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Research Article

Comparative Assessment of Civil Procedure in Indonesia and The Netherlands: The Source of The Principles

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ABSTRACT: This paper assessed the different sources of principles in the civil procedure between Indonesia and the Netherlands. Indonesia still uses the Inlandsch Reglement (IR) and the Rechtsreglement voor de Buitengewesten (RBg) while the Netherlands has updated their Civil Code incorporating the principles from the European Convention on Human Rights (ECHR). Therefore, the outdated regulation used in Indonesia lacks procedural protections such as timely case resolution and affordable proceedings. This matter creates a legal uncertainty between the Indonesian Constitution, the International Covenant on Civil and Political Rights (ICCPR), which emphasizes Human Rights, and the old Code of Civil Procedure itself. Although the Indonesian Government already made some efforts to fix this problem, it remains insufficient. This paper suggests that to improve legal certainty in Indonesia, they are required to make a new Code of Civil Procedure with provisions that ensure efficient and affordable legal proceedings.
KEYWORDS: Civil Procedure; Indonesia; The Netherlands; Legal Certainty.

I. INTRODUCTION

Are the sources of principles of civil procedure between Indonesia and the Netherlands the same? Indonesia has been a colony of the Netherlands for almost three and a half centuries. This event has affected the Indonesian legal system to this day. For instance, after Indonesia declared its independence on 17 August 1945, it had to do something to prevent a legal vacuum. Therefore, the Indonesian government issued a Transitory Provision through Government Regulations No. 2 1945, which, in Article II, states that "all existing State Agencies and Regulations before the founding of the Republic of Indonesia on 17 August 1945, are still valid as long as they do not conflict with the Constitution". Subsequently, the Dutch Code of Civil Procedure is still used in Indonesia because they have not created a new Code of Civil Procedure. However, the Dutch Code of Civil Procedure used now in Indonesia is outdated, considering the fact that the Dutch government has been transforming its Code of Civil Procedure. For instance, the Netherlands became one of the parties to the European Convention on Human Rights after Indonesia claimed its independence. The provisions contained in the ECHR became the source of the principles of civil procedure in the Netherlands. Meanwhile, Indonesia

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still uses the old Dutch civil procedure. Therefore, a question arises on whether the old Dutch Code of Civil Procedure is still relevant to be used in Indonesia, and if so, how does the Indonesian Government manage to respect the human rights aspect, which is the basis for the principles of civil procedure, even though the code itself is outdated? This paper argues that even if the Indonesian government respects the human rights aspect to establish its principles of civil procedure, there is still room for improvement regarding legal certainty. First, this paper provides the background history on how the Dutch Civil Procedure was implemented in Indonesia. Then, this paper compares the source of principles of civil procedure in the Netherlands and Indonesia. Finally, this paper addresses the room for improvement regarding legal certainty in the Indonesian principles of civil procedure.

II. IMPLEMENTATION OF DUTCH CIVIL PROCEDURE IN INDONESIA

In the era of the Dutch East Indies, when Indonesia was still one of the colonies of the Netherlands, there were several judicial institutions for different groups of people. Those groups of people are 1) the Europeans and their equals, and 2) the *Inlanders* or the Indonesian native groups. For the groups of Europeans and equals, there was a civil procedure available: the *reglement op de burgelijk rechtsvordering* (BRv). However, there was no available civil procedure for the groups of Indonesian natives.[1] Because of this lack of legal basis for the Indonesian natives, the Governor General issued a *besluit* (decision) No. 3 5 December 1846 ordering H.L Wichers, the president of *Hoogerechtshof* (the highest court in Indonesia in the era of the Dutch East Indies), to create regulations on police administration, civil procedure, and criminal procedure for the Indonesian natives.[2] Furthermore, on 1 May 1848, the *Reglement op de uitoefening van de politie, de burgerlijke rechtspleging en de strafordering onder de inlanders, de Vreemde Osterlingen op Java en Madura* or the *Inlandsch Reglement* (IR) was enforced and formally established with the Dutch government by Royal Decree on 29 September

[1] Benny Rijanto, *Hukum Acara Perdata* (Universitas Terbuka 2016).[11-12].
[2] R. Soepomo, *Hukum Acara Perdata Pengadilan Negeri* (Pradnya Paramita 2005).[5-8].

1849.[3] However, the IR was only available for Indonesian natives who reside in Java and Madura islands. To handle the legal uncertainty of the Indonesian natives outside of Java and Madura islands, in 1927, the Governor General of the Dutch East Indies issued the *Rechtsreglement voor de Buitengewesten* (RBg).

