Vol. 4 No. 2 (2020) pp. 69-74

ISSN : 2580-4707 (online) - 2549-0159 (cetak)
https://jurnal.uinsu.ac.id/index.php/attafahum/index

Systematics of Civil Law In Indonesia and The Netherlands

Abdul Hakim[1] Indri Arsalnah[2]
[1]University Malaya Of Malasia
[2]State Islamic University of North Sumatra
E-mail: Iva170089@siswa.um.edu.my indripkuu123@gmail.com

Info Articles

Article History
Received : 2020-07-03
Revised: 2020-07-11
Published: 2020-07-30

Keywords:
Systematics Of Civil Law, Indonesia, The Netherlands, Normative Legal Research, Comparative Law.

Abstract

This study examines the systematics of civil law in Indonesia and the Netherlands through a normative legal research approach. Civil law serves as the basic framework that regulates relationships between individuals in society. The Indonesian civil law system is historically rooted in Dutch law, specifically the Burgerlijk Wetboek (BW), which was introduced during the colonial period. However, over time, Indonesian civil law has evolved to accommodate elements of customary law and Islamic law, resulting in a legal system that is pluralistic and unique. This study uses a statutory approach, a comparative approach, and a conceptual approach, relying on primary, secondary, and tertiary legal materials collected through library research. The analysis is conducted qualitatively through legal interpretation and comparative methods to identify similarities and differences in the legal systems of the two countries. The results show that Indonesia still largely refers to the classical structure of civil law consisting of four books: on persons, objects, obligations, and evidence, which originated from the old Dutch BW. In contrast, the Netherlands has made significant reforms to its civil law system through the Nieuw Burgerlijk Wetboek, which adopts a more modern, flexible, and systematic approach. This study concludes that although both legal systems share a common historical basis, there are significant differences in terms of development and modernization. The Indonesian civil law system is still in a transitional stage, necessitating comprehensive legal reform to create a more adaptive, integrated, and responsive legal system to the needs of modern society.

I. INTRODUCTION

Manuscripts must be written in English and should not exceed 20 pages in length. Authors are required to follow these writing guidelines, and a template can be found on the JCISNU journal website.

Civil law serves as the foundation for regulating relationships between individuals in society. In Indonesia, the civil law system is heavily influenced by the Dutch legal system implemented during the colonial period. Dutch civil law, as embodied in the Civil Code (Burgerlijk Wetboek), has a clear systematic structure, consisting of several books covering family law, property law, and obligations.

In Indonesia, although many provisions from Dutch law are still used, the civil law system has evolved to incorporate elements of customary law and Islamic law. This creates a unique system where legal regulations and practices must take into account cultural diversity and societal norms.

A comparison of civil law systems between Indonesia and the Netherlands demonstrates how history, culture, and social context influence the application of law. Understanding these differences is crucial for analyzing challenges in law enforcement and the creation of justice in Indonesia today.

II. RESEARCH METHODS

The research method in this journal uses normative legal research, namely research that focuses on the study of legal norms contained in legislation, doctrine, and other legal sources. This research was conducted using a statutory approach, a comparative approach, and a conceptual approach to analyze and compare the civil law systems applicable in Indonesia and the Netherlands. The legal materials used include primary, secondary, and tertiary legal materials collected through literature studies. Furthermore,

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all legal materials are analyzed qualitatively using legal interpretation and comparative methods, then deductive conclusions are drawn to obtain a comprehensive understanding of the differences and similarities in the civil law systems of the two countries.

III. RESULTS AND DISCUSSION

A. Research Result

Based on normative research conducted through a review of various legal sources, it was found that the civil law systems in Indonesia and the Netherlands have a very close historical connection. This is due to the Dutch colonial influence on the formation of civil law in Indonesia, particularly through the enactment of the Civil Code, which was an adoption of the Burgerlijk Wetboek.

Systematically, civil law in Indonesia still adheres to the classic division of four books: persons, objects, contracts, and evidence. This structure reflects the old system derived from the codified tradition of Continental European law. However, in practice, various developments have occurred through legal reforms, both through legislation outside the Civil Code and through jurisprudence.

