
Employment Law Based on Civil Law and Common Law Legal Systems

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Abstract. This study discusses the regulation of employment law based on the Civil Law and Common Law legal systems, as well as the fundamental differences between the two legal systems in employment law. In the Civil Law legal system, employment law is generally regulated by laws enacted by the government, with the role of the courts limited to the application of written and codified laws. In contrast, in the Common Law legal system, the regulation of employment law relies more on court decisions and precedents resulting from previous cases, with judges having an important role in forming new legal principles. This study uses a normative legal research method with a statute approach and a conceptual approach to analyze employment law regulations in both legal systems. The results show that the Civil Law system provides more structured and detailed provisions, while the Common Law system tends to be more flexible and relies on litigation and specific court decisions. This study is expected to provide a deeper understanding of the differences in employment law regulations based on the two legal systems.

Keywords: Employment, Law, Civil, Legal Systems.

1. INTRODUCTION

Employment law plays an important role in maintaining a country's productivity and economic stability because the relationship between workers and employers is a fundamental part of the economic system. [1] Good employment law can guarantee workers' rights, provide legal protection for employment, and create a conducive working climate. This protection includes decent wages, humane working hours, and safe working conditions. When workers feel protected by law, they tend to be more productive and contribute optimally to the company or agency where they work, which ultimately supports increased national productivity. [2]

In addition, employment stability regulated by clear and firm laws plays an important role in maintaining the investment climate. Regulations that protect workers' rights and regulate employer obligations create legal certainty, which is a crucial factor for investors. [3] When a country has employment regulations that guarantee a balance between the rights of workers and employers, this reduces the potential for labor conflicts that can disrupt company operations. Thus, effective labor laws attract investment, as investors can be confident that the country has stable and orderly employment conditions.

The contribution of labor laws to the national economy can also be seen from their impact on social welfare. [4] Balance in employment relations guaranteed by law allows for the creation of a harmonious working environment, where workers' rights are respected

without neglecting the interests of employers. This not only creates economic stability but also helps reduce social and economic inequality. When workers receive decent wages and adequate protection, they can improve the standard of living of their families and the surrounding community, which ultimately contributes to increased purchasing power and overall economic stability.

The labor laws face various challenges that hinder their effectiveness. One of the main obstacles is the low level of compliance with labor regulations, which is often caused by ignorance or limited understanding of both workers and employers regarding the rights and obligations stipulated in labor laws. [5]

Many workers lack a clear understanding of their basic rights, including the right to a minimum wage, social security benefits, and a safe and healthy work environment. Meanwhile, employers frequently overlook these provisions, often citing cost concerns or inadequate supervision as reasons. The problem is further compounded by limited government oversight; without rigorous monitoring, violations of labor regulations are challenging to detect and frequently go without sufficient penalties. Moreover, the current sanctions are widely regarded as ineffective in creating a deterrent effect, resulting in minimal pressure on businesses to adhere to labor regulations. These challenges create a gap between labor regulations designed with Pancasila values, which aim to protect workers' rights and welfare, and labor practices in the field that are still far from expectations.

Judging from the traditions of legal systems that have developed in various countries, in general, there are two main groups of legal systems in the world. The first is the Anglo-Saxon legal system better known as Common Law, and the second is the Continental European legal system or Civil Law. [6] In the Common Law system, the main source of law comes from customary practices prevailing in society and agreements agreed upon by the parties concerned. In contrast, in the Civil Law system, the main source of law is legislation created and ratified by the government. The tradition of the Common Law system first developed in England and then spread to other countries through the practice of British colonialism. In employment law, the civil law and common law systems offer different approaches to regulating employment relations between workers and employers. [7].

Countries with a civil law tradition, such as Indonesia, generally rely on employment laws that cover specific aspects, ranging from wages, and working hours, to the rights and obligations of workers and employers. This approach aims to provide stable and uniform legal certainty for all parties involved in the employment relationship. In contrast, the courts in this system have great authority in deciding employment cases by considering the specific

situations and conditions of each case. [8] This provides flexibility in the application of the law because the courts can adjust decisions based on the context of the case and existing social, economic, and industrial developments. The differences in approach reflect the historical background and legal philosophy underlying each system, where civil law emphasizes certainty and codification, while common law is more adaptive and focuses on customary practices of society as reflected in court decisions.