Almost 100 years after the IR was enforced, Indonesia declared its independence on 17 August 1945. After declaring its independence, the Indonesian government was afraid that its citizens would think that the law made by the Netherlands was not enforced anymore, and that would lead to a legal vacuum. Therefore, the Indonesian government issued Government Regulations No. 2 1945, which states that "all existing State Agencies and Regulations before the founding of the Republic of Indonesia on 17 August 1945, are still valid as long as they do not conflict with the Constitution" in its second Article. In this case, the IR and RBg are still enforced and apply to every Indonesian citizen, and since there are no new regulations that have been issued by the Indonesian government regarding the civil code in general, these two regulations are still enforced today. In contrast, the Netherlands has already repeatedly made several amendments to its procedural code, especially in regards to the human rights aspect and the efficiency in the administration. This comparison showed how the Dutch legal system has already adapted to the modern hindrance, while the Indonesian legal system relied only on historical continuity, which leads to legal gaps and uncertainty.

III. THE SOURCE OF PRINCIPLES OF CIVIL PROCEDURE IN THE NETHERLANDS AND INDONESIA

In civil procedure, there are principles. Those principles are mainly derived from human rights. For most European countries, including the Netherlands, the principles of civil procedures originated from the ECHR. Article 6 (1) ECHR and Article 47 (2) EU Charter of Fundamental Rights are the leading provisions concerning fair trial of the parties. This principle was codified in Article 19 of the *Wetboek van burgerlijke*

[3] *Ibid.*

rechtsvordering or Dutch Code of Civil Procedure (Rv or DCCP) on 1 January 2002.[4] Therefore, it is known that the Dutch Code of Civil Procedure has undergone some changes concerning the principles of civil procedure after the ECHR and the EU Charter were enforced. Moreover, the ECHR entered into force on 3 September 1953, and the EU Charter of Fundamental Rights was declared on 7 December 2000 and became legally binding on 1 December 2009 alongside the Treaty of Lisbon. Meanwhile, the change was made by the Dutch government after Indonesia declared its independence. Therefore, the code of civil procedure that is enforced in Indonesia, which is the IR and the RBg, is not updated alongside the DCCP.

Indonesia also had some principles of civil procedure derived from the IR and the RBg. There are: 1) The judge's passive role (Article 188 IR and Article 142 RBg), 2) The judge's neutral stance (Article 178 IR and Article 189 RBg), 3) Adequate reasoning principle (Article 184 (1) IR and Article 195 RBg), 4) Imposition of litigation costs (Article 182 & 183 IR, Article 145 (4), 192-194 RBg), and 5) Right to self-representation (Article 123 IR and Article 147 RBg). Furthermore, there are also principles derived from new legislation. For instance, the open court or *openbaar* principle is derived from Article 13 of Legislation No. 48 2009, and the impartial judging of both parties is derived from Article 5 (1) Legislation No. 14 1970. Moreover, there are also principles of civil procedure concerning human rights in Indonesia. For instance, the simple, swift, and affordable legal proceedings principle and the timely case resolution principle. These two principles are enforced to protect the weaker party in case of financial status differences between parties and to ensure that all the parties have equal treatment under civil proceedings. Additionally, neither of these principles has a legal basis either in IR and RBg or in the new legislation. The only legal basis for these principles is Chapter XA of the Indonesian Constitution, which provides the human rights provisions enforced in Indonesia. Article 28D (1) of the Indonesian constitution provides the right of Indonesian citizens to equal treatment before the law. Consequently, these principles rely on the custom of Indonesian civil procedure to respect the human rights provision stated in the

[4] Marieke van Hooijdonk and Peter Eijsvoogel, *Litigation in the Netherlands: Civil Procedure, Arbitration, and Administrative Litigation* (Kluwer Law International 2009).[10].

Constitution. This matter causes a minor legal uncertainty in the enforcement of human rights in civil proceedings in Indonesia.

One of the main distinctions between these two legal systems is the formality and the clarity of the legal sources. A codified system that is frequently updated and harmonized with European standards became the foundation of the Dutch civil procedure. On the other hand, the Indonesian government relies on outdated sources like IR and RBg resulted in an insufficient framework. Furthermore, the Dutch requirement for a public and fair hearing is regulated and has legal force because it is enforced by EU-level regulation. Although similar ideas are found in Indonesia, they are more idealistic in practice and typically rely on the court's interpretation in the absence of procedural safeguards.

