



(MUDIMA)



Colonial Legal System and Legal Dualism in Indonesia

David Andreas

Program Study Magister ilmu Hukum

Corresponding Author: David Andreas adv.davidandreas@gmail.com

ARTICLE INFO

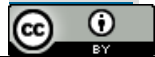
Keywords: Colonial Legal System and Legal Dualism in Indonesia

Received : 4 August

Revised : 23 September

Accepted : 25 October

©2025 Andreas: This is an open-access article distributed under the terms of the [Creative Commons Atribusi 4.0 Internasional](https://creativecommons.org/licenses/by/4.0/).



ABSTRACT

This paper explores the legacy of the Dutch colonial legal system that shaped the dualistic legal structure in Indonesia. Legal dualism is reflected in the coexistence of multiple legal systems—state law, customary law, and Islamic law—which often lack harmony in their implementation. This phenomenon leads to various impacts, including unequal access to justice, overlapping regulations, delayed legal reform, and fragmented legal identity among citizens. Using historical and normative approaches, the paper examines the root causes of legal dualism and the efforts of legal decolonization as a strategy to build a national legal system that is inclusive, just, and rooted in local values. This study aims to contribute to the development of a more responsive legal framework in Indonesia that meets the needs of its diverse society

INTRODUCTION

A country's legal system is a reflection of the history, culture, and socio-political dynamics that shape it. Indonesia, as a nation that experienced colonization for more than three centuries, has a legal system that did not naturally originate from its society, but rather is the result of construction and heritage from colonial power. One of the most complex and influential legacies of the Dutch colonial era was the emergence of legal dualism, namely the existence of two or more legal systems that operate simultaneously within a single jurisdiction.

During the Dutch East Indies period, the implemented legal system was discriminatory and stratified. The colonial government divided the population into three legal groups: Europeans, Foreign Orientals (such as Chinese and Arabs), and Natives. Each group was subject to different legal systems, whether in civil, criminal, or administrative law. The European group was subject to Dutch law codified in the *Burgerlijk Wetboek* and *Wetboek van Strafrecht*, sementara golongan Pribumi lebih diarahkan untuk mengikuti hukum adat dan hukum Islam, yang sering kali tidak dikodifikasi dan bersifat lokal. Sistem ini tidak hanya menciptakan ketimpangan dalam perlakuan hukum, tetapi juga memperkuat dominasi kolonial melalui kontrol terhadap instrumen hukum.

Since the Criminal Code book, while the Indigenous group was more directed to follow customary law and Islamic law, which were often uncoded and local in nature. This system not only created disparities in legal treatment but also reinforced colonial dominance through control over legal instruments. After Indonesia gained independence in 1945, a major challenge faced was building an independent, fair national legal system that reflected the nation's own values. However, this

process did not immediately eliminate the colonial legacy. Many colonial legal products remained in use, such as the Criminal Code (KUHP) and the Civil Code (KUHPerdata), which to this day still serve as the basis of positive law in Indonesia. As a result, legal dualism persisted, not only formally but also in society's practice and understanding of the law. This legal dualism gave rise to various problems, such as overlapping norms, inconsistencies between positive law and local values, as well as difficulties in the harmonization between customary law, Islamic law, and national law. In the context of modern legal development, this dualism becomes an obstacle in realizing a legal system that is inclusive and responsive to societal needs. This paper is prepared to critically examine how the colonial legal system shaped legal dualism in Indonesia and how that legacy continues to influence the national legal system to this day. Using a historical and normative approach, the author seeks to uncover the root causes of legal dualism and offer reflections on ongoing legal decolonization efforts. It is hoped that this paper can contribute ideas to the development of an Indonesian legal system that is more just, sovereign, and aligned with the nation's identity.

METHODS

This study uses historical and normative approaches to examine the colonial legal system and its impact on legal dualism in Indonesia. The historical approach is used to trace the legacy of Dutch colonialism in shaping a discriminatory and stratified legal structure, while the normative approach is used to analyze legislation that is still in effect today. Data is collected through literature studies on legal literature, historical documents, and colonial legal products such as the *Burgerlijk Wetboek* and *Wetboek van Strafrecht*. Analysis is conducted qualitatively by examining the

relationship between the colonial legal heritage and the challenges of harmonizing national law, customary law, and Islamic law. This study also uses a reflective method to evaluate ongoing efforts of legal decolonization in Indonesia, both through legislative reform and strengthening law education based on local values and Pancasila.