The comparison between the civil law and common law systems in employment law is important to study in order to strengthen employment policy in Indonesia. As a country rooted in the civil law system, employment law in Indonesia is based on codification and regulations that are generally rigid and comprehensive. However, with the increasing complexity of employment challenges in the era of globalization, there is a need to evaluate and perhaps adapt some aspects of the flexibility offered by the common law system, which is more responsive to developments and specific cases through precedent and court interpretation.

The research is expected to provide insight for policymakers regarding alternative ways to manage employment in a more dynamic and adaptive manner, without ignoring the principles of social justice based on Pancasila. By examining this comparison, Indonesia might explore a more equitable strategy, ensuring that labor laws safeguard workers' rights while also fostering a favorable business environment for employers, thus promoting lasting national stability and prosperity. The ultimate goal of this study is to emphasize the importance of labor policies that are able to respond to local and global challenges while remaining rooted in the values of justice and shared prosperity. Based on the brief explanation, in this study, the author will discuss the regulation of labor law based on the civil law and common law legal systems. As well as the influence of the civil law and common law legal systems on labor law.

2. METHOD

The normative legal research method is a key approach used in legal studies that emphasizes the examination of legal documents and norms. The primary aim of this method is to analyze the applicable legal rules and to understand how these rules are applied or interpreted in specific contexts. In normative legal research, the main sources utilized include laws, regulations, and various legal literature. This approach is particularly relevant for exploring theoretical and conceptual legal issues, such as the regulation of employment law within the frameworks of civil law and common law systems. The influence of both civil law

and common law on employment law is substantial. One of the methodologies employed in this analysis is the statutory approach, complemented by the conceptual approach.[9] The statutory method involves a thorough examination and analysis of various regulations that address specific issues. By utilizing this approach, researchers can delve into the regulatory frameworks governing employment law as shaped by both civil law and common law systems, highlighting their respective influences.

3. RESULT AND DISCUSSION

Regulation of Employment Law Based on Civil Law and Common Law Legal Systems

The fundamental difference between the two legal systems lies in the sources of law used by the courts in making decisions. In a Civil Law system, the primary source of law is a codified or systematically compiled statute, while in a Common Law system, the primary source of law comes from previous court decisions, known as the doctrine of *stare decisis*. Another significant difference lies in the role of the courts. In the Civil Law tradition, the courts are often considered part of the government, as was the case in France in the past, where the King had a dominant influence on the legal system, and this role was eventually changed by Napoleon during the French Revolution. This change has been maintained in Civil Law legal systems in countries that inherited Roman law. For example, in France, the courts distinguish between cases involving the government and cases relating to the private sector, with different laws being applied to the two. In this case, ordinary courts in France do not have the procedural authority to test government policy.

In contrast, in the Common Law system which originated from the English tradition, the courts are independent, with the power to establish law being vested in the Supreme Court as the highest court. The Civil Law legal system is the oldest and most influential legal system in the world, rooted in the Roman-Germanic tradition. Around the 5th century BC, the Roman Empire compiled their first written regulations known as the "Twelve Tables of Rome". This Roman legal system spread to various parts of the world along with the expansion of Roman territory. Then, this legal system was codified by Emperor Justinian in the 6th century through the *Corpus Juris Civilis*, which was completed in 529 AD. When European countries began to form independent governments, Roman law became the basis for their respective national legal systems. In France, Napoleon Bonaparte codified the law through the *Code Napoléon* in 1804, while in Germany, this law was codified in the Civil Code enacted in 1896. The Civil Law legal system is based on written law which aims to formulate legal norms systematically in clear rules. The main sources of law in this system

are laws stipulated by the legislative body and customs that apply in society, as long as they do not conflict with existing regulations. On the other hand, the Common Law system relies more on judicial decisions as a source of law, with these decisions providing legal certainty, although still recognizing the regulations set by the legislature.

The basic principle of the Civil Law system is that every law that is applied has binding force because its legal sources are contained in written regulations that are systematically arranged in a codification or compilation of laws. The main purpose of this system is to ensure legal certainty. Therefore, judges in this system do not have the authority to create generally binding laws. The judge's decision only binds the parties involved in the case (deductive pattern). This system emphasizes legal doctrine and adheres to Montesquieu's theory of separation of powers, where the legislature is tasked with making laws, while the courts only apply the law.

