

ADALAH

Buletin Hukum & Keadilan

A Comparative Study of Legal Systems in the Regulation of Business Activities in Indonesia and Common Law Countries

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Abstract:

Economic globalization has intensified cross-border business relations, requiring a comprehensive understanding of the differences among legal systems governing business activities. Differences in legal systems, particularly between the civil law and common law systems, have a significant impact on contract formation, dispute resolution, and the protection of business actors' interests. Indonesia, as a country that adopts the civil law system, has distinct characteristics in business regulation compared to common law countries such as the United Kingdom and the United States. This article aims to analyze the comparative legal aspects of business law between Indonesia and common law countries, with a focus on sources of law, contract law, and dispute resolution mechanisms. The research method employed is normative legal research using a comparative law approach. The findings indicate

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that differences in legal systems have direct implications for legal certainty, contractual flexibility, and business strategies adopted by business actors.

Keywords: Economic Globalization, Comparative Law, Business Law.

A. PROLOG

The development of the business world in the era of globalization has undergone a rapid and complex transformation. Economic globalization has effectively removed geographical boundaries between nations, enabling cross-border business interactions on an increasingly broad scale. The expansion of international trade, foreign investment, multinational business cooperation, and advancements in information technology have compelled business actors to operate not only within the framework of national law but also within the sphere of international law and diverse legal systems.¹

In modern business practice, legal relationships are no longer simple in nature. Business contracts frequently involve parties from countries that adhere to different legal systems, creating the potential for differing interpretations regarding their respective rights and obligations. In this context, legal certainty becomes a crucial factor. Legal certainty provides assurance that the rights of business actors are protected and that the obligations arising from their agreements can be clearly predicted and enforced.²

Indonesia, as part of the global economic community, cannot remain detached from these dynamics.

¹ Ali, Achmad. *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence)*. Jakarta: Kencana Prenada Media Group, 2017.

² David, René, dan John E. C. Brierley. *Major Legal Systems in the World Today*. London: Stevens & Sons, 2018.

As a country that adheres to the civil law system, Indonesia relies primarily on codified statutory regulations as the main source of law. This characteristic fundamentally differs from the common law system adopted by countries such as England and the United States, where judicial decisions and precedents play a dominant role in the formation and development of law. These differences have direct implications for business law, particularly in contract formation, interpretation of contractual clauses, and dispute resolution mechanisms.³

In a civil law system, judges generally function as interpreters of laws enacted by the legislature. In contrast, under the common law system, judges play a more active role in shaping and developing legal principles through judicial decisions. This distinction influences the degree of flexibility, certainty, and evolution within business law practices in each system.⁴

Therefore, a comparative study of business law is essential for a comprehensive understanding of the similarities and differences between these two legal systems. Through a comparative approach, it is possible to identify the strengths and weaknesses of each system in offering legal protection, ensuring certainty, and providing contractual flexibility for business actors. Moreover, comparative law serves as a valuable instrument for evaluating and developing national law to make it more

³ Friedmann, W. *Legal Theory*. London: Stevens & Sons, 2016.

⁴ Fuady, Munir. *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*. Bandung: Citra Aditya Bakti, 2019.

responsive to the continuously evolving needs of the business sector.⁵

Based on these considerations, this study seeks to examine in depth the comparison of business law between Indonesia, as a civil law country, and common law jurisdictions.⁶ The analysis focuses on the legal system and sources of business law, contract regulation, and business dispute resolution mechanisms. It is expected that this study will contribute not only to academic discourse but also provide practical benefits for business actors and policymakers in navigating the increasingly complex global business environment.

B. DISCUSSION

1. Legal Systems and Sources of Business Law

A legal system constitutes a structured body of legal norms designed to regulate social order. In the context of business law, the legal system determines how business regulations are formulated, interpreted, and enforced. Indonesia, as a country adhering to the *civil law* tradition, places statutory legislation as the primary source of law. Codification is a defining characteristic of this system, particularly through instruments such as the Kitab Undang-Undang Hukum Perdata⁷ and the Kitab Undang-

⁵ Subekti. *Hukum Perjanjian*. Jakarta: Intermedia, 2018.

⁶ Zweigert, Konrad, dan Hein Kötz. *An Introduction to Comparative Law*. Oxford: Oxford University Press, 2019.

⁷ Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek).

