

THE IMPACT OF THE COMMON LAW SYSTEM AND CIVIL LAW SYSTEM ON THE DEVELOPMENT OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN INDONESIA

Dinda Putri Santoso

Master of Construction Law, Pekalongan University, Jl. Sriwijaya No.3, Bendan, Kec.
Pekalongan Bar., Pekalongan City, Central Java 51119

Abstract

Alternative Dispute Resolution (ADR) such as arbitration, mediation and reconciliation is gaining more attention for dispute resolution in Indonesia, as it is a more efficient ADR than litigation. Indonesia adheres to the Civil Law legal system, which prioritizes legislation and the written law system, but the influence of the Common Law system with a more flexible approach to dispute resolution has also had a significant impact on the formation and application of dispute resolution mechanisms in Indonesia. The purpose of this study is to analyze the impact of Common Law and Civil Law on the development of ADR in Indonesia, using an analytical descriptive approach, identifying how the influence of Common Law and Civil Law plays a role in influencing the regulation and practice of ADR in Indonesia, as well as the challenges faced in its implementation. The results show that although Indonesia adheres to Civil Law, Common Law elements such as party autonomy in arbitration and flexibility in mediation, are beginning to be accepted and adapted. However, it has major challenges in terms of education, access, and standardization of ADR procedures in Indonesia.

Keywords: Alternative Dispute Resolution, Civil Law, Common Law, Arbitration, Mediation, Reconciliation, Indonesian Legal System.

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INTRODUCTION

Indonesia has a legal system that refers to the civil law legal system which tends to prioritize written rules and a more systematic process in dispute resolution. Meanwhile, common law, which developed in countries such as the United Kingdom and the United States, prioritizes flexibility, freedom of contract (party autonomy) and the application of precedent-based legal decisions (*stare decisis*). These differences affect how Alternative Dispute Resolution (ADR) mechanisms are applied in the Indonesian legal system, and some elements of the common law are used especially in the commercial arbitration sector.

Alternative Dispute Resolution (ADR) has developed as an alternative method for resolving disputes in Indonesia which includes dispute resolution mechanisms such as arbitration, mediation, and reconciliation, which provide options for resolving disputes outside the courts, ADR can provide efficient, cost-effective solutions, and reduce the burden on the courts. Indonesia has ADR that has been regulated in various laws, Indonesia adheres to a civil law system that has different characteristics from countries using common law which emphasizes more on freedom of contract and more flexible dispute resolution mechanisms. This research aims to analyze the impact of these two legal systems on the development of ADR in Indonesia, as well as the challenges faced in the implementation and practice of ADR in Indonesia.

RESEARCH METHODS

The research method used in this research uses an analytical descriptive approach with qualitative methods. Data is collected through literature studies covering national and international legal regulations related to ADR (Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution) and international legal documents and theories related to common law and civil law.

RESULTS AND DISCUSSION

The results and discussion of the impact of the common law system and civil law system towards the development of Alternative Dispute Resolution (ADR) as follows:

1. The influence of the Common Law System on ADR in Indonesia

The influence of common law on the development of ADR in Indonesia can be seen in the development of arbitration and mediation. Arbitration in Indonesia, which is regulated under Law No. 30/1999, is heavily influenced by common law principles such as freedom of choice of arbitrators and more flexible procedures compared to traditional court procedures. This influence reflects the acceptance of international arbitration decisions in Indonesia which often follow common law principles such as arbitration agreements. In addition, as mediation in Indonesia follows more Supreme Court Rules and involves the role of mediator judges, common law principles that emphasize the freedom of parties to resolve disputes independently are increasingly accepted. This can be seen in the more flexible application of mediation in commercial dispute resolution, where disputes are resolved without the involvement of the court. In common law, party autonomy has the freedom to choose the desired dispute resolution mechanism, including arbitration/mediation, without being bound by the standard rules determined by the court, which is very relevant in the context of international arbitration, and is known in Indonesia, especially in the commercial sector and international trade.

2. Effect of Civil Law System on ADR in Indonesia

Indonesia, which adheres to a civil law legal system, has a more structured approach to dispute resolution. Civil law in dispute resolution is often facilitated by the courts, this is based on Supreme Court Regulation Number 1 of 2008 concerning Mediation, which requires judges to offer mediation as a first step before continuing litigation, one of these mediations is one of the characteristics in civil law countries where there are courts that have an active role in dispute resolution. It has been influenced by the common law system in the development of commercial arbitration and mediation, but the civil law system still dominates in terms of procedures that are more structured by legislation. Decisions resulting from ADR in Indonesia are often influenced by standardized legal structures and based on existing regulations.

3. Challenges in ADR Development in Indonesia

The implementation of ADR development in Indonesia has challenges in its implementation, among others:

- a. Lack of understanding and socialization of ADR, although ADR is regulated by invitation - the law, the legal practitioner community in Indonesia still applies the litigation route in dispute resolution. Socialization to utilize ADR can be increased again;
- b. There is a lack of adequate ADR facilities and assistance, which is one of the challenges in the wider implementation of ADR;
- c. Differences in procedural standards between institutions/regions may reduce the effectiveness of dispute resolution through ADR;
- d. The role of the court as the first step in dispute resolution dominates in ADR and results in the limitation of flexibility that should exist in the common law system.

CONCLUSION

The conclusion is that both common law and civil law legal systems have a significant impact on the development of Alternative Dispute Resolution (ADR) in Indonesia. Common Law with the principle of party autonomy has a significant influence on the development of commercial arbitration and mediation which is more flexible, while civil law still conducts according to procedures and is structured. The influence of common law is increasingly visible in the commercial and international trade sectors, where arbitration and mediation are more accepted as more efficient dispute resolution mechanisms.

The challenges faced in accessibility, ADR education, and standardization of procedures are still obstacles that continue to be improved to increase the effectiveness of ADR in Indonesia. Therefore, it is necessary to increase legal knowledge among the public and practitioners and strengthen the capacity of mediators and arbitrators through training and certification.

LITERATURE

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