Meanwhile, in the Netherlands, the civil law system has undergone significant reform through the creation of the New Civil Code (Nieuw BW). This new system no longer strictly follows the classic four-book division, but is structured in a more systematic and modern way, adapting to societal needs and contemporary legal developments. These changes reflect the flexibility and renewal within the Dutch legal system, which is no longer rigidly tied to the old system.

The comparison reveals that although Indonesia still uses the old system inherited from the Netherlands, in practice there has been a shift toward a more dynamic system through various sectoral regulations. On the other hand, the Netherlands has already comprehensively updated its civil law system. This difference indicates that Indonesian civil law is still in a transitional stage between maintaining the old system and accommodating modern legal needs.

Thus, the results of this study indicate fundamental similarities between the historical and structural systems of Indonesian and Dutch civil law, but significant differences exist in terms of the development and renewal of the legal systems. This underscores the importance of civil law reform in Indonesia to be more adaptive to societal developments and ever-changing legal needs.

B. Discussion

1. Systematics Of Civil Law

Law civil according to Legal science is currently divided into four parts, namely law: about a person (law individual); family; wealth is divided into absolute wealth law, relative wealth law; inheritance.

a) Individual law contains regulations regarding individuals as legal subjects, regulations regarding the right to exercise rights and the right to act independently in exercising those rights, and matters affecting their capacity. It is the totality of legal norms that regulate the status of individuals as legal subjects, their capacity to act in legal transactions, civil registration, absence, and domicile. This includes the status of legal entities as subjects of civil law.

b) Family law is the totality of legal norms that regulate legal relationships based on family ties, for example marriage, parental authority, guardianship and custodianship.

c) Property law is the totality of legal norms that govern the relationship between legal subjects and their assets, or regulate rights and obligations that can be valued in money. Absolute property law encompasses property rights, which grant direct control over an object and can be enforced against any individual. Relative property law encompasses individual

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rights, which arise from a contract and can only be enforced against certain parties.

Inheritance law is the entire legal norm that regulates the transfer of rights and obligations in the field of property law from the heir to all his heirs and the consequences thereof.

2. Systematics According to the Civil Code

Book I about people

The provisions regulated in Book I regulate the law of individuals and family law, this is because according to the legislators the definition of law of individuals in a broad sense also includes family law. In relation to the provisions of Book I of the Civil Code today with the enactment of Law No. 1 of 1974 concerning Marriage, all provisions related to marriage as long as they are regulated in the law, the provisions on marriage in the Civil Code are no longer valid. Subekti, Principles of Civil Law (Jakarta: Intermasa, 2005)

Book II about objects

The provisions regulated in Book II of the Civil Code concern property rights which are part of property law as regulated in the doctrine. According to the doctrine, property law is divided into two, namely absolute property law which is a property right regulated in Book II concerning Objects. Book III concerning Agreements. In relation to the provisions of Book II concerning Objects, the Civil Code is no longer in effect, namely with the enactment of Law No. 5 of 1960 concerning Basic Agrarian Regulations. Based on this law, all legal provisions concerning the earth (land), water, and other natural resources contained therein which have been regulated in Law No. 5 of 1960 are declared invalid. In addition, regarding guarantees for land and objects related to land which previously used the provisions of the Mortgage as regulated in Book II of the Civil Code, with the enactment of Law No. 4 of 1996 concerning mortgage rights, it is declared invalid. Book II of the Civil Code on Assets also regulates inheritance law based on two reasons, according to the lawmakers, through Article 584 of the Civil Code, which states that inheritance is one way to obtain ownership rights. Furthermore, Article 528 of the Civil Code stipulates that inheritance rights are property rights.

Book III on obligations

The law of contracts regulated in Book III of the Civil Code, as previously mentioned, is part of the relative law of property (according to doctrine). The law of contracts regulates the legal relationship between one person and another to provide something, do something, or not do something within the scope of property law, which originates from laws or agreements. Specifically regarding the law of contracts, the principle of freedom of contract applies, in which each party are allowed to regulate their own binding agreements between them and may even deviate from the provisions in force Civil Code.

