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LAW, CRIMINOLOGY & CRIMINAL JUSTICE | RESEARCH ARTICLE

The adoption of various legal systems in Indonesia: an effort to initiate the prismatic Mixed Legal Systems

Lita Tyesta Addy Listya Wardhani^{1*}, Muhammad Dzikirullah H Noho^{1,2} and Aga Natalis¹

Abstract: Indonesia has three legal systems. Thus experts dispute which one to use. Peter de Cruz's opinion on worldwide legal systems makes it hard to classify Indonesia. This paper analyses the existence of Mixed Legal Systems in the world legal system and the consequences of adopting them in Indonesia to create Prismatic Mixed Legal Systems. This hermeneutical and dialectical inquiry uses comparative legal ideas. The study shows that the legal system is mixed, which leads to practical challenges owing to international relations, which influence each country's legal system. Simple Mixed, and complex Complex describe this legal system blend. A simple Mixed exists between Civil Law and Common Law, while Complex Mixed includes religious or customary law. The Indonesian legal system focuses on "Prismatic Mixed Legal Systems" "Mixed" must be regarded as a constant process to select the "best" resources from diverse sources of the legal system based on balance. It is anticipated that those individuals who specialise in Constitutional Law in Indonesia would carry on with their research and development on the Indonesian legal system, primarily through comparative law studies. This effort is essential in the framework for the future development of the National Legal System and is principally dedicated to the investigation and creation of "Prismatic Mixed Legal Systems."



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PUBLIC INTEREST STATEMENT

Globalization has made the legal system fascinating to study and grow. The current legal system is blending and forming new systems. Indonesia is establishing four legal systems: Islamic, Civil, Customary, and Common. Pancasila is the state's foundation. This research will show that all legal systems are mixed and therefore not absolute. All legal systems in Indonesia must be founded on Pancasila, the state philosophy. Pancasila will make the legal system prismatic, taking only what is profitable or beneficial. This legal system will become prismatic. This research introduces Prismatic Mixed Legal Systems. We will keep researching. This research will help individuals studying Indonesian law. Comparative Law and Constitutional Law researchers worldwide can use it as a reference.

Subjects: Jurisprudence & General Issues; Legal Theory; Regulation; Public Law; Comparative Politics

Keywords: Legal system; Civil Law Systems; Common Law Systems; Mixed Legal Systems; Prismatic Mixed Legal Systems; Pancasila

1. Introduction

From century to century, legal history records the legal system becoming more complex and complicated. Starting from the need to regulate order in society, eventually, the Law developed into a sophisticated system. Greco-Roman Law is touted as the culmination of the development of Law as an institution of advanced (sophisticated; Rahardjo, 2009). The formation of a country's legal system (Legal Tradition) cannot be separated from the history and legal culture that grows and develops in society. The development of legal culture causes a country to implement a written or unwritten legal system (Huda, 2020). In a society that applies an unwritten legal system, customary practices institutionalised in society are then transformed and poured into Law. If in a society with an advanced tradition and culture of writing, to achieve legal certainty, the developed legal system is a written legal system, both codified and uncoded.

Even though it is an unwritten rule, the legal pluralism that exists in Indonesia has the potential to become a unifier, a solution, and even to produce harmony in the social life of the community. This is because legal pluralism is a law that is not written down. Legal pluralism in Indonesia dynamically follows the development of its society while still relying on the characteristics of indigenous peoples and the participatory cosmos mindset to attract experts from all over the world to be the research object. In other words, legal pluralism in Indonesia is a dynamic follower of the development of its society. The value of customary law is currently being used in resolving disputes, both civil and criminal, with the development of methods or approaches known as restorative approaches. These methods and approaches are almost identical to the participatory cosmos approach that indigenous peoples have adopted in their legal systems. The execution of the restoration of a state of equilibrium based on the participatory cosmic attitude is manifested in several ceremonies, taboos, or rites. This is done to achieve the desired result (rites de passage). This fact demonstrates, albeit in a limited way, that the legal conception and mindset prevalent in society are still relevant and serve as an inspiration for other countries to design laws that fulfil the community's sense of justice. The same approach is taken by indigenous peoples when settling issues within their communities. This approach entails maintaining order within the community by exercising authority over its members and threatening punishments for those who break the rules (Aditya & Yulistyaputri, 2019).

Another illustration of this would be the mission of the University of Utrecht, which is to promote the utilisation of discussions and consensus models as a means of problem-solving among the indigenous Malay people. Disputes can be settled by discourse in Indigenous and Islamic societies; this method of conflict settlement is a living law, and it is common knowledge in practically every legal circle. Dispute resolution through this method always involves the head of the people (the customary leader), both in preventing and settling the law when violations have occurred. On the other hand, Indonesia established Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution as an out-of-court settlement option. This law, inspired by the evolution of dispute resolution in nations with a Common Law System, was passed in 1999.

Because of the significant role that Islamic law and other forms of customary law play in regulating people's lives, there must be an attempt made to incorporate Islamic law and other forms of customary law as one of the sources that go into the formulation of national law. According to Mochtar Kusumaatmadja, the law needs to be attentive to the evolution of society, and it also needs to be changed and adapted to the conditions. He believes these two things go hand in hand. In progressive legal theory, it is highlighted that the process of making laws and

regulations must take into account the values and legal norms that live and apply in society. This is something that must be done in order for the process to be considered legitimate (Aditya & Yulistyaputri, 2019).

The harmonious relationship between the three different legal systems is indicative of the allure that can be found in the application of customary law, Islamic law, and civil law. As was discussed earlier, the practice of strict and static civil law has resulted in forming a legal void in contemporary society. This legal difficulty can be solved by employing an unwritten legal system adaptable to keep up with the times. Specifically, this legal problem can be solved by utilising the norms and values outlined in Islamic law and customary law. According to Von Savigny (1828), the law was not created; it grew and developed along with society. Long before the establishment of civil law, other legal systems, such as Islamic law and customary law, had become established in society. The progress currently being made in Indonesian law cannot be divorced from the ideals inherent in both Islamic law and customary law.

Three legal systems exist in Indonesia, causing debate among experts about what legal system is adopted in the Indonesian legal system. However, Vernon Valentine Palmer's (2014) categorises Indonesia's legal system explicitly into Mixed Legal systems, more specifically *Mixed Systems of Civil Law, Muslim Law, and Customary Law*, along with the legal systems of the countries of Djibouti and Eritrea. This classification includes Indonesia's legal system. In Indonesia, the idea of Mixed Legal Systems is commonly referred to as Legal Pluralism. When it was first introduced, the notion was initially restricted to features of the interaction between Customary Law and State Law. However, this concept is undergoing a considerable shift in modern times because, in addition to being dependent on State Law and Customary Law, Pluralism is also dependent on Religious Law.

The concept of Mixed Legal Systems is essential to research, especially to emphasise the position of the legal system in force in Indonesia. Even though Vernon Valentine Palmer firmly places the legal system in Indonesia in the category of Mixed Legal systems, research on the legal system in national law reform must be carried out continuously. Based on the problems above, the researchers are interested in creating legal research entitled "Adoption of Various Legal Systems in Indonesia: An Effort to Initiate Prismatic Mixed Legal Systems". Some research questions will be the focus of this research: How is the *existence of Mixed Legal Systems* in the dynamics of legal systems in the world? Furthermore, What are the Implications of Implementing a Mixed Legal System on the Legal System in Indonesia as an Effort to Initiate a "Prismatic Mixed Legal System"? Based on the research questions that have been described, the purpose of this study is to analyse the existence of a Mixed Legal System in the dynamics of the legal system in the world and the implications of the application of a Mixed Legal System to the legal system in Indonesia as an effort to start a "Prismatic Mixed Legal System".

