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Characteristics of the World Legal System

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ABSTRACT

This paper explores the differences and characteristics of legal systems applied across countries worldwide, focusing on continental law (civil law), common law, religious law, and mixed legal systems. The study elaborates on the fundamental characteristics of each legal system, sources of law, core principles, institutional structures, and mechanisms of implementation in everyday legal practice. The research methodology employed is library research, examining classical legal literature, academic journals, and contemporary legal documents to achieve a comprehensive understanding. The findings reveal that each legal system possesses unique features that influence national law formulation, law enforcement, and international legal interactions. For instance, civil law emphasizes codification and legal certainty, whereas common law prioritizes precedent and judicial flexibility. Religious law stresses adherence to moral and doctrinal principles, while mixed legal systems combine characteristics from various legal traditions according to the historical and cultural context of a country. This paper aims to contribute academically to the understanding of global legal system diversity and provide insights for policymakers, scholars, and legal practitioners on the importance of aligning legal systems with the social, cultural, and economic context of a nation

INTRODUCTION

Law is the highest product of human culture, serving to regulate social life in order to achieve order, certainty, and justice. As stated by Harold J. Berman, law is not merely a system of norms, but also an integral part of human civilization that develops in line with the moral, social, and spiritual values of society. Law is thus not merely an exercise of power, but also a reflection of a nation's worldview (*weltanschauung*).

In various parts of the world, law develops in accordance with historical dynamics and social structures. The emergence of various legal systems around the world—civil law, common law, religious law, and mixed systems—is not merely a technical legal phenomenon, but also a manifestation of philosophical and epistemological diversity in understanding justice. These differences in legal systems reflect differences in views on the sources of law, the role of the state, the relationship between law and morality, and the nature of humans in the social order.

Historical Aspects of the Development of the World Legal System

Secara historis, sistem hukum dunia tumbuh dari akar peradaban manusia yang berbeda-beda:

1. Roman Law and the Birth of Civil Law

Roman law was a major milestone in the formation of the modern legal system. Through the monumental codification of the *Corpus Juris Civilis* by Emperor Justinian (529–534 AD), law was systematically organized to ensure certainty and uniformity throughout the empire. This gave rise to the civil law system, which emphasizes the role of codification, rationality, and the principle of universality of law.

The philosophy behind Roman law is rooted in classical rationalism and Stoicism, which view law as a manifestation of the rational order of nature (*lex naturalis*). According to this view, justice is objective and can be achieved through the use of human reason. Tradisi Anglo-Saxon dan Munculnya Common Law

In England, the legal system developed through court practice and social customs, rather than formal codification. During the reign of King Henry II (12th century), the royal courts began to form common law — laws that applied generally throughout the kingdom.

The main source of law in this system was judicial decisions (precedents), and the principle of *stare decisis* made the law dynamic. The basic philosophy of common law is influenced by English empiricism, as developed by John Locke and David Hume, which asserts that knowledge—including law—comes from experience, not rational speculation. Therefore, law is considered valid if it grows out of social practice and brings practical benefits to society, as emphasized in Jeremy Bentham and John Stuart Mill's thinking on utilitarianism.

1. Religious Law and Theocentric Orientation

Unlike the two Western legal traditions above, law in Eastern societies—such as Islam, Judaism, and Hinduism—is rooted in religious teachings. In Islam, law (*sharia*) is considered a manifestation of God's will, with its main sources being the Qur'an, *Sunnah*, *Ijma'*, and *Qiyas*.

The main purpose of Islamic law is not only to maintain social order, but also to realize *maqāṣid al-syarī'ah*: protection of religion, life, reason, lineage, and property. Thus, the law has a moral and spiritual function, and places justice as a divine principle (*al-'adl*).

2. Colonialism and the Birth of the Mixed Legal System

The colonial period (15th–20th centuries) brought together various legal traditions in the colonies. Europe brought Roman and Anglo-Saxon law to Asia and Africa, which then interacted with local customary and religious laws.

In Indonesia, for example, the current national legal system is a synthesis of Dutch civil law, indigenous *Nusantara* law, and Islamic law. This phenomenon gave rise to legal pluralism, namely the existence of more than one legal system that applies simultaneously.

Analytical Aspects: Comparison and Dynamics of the World Legal System

The differences between legal systems around the world are not only formal, but also conceptual and methodological.

- In civil law, laws originate from written statutes, and judges act as interpreters of the law. This system emphasizes legal certainty and the hierarchy of norms.
- In common law, laws are built from court decisions, where judges play an active role in creating new laws through precedent. The main principles are practical justice and social flexibility.
- Religious law places the source of law in divine revelation, with moral and spiritual goals that are higher than mere legal compliance.
- Mixed legal systems combine these various traditions, adapting to the social and cultural needs of a nation.