Book IV on proof and expired

Book IV of the Civil Code regulates the means of evidence used to claim or defend a person's civil rights in court. Furthermore, Book IV of the Civil Code also regulates the statute of limitations or specific time periods that can result in a person losing their rights.
civil law or obtaining civil rights, for example the period of time when a person loses the right to claim his property rights or the period of time that causes a person to obtain property rights. Regarding the provisions contained in Book IV of the Civil Code, legal experts (doctrine) are of the opinion that it should not be included in material civil law, but included in formal civil law (procedural law), but the law makers assume that matters related to evidence and statute of limitations are material procedural law so they are included in material law. The law makers distinguish between

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material procedural law which is included in the scope of material law and formal procedural law which is included in the scope of procedural law (formal).

3. History Formation Civil Code

The validity and existence of civil law in Indonesia are inseparable from the history of the Indonesian nation. Before the Dutch colonialists arrived in Indonesia, the Indonesian nation, which at that time consisted of large and small kingdoms, already had its own legal system. This legal system was known as customary law, which generally took the form of unwritten law. In several regions with a Muslim majority at that time, it is undeniable that customary law provisions were heavily influenced by Islamic law. In Wajo, for example, inheritance law uses both Islamic law and customary law, both of which are integrated, and customary law adapts to Islamic law. Ahmad Rofiq, Islamic Law in Indonesia (Jakarta: Raja Grafindo Persada, 1998)

At that time, for example, in certain areas of Aceh, or during the reign of Sultan Agung, Islamic law was enforced as the official law of the state. Muhammad Daud Ali, Islamic Law: Introduction to Islamic Law and Legal System in Indonesia (Jakarta: Raja Grafindo Persada, 2005)

Thus, before the Dutch set foot on Indonesian soil, two legal systems had been in force, namely customary law and Islamic law. When the Dutch set foot and colonized Indonesia, the validity of customary law and Islamic law in Indonesia was maintained, this was reflected in the legal policy of the Dutch colonial government at that time which was stated in Article 131 IS. This provision contains the following.

a) Civil law, commercial law, criminal law, civil procedural law, criminal procedural law, must be placed in a Law Code or codification.

b) For European groups, the provisions of the laws and regulations existing in the Netherlands in civil law must be applied as an application of the principle of Concordance.

c) For native Indonesians and foreign Easterners, the provisions of European legislation in the field of civil law and commercial law can be applied, if their needs require it.

d) Native Indonesians and foreign Easterners were allowed to submit themselves to the laws that applied to Europeans, either partially or completely.

e) Customary law, which still applies to native Indonesians and foreign East Indies, remains in effect as long as it has not been written into law. Based on this, it is clear that the implementation of Dutch legal provisions in Indonesia did not abolish the pre-existing legal system. This is actually related to the divide and conquer policy of "device et ampera" implemented by the Dutch colonial government. With the implementation of this Dutch legal policy, there was a division of law and population groups in Indonesia. This is reflected in the implementation of Article 163 IS, derived from Article 109 of the new RR, which states that in relation to the application of the Civil Code in Indonesia, the population of the Dutch East Indies is divided into the following three groups.

4. History Law Civil Code Of Indonesia And The Netherlands

a) Development of Civil Law in Indonesia

History Development law Civil law in Indonesia is inseparable from the history of the development of legal science in other European countries, in the sense that the development of civil law in Indonesia is

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greatly influenced by the development of law in other countries, especially those with direct relations. Indonesia, as a country under the auspices of the Dutch East Indies government, therefore, policies in civil law are inseparable from the policies that occurred and were implemented in the Netherlands. CST Kansil, Introduction to Indonesian Law and Legal System (Jakarta: Balai Pustaka, 2002)

The year 1848 was a pivotal one in Indonesian legal history. In this year, private law applicable to European law was codified, that is, compiled and incorporated into several statute books based on a specific system.