2. Literature review

The system is usually seen as a conception of all aspects and elements arranged as vertically integrated, horizontal, lines or diagonal units. According to Jimly Asshidiqie (2012), the legal system is all aspects and elements structured as an integrated unit of Law. John Henry Merryman and Pérez-Perdomo (2007) defines the legal system as:

... deeply rooted, historically conditioned attitudes about the nature of Law ... the role of Law in ... society and the polity, the proper organisation and operation of a legal system, and about the way Law is, or should be made, applied, studied, perfected, and taught. The legal tradition relates the legal system to the culture of which it is a partial expression. It puts the legal system into a cultural perspective.

Based on Merryman's opinion above, the legal system is not a question of a set of rules regarding marriage, contracts, or corporate crimes, but the legal system covers a wide range of legal issues,

which include; the attitude that is deeply rooted and conditioned or historically formed about the nature of Law, the role of Law in society and government, the formal institutions for administering the Law, and how the Law is formed must be shaped, applied, studied, perfected, and taught (Mousourakis, 2015; Okeke, 1997).

Various legal systems exist in this World; according to Merryman, legal systems or legal traditions are grouped into three main categories: Common Law Systems or customary law traditions, Civil Law Systems or Continental European legal traditions, and Socialist Law. According to the Website Guide to International and Foreign Law Research from the University of South Carolina School of Law, in general, there are five legal systems in the world today, namely; Civil Law Systems, Common Law Systems, Customary Law Systems, Religious Legal Systems, and Mixed Legal Systems (University of South Carolina School of Law, 2018). Meanwhile, Peter De Cruz (2015), legal traditions include; the Anglo-Saxon and American legal traditions, the Customary Law Traditions, the Socialist Legal Traditions, and the Islamic Legal Traditions. However, modern countries adopt only significant legal traditions, namely the Continental European Legal System (Civil Law Systems including Socialist Law) and the Anglo Saxon Legal Traditions (Common-Law Systems, including Anglo American, Customary Law, and Islamic Law).

In the context of Indonesia, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia is a state of Law. Article 1 paragraph (3) does not explicitly mention the legal system adopted by the Unitary State of the Republic of Indonesia; some legal experts say that the word "State of Law" refers to *Rechtsstaat* as popularised by Friedrich Julius Stahl (Budiardjo, 2008). The concept of *Rechtsstaat* is a reduction of Civil Law Systems with the character of written Law or positive Law (Krygier, 2014). One of the implementations is the administration of government based on statutory regulations (*wetmatigheid van bestuur*; Iswahyudi, 2020). However, the facts show that Indonesia adheres to three legal systems that live and develop in people's lives and the state administration system: Civil Law Systems, Customary Legal Systems, and Islamic Legal Systems.

Prior to the arrival of the Dutch in 1596, the Law that prevailed in the regions of Indonesia, in general, was unwritten Law, which was unique to the Customary Law System, for example, Cornelis van Vollenhoven who divided or classified 19 areas of customary Law in Indonesia (Alting, 2011). Within the Customary Law System itself, there is no known difference between Public Law (*Publiekrecht*) and Private Law (*Privaatrecht*; Pide, 2017). In some areas, customary Law is heavily influenced by the development of Islam which in the field of Law then has implications for the adoption of the Islamic Legal System. This Islamic Law affects the Indonesian legal system with laws and regulations that adopt Islamic Sharia, for example, the Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (Mardani, 2008). After the entry of the Dutch into Indonesia (known as the Archipelago or the Dutch East Indies at that time), legal life in Indonesia changed, in particular starting to be influenced by the Civil Law Systems or Continental Europe. Even though the Dutch are no longer colonising Indonesia, their influence on legal life in Indonesia can still be felt today. *Wetboek van Strafrechts* (WvS) is still valid through Law no. 1 of 1947 as a guidebook in the field of criminal Law (Criminal Law Code). In the civil sector, *Burgerlijke Wetboek* (BW) or the applicable Civil Code through *Staatsblad* No. 23 of 1847 concerning *Burgerlijke Wetboek voor Indonesia*, and *Wetboek Van Kopenhandel* (WvK) or the Commercial Code are still valid. Meanwhile, in the field of civil proceedings, the *Herzien Inlandsch Reglement* (HIR), *Rechtsreglement voor de Buitengewesten* (RBg) and *Reglement op de Burgerlijke Rechtsvordering* (RR) are also still being implemented and there has been no change (Hajati et al., 2019).

Ultimately, all legal systems in Indonesia must be based on Pancasila, the Indonesian national ideology (Soekarno refers to it as *Weltanschauung* in German, roughly equivalent to the English word "worldview"). These terms can be interpreted using Bung Karno's speech on 1 June 1945. "Philosofische Grondslag" and "filosofische Principe" were mentioned four times and once,

respectively, in this speech; “Weltanschauung” was cited 31 times. His definition of “Philosophische Grondslag” is “Fundamentals and philosophy, deepest ideas, souls, deepest wishes for the construction of Indonesia Merdeka building on it.” To put it another way, Pancasila as Philosophische Grondslag is what we would call a “State Fund” in Indonesian. In this way, the idea of Pancasila as “the foundation of the state” is nothing more than the idea of Pancasila as “the foundation of philosophy/state philosophy” (Latif, 2020).

As the foundation of the state, the ideology of the state, the philosophy of the nation, and the source for all sources of law, Pancasila has a unique position in Indonesia’s constitutional structure. Pancasila must be able to respond to questions about its relevance in light of these varied perspectives. When solving these kinds of issues, it is imperative that an accurate reading of Pancasila is found. This reading may serve as an alternative to the more traditional reading model (Muchtar & Iswandi, 2018).

An excellent and negative appraisal of the established legal system, which is based on the ideals of divinity, humanity, unity, democracy and justice, has at least been the basis of Pancasila as the Worldview of the Indonesian country. In order to be considered a good deed, an action must not only be free of conflict with these values but must also conform to and strengthen them (Pesurnay, 2018). The values of Pancasila are based on the social, religious, and cultural reality of the Indonesian nation, yet the values of Pancasila are universal and can be adopted by anyone at any time (Dimiyati et al., 2021). This system will be built on a solid foundation of ontological and epistemological coherence and historical and natural coherence. Understanding, belief and dedication to the values of Pancasila must be strengthened throughout the state and national institutions.

Therefore, the ideals of Pancasila will be incorporated into the future national legal system that is being constructed. These values are as follows:

- (1) God, the Supreme Being. This indicates that the establishment of law in Indonesia needs to be based on divine or religious ideals to be legitimate. In addition, there must be a provision that ensures the protection of religious liberty in every legal framework, and there must not be a single statute that gives preferential treatment to any religion over another.
- (2) A humanity that is just and decent. This indicates that there must be safeguards and respect for human rights in every possible form of legal organisation;
- (3) Indonesian Union. This indicates that when laws are drafted, consideration must be given to preserving the harmony or completeness of the nation and the state.
- (4) A democracy in which the application of wisdom guides representative discourse. This indicates that democratic principles, which incorporate participation from all aspects of state life, such as the executive branch, the legislative branch, and society at large, must serve as the foundation for the creation of laws;
- (5) Justice for all of Indonesia’s population in the realm of social issues. This indicates that the establishment of national law must have as its primary objective the provision of justice and welfare for the entire population of Indonesia. After that, the principles of Pancasila are transformed into legal standards and guidelines.

