

## **Civil Law: A Review Literature of Indonesian University Student Perspectives**

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### **ABSTRACT**

**Indonesia has one of the world's most legally diverse and complex civil law systems in the world. The country's civil code was inherited from the Dutch during the colonization era. The aim of this study was to examine the perceptions of Indonesian students about their country's civil law. It was established that no particular study had explored the issue under investigation. As a result, the researcher developed a novel conceptual framework to facilitate the collection and analysis of relevant data from books and journal articles. Specifically, a combination of the Grounded Theory (GT) research approach and thematic analysis was used as the methodology for gathering and evaluating data. The findings revealed that Indonesian students think that their country's civil code does not effectively meet the various needs of the local communities. Moreover, the research also confirmed Indonesian students lack interest and expertise to research about the nation's civil law. It is recommended that to improve the reliability and validity of the present study, future researchers should collect primary data by interviewing and administering questionnaires to students.**

**Keywords:** civil law, legal system, civil code

### **INTRODUCTION**

The legal system of Indonesia is inherited mostly from the legal system of the Netherlands (Burns, 2004; Lev, 2000; Bedner, 2001; Agusman, 2015; Kaneko, 2019). The authors explain that the Indonesian Civil Code, which is consistent with that of the Netherlands, forms part of the legal framework that is predominant in Civil Law countries. Kaneko (2019) acknowledges that it is impossible for one to have a debate on the development of civil law without exploring the changes and the application of the civil code. Therefore, it can be theorized that in Indonesia, the curriculum for civil law has been designed to incorporate the training of students on the evolution of civil law and its application in real situations. It is worth pointing out that in Indonesia, legal education is offered by both the private and public establishments and has been under a state of reform since the era of Dutch colonization (Juwana, 2006; Sinaga, 2018). The researcher observes that compared to the public institutions, the private organizations in the country offer more plentiful legal education. The implication of this empirical observation is that with respect to quantity, the students of law in private universities have access to more content as opposed to their counterparts in public universities. Although Indonesia's higher education is facing numerous challenges relating

to quality and access, the government continues to develop and implement policies that help to address the problems (Logli, 2016). Therefore, one can postulate that the instruction on civil law in private law schools is richer in theoretical and practical knowledge than in public law schools.

Subsequently, Sinaga (2018) adds that although private institutions are more abundant in terms of quantity, most people still prefer public universities. The author explains that the main reason behind this widespread stigma is because society shares the notion that public institutions are superior to private ones. Consequently, it can be presumed that due to this societal stigma, many of the students pursuing law in private universities in Indonesia, and majoring in civil law, feel inferior to their counterparts in public institutions. According to Sinaga (2018), the stigma that the Indonesian society has towards private universities was influenced by the fact that before the 2000s, the government was responsible for providing full funding to all the public institutions. As a result, this meant that the public universities had the capacity to reduce their tuition fees to the minimum. Moreover, the government of Indonesia gave the public institutions all the necessary support, thereby facilitating them to have improved growth than the private universities. The main focus of the present literature review is to examine the perspectives that Indonesian universities have about civil law.

In order to accomplish the goals and objectives of the study, the researcher has divided this review into four main sections. The first part of the paper provides a detailed explanation of the research methodology. In particular, this section outlines and elucidates the various steps that the reviewer took to search for the appropriate articles and the approach used to extract and analyze data. Moreover, the part also offers key insights into the measures that the researcher implemented to address any potential bias during the gathering and assessment of the relevant data. In the second part of the paper, the review offers a comprehensive discussion based on the findings of the research. The third and fourth sections of the paper are the conclusion and recommendations, respectively. Specifically, the conclusion outlines the key aspects of the study, whereas the recommendation part offers suggestions to the relevant stakeholders based on the results of the study.

## METHOD

The main emphasis of the present research, as pointed out in the preceding section, is to assess the perspectives that the students of law in Indonesia have about civil law. Therefore, this study is purely qualitative in nature as the researcher was collecting and analyzing students' opinions about the development, changes, and the application of the Indonesian Civil Code. It is worth noting that as a qualitative empirical investigation, it would have been ideal for the researcher to collect and analyze primary data. In particular, the reviewer should have used tools such as interviews and questionnaires to collect the views of the students about the Indonesia's Civil Code. However, this was not possible because the study is a review of the available literature. Unfortunately, no single past study has examined the issue under investigation in the present research. As a consequence, the reviewer in this study developed a novel methodology that led to the accomplishment of the set research goals and objectives.