According to H. Patrick Glenn, every legal system has a distinctive “vision of law and society,” reflecting how society understands the relationship between law, power, and morality. This analysis shows that differences in legal systems around the world stem from differences in legal epistemology—that is, how humans understand and legitimize law.

METHODS

This study uses a descriptive-comparative qualitative method with historical, philosophical, and analytical approaches. Data sources come from books, scientific journals, and international legal documents. The analysis was conducted by comparing the basic principles, history, and philosophy underlying the world's legal systems.

RESULTS AND DISCUSSION

The results of this study show that legal systems around the world have developed historically, philosophically, and sociologically in accordance with the cultural, political, and moral contexts of their respective societies. Based on a descriptive-comparative analysis of four major legal systems—Civil Law, Common Law, Islamic Law, and Customary Law—a number of important findings have been identified that illustrate the differences,

similarities, and relevance of these systems to the formation of Indonesia's national legal system.

1. General Characteristics of Each Legal System

a. Civil Law System (Continental Europe)

This legal system is rooted in Roman legal tradition and was developed through the *Corpus Juris Civilis* and the *Code Civil Napoléon* in France. Its main features are the dominance of written law and comprehensive legal codification, which guarantee legal certainty and uniformity. Judges in this system only act as enforcers of the law (*la bouche de la loi*), not as lawmakers.

Philosophically, civil law is based on rationalism and legal positivism, which emphasize that laws must be structured systematically and scientifically, regardless of morality and politics. The advantages of this system are legal certainty and administrative efficiency, but its weakness lies in its limited flexibility in adapting to social changes.

b. Common Law System (Anglo-Saxon)

Unlike civil law, this system emphasizes judicial precedent (case law) as the main source of law. Previous court decisions form the basis for similar cases in the future (the principle of *stare decisis*). Judges play an active role in shaping the law, making this system dynamic and adaptive to changes in society.

Philosophically, common law is based on legal empiricism and pragmatism, which views law as the result of social evolution, not a product of rational deduction. Law develops through social experience, not through formal codification. Its advantage lies in its flexibility and ability to adapt to social change, although it can lead to uncertainty because it depends on jurisprudential interpretation.

c. Islamic Legal System (Sharia)

The Islamic legal system is based on divine revelation (the *Qur'an* and *Sunnah*) and the reasoning of scholars through *ijtihad*, *ijma'*, and *qiyas*. Its main objective is to realize *maqāṣid al-syarāh*—namely, the protection of religion, life, reason, lineage, and property.

Islamic law combines legal and moral values, making law a means of worship and spiritual responsibility. The source of legal legitimacy comes from God (theocentrism), but still allows room for human reason to interpret revelation according to the social context.

The strength of Islamic law lies in its balance between moral justice and positive law. However, the challenge that arises is how to accommodate divine principles in a secular and pluralistic legal system.

d. Customary Law

Customary law is a living law in society and originates from customs, traditions, and mutually agreed social values. Its distinctive features are its communal, flexible, and restorative nature, where the law serves to restore social balance rather than impose punishment.

The philosophy of customary law is based on the concept of harmony and balance (cosmic balance), so that justice is understood as the restoration of social relations, not retributive justice. Its advantage is its ability to maintain social stability and local wisdom, although it is weak in terms of formality and codification.

2. Comparative Analysis of the World Legal System

A comparison of the four legal systems reveals epistemological and philosophical differences in their views on the sources and purposes of law.

Civil law places human reason and rationality as the basis for the legitimacy of law.

Common law places social experience and court practice as the sources of law.

Islamic law relies on revelation and divine morality.

Customary law is rooted in social traditions and local cultural values.

Philosophically, civil law represents rationalism and legal certainty, common law represents empiricism and contextual justice, Islamic law represents theocentrism and universal morality, while customary law emphasizes social balance and communality.

These four systems form a dialectical pattern between legal certainty and substantive justice, which is the basis for global legal evolution.

The results of the study also show that in the era of globalization, there is a convergence of world law. The principles of civil law and common law influence each other, while Islamic and customary law values are gaining recognition within the framework of legal pluralism. This phenomenon shows that modern law is increasingly interdependent and cross-traditional, while still maintaining its respective philosophical identities.

3. Relevance to the Indonesian Legal System

Indonesia is a concrete example of a mixed legal system, as it combines elements of civil law (a Dutch legacy), Islamic law, and customary law. Indonesia's national legal system reflects legal pluralism rooted in the nation's history, religion, and culture.

Indonesian positive law is built on the foundation of codified civil law, but the existence of Islamic law and customary law is still constitutionally recognized, especially in the areas of civil, marriage, and agrarian law. This is in line with Satjipto Rahardjo's view of law as "the living law" — a law that is alive, dynamic, and develops alongside society.