The development of a legal system based on Pancasila must be directed toward accommodating and supporting legal needs through developments and development progress in other fields. This is necessary for the Pancasila legal system to create order and legal certainty to increase the unity and integrity of the nation and the state. In addition to being able to thwart corrupt practices and legislate in a way that protects human rights.

The prismatic quality of something. Indonesian law is distinct from other legal systems because of its legal value system, which is why the phrase Pancasila Law or Pancasila Law State is used, coupled with literature on the combination of more than one choice of social values is referred to

as a choice. Pancasila ideology dictates that we employ Prismatic Law Theory to create legal systems consistent with the ideology (Roisah, 2012). Like plants can only grow and develop under specific climatic conditions, the legal system will also grow or develop by an economic structure, values, and political system in different societies with already existing legal systems in other communities with the existing (contextual).

3. Research methods

3.1. Research paradigm

The paradigm utilised in this study is post-positivism. The existence of reality is assumed but cannot be fully comprehended since, fundamentally, human intellectual machinery has limitations and flaws, while the phenomenon itself is inherently uncontrollable (Indarti, 2010).

Pancasila and the 1945 Constitution of the Republic of Indonesia need the application of the post-positivism paradigm. However, empirical testing of the legislation is conducted through falsification by modification methods. In some sense, post-positivism seeks to falsify the “buildings” of positivism by empirical (fact-based, experience-based) means (rules that are considered as a final truth). The examined phenomenon, the legal system, is an item that can be generalised so that it may be predicted in the future (predicted).

This paradigm’s ontology is critical realism. It is considered that realism exists, but it cannot be fully comprehended because the human intellectual apparatus has inherent defects, and the reality itself is inherently uncontrollable. In this study, ontology, the essence of reality, is the Indonesian legal system, which still presents issues (understood imperfectly). In addition, the post-positivism paradigm conceptualises reality as it is, but it is understood that various things impact this reality. Consequently, this paradigm conceptualises law as a set of socially applicable rules whose enforceability is contingent on other conditions (economic, political, cultural and other factors).

The epistemology of the post-positivism paradigm is dualist/objectivist with modifications. In epistemology, the relationship between the examiner and the subject of study is discussed; this paper examines the relationship between the reviewer and numerous regulations. Modification incorporates the researcher’s subjectivity or evaluation into the researched data (statutory regulations). The methodology is a process by which individuals or community groups (including, of course, researchers) obtain the information they need; in this study, the methodology employed is experimental modification/manipulative falsification through critical multiple or triangulation modification (using various methods, sources data, researchers and theory).

4. Types of research

As a scientific method, the research technique uses systematic, orderly, and scientifically accountable methods to expose and explain natural and social phenomena in human existence. Scientific methods, systems, and ideas underlie legal research, which tries to investigate and analyse various legal issues (Soekanto, 1989).

For example, normative legal research examines written laws from various perspectives, including aspects of theory, history, philosophy, comparison, structure and composition; scope and material; consistency; general explanations; article by article; formality and binding; and the laws and legal language used.

According to the experts, as mentioned above, normative legal research (doctrinal) is what this study falls under, and the goal of its implementation is to collect data to find a response to the significant concerns posed by the study’s subjects.

5. Research approach

This research ontologically aims to analyse the existence of Mixed Legal Systems in the dynamics of the world legal system and analyse the implications of the adoption of Mixed Legal Systems on the legal system in Indonesia to initiate Prismatic Mixed Legal Systems. Thus, this research is hermeneutical and dialectical, using methodological principles typical of a comparative law research approach (Eberle, 2009).

Law is a social phenomenon and a part of the national culture. As a result, each country's legal system will be distinct from another countries (Friedman, 1969). It is impossible to compare the constitutions of two countries side by side because each country's constitution reflects the current state of society in several spheres, such as politics, economics, society, and culture. However, in general, every country's constitution prioritises protecting the citizens' human rights. The goal of comparing the legal systems of other countries is not only to discuss the variations and similarities between them but also to provide input on how the law might be improved in the future. When there are multiple legal systems in a country, comparative law is used to study the differences between the various systems (Kamba, 1974).

The purpose of using a comparative law research approach is to compare the Indonesian legal system with several countries, which Palmer has categorised into Mixed Legal Systems. The importance of comparative law studies in the effort to reform the national legal system as stated by George Santayana that "A man's feet must be planted at home, but his eyes should survey the world" (Adji, 1973; Santayana, 1934). Through this methodology, the schemes and motives of Mixed Legal Systems in the legal system in several countries in the World will be revealed. It is hoped that these efforts will in due course contribute to efforts to reform the national legal system, especially in initiating the "Prismatic Mixed Legal System".

6. Data sources and data collection techniques

In this study, the documenting of legal materials uses a literature review, specifically data collecting by reviewing materials pertinent to the research subject. Collecting library materials, reading them, and taking notes on subjects related to the issues presented are the processes taken. This is the case in agreement with normative legal study or doctrinal legal research.

To obtain legal materials as anticipated, a legal material collection tool is utilised through library observation using direct observation by researchers of studies/studies related to the object of study and by compiling an inventory of pertinent decisions/stipulations, laws and regulations books, literature books, and documents.

7. Data analysis technique

Using a legal material analysis technique is vital to account for the data obtained and provide solutions to issues. For Prismatic Mixed Legal Systems in Indonesia, analysing secondary data is a crucial step because, at this point, the data collected is secondary and therefore needs to be processed and evaluated normatively qualitatively, namely through the presentation of legal materials that have been analysed with qualitative descriptions. As a result, in this study, the researcher employs a comparative descriptive approach using the deduction method, beginning with a set of fundamental principles from which the topic of study is presented. It is a scientific approach that begins with a general proportion and concludes with a more specific conclusion known to be true.

8. Results

For taxonomic purposes and organisational convenience, experts in Comparative Law have categorised the legal system into what is referred to as "Family Law". However, it is universally recognised that the idea of "Family Law" does not correspond to biological reality and is considered nothing more than a didactic matter (Leckey, 2017). Classification of the legal system into "Family Law" has become a practice to study the dynamics of the legal system adopted by countries in the World that experts most widely use Comparative Law which will then produce

¹ a generalisation based on concepts, such as originality, derivation, and common elements of an existing legal system (David & Brierley, 1968; Schlesinger, 1988).

The basis of this classification can be identified the similarities and relationships of each legal system adopted. This classification depends on the Law's general characteristics, substance, source, and structure. This classification is also based on the origin, the elements of the composition, and the resulting mixture, which is then regrouped based on the principle of domination of the existing legal system.

¹ Konrad Zweigert and Hein Kötz (1998) propose considering "legal styles" to find the distinguishing elements between legal systems. The suitability of any classification will depend on whether the perspective is universal or regional or whether the attention of the legal system places more emphasis on public Law, private Law, or Civil Law. Nevertheless, in Europe at this time, through the dominance of the "Eurocentric" legal system, issues outside of Civil Law Systems and Common Law Systems are not uncommon or not worth discussing or even questioning (considered non-existent).

