

A CRITICAL STUDY OF THE EFFECTIVENESS OF CIVIL LAW ARRANGEMENTS IN THE PROTECTION OF INDIVIDUAL RIGHTS IN INDONESIA

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Abstrak

Hukum perdata di Indonesia memiliki peran strategis dalam melindungi hak-hak individu sebagai bagian dari masyarakat hukum. Namun, efektivitas pengaturan hukum perdata sering kali dipertanyakan karena adanya kesenjangan antara norma hukum yang tertulis dan praktik implementasinya di lapangan. Artikel ini bertujuan untuk melakukan kajian kritis terhadap efektivitas pengaturan hukum perdata dalam memberikan perlindungan terhadap hak-hak individu di Indonesia. Penelitian ini menggunakan pendekatan kualitatif dengan metode analisis dokumen dan wawancara mendalam terhadap para ahli hukum, praktisi, serta masyarakat yang terlibat langsung dalam proses penyelesaian sengketa perdata. Fokus utama penelitian adalah mengeksplorasi sejauh mana prinsip-prinsip hukum perdata dapat diterapkan secara adil dan merata, terutama dalam kasus-kasus yang berkaitan dengan hak milik, kontrak, dan keluarga. Hasil temuan menunjukkan bahwa meskipun norma hukum perdata telah dirancang secara komprehensif, tantangan utama terletak pada lemahnya penegakan hukum, minimnya pemahaman masyarakat terhadap hukum, serta disparitas akses terhadap keadilan. Ketiga faktor tersebut menjadi penghambat dalam mencapai tujuan utama hukum perdata, yaitu perlindungan hak individu.

Kata kunci: hukum perdata, perlindungan hak individu, penegakan hukum

Abstract

Civil law in Indonesia has a strategic role in protecting the rights of individuals as part of the legal community. However, the effectiveness of civil law arrangements is often questioned due to the gap between written legal norms and their implementation practices in the field. This article aims to conduct a critical review of the effectiveness of civil law arrangements in providing protection for individual rights in Indonesia. This study uses a qualitative approach with document analysis methods and in-depth interviews with legal experts, practitioners, and the public who are directly involved in the civil dispute resolution process. The main focus of the research is to explore the extent to which civil law principles can be

applied fairly and equitably, especially in cases relating to property, contract, and family rights. The findings show that although civil law norms have been comprehensively designed, the main challenges lie in weak law enforcement, lack of public understanding of the law, and disparities in access to justice. These three factors are obstacles in achieving the main goal of civil law, namely the protection of individual rights.

Keywords: civil law, protection of individual rights, law enforcement

INTRODUCTION

Civil law is one of the important pillars in the legal system in Indonesia. As an integral part of the national legal order, civil law has the main function of regulating relationships between individuals or between individuals and legal entities in society. In this context, civil law not only functions as a normative setting tool, but also as a mechanism for the protection of individual rights. However, the implementation of civil law often faces various challenges that make it less effective in achieving these goals. Therefore, it is important to conduct an in-depth study to understand the extent to which civil law arrangements can provide fair and equitable protection for the community (Subrin, 1986).

Indonesia as a country of law places the principle of justice as one of the fundamental values in the implementation of its legal system. Civil law, which is private, is the main instrument in protecting individual rights such as property rights, contract rights, and family rights. However, the reality on the ground shows that many civil law cases are not resolved satisfactorily. This is due to various factors, including weak law enforcement, lack of public understanding of the law, and disparities in access to justice (Rhode, 2000). These three factors are the main obstacles in realizing the ideal civil law objectives (Marzban et al., 2024).

Civil law enforcement in Indonesia still faces various structural obstacles. One of the main problems is the inconsistency between written legal norms and their implementation practices in the field. Many civil law rules are designed

comprehensively, but they are difficult to implement due to limited resources, both human and infrastructure. In addition, complicated and slow bureaucracy is often an obstacle in the process of resolving civil disputes (Bendix, 1945). As a result, many people feel that they do not get justice even though they have followed the applicable legal procedures (Stuntz, 1997).