In most of the conventional literature reviews, only books and peer-reviewed journals that discuss the phenomenon under investigation are often used as valid and reliable sources of information. However, in the present study, the researcher included books and journals that explore issues such

as legal education in Indonesia to perform a review of the literature. It is worth pointing out that due to the limited sources of information on the topic, articles with abstracts only available were also included in the present research. The rationale for deviating from the typical practice in these types of studies was because there are no specific studies that had examined the aspect that was under review in the present study. The reviewer in this study had to rely on the analysis and findings of other studies to deduce the perspectives of the students. In particular, the researcher evaluated the current status of Indonesia's legal education, specifically the general understanding of the nation's civil code amongst the scholarly community, and its application by the courts and other quasi-judicial bodies. Subsequently, the reviewer used the grounded theory (GT) approach to develop a model that helped to infer the perceptions held by Indonesian students about civil law.

It is essential to acknowledge that many scholars in different fields have used the GT research method to examine different phenomena. For example, in the area of Information Technology (IT), Halaweh (2012) used GT to accomplish two aims: (1) to rationalize the adoption of GT as a data analysis technique in a way that is consistent with the selected case study method; and (2) to show how the proposed Straussian GT can be applied to the security perception of e-commerce. Halaweh (2012) acknowledges that since the start of 1990s, several Information System (IS) scholars have used GT to evaluate various aspects in the discipline. In another study in the field of technology, Webster (2016) relied on GT methods to analyze the collected data. Some of the IS researchers that have previously adopted the GT method in their works include Orlikowski (1993), Urquhart (2001), and Fernández (2002), use different IS-related phenomena. Notably, the GT research method has also been used extensively in the fields of healthcare and nursing. For instance, Santos (2016) acknowledges that the adoption of GT in health and nursing research is expanding, but scholars are using different frameworks and models. The GT research method is premised on epistemological and theoretical concepts with the widespread use of three key methodological aspects: constructivist, Straussian, and classical (Boyчук Duchscher & Morgan, 2004; Bryant & Charmaz, 2010; Thornberg, 2012; Kenny & Fourie, 2015). The GT research technique has also been used to capture and evaluate health care experiences (Foley & Timonen, 2015; Noble & Mitchell, 2016). The investigators conclude that researchers can use GT research technique to bring precision and structure to the evaluation of qualitative data.

Subsequently, a fundamental point worth noting is that many researchers who have focused on examining people's attitudes and perceptions have mainly adopted the GT research method in their work. For example, Vrij (2003) use this research approach to determine why people have varied attitudes towards the use of animals. These investigators conducted a semi-structured interview involving seventeen participants, and subsequently, used GT to evaluate the gathered data and to design a model that comprises of four major themes, thereby accomplishing the purpose of their study. In a different research, Feeler (2012) used the GT research method to determine the perceptions of students on the presence of instructor in online classes. Notably, there are several other researchers who have explored and used the GT method to successfully conduct their investigation, including Correia (1997), Douglas (2003), Whiteley, (2004), Lind and Goldkuhl (2006), Larsson (2007), Birks (2013), Poteat (2013). It is evident from the foregoing discourse that GT research approach is a suitable approach for examining the perspectives of Indonesian students on civil law.

The biggest challenge to the present study, as pointed out earlier in the preceding discussion, is the lack of the necessary primary data. Therefore, to address this research limitation, the author relied on the available secondary data to infer the possible point of view of Indonesian students about their country's civil law. Remarkably, obtaining the appropriate secondary information was not a significant problem for the investigator. The major hurdle was in identifying the ideal technique for analyzing the collected data. In this regard, the researcher settled on using the GT research method to develop the relevant themes about student perception. Subsequently, the identified themes were analyzed using the thematic approach. Halaweh's (2012) proposed GT methodology was used as the conceptual framework for the present study (see figure 1).