Civil Law Systems and Common Law Systems are as if they were the only "monolithic entity". However, such a perspective is considered inadequate because there are still many legal systems that grow and exist and are influenced by cultural or historical factors of each country (Gillespie, 2008). When researching the legal system adopted by countries in Southeast Asia, Andrew Harding said that Eurocentric dominance fell into the "legal families trap". Harding said that "Legal families tell us nothing about legal systems except as to their general style and method, and the idea makes no sense whatsoever amid the nomic din of South East Asia" (Harding, 2002). This statement shows that the European-centric style does not explain the legal system outside of it except for their style and method; even the idea does not make sense during the hustle and bustle of legal life in Southeast Asia. This statement shows that European centric jurists disagree on whether the meaning of "Family Law" and its theoretical or descriptive basis is useless if applied in Southeast Asia.

Palmer (2014) responded to this debate with his first attempt at placing a cross between Civil Law Systems and Common Law Systems into the so-called "Third Family", which later became known as "Mixed Jurisdiction" or "Mixed Legal Systems". The first time the concept of Mixed Legal Systems appeared, it was deemed unsatisfactory because not all "Mixed" would have the same or similar ingredients (Palmer, 2007). It would be not easy to place, for example, combining the legal systems in Quebec and Algeria into the same family of Mixed Legal Systems (Smits, 2006). However, Palmer classifies that Mixed Legal Systems are unified but reclassified into different mixed law systems.

According to the Website Guide to International and Foreign Law Research, Mixed Legal Systems is legal system in which two or more legal systems exist and are adopted by the State (University of South Carolina School of Law, 2018). The definition of Mixed Legal Systems is essentially a modern idea that is increasingly shaping the discussion of the nature of the legal system. The word "Mixed" indicates that various other Legal Systems have influenced a Legal System.

Mixed Legal Systems result from transplants and receptions across existing legal systems. In some cases, Mixed Legal Systems first emerged because of the influence of religious Law in secular regimes or vice versa (Tetley, 2000). In this sense, most legal systems result from mixing, which results in varied compositions. Nevertheless, the term "Mixed Legal Systems" at the level of legal science is understood much more narrowly, namely a mixture of Civil Law Systems in the tradition Romano-Germanic (Spanish Law, Roman Law, and Dutch Law) with Common Law Systems (English and United States Law; Picker, 2008). Countries that expressly recognise the adoption of Mixed Legal Systems are the Republic of South Africa, Scotland, Puerto Rico, the Philippines, and Israel. All these countries unite legal systems that have a foundation (Kedar, 2007), namely, a mixture of elements of Civil Law Systems and Common Law Systems, which sometimes includes other legal components, depending on the circumstances.

Mixed Legal Systems implies a duality that permeates and goes beyond simply acknowledging the historical origins of Law and its institutions. According to Jean Jacques Du Plessis (2017), as far as legal substance is concerned, the main areas of Common Law Systems have been heavily influenced by Civil Law Systems in the form of codification. For various historical reasons, this system often gets Civil Law Systems, especially in the Anglo American legal system, including the constitutional and Public Law levels, including their influence on court structures and procedures (Siems, 2018). Mixed Legal Systems thus shows that the order of a legal system will gradually open up to what is now known as “Bijuralism” (Graziadei, 2006).

According to Esin Örüçü (2004), classifying legal systems in this modern era can no longer be maintained, because of the influence of “Mixed Legal Systems” the legal system is no longer considered rigid and is not easily placed in a particular legal system tree. No countries are entirely consistent in applying a particular legal system; for example, there are no more countries entirely consistent in Civil Law Systems or Common Law Systems. Combining the two legal systems is unavoidable, even with what David and Brierley (1990) calls Residual Law and Socialist Law. For example, in Indonesia, the customary law system that influenced Law no. 5 of 1960 concerning Basic Agrarian Regulations can be seen in the Elucidation of Article 5, which emphasises that customary Law is used as the basis of the new agrarian Law.

Örüçü (2008) divides “Mixed Legal Systems” into ten categories, consisting of a mix of Common Law Systems and Civil Law Systems (3.47% of the World’s population); a mix of Civil Law Systems and Customary Legal Systems (28.54%); Civil Law Systems and Islamic Legal Systems (3.14%); Common Law Systems and Customary Legal Systems (2.94); Common Law Systems, and Islamic Legal Systems (5.25%), Islamic Legal Systems, Civil Law Systems, and Customary Legal Systems (3.62%); Common Law Systems, Islamic Legal Systems, and Customary Legal Systems (19.17%); Civil Law Systems, Common Law Systems, and Customary Legal Systems (0.8%); Common Law Systems, Islamic Legal Systems, and Civil Law Systems (0.23%); and Civil Law Systems, Common Law Systems, and Talmudic Legal Systems (0.09%). The number of jurisdictions that fall into the category of “mixed systems with Civil Law Systems” is 65 (19.12% of world legal systems), “mixed systems with Common Law Systems” are 53 (15.59 %), “mixed systems with Customary Legal Systems” is 54 (15.88%) and “mixed systems with Islamic Legal Systems” is 33 (9.70%).

Palmer details the mix-up between the various legal systems by mapping out the countries that apply them (Palmer, 2012). The mixed system between Common Law Systems and Civil Law Systems; Botswana, Cyprus, Guyana, Louisiana (United States), Malta, Mauritius, Namibia, Philippines, Puerto Rico (unincorporated the United States), Quebec (Canada), Saint Lucia (Scotland (United Kingdom), Seychelles, South Africa, and Thailand Mixed Civil Law Systems and Customary Legal Systems; Burkina Faso, Burundi, Chad, China, Congo [Democratic Republic (Congo Kinshasa)], Congo [Republic (Congo Brazzaville)], Ivory Coast, Equatorial Guinea, Ethiopia, Gabon, Guinea, Guinea Bissau, Japan, North Korea, South Korea, Madagascar, Mongolia, Mozambique, Nigeria, Rwanda, São Tome & Príncipe, Senegal, Swaziland and Taiwan

Mixed Civil Law Systems and Islamic Legal Systems; Algeria, Comoros, Egypt, Iraq, Kuwait, Lebanon, Libya, Mauritania, Morocco, Syria, and Tunisia Mixed systems of Islamic Legal Systems, Civil Law Systems, and Customary Legal Systems; Djibouti, Eritrea, and Indonesia Mixed systems of Civil Law Systems, Common Law Systems, and Customary Legal Systems; Cameroon, Lesotho, Sri Lanka, Vanuatu, and Zimbabwe. The hybrid system between Common Law Systems and Islamic Legal Systems; Bahrain, Bangladesh, Oman, Pakistan, Qatar, Singapore, Sudan and the United Arab Emirates. The mixed system between Common Law Systems and Customary Legal Systems; Bhutan, Hong Kong (China), Malawi, Micronesia, Myanmar, Nepal, Sierra Leone, Solomon Island, Tanzania, Uganda, Western Samoa and Zambia. A mixed system of Common Law Systems, Islamic Legal Systems, and Customary Legal Systems; Brunei Darussalam, Gambia, India, Kenya, Malaysia and Nigeria. A mixed system of Common Law Systems, Islamic Legal Systems, and Civil Law

Systems; Iran, Jordan, Saudi Arabia, Somalia and Yemen. A mixed system of Civil Law Systems, Common Law Systems, and Talmudic Legal Systems is Israel.