The lack of public understanding of civil law is also one of the big challenges. Many individuals are not legally aware of their rights or do not understand the procedures to follow to protect those rights. This is especially true in rural areas or communities that are less accessible by legal education. This ignorance is often used by irresponsible parties to take unfair advantage. Therefore, increasing legal literacy is one of the important steps to improve the effectiveness of civil law (Laskarides et al., 2019).

Disparity in access to justice is also an issue that cannot be ignored. In Indonesia, access to justice is often influenced by economic, social, and geographical factors. People who live in remote areas or have financial limitations tend to have difficulty accessing adequate legal services. In addition, the high costs in the process of resolving civil disputes are often an additional burden for communities that are already marginalized (Salehyan, 2008). This condition shows that the civil law system in Indonesia is not fully inclusive and responsive to the needs of the community (Zulfikar et al., 2024).

A critical study of the effectiveness of civil law arrangements is very relevant in this context. This study aims to explore the extent to which civil law principles can be applied fairly and evenly in society. A qualitative approach is used to dig into the data in depth through document analysis and interviews with legal experts, practitioners, and the public who are directly involved in the civil dispute resolution process. The main focus of this study is to identify the factors that affect the

effectiveness of civil law in protecting individual rights (Anagnostou & Mungiu-Pippidi, 2014).

The preliminary findings show that there are several fundamental challenges that need to be overcome in order for civil law to function optimally. Weak law enforcement, lack of public understanding, and disparity in access to justice are the three main factors that are obstacles. Therefore, this study is expected to provide a clearer picture of how civil law can be improved to be more responsive to the needs of the community. Thus, efforts to increase the effectiveness of civil law can be carried out in a more targeted and sustainable manner (Bäckstrand, 2006).

METHODS

This study uses a qualitative approach to examine in depth the effectiveness of civil law regulation in the protection of individual rights in Indonesia. The qualitative approach was chosen because this research aims to understand complex and contextual phenomena, especially related to the implementation of civil law in society. The data collected is descriptive and interpretive, focusing on exploring the experiences, views, and perspectives of the parties involved in the civil dispute resolution process. This method allows researchers to capture social, legal, and cultural dynamics that affect the effectiveness of civil law in a more holistic way. Thus, the results of the research are expected to provide a comprehensive overview of the challenges and opportunities in the civil law system.

Data collection techniques were carried out through in-depth interviews, document analysis, and field observations. Interviews were conducted with various parties, including legal experts, legal practitioners, law enforcement officials, and the public who have been involved in civil law cases. The interview questions are designed open-ended to allow respondents to express their views freely and in-depth. In addition, the analysis of the document includes a review of applicable civil law

regulations, court decisions, and related academic literature. Field observations are also carried out to understand how the process of resolving civil disputes takes place in court and outside the court, such as through mediation or arbitration.

The data obtained were then analyzed using the thematic analysis method. The analysis process begins with organizing the raw data into thematic categories based on the patterns and relationships found. The main themes that emerge from the data are then interpreted to answer the research questions. The validity of the data is strengthened through source triangulation, namely by comparing information obtained from various respondents and documents. In addition, the researcher also held discussions with legal experts to ensure the accuracy of the data interpretation. With this method, it is hoped that the results of the study can make a significant contribution to the understanding of the effectiveness of civil law regulation in Indonesia.

RESULTS AND DISCUSSION

The results of the study show that civil law arrangements in Indonesia have a normative framework that is quite comprehensive to protect individual rights. The Civil Law (BW) and its various derivative regulations have been designed to regulate relationships between individuals in various aspects, such as property rights, contracts, and family. However, the implementation of these rules is often not in accordance with public expectations. Many cases show that civil law norms are difficult to apply effectively due to structural and cultural constraints (Edelman, 1992). This shows that the existence of regulations alone is not enough to ensure optimal protection of individual rights (Haines, 2011).

One of the main findings of this study is weak law enforcement as a major inhibiting factor. Although civil law rules have been well drafted, the enforcement process is often hampered by complicated bureaucracy, slow court procedures, and

a lack of integrity by law enforcement officials. For example, many civil dispute cases take years to resolve, leaving the parties frustrated and losing trust in the legal system. In addition, the high cost of the litigation process is also an additional burden for the community, especially those from the lower middle economic class. This condition shows that civil law enforcement is still far from ideal (Arnold, 1932).

