

## THEORETICAL RESPONSES TO THE QUESTIONS OF ONE LAW FOR ONE SOCIETY AND MULTIPLE LAWS FOR MULTIPLE SOCIETIES

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### Abstract.

The Indonesian legal system is a combination of several religious, customary and European legal systems, especially the Dutch as a nation that once colonized Indonesia for 3.5 centuries. So, it is not surprising that their inherited civilization includes the legal system. Living law refers to the laws that are still valid and applied in society, including customary law, religious law, and positive law. This law can coexist with various other laws, such as civil, constitutional and criminal law, which apply according to the context and issues that arise in society. Therefore, it is important to understand and accommodate the various sources of law in a society to achieve justice and order. In the Indonesian context, the applicability of law to the life of society and the state involves various factors, including public awareness, lawmaking, and juridical, sociological and philosophical foundations. Indonesia's legal system is a combination of several legal systems, including religious, customary and state law. This shows the complexity in the application of law in society, which requires a comprehensive understanding and accommodation of various sources of law to achieve legal objectives, such as order, justice and security.

Keyword: Theoretical, Law for One Society, Multiple Laws and Societies

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### 1. Introduction

Humans in society basically have certain views about what is considered good and what is considered bad. These views are always realized in certain pairs, so that, for example, there is a pairing of the value of order with the value of tranquility, a pairing of the value of public interest with the value of private interest, a pairing of the value of preservation with the value of innovation, and so on.

In Indonesia, there are two legal subjects, namely humans (*Natuurlijke Person*) and legal entities (*Recht Person*). In its enforcement, the law has a close relationship with humans. Apart from requiring an implementing subject, the law is also influenced by social interaction. In this case, it can be concluded that the higher the level of social interaction, the higher the level of use of law in social life. Laws are born to achieve various goals desired by society. In addition, the law also provides guarantees for people's lives in order to create justice, security and order. Law can be interpreted as a collection of rules that must be followed and obeyed by anyone and contains sanctions if not obeyed. So that this law is needed by every human being in society and the state. (Sugiharto, 2023)

Marcus Tullius Cicero said *ubi societas ibi ius*, which means where there is society, there must be law. So, existing laws will inevitably change and develop, along with the changes and developments that occur in society. A statement that illustrates the overlap (development-change) of society with the law that is also constantly changing. It also implies that the order that allows the existence of society is the existence of law and vice

versa, law, no matter how it develops, cannot and should not be completely separated from society.

As Soetanyo Wignjosoebroto says, in today's globalized life what will materialize is a global society that will not move towards diversity. Global society is not a centrally controlled global state. The global state is more accurately described as a "market society" which can be called a global economy. The global society witnesses the liberation of millions of people from the bonds of national laws that in the past were developed as control mechanisms in the central hands of state rulers. Meanwhile, its development as a global economy has opened various territorial and cultural borders. Globalization and its influence on legal life, which is now increasingly difficult to control by the central power of the national state, has invited serious attention from various scenes, ranging from transnational, national and sub-national. When national states are forced by many boundaries and changes in economic life that have an impact on political, social and cultural life have increased the number of people and ideologies that cross various barriers, the problem of organizing order and structural power will become the homework of future leaders. (Wignyosubroto, 2007)

Thus, the existence of globalization, especially in the field of law, forces a country to make changes or reforms to national law so that it continues to play an important role in national development in the midst of globalization. The important role of law in national development is that the law can create welfare, justice and happiness for the community.

Based on the background described above, this research problem can be formulated as follows: How do structural differences and cultural values between societies affect differences in legal systems? And how does globalization affect the intertwining of laws between societies?