Örücü said that several legal systems are mixed, which leads to practical problems because of the unavoidable international relations, which then influences the legal system in each country. Örücü then describes the mixing of these legal systems into Simple Mixed, which occurs only between two systems, namely Civil Law Systems and Common Law Systems; in addition, there is a Complex Mixed that occurs between the two systems with religious Law or customary Law.

Indeed “Mixed Legal Systems” is a complicated term to identify because the existing legal systems are in the possibility of being open or hidden, structured or unstructured, complex or straightforward, and mixed or not. When talking about “Mixed Legal Systems,” it is essential to understand and consider that mixing will always occur or continue. In the ongoing “Mixed” State, extensive knowledge is required to thoroughly analyse this phenomenon, as many legal systems will shift or transition, and this kind of mix-up will continue to emerge; therefore, future observations will be uncertain and how experts will react. Constitutional Law on the continuous transition of mixing, handling, and harmonising the legal system, which will form the new “Mixed Legal Systems”, is fundamental to continue researching. Thus, studying the legal system will always display a unique feature. Each feature is shared with other features and allows to study the legal system separately or together.

It has been mentioned above that “Mixed Legal Systems” can be divided into Simple Mixed and Complex Mixed. In Simple Mixed, in general, there is a mixture of Common Law Systems and Civil Law Systems. This mixture or combination is related to the substance, structure, and even legal culture. For example, Scotland applies “Mixed Legal Systems” only on a substantive level; this relates to the unique history of being influenced by the migration pathways of the legal system. The starting point is that the Scottish legal system was the Customary Law System which was later overlaid by the Anglo-Norman system, Canon, Roman and European Civil Law, and later in modern times by Common Law Systems (England; Farran, 2009). This mixture resulted from close cultural and political ties, not from the Colonial powers’ introduction of Common Law Systems over Civil Law Systems. The Scottish legal system creates a “Mixed” by selecting the “best” materials from various sources of a legal system based on the principle of equilibrium or what is known as the Prismatic Legal System (will be explained in detail in the second discussion of this paper).

When elements from different socio-culturally similar legal systems come together to form Simple Mixed, the ingredients are always in the process of mixing or what Satjipto Rahardjo (2006) calls the process of becoming (Law as a process, Law in the making) and requires a construction process. continuously and continuously so that a “Purée” legal system will be formed. In addition to the “Simple Mixed” legal system, there is also a “legal system complex Mixed”, where the elements of the legal system are formed from various socio-cultural factors and legal culture. Complex Mixed is like a salad bowl; even though the sauce covers the salad, it is easy to detect that the salad is made from many different types of fruits and vegetables through the glass bowl.

Complex Mixed may appear in places where the legal system is formed due to many factors outside the Law (Meta Juridical), such as religion or belief that collaborates with secular Law and these events occur in unexpected places. An example is a legal system in Hong Kong, where there is talk of “one country, two legal systems” concerning China (Jones, 2017). Legal transmigration may occur between legal systems that form a legal pluralism or hybrid, and sometimes unexpected outcomes of a legal system may occur due to elite domination. Sometimes there is an overlap between the legal meanings understood between constitutional law experts and may occur, and the differences are very complex. For example, a mixture of religious and secular legal systems, as we know that the two legal systems deny each other’s existence. For example, the secular legal system, which is influenced by Legal Positivism, rejects the nature of the Law proposed by the religious legal system, which Theology Law or Natural Law more influences.

Through the complexity of this Mixed Legal System, the traditional theory of “Family Law” echoed by European-centric jurists and characterised by the classical paradigm is entirely inadequate to answer this question.

As soon as constitutional law experts release their Europa-centric, they will immediately see that the legal system is neither homogeneous nor singular. Several legal system orders and social orders will always coexist. For example, in the context of the customary law system, finding and understanding it will be challenging because some of them are not written, and some of the written customary Law is not translated perfectly. For example, in many legal systems in Asia that mix western legal systems (Common Law and Civil Law) with religious legal systems, Hinduism, Buddhism, Confucianism, and Islam, existed before the arrival of western colonialists (Netherlands, Spain, France, Portuguese and English; Antons, 2003). The mix-up is also complicated by the fact that not all legal systems apply to everyone, different sections of the population being classified as “Foreign Easterners”, “Assimilated Asians”, “Europeans”, “Non-Indigenous” or “Indigenous”. This condition occurs in Indonesia, Taiwan, and Malaysia.

In the case of this classification, we can take the example of classifying Indigenous and Non-Indigenous people in Indonesia. The enactment of Article 131 Indische Staatsregeling (IS) and Article 163 IS one of the historical moments that has led to legal pluralism in the civil sector. In the provisions of Article 163 IS, the population of the Dutch East Indies was divided into 3 (three) groups, namely the European group, the Bumiputera group and the Foreign Eastern group. The division of these groups is followed by the distribution of legal power for each of these groups based on Article 131 IS, which is affirmed as follows (Nurdia et al., 2021):

- (1) Civil and Commercial Law, Criminal Law, civil procedural Law, and criminal procedural Law must be codified, i.e. placed in a law book. For the European group, the legislation in force in the Netherlands must be followed (the principle of concordance);
- (2) For the Indigenous Indonesian and Foreign Eastern groups, if it turns out that the needs of their community so require it, the regulations for the Europeans can be declared to apply to them, either entirely or with amendments, and it is also permissible to make a new regulation together, for others they must observe the rules that apply among them, from which rules may be made deviations if requested by the public interest or their social needs; and
- (3) Indigenous Indonesians and Foreign Easterners can submit to the laws in force in Europe as long as they have not been subject to a standard regulation with Europeans.

Thus we see that legal migration has followed the path of colonisation, resettlement, occupation, expansion, and the relationship between various cultures. This method of legal transmigration can take the form of coercion, acceptance, forced acceptance, coordinated parallel development, infiltration, imitation, variation, and a combination of all of them. The consequence is the birth of a legal system in a transition and mixing that continues to occur, besides that there are “Mixed Jurisdictions”, which are in the form of a legal system that is interrelated, developing, layered, the similar meaning of symbols, harmonisation, unification, and standardisation. The condition of such a legal system will always have a different conceptual implication, especially on the way of Law in each country that adopts it.

9. Discussion

Because the law is a product of culture, different societies and communities will have different legal traditions. These traditions will be highly influenced by their historical background, character and behaviour, sense of law, and perspective. In the legal system of continental Europe, written rules that have been methodically codified play a significant role, and the role of the judge is limited to that of the Law’s speaker. Legislators with a hostile judge position are not given the authority to establish new regulatory standards. In the Anglo-Saxon legal system, the judge’s

decision is the primary source of information. When making judgements, judges have the power and latitude to establish new standards, giving them a role analogous to that of a constructive legislator. Even in the Anglo-Saxon system, which adheres to the stare decisis, the current judge must adhere to the decision made by the judge who presided over the case in question. As a result of globalisation, no nation's system can be considered independent; nonetheless, a mixed system has emerged since different systems impact and interact with one another.

The Indonesian legal system is a matter of ongoing discourse, which involves legal experts and observers and has also attracted various groups to express opinions; this can be understood considering that there is almost no gap in life that is not intervened in legal norms.

Ubi Societas Ibi Ius (MD, 2010b) has emphasised that even in the most straightforward society, the existence of legal norms as social institutions has become a condition sine qua non for the sustainability of society as an entity (Burlian, 2015). There is an opinion that Indonesian Law, with all its limitations, has been developed into a system. Indonesian legal norms have been tested by time for more than a century that has passed through various dynamics of society, and is still valid today. Since legal higher education has become a formal institution in Indonesia, this has implications for various studies on the Indonesian legal system (Sukowati, 2008).