The initial step that the investigator conducted in this research, as recommended by Halaweh (2012), was to pinpoint a general research topic. In this respect, the investigator identified "civil law: a review literature of Indonesian university student perspectives" as the focus of interest in the study. In order to pinpoint new fields of research, gaps in literature, or extend the current body of knowledge, the author of this study reviewed relevant literature.

The findings of the research helped the reviewer to formulate a suitable research question that was important in describing the aim of the study. In particular, the investigator developed the following research question: what are the perspectives of Indonesian students concerning their country's Civil Code? According to Halaweh (2012), a survey of literature enables a researcher to pinpoint the relevant theories and concepts relating to the research question. As a result, the investigator develops and puts forward appropriate hypotheses. Halaweh (2012) acknowledges that it is essential to note that these models or concepts are not to be validated or tested, but instead, offer initial ideas concerning the issue under investigation. The hypotheses help to improve sampling and theoretical sensitivity.

The units and cases of analysis are chosen based on their relevance to the identified research question (Halaweh, 2012). The protocol for the study is developed to facilitate the collection of sufficient data. According to Halaweh (2012), this data is gathered mainly from interviews, but can also be drawn from artifacts, observations, and documents. In the present study, the researcher collected the relevant data mainly from books and journal articles. Halaweh (2012) explains that once the appropriate data is collected, the researcher should initiate a systematic coding process. Notably, each phase in this process must generate the following outcomes that will facilitate the investigator to develop a research model. In the present study, the whole process that contributed to the development of the research model was evaluated based on the criteria of conformability, dependability, transferability, and credibility. Finally, as recommended by Halaweh (2012), the investigator explained the originality of the study as well as its contribution to the existing body of knowledge by performing a comparative analysis between past studies and the initial GT model. A thematic analysis was used to identify the key opinions about the status of the Indonesia's civil. In particular, this research approach was adopted because it is useful in analyzing qualitative data (Boyatzis, 1998; Braun, & Clarke, 2006; Guest, 2012; Clarke & Braun, 2013; Braun, 2014; Braun, 2016). The present study had disparate themes, and therefore, thematic analysis was regarded as a suitable technique for evaluating data.

## DISCUSSION

The source of the law of Indonesia's civil law system includes jurisprudence, customs, and legislation, Adat law, and Syariah law principles (Center, 2015; Irawan Soerodjo, 2016). The

country's Civil Code is mainly drawn for the Roman law covering both the customs (unwritten law) and written. An in-depth analysis of Indonesia's civil law system reveals that the type of enforcement is dualism (Irawan Soerodjo, 2016). Although the Civil Code has broad applications, many new laws and regulations haven't passed to strengthen the country's civil law. The identification and selection of relevant data for this research involved an online search for articles and books that examine Indonesia's Civil Code. The reason for adopting this approach was because the writings of different scholars about a phenomenon often impact the perception of the readers about the issue in question. Since students in different fields, including those pursuing law, read journal articles for varied reasons, it is correct to postulate that the perceptions of Indonesian students about their country's civil law is influenced by the analysis of the available literature on Indonesia's Civil Code. Moreover, it is also crucial to point out that when authors publish books and journals, they often explain their views or findings of a phenomenon. The opinions of these writers about Indonesia's civil law, for example, can be said to be a representation of the perception that the majority of the Indonesians, including the students of law and other disciplines, have about the nation's civil code. Bell (2014) observes that Indonesia is one of the most legally diverse, and as a result, legally complex nations of the world. Therefore, it would be correct to infer that one of the perceptions of the Indonesian's students about their Civil Code is that it is diverse and multifaceted in content and application.

