing times, increasing effectiveness in dealing with contemporary challenges such as technological developments, human rights, and global economic dynamics, while maintaining the integrity and uniqueness of the existing legal culture.

CONCLUSION

This study highlights the challenges facing Indonesia's legal system, which is shaped by both common law and civil law traditions, particularly in balancing flexibility and legal certainty amid digitalization and globalization. It underscores the necessity for legal reform that recognizes Indonesia's

unique legal culture, strengthening legal institutions and developing responsive policies. The study advocates for adopting technology-based solutions, such as e-courts and digitized legal processes, to enhance efficiency while ensuring the protection of individual rights. Furthermore, it suggests that Indonesia can benefit from international best practices by integrating a flexible common law approach with the systematic nature of civil law to improve responsiveness and maintain legal certainty. A holistic approach to reform is emphasized, considering structural, substantial, and cultural aspects to ensure that the legal system remains relevant and effective in both global and local contexts. Ultimately, the legal framework should reflect fundamental values of social justice while supporting sustainable national development. Future research could focus on comparative analyses of successful legal reforms in other countries, the development of technology-focused legal education, and the creation of a balanced legal framework that meets contemporary challenges.

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