It is certain that globalisation, with its repercussions in various spheres of people's lives, would affect the judicial system in every nation, including Indonesia. The impacts of globalisation demand that Indonesia's national legal system be able to adapt to the different legal standards that are also growing in other nations. At the same time, this exposes Indonesia to various legal issues that need to be resolved as quickly as possible. However, the values of the nation and state, as outlined in the constitution, should not be altered by globalisation. These ideals include safeguarding all of Indonesia's heritage, teaching the nation's life, and advancing the general welfare of the population. As a result, the formulation of Indonesia's national legislation must take place within Indonesia itself (development from within). Because of this, the Indonesian National Law needs to be improved in its substance and procedure so that it can keep up with the currents of globalisation and the dynamics of society.

The legal system in Indonesia today appears as a unique legal system. A legal system built from the process of discovery, development, adaptation, and even compromise of several existing systems. The Indonesian legal system emphasises local characteristics and accommodates general principles adopted by the international community. Not only that, the Indonesian legal system is a system that is still full of dynamics, to look for a format in which order and order are aspired by Civil Law Systems, without neglecting the flexibility of Customary Legal Systems and not eliminating the religious nuances of the Indonesian people with the existence of Islamic Legal Systems. It has been explained above that Palmer explicitly incorporates the Indonesian legal system into "Mixed Legal Systems", especially a mixture of Islamic Legal Systems, Civil Law Systems, and Customary Legal Systems. This mixing is not an ordinary or straightforward mixture (Simple Mixed) but leads to a complex and unique mixture (Complex Mixed). Most of the civil and criminal systems adopted are based on Civil Law Systems, especially from the Netherlands because of aspects of Indonesia's history, a colony known as the Dutch East Indies (Nederlandsch-Indie).

⁷ The main principle of Civil Law Systems is that the Law acquires binding power in the form of statutory regulations that are systematically arranged in codification; this is intended to guarantee legal certainty, which is a primary goal of the Law. Legal certainty can be realised if written rules regulate all human behaviour in social life. In Civil Law Systems, we can recognise an adage that says, "there is no law other than the law", in other words, Law is always identified with the Law. The existence of legal ⁶ codification is one of the characteristics of Civil Law Systems; this codification has implications for decision making by judges and by other law enforcers must refer to the law book or legislation, so that the Law becomes the primary source of Law (bouche de la Loi; Schmitt, 2021). The judge, in this case, is

not accessible in creating Law because judges are only to apply and interpret the Law in a limited according to the authority given to him and the judge's decision was not binding general.

In the current civil law system, judges or courts have the power to interpret a stated law in order to be able to create new laws. This allows the system to adapt to changing circumstances. The second item to consider is where the decision stands as a source of legal precedent. The Common Law System is based on the concept of precedent, which states that judges must adhere to decisions similar to those they made in the past. Because of this, court rulings are considered one of the law sources. In a system based on civil law, decisions made by judges or courts are considered authoritative sources of information but do not compel subsequent decisions made by judges or courts (Ramadhan, 2018).

The precedent principle conceptually compares to the phrase "jurisprudence constante," which is used in the civil law system. By this approach, judges are obligated to seriously consider past decisions in cases involving facts and legal concerns comparable to those at hand. At the beginning of the 20th century in Germany, there was a regulation that said judges in high courts had to abide by the decisions they had made in the past. In Rome during the days of the Roman empire, the practice of taking into account the decisions of previously sitting judges was carried out. The more frequently it is cited and considered, the more powerful it is thought to be. If a judgment is mentioned frequently, consistently, and comprehensively in France and Belgium, it may become a source of law and become binding on other courts. This occurs when a decision is cited (Metzger, 2004).

Countries with civil law systems, like Italy, Germany, and Switzerland, uphold and defend the notion of precedent against the decisions made by their constitutional courts. In the beginning, Austria established a constitutional court that upholds the idea of the separation of powers by having justices on the constitutional court elected and appointed by the parliament. In later years, constitutional courts emerged in both Germany and Italy. These courts were established to safeguard people's rights so they may make constitutional challenges against regulations. In the past, the powers of the constitutional court in France were restricted to reviewing draught legislation rather than laws that had already been voted into law. However, France today has a constitutional court comparable to Germany's constitutional court (Florczak-Wątor, 2020).

However, only binding on the litigants alone; moreover, there is a difference between Private Law and Public Law in the Civil Law Systems. The difference between public and Private Law then has implications for dividing two types of hierarchy court, namely civil justice and criminal justice. Even in the character of Civil Law Systems in Indonesia, the judicial differences are limited to criminal justice and civil courts and the State Administrative Court, Tax Court, Constitutional Court, Military Court, and special courts for Corruption Crimes. In Civil Law Systems, a collection of private legal substances is principally based on the Civil Code, broken down into several sub-chapters or divisions of civil Law, such as people and families, property law, property law regimes, and contract or contract law. In addition, it is also distinguished between civil Law and commercial Law. Although commercial Law is part of civil Law, it is regulated in different laws. In the case in Indonesia, the difference between these two fields of Law can be seen in the existence of two different law books, for civil Law it is regulated in the Civil Code or Burgerlijk Wetboek (BW), and for commercial Law, it is regulated in the Commercial Code or Wetboek van Koophandel (WvK).

The customary law system or Customary Legal Systems is one of the features of the legal system in Indonesia. According to Van Vollenhoven, law customary is the overall behaviour of the community that applies and has sanctioned and has not been codified. According to Terhaar, customary Law is the entirety of regulations embodied in day-to-day decisions and apply spontaneously (Thontowi, 2013). It can be concluded that customary Law is an unwritten norm or regulation made to regulate people's behaviour and has sanctioned. The existence of customary

Law is officially recognised based on the provisions of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, that the State recognises and respect units customary law community and their traditional rights as long as they are still alive and by community development and the principles of the Unitary State of the Republic of Indonesia, which regulated by Law.

One of the effects of the customary law system on the legal system in Indonesia is the enactment of Law no. 5 of 1960 concerning Basic Agrarian Regulations. Article 3 of the Basic Agrarian Regulations stipulates that the implementation of ulayat rights and similar rights of customary law communities, as long as in reality they still exist, must be in such a way that they are by national and State interests, which are based on national unity and may not conflict with the Law. Higher laws and regulations. Based on these provisions, the national land law is based on customary Law, which should automatically recognise the customary rights of Indigenous Peoples.

The Islamic legal system or Islamic Legal Systems also influences the existence of the legal system in Indonesia, one of which is the approval of this Law on Religious Courts by the Indonesian House of Representatives, an affirmation of the enactment of Islamic Law which became clearer when Law no. 7 of 1989 concerning the Religious Courts stipulated on 29 December 1989, and promulgated in the State Gazette Number 49 dated 29 December 1989, by the State Secretary, is significant momentum in the development of the national legal system, including for Muslims in Indonesia. In addition, the Compilation of Islamic Law has been designed by the foremost authority of the Religious Courts. Ulama and Scholars of Islamic Law have well and unanimously accepted it throughout Indonesia, a workshop held in Jakarta from 2 to 5 February 1988, consisting of three books., namely Book I on marriage law, Book II on inheritance law and Book III on waqf law. Then through Presidential Instruction No. 1 of 1991, dated 10 June 1991, has been stipulated as a guideline for Government Agencies and the Muslim community who need to resolve the problems of the three legal fields. Which was then followed up by the Minister of Religion with Decree No. 154 of 1991 On 22 July 1991, the contents of which were to implement the Presidential Instruction, asked all agencies of the Ministry of Religion, including the Religious Courts, and other relevant government agencies to disseminate the said Compilation of Islamic Law. In the second dictum of the Decree of the Minister of Religion regarding the implementation of the Presidential Instruction, it is also stated that the entire environment of the institution, especially the Religious Courts, is to apply the Compilation of Islamic Law in addition to other laws and regulations in solving problems in the field of marriage law, inheritance and endowments.