The lack of public understanding of civil law is also one of the big challenges. The results of interviews with respondents showed that most people do not know their rights legally or do not understand the procedures that must be followed to protect these rights. This ignorance is often used by irresponsible parties to take unfair advantage. For example, in the case of business contracts, many individuals are unaware that they have the right to sue for damages if the contract is breached. This shows the importance of increasing legal literacy as one of the strategic steps to increase the effectiveness of civil law (Nouri et al., 2024).

Disparity in access to justice is also a dominant issue in the results of this study. People who live in remote areas or have financial limitations tend to have difficulty accessing adequate legal services. In addition, the high cost of the civil dispute resolution process is often a barrier for marginalized communities. For example, in the case of land disputes, many small communities cannot afford to pay attorney's fees or court administration fees. As a result, they often choose to resolve the problem informally, even if the solution is not always fair or adequate (Sadler, 2004).

Another interesting finding is the disparity in the interpretation of civil law by judges in various regions. In some cases, court decisions on civil disputes often vary even though the cases have similar facts. This shows that the subjectivity of judges in interpreting civil law can affect the justice received by the parties. For example, in divorce cases, some courts grant custody of the child to the mother, while others grant it to the father, even though the social and economic conditions of both

parties are relatively the same. This disparity shows the need to standardize the interpretation of civil law to be more consistent (Kinsler, 2011).

In addition, this study also found that alternative dispute resolution mechanisms, such as mediation and arbitration, have not been fully utilized by the community. Although this mechanism is considered faster and cheaper than litigation, many people are still hesitant to use it due to a lack of information and understanding of the procedure. Some respondents also stated that they were worried that this alternative mechanism would not provide a fair outcome due to the lack of oversight by official institutions (Schooner, 2001). This shows that promotion and education about alternative dispute resolution mechanisms need to be improved (Khan, 2006).

Finally, the results of the study also highlight the importance of reforms in the civil law system to improve its effectiveness. Several legal experts interviewed emphasized the need for revisions to existing regulations to be more relevant to current social dynamics. For example, the development of digital technology has created new types of contracts that are not explicitly regulated in traditional civil law. In addition, some practitioners suggested that the government increase the capacity of judicial institutions, including training for judges and court staff, to ensure that the civil dispute resolution process can run more efficiently and fairly. This reform is expected to bridge the gap between legal norms and their implementation practices in the field (Knapp, 2020).

CONCLUSION

This study shows that civil law regulation in Indonesia has a comprehensive normative framework, but its implementation still faces various significant challenges. Although civil law regulations have been designed to protect individual rights, factors such as weak law enforcement, lack of public understanding of the

law, and disparities in access to justice are the main obstacles to its effectiveness. The findings of the study show that many people do not get optimal legal protection due to the complicated litigation process, high costs, and long dispute resolution time. This shows that the current civil law system is not fully responsive to the needs of the community, especially for vulnerable groups.

In addition, the results of the study also revealed that there is a disparity in the interpretation of civil law by judges in various regions, which causes injustice in the awarding of judgments. Differences in the subjectivity of judges in interpreting the law often result in inconsistent decisions even though the cases faced have the same facts. Alternative dispute resolution mechanisms, such as mediation and arbitration, have also not been fully utilized by the public due to a lack of education and promotion. This condition indicates the need for further efforts to increase public awareness of faster, cheaper, and more efficient dispute resolution options compared to formal litigation channels.

Reform in the civil law system is one of the important steps that must be considered to increase its effectiveness. Revisions to existing regulations are needed to be more relevant to current social dynamics and technological developments. In addition, increasing the capacity of judicial institutions, including training for judges and court staff, is also a priority to ensure that the civil dispute resolution process can run more transparently, efficiently, and fairly. Thus, efforts to bridge the gap between legal norms and their implementation practices in the field can be carried out in a more targeted manner. This research is expected to be the basis for further discussion on the improvement of the civil law system in Indonesia.

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