Undang Hukum Dagang⁸, which regulate various aspects of commercial relationships.⁹

Within the civil law framework, judges primarily function as interpreters of written law in concrete cases. Judicial decisions do not formally bind subsequent courts, and jurisprudence does not possess binding authority in the same manner as statutory provisions. Consequently, legal certainty is generally emphasized, as business actors may directly rely on codified rules to structure their transactions and anticipate legal outcomes.¹⁰

In contrast, the common law system regards judicial precedent as a central source of law. The doctrine of *stare decisis* obliges courts to follow prior decisions in cases involving similar facts and legal issues. As a result, business law within common law jurisdictions evolves dynamically alongside commercial practice. This adaptability enables the law to respond more flexibly to emerging business developments. However, the reliance on precedent also requires a comprehensive understanding of relevant case law, which may present complexity for foreign business actors unfamiliar with the precedent-based system.¹¹

3. Comparative Analysis of Contract Law in Business

⁸ Kitab Undang-Undang Hukum Dagang (Wetboek van Koophandel).

⁹ Rahardjo, Satjipto. "Hukum dan Perubahan Sosial." *Jurnal Hukum dan Pembangunan* Vol. 48, No. 1 (2018).

¹⁰ Scalia, A. (1997). Common-law courts in a civil-law system: the role of united states federal courts in interpreting the constitution and laws. *Tanner Lectures on Human Values*, 18, 77-122.

¹¹ Jacob, M. (2011). Precedents: lawmaking through international adjudication. *German Law Journal*, 12(5), 1005-1032.

Contract law constitutes a fundamental component of business activity, as nearly all commercial transactions are grounded in agreements. In Indonesia, contract law is principally governed by the Kitab Undang-Undang Hukum Perdata, particularly Article 1320, which establishes four essential requirements for a valid contract: mutual consent, legal capacity, a certain object, and a lawful cause. The principle of freedom of contract grants parties broad discretion to determine the content of their agreements in accordance with their interests.¹²

Nevertheless, freedom of contract within the civil law system is not absolute. Statutory provisions, public order, and morality impose substantive limitations. Additionally, the principle of good faith is expressly recognized as a fundamental norm governing the formation and performance of contracts.¹³

By contrast, common law contract doctrine contains distinctive features. One essential element for contractual validity is *consideration*, defined as something of value exchanged between the parties. Without consideration, an agreement is generally unenforceable. While the principle of good faith may not always be

¹² Budiarta, I. N. P. (2018, November). Principles of contract law underlying business activities in the globalization era. In International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2018) (pp. 70-73). Atlantis Press.

¹³ Storme, M. E. (2007). Freedom of Contract: Mandatory and Non-Mandatory Rules in European Contract Law. *European Review of Private Law*, 15(2).

explicitly articulated, it has developed through judicial interpretation across numerous decisions.¹⁴

Business contracts in common law jurisdictions are often drafted in highly detailed and comprehensive terms. This approach aims to minimize legal uncertainty and anticipate potential disputes. It differs from the civil law tradition, which tends to rely more heavily on statutory provisions to supplement and interpret contractual arrangements.¹⁵

3. Business Dispute Resolution

Business disputes are an inevitable aspect of commercial practice. Accordingly, legal systems must provide mechanisms that are effective, efficient, and capable of ensuring legal certainty.¹⁶ In Indonesia, business disputes may be resolved through litigation before the courts or through alternative dispute resolution mechanisms such as arbitration, mediation, and conciliation.¹⁷

Litigation is often perceived as time-consuming and costly. Furthermore, the public nature of court

¹⁴ Hernoko, Agus Yudha. "Asas Proporsionalitas dalam Kontrak Komersial." *Jurnal Hukum Ius Quia Iustum* Vol. 26, No. 2 (2019).

¹⁵ Valcke, C. (2009). Contractual interpretation at common law and civil law: an exercise in comparative legal rhetoric.

¹⁶ Wibowo, A. S., Negara, D. S., Marsal, A. P., & Da Silva, E. B. (2021). Contractual Instruments' Effectiveness in Preventing Business Disputes and Ensuring Business Law Stability. *Journal of Social Science Studies*, 1(2), 209-214.