Unlike Civil Law, the Common Law system does not organize its legal sources in a systematic hierarchy. In the Anglo-Saxon system, judges not only function to establish and interpret legal regulations but also have a greater role in shaping the order of community life. Judges in this system have broad authority to interpret regulations and create new legal principles that will be used as a reference by other judges in deciding similar cases (inductive pattern). In the Common Law system, priority is given to jurisprudence and the principle of judge-made precedent as the main sources of law.

The application of the Civil Law system has strong historical roots since the Dutch colonial era and has developed the lifestyle of the Indonesian people. The principles contained in Pancasila, especially the principle of social justice for all Indonesian people, are very relevant to the comparison of these two legal systems. The principle of social justice is increasingly emphasized, especially in mutual cooperation, deliberation for consensus, and equal justice for all workers in Indonesia.

In the field of employment law, there are two types of sources of law, namely autonomous legal principles and heteronomous legal principles. Autonomous legal principles are legal provisions stipulated by the parties involved in an employment relationship, namely between workers or labor unions and employers or organizations entrepreneurs. Examples of this autonomous legal principle are employment agreements, company regulations, and collective labor agreements. Meanwhile, heteronomous legal principles are legal provisions stipulated by a third party outside the employment relationship between workers and employers, namely the government. Examples of this heteronomous legal principle are laws and regulations issued by the government, such as Law No. 13 of 2003, Law No. 02 of 2004,

and Law No. 21 of 2000 along with their implementing regulations. In jurisdictions that implement the Civil Law legal system, such as Indonesia and France, the government plays a highly influential role in employment law. This legal system is based on the principle of codification, where laws made by the legislature serve as the main source of law. In employment, the government has the authority to stipulate very detailed regulations regarding the rights and obligations of workers and employers. Therefore, employment law in Civil Law countries is more structured and involves detailed regulations, such as the Employment Law which regulates wages, working hours, leave rights, termination of employment, and protection of workers' rights.

These detailed regulations directly protect the workers because the law sets clear and binding standards for employers. For example, in Indonesia, Law No. 13 of 2003 concerning Employment provides a strong legal basis for protecting workers' rights. Employers are required to comply with these regulations, and the government plays an active role in supervising and enforcing these laws through authorized institutions. In addition, the mechanism for resolving employment disputes can also be carried out through industrial relations courts provided by the state. With this approach, the state creates a more protective employment law system, which not only regulates employment relations but also provides legal certainty for workers.

In countries with a Common Law legal system, such as the United States, employment law is more influenced by court decisions and precedents generated by previous cases. This system offers greater flexibility, allowing judges to play a crucial role in resolving employment disputes by referencing prior court rulings and adapting decisions to the current socio-economic environment and developments. Therefore, the regulation of employment law in Common Law countries tends to rely more on litigation practices and court decisions that are specific to each case.

Even so, the government still has a role in establishing basic laws that regulate employment relations, such as regulations related to minimum wages, discrimination, work safety, and other basic rights. However, these regulations are not as complex or detailed as in Civil Law countries. In the United States, for example, employment law is more formed and interpreted through court decisions than through detailed regulatory codification. This approach gives employers flexibility in regulating employment relations according to their individual needs, but also creates uncertainty for workers. Workers must go through a long and expensive litigation process if they feel their rights have been violated. Employee

protection is more dependent on their ability to access the justice system and file lawsuits, which is often time-consuming and expensive.

If the two legal traditions are associated with the types of sources of labor law that have been explained, then in countries that adhere to the Common Law legal tradition, the main source of labor law generally comes from autonomous rules, such as collective labor agreements. Meanwhile, in countries that adhere to the Civil Law legal tradition, heteronomous rules, namely laws and regulations stipulated by the government, are more dominant as sources of labor law. The term labor refers to everything related to labor, namely individuals who have the ability to do work to produce goods and/or services, either to meet personal needs or for the benefit of society, either before, during, or after the work period. Individuals who do this work and receive compensation in the form of wages or other forms of compensation are referred to as workers or laborers. This work is a productive activity carried out on the orders of another party, which in an employment relationship is the employer. The wages received by workers or laborers are compensation from the employer for the work that has been carried out. The work does not have to be completely completed before payment of wages is made, but can also be paid based on the agreed agreement, even though the work is not yet fully completed.