## **2. Theoretical Background**

This view of law as a reflection of society (mirror thesis) is similar to that of Friedrich Carl von Savigny (1779-1861). He, who opposed the transplantation of French codification (Code Napoleon, 1804) into the German state and society, argued that law cannot and should not be codified, the reason being that law is values that live and develop with society and therefore, law as the soul of the nation, cannot be captured in written form by lawmakers. A slightly different understanding emerges from the view of Eugen Ehrlich (1862-1922) contrasting living law, namely the law practiced by society, which can be found in social facts, with formal legal sources enacted by the State. Statutory law (made by the state) is not necessarily the same as the (unwritten) law that lives and develops in society. (Tristam Pascal Moeliono, 2022)

Whether a society should be governed by a single law or multiple laws applicable to different societies is an issue that arises from the complex relationship between law and social diversity. These two approaches reflect different philosophical and legal thinking, raising questions of equality, justice and identity in the context of legal systems. History records variations in the interpretation and application of law in different societies. In some legal traditions, such as Roman law, there is a spirit of universality where one law applies to all citizens. In contrast, the Islamic legal tradition shows a diversity of laws that accommodate different cultures and beliefs. Cultural diversity and customs are often the basis for various laws that reflect local values. The maintenance of cultural identity and local wisdom is often the main argument for proponents of various laws in societies rich in tradition.

Law is a rule of life created to achieve the values desired by society. One of the values that the law aims to achieve is order. Order means that there is compliance and obedience to behavior in carrying out what the law prohibits and commands. Humans always live with desires to achieve their desired goals. There are times when the means of obtaining the desires to achieve the desired goals. There are times when the way to obtain these desires is not in accordance or contrary to the existing legal rules, where we often hear that humans in obtaining something they want or want to use all means. This is what ultimately leads to violations of the law. In order to avoid these violations of the law, we need a legal system that applies to a country, so that it can serve as a guiding rule as well as provide sanctions for anyone who violates it.

Law is needed and useful for everyone because with the existence of law, justice, security and order are created in society and the state. The applicability of law for an agency or body is the most important thing is to be a guideline and limitation in acting as an agency or body. The law also functions to regulate the order in an agency or body so as not to clash of interests, the law is also useful for solving a problem that arises internally or externally in agencies and bodies, and there are still many legal functions for a body or agency. Therefore, the law is needed by everyone and every layer in society. The applicability of law certainly coexists with the lives of everyone in society and the state. In society, it also requires law to regulate the behavior and actions of individual humans so as not to disturb others.

Meanwhile, the phenomenon of globalization and the growing interconnection between countries raises the question of the extent to which a society can maintain its distinct laws in the face of homogenizing pressures. How societies can maintain their unique identities while still engaging in the global community is a key question. Questions of power distribution and politics often influence legal policy. Centralization of power tends to support one law for all societies, while the granting of power to local groups supports the idea of multiple laws.

### **3. Methodology**

This research uses a juridical sociological approach by examining the rules, concepts, public views, legal doctrines obtained from secondary legal materials, as well as applicable laws and regulations both related to the issues discussed. After the necessary legal materials are collected, data processing is carried out using qualitative methods. (Istanto, 1999).

### **4. Result and Discussion**

Nowadays, comparative law is viewed from a functional approach. The functional approach places various legal systems only comparable as long as they function to solve the same social problems or fulfil the same legal needs. The functional approach is conducted with a critical, realistic and non-dogmatic method. (Tungadi, 2004) According to Tahir Tungadi, comparative law is now not concerned with the differences or similarities of various legal orders (legal orders) merely as facts, but what is important is "the fitness, the practicability, the justice, and the why of legal solutions to given problems." Realistic because comparative law not only examines legislation, court decisions and doctrine, but also "All the real motives, which rule the world: the ethical, the psychological, the economic, and those of legislative policy." It is not dogmatic, because comparative law does not want to be confined to the rigidity of dogmas as is

often the case with any legal system. Although dogma has a systematizing function, it can obscure and distort the view of finding a "better legal solution".

According to Soebekti, the similarities of various matters in the legal system are partly due to the sense of law and justice regarding this matter which is everywhere the same. (Subekti, 1983) Comparative Law is seen as a general history or universal history of law, as stated by Joseph Kohler who considers the term "Universale Rechtsgeschichte" is the same as "Vergleichende Rechtswissenschaft". Similarly, Sir Frederic Pollock considers there is no difference between "historical jurisprudence" and "Comparative Jurisprudence" which both mean the general history of law. (Atmasasmita, 1989)

Friedman's legal system theory states that there are three elements that form the legal system, namely legal substance, legal structure and legal culture. Legal structure is a structural component or organ that moves in a mechanism, both in making regulations, as well as in applying or implementing regulations. Legal substance is the product of legal structure, either regulations made through formal structure mechanisms or regulations born of custom. Meanwhile, legal culture is the values, thoughts, and expectations of rules or norms in the social life of society. These three elements of the legal system have a relationship with each other where between the three elements are harmonized in the process of achieving the legal objectives themselves. Strengthening the national legal culture is certainly inseparable from the basic norms or values agreed upon together as a nation and state, namely Pancasila and the 1945 Constitution of the Republic of Indonesia. Every citizen in the legal system can take over in the legal culture sub-system.