While assessing the human rights aspect that is enforced in Indonesia, the International Covenant of Civil and Political Rights (ICCPR) also plays a big role in Indonesia. The Indonesian government ratified the ICCPR in 2005 with the Indonesian Legislation No. 12 of 2005. Moreover, Article 14 of ICCPR states that all people shall be equal before the courts and tribunals, and everyone shall be entitled to a fair trial. Therefore, some of the principles of civil procedures that are related to human rights are also derived from this provision. Furthermore, according to Article 7 of Indonesian Legislation No. 39 of 1999, it is stated that "all international human rights law instruments which have been ratified by Indonesia will become part of the national law". Therefore, in theory, the people could rely on the ICCPR when their rights to a fair trial are threatened. However, in practice, the implementation of a ratified treaty as a national law is completely at the discretion of the judges,[5] adding to the problem of legal uncertainty as assessed above.

In conclusion, there are three main differences between the Dutch and Indonesian civil procedures. First, it is about legal modernization, which in this case, the Netherlands continues to revise its civil procedural code while making sure it is in line with the European human rights aspect. On the other hand, Indonesia keeps retaining the old,

[5] Wisnu Aryo Dewanto; 'Penerapan Perjanjian Internasional di Pengadilan Nasional: Sebuah Kritik terhadap Laporan Delegasi Republik Indonesia kepada Komite Hak Asasi Manusia Perserikatan Bangsa Bangsa tentang Implementasi Kovenan Internasional tentang Hak-hak Sipil dan Politik' (2014) Vol.1 No. 1, Padjajaran Jurnal Ilmu Hukum.

colonial-era civil procedural code. The second difference is about legal sources, the Dutch civil procedural code is shaped by directly binding international treaties such as the ECHR and the EU Charter, meanwhile, the Indonesian civil procedural code relies more on constitutional and customary sources without codification. Lastly, the final difference is about the implementation method. The Dutch courts have an institutional check and integration with the EU jurisprudence, making sure that the implementation of rights is secured. On the contrary, the Indonesian courts do not have a higher institutional check, such as the EU. Therefore, Indonesia's application of rights is quite unpredictable due to the judicial discretion and lack of systemic reform.

IV. IMPROVING THE LEGAL CERTAINTY IN INDONESIAN CIVIL PROCEDURE CONCERNING HUMAN RIGHTS

Even though every decision made by the judge in the district court can be appealed until the highest court in Indonesia, which is the Indonesian Constitutional Court can therefore refer to the Constitution and repeal the decision made by an inferior court if there is a human rights violation, it is still a long and expensive process. Therefore, the principles themselves still have not been enforced. Another measure taken by the Indonesian government to tackle this issue, which is also not effective enough, is by issuing Legislation No. 39 of 1999 concerning human rights. Article 17 of Legislation No. 39 of 1999 provides that every person without discrimination has the right to obtain justice by submitting applications, complaints, and legal proceedings in criminal, civil, and administrative cases as well as being tried through a free and impartial judicial process following procedural law which guarantees an objective examination by an honest and fair judge to obtain a decision which is fair and right. This provision states that all legal proceedings in Indonesia must respect the right of people to receive equal treatment before the law in accordance with the procedural law.[6] In this case, the provision is referring back to the IR and the RBg which still does not include the principle of simple, swift, and affordable legal proceedings and the timely case

[6] H. Ediwarman; 'Perlindungan HAM Dalam Proses Peradilan (The Human Rights Protection in The Process of Justice)' (2000) Vol 1. No. 1 Jurnal Kriminologi Indonesia.[20-28].

resolution principle. This means that there is still no protection for weaker parties in civil proceedings.

There is room for improvement in legal certainty for the enforcement of those principles derived from human rights. For instance, by adding a provision stating the specific time limit for the legal proceedings and the specific price of the civil proceedings. The Indonesian Supreme Court has tried to abolish this issue by issuing Supreme Court Circular Letter No. 3 of 1998. In the first point of the circular letter, the Supreme Court instructs that every court in Indonesia, in case of civil disputes, religious civil disputes, and state administrative cases, must be decided and completed within six months unless, due to the circumstances of the case, it is forced to last longer. This provision seems to fulfill the matter, however, since there is no description of what circumstances of the case could make the case last longer, it still leaves a gap to not enforce the principle of timely case resolution.