Apart from the three legal systems above, it turns out that Common Law Systems also influence the legal system in Indonesia. For example, President Susilo Bambang Yudhoyono used the term out of court settlement to settle the cases of Bibit S. Rianto and Chandra M. Hamzah; this term has also become popular far, Civil Law Systems do not recognise outside trials. Of course, courts are the influence of the Common Law Systems, which prioritises using the Law and finding justice rather than upholding legal certainty. In addition, in terms of state institutions, the Common Law Systems have influenced the formation of the Constitutional Court and the Supreme Court. In terms of sources of Law, although it has been stated that the Law is the primary source of Law in our country, it cannot be denied that other sources of Law are also recognised, namely Judge Law (Judge Made Law) which is the primary source of Law in the Commonwealth. Law Systems, stated in the Repelita book, is the Indonesian legal system reference.

Thus, Indonesia's legal system is more complex than Palmer's claims. In Indonesia, there are three legal systems and four legal systems at once: a mixture of Civil Law Systems, Common Law Systems, Islamic Legal Systems, and Customary Legal Systems. The complexity of the legal system in Indonesia has implications for the development of a national legal system. For example, in efforts to reform the Criminal Code, which in substance tries to integrate or reconcile these four legal systems, but for decades this effort has not been realised.

To break down the complexity of the legal system in Indonesia, Moh Mahfud MD (2020) proposed the concept of a Prismatic Rule of Law. Indonesia cannot adhere to Civil Law Systems, Common Law Systems, Islamic Legal Systems, or Customary Legal Systems, but a Prismatic legal system. Under this concept, the fourth existence of these systems is as a counterweight, and its adoption is not absolute but always in the filtration process.

This prismatic concept is a demand from Pancasila as *Rechtsidee*. Moh Mahfud MD explained further that as a prismatic conception, Pancasila contains good elements and is compatible with the typical values of Indonesian culture that have lived among the people for centuries. This prismatic conception can be seen from at least four things. First, Pancasila contains good elements from the views of individualism and collectivism. Here it is recognised that humans as individuals have fundamental rights and freedoms, but at the same time, they attach to essential obligations as creatures of God and as social beings. Second, Pancasila integrates the concept of the rule of law “*Rechtsstaat*”, which emphasises civil Law and legal certainty and the conception of law “the rule of the Rule of Law”, which emphasises common Law and a sense of justice. Third, Pancasila accepts Law as a tool of community renewal (Law as a tool of social engineering) and a mirror of the sense of justice that lives in society (living Law). Fourth, Pancasila adheres to the notion of a religious nation-state, does not adhere to or is controlled by the particular religion (religious State) but is also not empty of religion (secular State) because the State must protect and foster all religious adherents without discrimination because of the number of adherents (MD, 2010a).

To find a suitable reference to uphold the Rule of Law in Indonesia, experts try to build a specification of the conception of the state Pancasila law as an alternative to legal development in Indonesia. Even though there are jokingly said that the Pancasila state or Pancasila state law is a “country that is not a not” (not liberal and not communal). The legal ideal (*rechtsidee*) of Pancasila in establishing the legal system in Indonesia has a function as both a regulatory and constructive standard. This is because Pancasila is the foundation of the Indonesian legal system. Without this, the result of the legal process will be devoid of significance. In the meantime, Hamid Attamimi has stated that the Pancasila, as a legal ideal (*rechtsidee*), serves both a constitutive and a regulating function to the system of Indonesian legal norms in a manner that is both consistent and continuous (Prasetyo, 2014).

The ideals of Pancasila law in the evolution of the legal system have three values, which are as follows:

- (1) Fundamental values, also known as principles, are acknowledged as propositions which are more or less absolute. The principles of divinity, humanity, unity, populist ideas and the concept of justice are at the core of the Pancasila philosophy.
- (2) Instrumental values, which refer to the widespread execution of fundamental values, most notably in the form of legal standards, further crystallised in-laws and regulations. Instrumental values are a subset of normative values.
- (3) Value in the application, often known as the value put into practice in the real world. The genuinely practical value becomes the litmus test that determines whether or not the fundamental and instrumental values exist in the society of Indonesia. Take, for instance, the community’s compliance with the law or the execution.

Nevertheless, The use of the term is very appropriate based on deep reflection by the thinkers of this country in politics, Law and economics. Substantively conceptually, the rule of Law Pancasila represents the spirit of democracy and Law rooted in Indonesian culture. Use this term to accommodate the various value characters that grow in Indonesia, such as kinship, fatherly, balance, deliberation, harmony. Because that is all is the root of the legal culture of this country. Because the Law is a public servant, the Law must be by the Law and cultural roots of Indonesian society (Listyarini, 2008).

To find a suitable reference to upholding the Rule of Law in Indonesia, experts try to build a specification of the conception of the state Pancasila law as an alternative to legal development in Indonesia. Prioritise honesty, dare to take responsibility, obey principles, uphold justice, take sides with the truth. Third, make the Indonesian legal system exist. Fourth, provide a moral-ethical foundation for the Indonesian legal system, fifth, normative Law based on humanitarian norms and justice. Sixth, the Law must prioritise the spirit of unity. Seventh, the Law favours the people, and lastly, the legal orientation to provide access to the realisation of social justice. The Pancasila legal system is new hope in realising natural justice because this Pancasila law is values that come from the Indonesian nation; as Soekarno said, Pancasila was dug up from the bowels of the Indonesian nation.

Deconstructing Pancasila as the Indonesian legal system must concentrate on developing legal concepts National. It means that Pancasila it is possible to become a legal system owned by Indonesia with characteristics, in principle Pancasila, as a legal system have in common and differences with the concept of western Law, basic things What distinguishes the Pancasila legal system? from the western legal system due to factors the history of the nation and the culture of the Indonesian nation, the concept of *rechtsstaat* and the rule of law-oriented to the “dignity of man” that is liberalism, individualism capitalism, and secularism. In contrast, the legal system Pancasila is based on communalism, namely: spirit together to achieve goals Indonesia that uphold justice with divine principles. Value substance Pancasila is divinity, humanity, democracy/ deliberation and justice; fifth, The values are arranged in a pyramidal hierarchy where the value of justice is the peak value, or in other words, the value of justice is the goal of the legal system Pancasila.

Pancasila allows Indonesia to choose which rule of law concept is suitable to be applied in Indonesia. For example, Indonesia is not a religious state. However, religious acknowledgement is powerful in Indonesia, as evidenced in Article 29, paragraph 2 of the 1945 Constitution of the Republic of Indonesia, that the State guarantees the independence of each resident to embrace their religion and worship according to their religion and beliefs. In addition, in law enforcement, Indonesia follows the principle of civil Law, namely the principle of legality, but Indonesia also uses the principle of common Law, namely justice. Indonesia does not follow the principle of sociality legality. However, Article 33, paragraph 2 of the 1945 Constitution of the Republic of Indonesia states that the production branches are essential to the State and affect the State controls the livelihood of many people. State intervention is required and regulated in the constitution for the welfare of its people.