In codifying civil law, the principle of concordance is still maintained, the risk is that almost all the results of the 1848 codification in Indonesia are imitations of the results of the codification that has been implemented since 1838 in the Netherlands, with several exceptions made to adjust the law for the European legal group in Indonesia with special circumstances. What is meant by the principle of concordance is the principle of adjustment or the principle of equality in the application of the legal system in Indonesia which is based on the provisions of Article 131 paragraph (2) IS which states "For the Dutch group, the laws in the Netherlands must be adopted or emulated." According to Kansil, this means that the laws applicable to Dutch people in Indonesia must be the same as the laws applicable in the Netherlands. So, it is clear that the codified law in Indonesia with the codified law in the Netherlands is based on the principle of concordance.

b) The development of civil law in Dutch

The Dutch civil law system, or Burgerlijk Wetboek (BW), is based on several things, namely: the Code Napoleon, French civil law which is based on Roman law Corpus Juris. The Dutch legal system adheres to civil law, or Continental European legal system. In this system, the judge's role in lawmaking is limited.

Indonesia once used the Dutch legal system because it was a Dutch colonial colony. At that time, Indonesia did not yet have its own legal traditions.

Dutch civil law, as a source of Indonesian civil law, has been updated since 1947. The Nieuw Burgerlijk Wetboek (New Dutch Civil Code) was successfully compiled and has been in effect since 1992, consisting of 10 (ten) books. This update is quite significant when compared to Indonesian civil law, which still uses the old Civil Code (KUHPer) consisting of 4 (four) books. In its development, Max Encyclopedia.

Planck on European Civil Law states that the most significant reform was the extension of the principle of good faith throughout Book 3 and Book 6 of the Nieuw Burgerlijk Wetboek.

The similarity between the principle of good faith in Indonesian civil law and Dutch civil law is that the principle of good faith gives rise to rights and obligations that are not expressly stated in the agreement. On the other hand, the difference between the principle of good faith in Indonesian civil law and Dutch civil law lies in the broadening of interpretation that upholds the principle of freedom of contract and helps judges in court to avoid multiple interpretations, as well as the cancellation of clauses in the general terms and conditions of a contract and compensation for parties who are harmed by the cancellation of the contract at the contract drafting stage. This is a deficiency of the principle of good faith in Indonesian civil law, which does not yet recognize the function of derogation or restriction.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

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Based on the normative legal research that has been conducted, it can be concluded that the civil law systems in Indonesia and the Netherlands have strong historical similarities, where Indonesian civil law is an adoption of the Dutch legal system through the Civil Code sourced from the Burgerlijk Wetboek. This similarity is reflected in the division of classical systematics that regulates people, objects, obligations, and evidence.

However, there are significant differences between the two countries in their development. The Netherlands has comprehensively updated its civil law system through the creation of a new, more modern, systematic, and adaptive Burgerlijk Wetboek (Civil Code). Meanwhile, Indonesia maintains its old system, although in practice it has undergone various adjustments through legislation outside the Civil Code and developments in jurisprudence.

Thus, it can be emphasized that the current systematics of Indonesian civil law are still in the developmental stage and have not yet undergone a complete re-codification, as has been done in the Netherlands. Therefore, efforts are needed to reform civil law in Indonesia to make it more responsive, systematic, and in line with the legal needs of modern society without neglecting existing fundamental values.

B. Suggestion

Based on the results of the normative legal research conducted, it is recommended that Indonesia immediately reform its civil law system comprehensively by establishing a new, more modern and systematic codification, while still considering national legal values and the evolving needs of society. This reform is crucial to address the inconsistency between the provisions of the Civil Code, which are still colonial in nature, and the dynamics of contemporary law.

Furthermore, harmonization of the various civil law regulations currently scattered outside the Civil Code is necessary to create an integrated and non-overlapping legal system. The government and lawmakers are also expected to use the development of the Dutch civil law system as a reference for legal reform, without ignoring the characteristics and legal needs of Indonesia.

On the other hand, academics and legal practitioners are expected to continue contributing through critical and constructive scientific studies to encourage civil law reform. In this way, it is hoped that the civil law system in Indonesia will become more adaptive, responsive, and capable of providing legal certainty and justice to the public.

REFERENCE LISTAN

Ahmad rofiq, (1998). hukum islam di indonesia , cet 3 Jakarta: Raja Grafindo Persada

Muhammad Daud Ali , " Hukum Islam : Peradilan Agama dan masalahnya

Passal 66 UU no.1 Tahun 1974 tentang perkawinan

Z Anshory Ahmad, (1996). Sejarah dan kedudukan BW di indonesia , cet 1. Jakarta : CV Rajawali