Differences between Civil Law and Common Law Legal Systems in Employment Law.

In the Civil Law system, labor law sources are structured through codified legislation established by the state. The state plays a central role in formulating and regulating rules governing the relationship between workers and employers, aiming to provide legal certainty and clear protection. Laws such as Law No. 13 of 2003 on Manpower serve as the primary basis regulating various rights and obligations, including protection of wages, social security, and adequate working conditions. This framework ensures greater legal certainty for both workers and employers. Conversely, in the Common Law system, labor law sources evolve through court decisions that establish precedents. Legal cases adjudicated by courts create a foundation for future legal interpretation, with other courts following these precedents in similar cases. While legislative laws also exist, many aspects of labor law are determined by judges' interpretations of existing cases, which introduces greater flexibility but may also lead to uncertainty, as decisions can vary depending on individual judicial interpretation.

In the Civil Law system, the state plays a significant role in labor regulation, acting as the primary regulator that formulates and establishes various rules through laws and legislative regulations. The state is responsible for detailing various aspects of labor relations, from workers' basic rights to working conditions and social security. Labor law in this system

tends to be more protective of workers, as existing regulations aim to provide clear legal certainty and protection and to prevent exploitation by employers. Both workers and employers must comply with the provisions established by the state, and in the event of disputes, resolution typically follows the processes outlined in legislation. Consequently, this system fosters stability and fairness in labor relations, although it can occasionally appear rigid due to its reliance on a highly structured regulatory framework.

In contrast, in the Common Law system, the state's role in labor regulation is more limited and less comprehensive than in the Civil Law system. The state does not directly formulate detailed rules regarding labor relations; instead, it relies more on court decisions that establish precedents. In this system, many labor law aspects are determined through judges' interpretations of faced cases, creating flexibility in addressing various employment issues. Employers are granted greater freedom in setting employment conditions according to internal company policies, yet this can lead to uncertainty for workers. Workers must endure lengthy litigation processes, which can result in significant dependence on judicial interpretation and existing precedents. As such, while this system offers flexibility, workers often face challenges in obtaining consistent and guaranteed protection, especially when a power imbalance exists between employers and employees.

In the Civil Law system, labor dispute resolution follows clear and structured procedures, focusing on adherence to established legislation. Workers or employers who feel aggrieved may submit disputes to the appropriate court according to applicable regulations, and this process is guided by written legal provisions regulated in labor law. This system emphasizes legal certainty, ensuring that dispute resolution outcomes are binding and accountable. Courts act as interpreters and enforcers of the law by applicable legal stipulations, and the decisions made will be binding for both parties under the stipulated laws, without the influence of more flexible precedents as seen in the Common Law system. Thus, the dispute resolution process is more directed and predictable, although it may sometimes lack the capacity to accommodate the dynamics of more complex cases.

In the Common Law system, labor dispute resolution often involves litigation processes heavily reliant on prior court decisions (precedents). Although laws governing work relationships exist, judges play a substantial role in interpreting law based on the cases presented. This dispute resolution process is often not entirely procedural or structured but is more reactive, allowing judges to create new legal principles through rulings in individual cases. It grants courts the freedom to adapt decisions based on the specific circumstances faced, yet introduces uncertainty, as each decision can create new precedents that must be

followed by other courts. Dispute resolution in the Common Law system is more flexible but often requires prolonged timeframes due to lengthy and complex litigation processes, heavily depending on lawyers' abilities to leverage existing precedents for their clients' benefit.

Legal certainty in the Civil Law adherents is the primary priority, with explicit and detailed rules outlined in codified legislation. Labor law in countries utilizing this system, including Indonesia, establishes the rights and obligations of both workers and employers in the form of laws and regulations. This creates stability and certainty for both parties, as they understand their expectations and compliance obligations per existing regulations. However, despite providing legal certainty, this system tends to be less flexible in adapting to rapidly evolving social and economic dynamics.