Another essential aspect of Indonesia's civil law is that the process by which it was adopted to form part of the country's laws was involuntary (Bell, 2014). The author explains Indonesia's Civil Codes can be traced back to the colonization era. In particular, the Dutch enacted the Civil Code without due regard to the needs and culture of the local communities (Bell, 2014). In this context, it is right to conclude that a significant proportion of Indonesian students feel that their country's civil code does not fully address the needs of the people because it is inconsistent with the culture and needs of the local communities. It is important to highlight that different scholars have provided varied opinions about the relevance of adopting laws that meet people's needs. For example, Bruce (2006) argues that one of the approaches and principles that should be examined in the efforts to promote the rule of law in the context of the environment is to ensure that the law adequately satisfies the social and economic needs of the people. The author argues that communities cannot comply with laws that fail to meet these requirements. In respect to the perception of the Indonesian students, it is theorized that many of them feel that there is a significant disconnect between the Civil Code and the reality in the country. It cannot be urged that the culture and needs of the Dutch, the policymakers who were responsible for enacting the existing civil law in Indonesia, are similar to those of the Indonesians.

It is imperative to note that the legislators mandated to enact laws are ordinary people born with the nation for which they enact laws, molded based on its traditions and customs, and impacted upon by the bases of their environment (Rodgers, 1899). The author further contends that one can describe the law-making process as the "science of adaptations" (p. 26). According to Rodgers (1899), the law that took effect in Rome could never be administered in London, and the laws that effectively address the needs of the communities in Asia or Japan are not necessarily applicable in the United States. Based on this scholarly perspective, it is proper for one to conclude that Indonesian students perceive their country's Civil Code as an intolerable legal framework that cannot effectively address the cultural, social, and economic needs of the Indonesians.

Moreover, Bell (2014) acknowledges that the Indonesian Civil Code is unattractive to young academics as well as the future of Indonesian doctrine because it is mainly foreign and Dutch. The author argues that the jurisprudence of Indonesia's civil law does not offer sufficient guidance. The situation is worsened by the fact that the Code is in Dutch because it may not be helpful to the majority of the Indonesian students because many of them cannot read, write, or communicate in Dutch language. According to Bell (2014), there is a generation that fully understands the Dutch language and Indonesia's civil law, and which presently serve as legal professionals in arbitration cases as well as in court. However, a new generation of these types of experts is non-existent (Bell, 2014). The implication of this situation is that in the future, Indonesia will have few experts providing arbitration services. Bell (2014) acknowledges that there appears to be little academic expertise and no interest to write civil codes in Indonesia. Consequently, this means that Indonesian students do not recognize the importance of reviewing the country's civil code to reflect the culture and traditions of the locals.

### **CONCLUSION**

The research on the perceptions of Indonesian students about the country's civil law is complicated due to the fact that there is no collaborative data on the phenomenon. The present research deconstructed this topic by developing and using a novel research method to assess the perception of students. In particular, the researcher used a combination of GT research approach and thematic analysis to collect and analyze the relevant data, thereby accomplishing the aim of the study. Data was obtained from books and journal articles that explore different facets of Indonesia's civil law system and code. The researcher in the present study analyzed the opinions of various authors to draw appropriate conclusions concerning the perception of Indonesian students on the nation's civil law system. The thematic analysis of the different views revealed that there is a disconnect between Indonesia's civil law and the culture and needs of the citizens. Consequently, it was deduced that Indonesian students feel that the Civil Code cannot effectively address the economic and social needs of the communities. Additionally, the evaluation also confirmed that young Indonesian scholars lack interest and expertise to write about their country's civil law system. As a result, it was deduced that a significant proportion of Indonesian students do not think that it is crucial to research about their country's civil law system, for instance, how to introduce appropriate legal reforms to support the nation's economic, social, and political pillars. Overall, the findings of this research indicate that Indonesian students, as agents of change, are not playing an active role in advocating for the enactment of new laws and regulations that would in the long-term, help to effectively satisfy the needs of the local communities.

### **RECOMMENDATION**

The present study had one major limitation that may have had a significant effect on the outcome. In particular, the researcher mainly relied on secondary data to evaluate the perception of the students about Indonesia's civil law system. It is posited that the findings of the research may not be the factual representation of students' perception because the researcher used an insignificant sample to perform the thematic analysis. Lack of specific studies that explore the phenomenon in question resulted in the use of a small sample. It is suggested that to improve the validity and reliability of this study, future researchers should design an investigation that involves the interviewing of the respondents and the administration of appropriate questionnaire to facilitate the collection of first-hand information about the views and opinions of students concerning the country's civil law system.

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