¹⁷ Sharma, I., & Singh, V. (2022). MEDIATION-A PANACEA OR AN UNAVAILING PRACTICE: WITH SPECIAL REFERENCE TO COMMERCIAL DISPUTES. *Journal of Positive School Psychology*, 6(2).

proceedings may affect the commercial reputation of the parties involved. For these reasons, many business actors prefer alternative dispute resolution, particularly arbitration, which is generally regarded as more expedient and confidential.¹⁸

Common law jurisdictions similarly recognize both litigation and alternative dispute resolution mechanisms. However, the operation of a precedent-based system provides a relatively higher degree of predictability in judicial outcomes. Business actors can assess potential dispute outcomes by examining relevant prior decisions, thereby enhancing legal risk management and strategic planning.¹⁹

C. EPILOG

The comparative analysis of business law between Indonesia and common law countries reveals fundamental differences in legal systems, sources of law, contract regulation, and dispute resolution mechanisms. Indonesia's civil law system emphasizes legal certainty through codification and comprehensive statutory regulation. In contrast, the common law system offers flexibility and adaptability through judicial precedent and the active role of judges in shaping legal principles.

¹⁸ Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa.

¹⁹ Klerman, D. (2007). Jurisdictional competition and the evolution of the common law. *U. Chi. L. Rev.*, 74, 1179.

For business actors, understanding these systemic differences is essential, particularly in the context of cross-border commercial transactions. A sound grasp of the characteristics of each legal system enables parties to draft contracts more effectively, select appropriate dispute resolution mechanisms, and manage legal risks with greater precision. In an increasingly interconnected global economy, such awareness is not merely advantageous but necessary.

Furthermore, this comparative study provides valuable insights for policymakers. By examining the strengths and limitations of both systems, lawmakers may consider reforms and innovations that enhance the responsiveness and competitiveness of national business law. Ultimately, the development of a balanced legal framework, one that ensures certainty while remaining adaptive to commercial realities, will contribute to a more robust and globally competitive business environment.

REFERENSI:

Ali, Achmad. *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence)*. Jakarta: Kencana Prenada Media Group, 2017.

Budiarta, I. N. P. "Principles of Contract Law Underlying Business Activities in the Globalization Era." In *International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2018)*, 70–73. Atlantis Press, November 2018.

- David, René, dan John E. C. Brierley. *Major Legal Systems in the World Today*. London: Stevens & Sons, 2018.
- Friedmann, W. *Legal Theory*. London: Stevens & Sons, 2016.
- Fuady, Munir. *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*. Bandung: Citra Aditya Bakti, 2019.
- Hernoko, Agus Yudha. "Asas Proporsionalitas dalam Kontrak Komersial." *Jurnal Hukum Ius Quia Iustum* Vol. 26, No. 2 (2019).
- Jacob, M. "Precedents: Lawmaking through International Adjudication." *German Law Journal* 12, No. 5 (2011): 1005–1032.
- Klerman, D. "Jurisdictional Competition and the Evolution of the Common Law." *University of Chicago Law Review* 74 (2007): 1179.
- Kitab Undang-Undang Hukum Dagang (Wetboek van Koophandel).
- Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek).
- Rahardjo, Satjipto. "Hukum dan Perubahan Sosial." *Jurnal Hukum dan Pembangunan* Vol. 48, No. 1 (2018).

Scalia, A. "Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws." *Tanner Lectures on Human Values* 18 (1997): 77–122.

Sharma, I., dan Singh, V. "Mediation—A Panacea or an Unavailing Practice: With Special Reference to Commercial Disputes." *Journal of Positive School Psychology* 6, No. 2 (2022).

Storme, M. E. "Freedom of Contract: Mandatory and Non-Mandatory Rules in European Contract Law." *European Review of Private Law* 15, No. 2 (2007).

Subekti. *Hukum Perjanjian*. Jakarta: Intermasa, 2018.

Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa.

Valcke, C. "Contractual Interpretation at Common Law and Civil Law: An Exercise in Comparative Legal Rhetoric."

Wibowo, A. S., D. S. Negara, A. P. Marsal, dan E. B. Da Silva. "Contractual Instruments' Effectiveness in Preventing Business Disputes and Ensuring Business Law Stability." *Journal of Social Science Studies* 1, No. 2 (2021): 209–214.

Zweigert, Konrad, dan Hein Kötz. *An Introduction to Comparative Law*. Oxford: Oxford University Press, 2019.