Philosophically, the Indonesian legal system is based on Pancasila as the source of all sources of law. Pancasila serves as an integrative basis that unites the three main legal traditions — rational (civil law), moral (Islam), and social (customary). Thus, the national legal system not only emphasizes legal certainty as in civil law, but also social justice and human values as contained in the second and fifth principles of Pancasila.

4. Global and National Implications

This study also found that legal globalization has two important consequences:

The convergence of international law that encourages the harmonization of norms in the fields of trade, human rights, and technology, as well as

Cultural resistance, namely the need to maintain national legal identity so that it is not subordinated by universalistic global law.

Therefore, the Indonesian legal system needs to be continuously developed using a dynamic legal pluralism approach, namely recognition of legal diversity accompanied by efforts to harmonize between systems.

This approach allows Indonesian law to remain open to global developments without losing the local and religious values that form the nation's identity.

CONCLUSION

A study of various legal systems around the world shows that no single legal system is absolute or perfect. Each legal system—whether civil law, common law, religious law, or customary law—has different strengths, weaknesses, and philosophies depending on the social, historical, and cultural context in which the law developed.

Analytically, the main differences between the world's legal systems can be examined in terms of the source of law, methods of enforcement, and value orientation. Civil law emphasizes codification and legal certainty; common law emphasizes precedent and flexibility; religious law is based on morality and revelation; while customary law is based on social values and local wisdom. These differences show that law is not only a collection of formal norms, but also a product of history and a reflection of humanity's evolving values.

Historically, the journey of world law shows a long evolutionary process influenced by political, economic, and cultural factors. The development of Roman law in Europe gave birth to civil law, while the Anglo-Saxon tradition formed the basis of common law. Religious law grew out of the human need to regulate life based on divine moral principles, while customary law is the most ancient form of law that originated in traditional communities.

Meanwhile, Indonesia occupies a unique position in the global legal landscape. The history of Dutch colonialism brought with it a legacy of civil law, but the Indonesian legal system is also deeply rooted in customary law and Islamic law. It is this combination that shapes the country's legal pluralism, in which positive law, customary law, and Islamic law interact and complement each other.

Philosophically, the Indonesian legal system is based on Pancasila, which is the highest source of values in the formulation of national law. The values of Belief in God, Humanity, Unity, Democracy, and Social Justice reflect the integration of universal morality and cultural contextuality. Thus, Pancasila not only functions as the foundation of the state, but also as a legal ideology that guides the development

of national law to remain fair, distinctive, and oriented towards humanity.

From a comparative perspective, the Indonesian legal system can be considered a form of synthesis of world law. It takes its codification structure from civil law, recognizes jurisprudential precedents in court practice such as common law, respects moral and religious values such as religious law, and maintains the local wisdom of customary law. This shows that Indonesia has an integrative legal model that has the potential to serve as an example for other countries facing legal plurality.

However, legal pluralism in Indonesia also faces challenges. Globalization and modernization demand the harmonization of national law with international law, while on the other hand, local and spiritual values must be preserved. Therefore, the Indonesian legal system needs to be continuously developed through a progressive and contextual approach, taking into account moral, social, and humanitarian dimensions in addition to formal certainty.

Overall, law must be understood not merely as an instrument of power, but as a means of achieving justice and the common good (*bonum commune*). This is the highest essence of legal philosophy that underlies all legal systems in the world—that law exists for humans, not humans for law.

Saran

1. Strengthening National Legal Philosophy

The development of Indonesian law needs to reaffirm Pancasila as the *philosophische grondslag* (philosophical basis) of national law. Every formulation of law must reflect the values of humanity, social justice, and universal morality that originate from Pancasila.

2. Harmonization of National and International Legal Systems

In the face of globalization, Indonesia needs to develop mechanisms for harmonizing its laws with international standards without losing its local identity. Adaptation to international law must be done selectively so that it remains in line with Indonesian values and national legal sovereignty.

3. Revitalization of Customary Law and Religious Law

The government and legal institutions need to provide greater space for the application of customary and religious law, especially in the areas of social dispute resolution and family law. In this way, national law can reflect the social realities that exist in society (living law).

4. Holistic Legal Education and Reform

Legal education in Indonesia must place greater emphasis on philosophical and ethical understanding, not just normative and procedural aspects. Law students and practitioners need to be equipped with a comparative understanding of world law so that they can think critically and adaptively in response to global developments.

5. Development of a Social Justice-Based Legal System

All legal policies should be oriented toward substantive justice, not merely formal certainty. The law must side with the common people, correct social inequalities, and guarantee the welfare of all citizens.

6. Strengthening the Role of Judges and Jurisprudence

In the context of legal pluralism, judges must act as interpreters of social justice values and not merely as enforcers of the law. Therefore, it is necessary to strengthen the jurisprudence system so that it can become a living source of law that evolves in line with the needs of the times.

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