RESULTS AND DISCUSSION

Research results indicate that the Dutch colonial legal system created a discriminatory legal structure, where society was divided into different legal groups based on race and ethnicity. Europeans were subject to codified Dutch law, while Indigenous groups were directed to follow customary law and Islamic law, which were not formally codified. This legacy has produced a legal dualism that persists to this day, reflected in the use of colonial legal products such as the Criminal Code (KUHP) and Civil Code (KUHPerdata) as the basis of Indonesia's positive law. This legal dualism has led to various issues, such as overlapping norms, inconsistencies between positive law and local values, and difficulties in integrating customary and Islamic law into the national legal system. Efforts to decolonize the law, such as the enactment of a National Criminal Code and the strengthening of customary law documentation, are important steps in building a just legal system that aligns with local values. However, this process still faces structural and cultural challenges, including in legal education, which tends to be oriented toward a Western paradigm. Therefore, a synergy between the state, academics, and indigenous communities is required to formulate legal policies that are inclusive and responsive to the needs of Indonesia's diverse society.

CONCLUSION AND RECOMMENDATION

Recommendation

The Indonesian legal system is the result of a long historical process, in which Dutch colonialism played a central role in shaping the legal structure that remains in effect today. The implementation of a colonial legal system that was discriminatory and stratified gave rise to legal dualism, that is, the existence of two or more legal systems that operate simultaneously within a single jurisdiction. This legal dualism not only creates disparities in legal treatment among social groups but also complicates the process of harmonization between positive law, customary law, and Islamic law. Although Indonesia has gained independence and undertaken various legal reforms, the colonial legacy still strongly persists in the form of codified laws, judicial structures, and legal culture.

Efforts to decolonize law are crucial for building a national legal system that is just, sovereign, and reflects local values as well as Pancasila. This process must be carried out comprehensively, not only in the substance of the law but also in institutional structures and legal education.

Conclusion

The government needs to accelerate the reform of colonial legal products, such as the Civil Code and the Commercial Code, so that they are more in line with the current social and cultural context of Indonesia. Strengthening the documentation and codification of customary law should be a priority, so that customary law can be formally integrated into the national legal system without losing its local character. Legal education in universities needs to be directed toward a pluralistic and contextual approach, emphasizing the importance of understanding customary law, Islamic law, and the

values of Pancasila as part of the national legal identity.

There needs to be synergy between state institutions, academics, and indigenous communities in formulating legal policies that are inclusive and responsive to the needs of society. Legal decolonization must be a continuous agenda, not just a legislative project, but also an intellectual and social movement to free the law from the dominance of the colonial paradigm.

REFERENCES

- Ali, Achmad. *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*.
- Daffa Fadiil Shafwan Ramadhan. *Hukum Hindia Belanda: Pluralisme, Dualisme, dan Warisannya bagi Indonesia*. Indonesiana, 2025.
- Agil Ity. *Kolonialisme dan Perubahan Sistem Hukum di Indonesia: Suatu Tinjauan Sejarah*. Academia.edu, 2023.
- Syaiful. *Evolusi Sistem Hukum di Indonesia: Dari Kolonial hingga Era Digital*. Universitas Medan Area, 2024.
- Daffa Fadiil Shafwan Ramadhan. *Hukum Hindia Belanda: Pluralisme, Dualisme, dan Warisannya bagi Indonesia*. Indonesiana, 2025.
- Agil Ity. *Kolonialisme dan Perubahan Sistem Hukum di Indonesia: Suatu Tinjauan Sejarah*. Academia.edu, 2023.
- Syaiful. *Evolusi Sistem Hukum di Indonesia: Dari Kolonial hingga Era Digital*. Universitas Medan Area, 2024.
- Maria Farida Indrati. *Ilmu Perundang-undangan: Jenis, Fungsi, dan Materi Muatan*. Yogyakarta: Kanisius, 2007.
- Jimly Asshiddiqie. *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Konstitusi Press, 2006.
- Satjipto Rahardjo. *Hukum Progresif*. Jakarta: Kompas, 2009.
- Kementerian Hukum dan HAM RI. *KUHP Nasional Disahkan: Tonggak Sejarah Pembaruan Hukum Pidana Indonesia*. Humas Kemenkumham, 2022.
- Maria Farida Indrati. *Ilmu Perundang-undangan: Jenis, Fungsi, dan Materi Muatan*. Yogyakarta: Kanisius, 2007.
- Rahardjo, Satjipto. *Hukum Progresif: Hukum yang Membebaskan*. Jakarta: Kompas, 2009.
- Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: Citra Aditya Bakti, 2000.
- Undang-Undang Republik Indonesia Nomor 6 Tahun 2014 tentang Desa.