However, if we look at the reality that occurs in the community, the legal culture that is desired is still far from what is expected given the lack of public awareness related to the law itself, this can be seen that where people still tend to violate the law deliberately, besides that people still do not like to settle cases or bring cases they face to court because it will only increase losses through unclear fees, even extortion. People do not like to litigate in court not because of a cultural awareness that family settlements outside the court are better, but because they do not trust the law enforcement process and its law enforcers. (MD, 2011)

Seeing the reality that occurs in the community, of course this is very contrary to the purpose of the law itself, where the purpose of the law is essentially for justice, benefit and legal certainty. Even legal and philosophical experts such as Aristotle say that the purpose of law is to fulfil the sense of justice of society (humans) and Prof. Van Apeldoorn states that the purpose of law is to regulate human association so that it is peaceful. (Waluyadi, 2001) Seeing the purpose of the law that in essence the purpose of the law is something very noble, if it is implemented in the life of society, nation and state is certainly a very good thing because it is in line with the goals and ideals of the Indonesian nation in the constitution.

Law has the same role throughout the world, but there are differences in the form and substance of law in each country. The differences in each country are caused by several factors, including: (2023)

1. Customs and Culture Factor
2. History Factor
3. Political Factor
4. Ideology Differences
5. Differences in economic and environmental conditions.

The problem of legal acculturation in society is not only a problem for those who distinguish or contrast law and society, but also those who distinguish rules from facts. The problem actually revolves around how to civilize a legal system imported from another society or how to institutionalize a legal system introduced by the ruling class. The problem must be overcome if the goal is to make the law effective.

Laws that are made are ultimately determined by the legal culture in the form of values, views and attitudes of the community concerned. If the legal culture is ignored, it is certain that there will be a failure of the modern legal system which is characterized by the emergence of various symptoms such as: misinformation about the content of legal regulations to be conveyed to the public, there is a difference between what is desired by the law and the practices carried out by the community. People prefer to continue to behave in accordance with what has become values and views in community life. The description of legal culture in the elements of the legal system is that the legal structure is likened to a machine that produces something, legal substance is likened to the product produced by the machine, and legal culture is anything or anyone who decides to run the machine and limit the use of the machine. (S, 2015) So that the urgency of strengthening legal culture has become an inevitable need. Therefore, the development of legal culture must be carried out through a targeted and measurable development strategy through policy formulation, legal culture strategy and legal culture development efforts. (Jawardi, 2016)

One of the efforts made in improving legal culture and legal awareness is through education and socialization of various laws and regulations in order to obey and comply with the law and uphold the rule of law. One of the efforts made in improving legal culture and legal awareness is through education and socialization of various laws and regulations in order to comply with and obey the law and uphold the rule of law. One effective way is to conduct legal counselling.

The principles that support legal culture and legal intelligence of the community mentioned above will produce a legal cultured or legal intelligent society. The characteristics of a law-intelligent society are people who understand the law comprehensively related to their rights and obligations, know the permissions and prohibitions and understand the benefits and risks that will be experienced related to the legal actions they take, are careful and careful in taking steps and legal actions and are able to stay away from all actions that can lead to violations of the law, able to avoid actions that lead to violations of the law. Another element of community legal intelligence is the ability to participate in efforts to realize a democratic state of law, through the contribution of ideas in the context of national legal development, so that laws made can truly reflect philosophical, sociological and juridical values. (Susilawati, 2008)

The formation of a law-aware and law-abiding society is the ideal of the norms that want a just society so that the joints of the culture of society will develop towards the creation of a system of society that respects each other, making a law-aware and law-abiding society is not something that is easy to turn the palm of the hand, a lot must be done by the founders or thinkers of this country to think about it. Law is not the only thing that serves to make people aware of the law and law-abiding, Indonesia, which in fact is a very heterogeneous country, seems to be in forming positive legal formulations somewhat different from countries whose culture is homogeneous, it is very important that before forming a law that will regulate the course of society, it must be explored about the philosophy of law more comprehensively which will realise real justice for all groups, ethnicities, races, religions in Indonesia.