The concept of the Pancasila Legal System is then universally referred to as “Prismatic Mixed Legal Systems”. The prismatic conception, according to Fred W. Riggs (1964), when associated with Pancasila, is that Pancasila contains good elements and is compatible with the distinctive values of Indonesian culture, which include:

- (1) Pancasila contains good elements from the views of individualism and collectivism, where it is recognised that humans as individuals have fundamental rights and freedoms but at the same time attaches to essential obligations as creatures of God and as social beings;
- (2) Pancasila integrates the concept of a state of law “*rechtsstaat*”, which emphasises civil Law and legal certainty, as well as the concept of a state of law “the rule of law”, which emphasises common Law and a sense of justice;
- (3) Pancasila accepts the Law as a tool of community renewal (Law as a tool of social engineering) as well as a reflection of the sense of justice that lives in society (living Law); as well as
- (4) Pancasila adheres to the notion of a religious nation-state, does not adhere to or is controlled by one particular religion (religious State) but is also not empty of religion (secular State) because the State must protect and foster all adherents of religions without discrimination because of the number of adherents.

Based on this prismatic conception, several guidelines were born as the basis for the work of national legal politics, namely: the Law must be created democratically and nomocratically based on the wisdom of wisdom which in its manufacture must absorb and involve the aspirations of the people and the Law can not only be formed based on the majority vote (democratic) but there must be procedures and consistency between Law and the underlying philosophy² and hierarchical relationships; the Law is based on civilised religious tolerance in the sense that **there should be no public law based on the teachings of a particular religion**. Indonesian laws must guarantee the integration or integrity of the nation, and therefore there should be no discriminatory laws based on primordial ties, where national laws must maintain the integrity of the nation and State both territorially and ideologically;

We already have a guide to take firm actions if there are laws that are in question because they are judged to be outside the guiding frame, in the sense that if there is a legal product that deviates from the four guiding principles, it must be resolved with the available legal instruments so that it can be adapted to the prismatic legal system of Pancasila.

In the context of embracing the philosophy of Pancasila in the internalisation of the Pancasila ideology. In-laws and regulations, problems (Indriati, 2020; Kuseri, 2015; Sudrajat, 2018), namely:

- (1) The ⁵ is a void in regulatory norms so that Pancasila can be applied as a philosophical basis for **laws and regulations** referring to **Law Number 12 of 2011**; this results in **the** possibility that the values of Pancasila will not become more concrete as norms in the laws and regulations that are formed. It is just a designation that the philosophical basis in the consideration is weighing.
- (2) Furthermore, in implementing the values of Pancasila in-laws and regulations as well as as a way of life for the nation and the State in daily life, it is necessary to regulate such as the Decree of the People's Consultative Assembly II of 1978 concerning Eka Prasetya Pancakarsa, so that the younger generation can avoid from exposure to radicalisation or efforts to eliminate Pancasila as the basis of the State and the grounds norm.
- (3) The argument is analogous to the ⁵ **Constitutional Court as the guardian of the constitution**, then who is **the** guardian of Pancasila? His position as the sun, the source of all sources of Law in Indonesia, but in practice, the formation of legislation, does not rule out the possibility of not making Pancasila as the thing that animates the legislation.

Thus, it is inappropriate to categorise the Indonesian legal system as "Mixed Legal Systems" instead of leading to "Prismatic Mixed Legal Systems". Such a concept is the same as the concept of the legal system adopted by Scotland, that "Mixed" here must be understood as a continuous and continuous process to select the "best" materials from various sources of the legal system based on the principle of balance. The materials here are obtained from the four legal systems currently recognised by legal experts in Indonesia and other legal systems that must be discovered and sorted through continuous research on Legal Higher Education in Indonesia. This effort is expected to contribute to the reform of the national legal system to solve various legal problems that continue to grow in tandem with the development of society.

The development of the concept of "Prismatic Mixed Legal Systems" plays a role in providing direction for the development of national Law amidst the strengthening demands of legal globalisation, especially when there is a significant possibility of space when a legal system transplant occurs or when a country integrates with the global legal system. After all, no legal system is perfect, and each has its strengths and weaknesses. Since the beginning, the Law has never been able to satisfy human desires as a tool that perfectly judges between "right" and "wrong" actions. In the most extreme conditions, the Law can be like the expression "Summum ius summa injuria", a law that works to cause injustice.

10. Conclusion

The many legal systems contribute to practical challenges brought on by the inevitability of international interactions, which in turn affect the legal system that prevails in each nation. The existence of Mixed Legal Systems in the dynamics of the Legal System in the world; a Mixed Legal System is a legal system in which two or more legal systems exist and are adopted by countries in the world; the existence of Mixed Legal Systems in the dynamics of the Legal System in the world. There are two possible levels of complexity for this blend of legal systems: simple mixed and complex. Mixed can only occur between two different legal systems, namely Civil Law Systems and Common Law Systems. On the other hand, Complex Mixed can occur between two legal systems, Religious Legal Systems and Customary Legal Systems. The number of countries' legal systems in the world that belong to the category of "mixed systems with Civil Law Systems" is 65 (19.12 per cent of the world's legal systems). The number of legal systems that belong to the category of "mixed systems with Common Law Systems" is 53 (15.59 per cent), and the number of legal systems that belong to the category of "mixed system with Customary Legal Systems" is 54 (15.88 per cent), and the number of legal systems that belong to the category of "mixed (9.70 per cent).

Vernon Valentine Palmer explicitly incorporates the Indonesian legal system into "Mixed Legal Systems," mainly a mixture of Islamic Legal Systems, Civil Law Systems, and Customary Legal Systems. This is the implication of adopting Mixed Legal Systems in the legal system in Indonesia as an effort to initiate Prismatic Mixed Legal Systems. Adopting Mixed Legal Systems was an effort to initiate Prismatic Mixed Legal Systems. This mixing does not result in a simple or standard mixture (Simple Mixed) but produces a complicated and one-of-a-kind concoction (Complex Mixed). Despite this, Indonesia's judicial structure is based on the common law tradition; this is demonstrated by the fact that both the Constitutional Court and the Supreme Court exist in the country. In order to simplify the intricate workings of Indonesia's judicial system, Moh Mahfud MD came up with the idea of a prismatic rule of law. According to this theory, the fourth component of these systems is a counterbalance, and the application of this component is never complete but rather always part of the filtration process (filter). Therefore, it is inaccurate to classify the legal system of Indonesia as merely a "Mixed Legal System," but rather, and it leads to "Prismatic Mixed Legal Systems." That "Mixed" here must be understood as a continuous and continuous process to select the "best" materials from various sources of the legal system based on the principle of the balance must be understood to be the same as the concept of the legal system adopted by Scotland. Such a concept is identical to the concept of the legal system adopted by Scotland.

It is anticipated that those individuals who specialise in Constitutional Law in Indonesia would carry on with their research and development on the Indonesian legal system, primarily through comparative law studies. This effort is essential in the framework for the future development of the National Legal System and is principally dedicated to the investigation and creation of "Prismatic Mixed Legal Systems."

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