Another way to uphold human rights in Indonesia is for the Indonesian Judiciary to establish the Human Rights Court. This is based on the International Commission of Jurists (ICJ) recommendation in the Alternative Report of The International Commission of Jurists to the UN Human Rights Committee on the Initial Report of Indonesia under the International Covenant on Civil and Political Rights submitted in June 2013. This suggestion will improve human rights enforcement in Indonesia to meet the requirements based on international standards, especially in this case, the right to a fair trial. However, to ensure the enforcement of the right to a fair trial, not only that the legal system should be reformed, but also the societies' attitudes and behaviors need to be altered.[7]

Therefore, there is still an area for improvement concerning the legal uncertainty in the enforcement of principles of civil procedures in Indonesia. The hardest way is to make a new Indonesian Code of Civil Procedure, which will take a lot of time and may affect the legal proceedings in civil law. Although it is time-consuming and needs a lot of effort, it is not impossible to make a new code of civil procedure. On the other hand, the Indonesian government could also update the IR and the RBg with a new provision with

[7] E. Widder; *A Fair Trial at the International Criminal Court? Human Rights Standards and Legitimacy* (Peter Lang Verlag 2016).

the principles of civil procedure. Either way, there is a measure that needs to be taken in order to seal the gap and create legal certainty.

V. CONCLUSION

Even though Indonesia used the code of civil procedure made by the Netherlands back in the era of the Dutch East Indies, the sources used to establish the principles of civil procedure are different in Indonesia and the Netherlands. This happened due to the fact that the Dutch Code of Civil Procedure went through some changes after Indonesia declared its independence. On the other hand, Indonesia only used the old IS and RBg as its basis of civil procedure. Furthermore, even though the principles of civil procedure are derived from the same area of law concerning human rights, the Netherlands used the ECHR and the EU Charter for the human rights basis, while Indonesia used its Constitution as the human rights basis. Moreover, the Indonesian government has issued some legislation to ensure the principles of civil procedure are enforced. Although the IS and RBg seem outdated, some of the provisions are still relevant to be used to enforce the principles of civil procedure in Indonesia. Additionally, the IS and RBg have been enforced for almost 80 years now, and there has not been a problem settling a civil dispute in Indonesia. This is proof that the IS and RBg are still relevant to be used in Indonesia. Furthermore, Indonesia has made many efforts to respect human rights. For Instance, in 2005, Indonesia ratified the International Convention on Civil and Political Rights or the ICCPR. This proves that human rights are highly valued in Indonesia. However, despite the many efforts made by the Indonesian government, there is still a gap in their civil procedure, specifically in the enforcement of principles of civil procedure concerning human rights. This gap can be filled by either making a new Indonesian Code of Civil Procedure or by updating the currently enforced code of civil procedure, which are the IS and RBg, with some new provisions providing a specific time limit to settle a civil dispute and a specific price for civil proceedings.

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REFERENCES

Books

E. Widder; *A Fair Trial at the International Criminal Court? Human Rights Standards and Legitimacy* (Peter Lang Verlag 2016).

Marieke van Hooijdonk and Peter Eijsvoogel, *Litigation in the Netherlands: Civil Procedure, Arbitration, and Administrative Litigation* (Kluwer Law International 2009).

R. Soepomo, *Hukum Acara Perdata Pengadilan Negeri* (Pradnya Paramita 2005).

Journals

Benny Rijanto, *Hukum Acara Perdata* (Universitas Terbuka 2016).

H. Ediwarman; 'Perlindungan HAM Dalam Proses Peradilan (The Human Rights Protection in The Process of Justice)' (2000) Vol 1. No. 1 Jurnal Kriminologi Indonesia.

Wisnu Aryo Dewanto; 'Penerapan Perjanjian Internasional di Pengadilan Nasional: Sebuah Kritik terhadap Laporan Delegasi Republik Indonesia kepada Komite Hak Asasi Manusia Perserikatan Bangsa Bangsa tentang Implementasi Kovenan Internasional tentang Hak-hak Sipil dan Politik' (2014) Vol.1 No. 1, Padjajaran Jurnal Ilmu Hukum.

Reports

International Commission of Jurists' Reports; 'Alternative Report of The International Commission of Jurists to the UN Human Rights Committee on the Initial Report of Indonesia under the International Covenant on Civil and Political Rights'. June 2013.

Regulations

International Covenant on Civil and Political Rights (ICCPR).

European Convention on Human Rights (ECHR).

European Union Charter of Fundamental Rights.

Indonesian Constitution 1945.

Dutch Code of Civil Procedure.

Inlandsch Reglement (IR).

Rechtsreglement voor de Buitengewesten (RBg).

Indonesian Government Regulations No. 2 1945.

Indonesian Legislation No. 14 1970.

Indonesian Legislation No. 39 1999.

Indonesian Legislation No. 12 2005.

Indonesian Legislation No. 48 2009.

Indonesian Supreme Court Circular Letter No. 3 1998.

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