Globalization as a process has accelerated in the last few decades, but the actual process has been going on for a long time, simply because of the predisposition of human beings to live together in a region and therefore be conditioned to relate and recognize each other's relationships. (Rahardjo, 1996)

The development of the national legal system is directed towards national laws that serve the national interest. Legal development must be able to serve as a basis for ensuring society, among others, can create legal certainty, legal order and legal protection. In the language of enlightenment philosophers, the law should not only be a tool to achieve rationality, but the law itself must be rational.

The simplest way to explain the presence of the globalization phenomenon is to point to the increasingly rapid development of franchise businesses in Indonesia, the rise of telenovelas on television, and the presence of tens of thousands of foreign workers working in Indonesia. Globalization, on the other hand, is also illustrated by the increasing number of Indonesian workers working abroad. In globalization, the main asset a country has is the expertise and insight of its citizens or in a more popular expression, the human resources it has.

Global influence, especially large countries in influencing the development of law in a country, is very pronounced and this cannot be stopped, using the economic power of a country such as the United States can easily influence the development of a nation's national legal system. The development of the legal system must be interpreted as law as an institution of statutory regulations or law as an institution in the sense of a law enforcement organization. Reform in this field is based on the fact that during the new order law tended to be used as a tool of authority, as a means of legitimizing or justifying actions. government, in other words the law tends to serve the will and wishes of certain rulers and elites. (Susanto, 1999) Satjipto Rahardjo said that law does not just come from the sky, but grows and develops together with society, in other words, law is imperatively related to the society in which it operates.

## 5. Conclusion

Structural differences and cultural values between societies have a significant impact on differences in legal systems. The political, economic and social systems of a society form the basis for forming a legal framework, while cultural values and local norms influence the substance of the law and how the law is implemented. The success or failure of legal culture in society always depends on the structure of society as a whole, related to the legal values it adheres to, the areas of life targeted by legal culture, the tools and methods of legal communication, and the quality of leaders. The characteristics of a legally intelligent society are people who understand the law comprehensively relating to their rights and obligations, know the permissible and prohibitions and understand what benefits and risks they will experience in relation to the legal actions they take, are careful and thorough in taking steps and actions. -legal action and being able to avoid all actions that could lead to violations of the law, able to avoid actions that could lead to violations of the law. People obey the law because they are afraid of negative sanctions in order to maintain good relations with the government and other citizens.

To respond to the challenges of globalization, it is important to understand that interactions between societies, which bring together structural differences and cultural values, can design legal intertwinement at the global level. This study shows the need for an interdisciplinary approach to understand and manage these differences wisely, respecting human rights and local values, while considering broader legal frameworks in

an increasingly connected global context. The influence of globalization on the formation of the legal system in Indonesia cannot be avoided, only by relying on the economic strength of a country like the United States can it exert its influence in Indonesia through the formation of laws.

### 5.1 Suggestion

Structural differences and cultural values between societies can influence differences in legal systems. Cultural values are a general view of what is considered important, noble, or desirable in a culture, while the structure of society is characterized by the fact that there are social units based on ethnic, religious, customary, and regional differences which are referred to as characteristics of a pluralistic society. Changes in cultural values that occur in society can influence the form and nature of mutual cooperation, which is part of the cultural system and can influence the legal system. Additionally, differences in values and norms between cultures can also provide better insight into differences in legal systems.

Globalization can affect legal relations between communities due to the influence of different cultural values and societal structures. Globalization can also affect the substance and enforcement of law in a country. Therefore, it is important to understand the impact of globalization on legal relations between societies in order to develop a legal system that is better and in line with society's needs.

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