When there are changes in social needs or new developments in the labor market, the Civil Law system may struggle to accommodate these changes swiftly, as legal regulation alteration requires time and extensive legislative procedures. Conversely, in the Common Law system, flexibility is dominant since court decisions or legal precedents can evolve alongside social and economic changes. Each interpretative judicial decision can establish new legal principles relevant to current conditions, allowing the legal system to adapt more quickly to societal shifts and economic needs, as it does not rely on legislative alterations that must undergo lengthy processes. However, this flexibility also bears the risk of legal uncertainty, as each new case may produce varying legal interpretations, potentially leading to diverging opinions among judges and increasing complexity for the parties involved in disputes. This uncertainty can result in less consistent outcomes, contingent on court decisions and how previous precedents are interpreted by judges concerning the cases at hand.

Labor law is profoundly influenced by the moral and political values embedded in the Pancasila ideology. As a legal system following the Civil Law tradition, Indonesia possesses highly detailed legislation that governs various aspects of labor relations, such as wages, working hours, social security, and workers' rights. Pancasila, as the state ideology, encourages the creation of a balance between workers' and employers' rights and obligations. The principle of social justice found in the fifth precept of Pancasila directs that labor law should not only protect employers' interests but also provide adequate safeguards for workers, especially concerning their welfare and fundamental rights.

Politics and morality also play significant roles in shaping employment policies. The Indonesian government strives to create regulations that are not only in alignment with the values of Pancasila but also support sustainable economic growth. For instance, Law No. 13

of 2003 on Manpower exemplifies efforts to establish a labor system that is just and protective of the workforce, particularly in sectors prone to inequality and exploitation. The Civil Law system enables the state to assume a more prominent role in formulating labor regulations that directly affect the social and economic structures of society, prioritizing social justice and workers' welfare.

On the other hand, the Civil Law system, in the Common Law system, labor law tends to be more reactive, shaped by court decisions based on precedents and case-by-case interpretations. Morality and politics also significantly influence this system, although the legal process prioritizes legal certainty based on established jurisprudence. However, due to the high reliance on court rulings and the principle of *stare decisis*, practical politics and economic pressures can sway judicial decisions, especially in cases involving the interests of certain economically or politically stronger parties.

In countries adopting the Common Law system, such as the United States, even though laws exist regulating workers' rights, such as the Occupational Safety and Health Act or the Discrimination Act, court decisions in many instances are more influenced by facts revealed during litigation processes and by judges' perspectives on socioeconomic fairness at the time. Therefore, morality and politics frequently play roles in shaping judges' views on cases, which can subsequently impact legal conclusions. Tensions between broader political interests or pressures from business groups often manifest in court decisions, creating legal uncertainty for workers needing state protection.

4. CONCLUSION

The fundamental difference between the Civil Law and Common Law systems lies in the sources of law and the role of the courts in their application. The Civil Law system emphasizes codification or systematically organized statutes as the primary source of law, with courts acting as enforcers of established laws without the power to create new laws, thus ensuring legal certainty. In contrast, the Common Law system relies more on court decisions as the primary source of law through the doctrine of *stare decisis*, wherein judges play a crucial role in establishing legal principles followed by other courts, providing flexibility but sometimes creating legal uncertainty. In labor law, the Civil Law system tends to offer more detailed and protective regulations, with the government playing a dominant role in enacting binding regulations, as reflected in the Labor Law in Indonesia. Conversely, in the Common

Law system, labor law is influenced more by judicial decisions and litigation practice, relying on employment agreements and judicial rulings in each case.

Consequently, each system creates a different legal framework for labor law, where Civil Law is more structured and detailed in its regulations, while Common Law offers greater flexibility but risks creating legal uncertainty for workers. Although both legal systems, Civil Law and Common Law, approach labor regulation differently, they play significant roles in establishing a balanced relationship between workers and employers. The Civil Law system, with its detailed regulations and high legal certainty, provides clear and definitive protections for workers through codified laws established by the state, even though it may be less flexible in adapting to rapidly changing social and economic dynamics. On the other hand, the Common Law system offers greater flexibility because court decisions based on precedents can adapt to social and economic needs; however, this also leads to legal uncertainty, as judicial interpretations may differ and create ambiguity for workers seeking consistent protection. Politics and morality play important roles in both systems, albeit in different ways; in the Civil Law system, national ideological values such as Pancasila influence labor policies to ensure social justice and worker welfare, while in Common Law, judicial decisions are often swayed by broader political and social interests, which can affect case outcomes. Thus, both the Civil Law and Common Law systems have unique advantages and challenges in providing fair legal protection that meets the needs of the workforce in each country.

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