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Cogent Social Sciences • Open Access • Volume 8, Issue 1 • 2022 • Article number 2104710

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

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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

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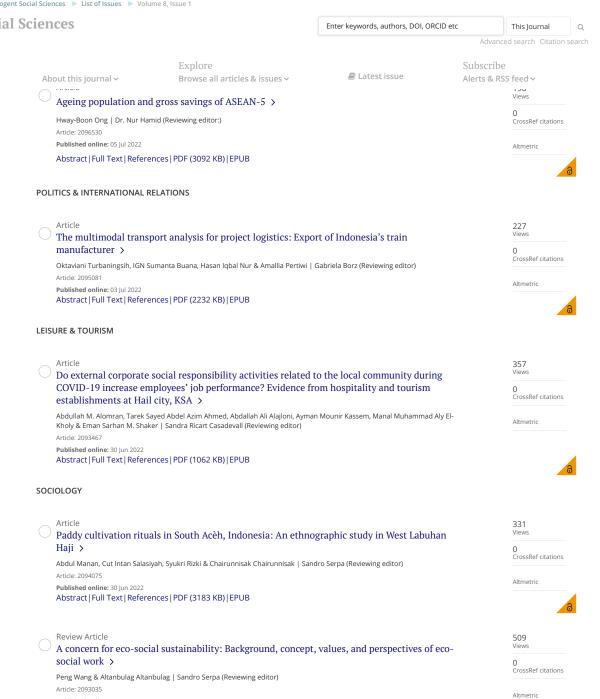
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Received: 29 April 2022 Accepted: 19 July 2022

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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 Wardhani¹*, 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."



Lita Tyesta Addy Listya Wardhani

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Lita Tyesta Addy Listya Wardhani is a lecturer and senior researcher from the Faculty of Law, Diponegoro University, Indonesia. She is highly skilled in Constitutional Law, Comparative Law, Law and Gender, and Regional Autonomy Law. She is also active as a consultant for drafting local regulations.

Muhammad Dzikirullah H. Noho is a lecturer and junior researcher from Hasyim Asy'ari University Tebuireng, Indonesia. He is a law doctoral candidate from Diponegoro University. He is an expert in civil law, comparative law, and Islamic law. Aga Natalis is a Doctoral Candidate from Diponegoro University, Indonesia. He is actively researching Environmental Law, Comparative Law, Law and Gender, and State Administrative Law.

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.





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Received: 12 June 2022 Accepted: 18 July 2022

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Reviewing editor: Heng Choon (Oliver) Chan, Department of Social and Behavioral Sciences, City University of Hong Kong, Hong Kong

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LAW, CRIMINOLOGY & CRIMINAL JUSTICE | RESEARCH ARTICLE Unpacking the evidence elasticity of digital traces

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Abstract: Digital traces are sought in most criminal investigations, due to their usefulness in shedding light on the case circumstances and evidential themes. They are often trusted to be value-neutral and credible. However, a recent study on digital forensic (DF) decision-making revealed that the human factor greatly influences the construction of digital evidence. The study found that DF practitioners were biased by contextual information and produced inconsistent results during DF casework. This article applies a qualitative lens to explore how the statistically determined variance materialises in DF reports. The article examines the role of interpretative flexibility when the DF practitioner constructs the digital evidence. It develops "evidence elasticity" as a concept for describing the mutability of digital traces as knowledge objects. The article explores the role of evidence elasticity for constructing narratives involving digital evidence and how this sometimes may result in misinformation with the propensity to mislead actors in the criminal justice chain, such as the investigators, prosecutors or judges.

Subjects: Digital Forensics; Criminal Justice - Criminology; Forensic Science - Law; Criminology and Criminal Justice

Keywords: digital traces; digital evidence; digital forensics; criminal investigation; interpretative flexibility; elasticity

1. Introduction

Digital information from various sources such as mobile phones and laptops is frequently seized in criminal investigations. According to the Digital Forensic Strategy issued by the UK National Police Chiefs' Council, over 90% of all recorded crimes have a digital element (NPCC, 2020). Digital traces are transformed into evidence through the DF process, which is an iterative multistage process for the identification, collection, examination, analysis and presentation of the evidence (Flaglien, 2018). The DF process is primarily conducted by personnel—the DF practitioners—with adequate expertise to ensure a forensically sound transformation (McKemmish, 2008).

Despite the available knowledge about the technical sources of errors in digital traces and the necessity of error mitigation (e.g., Casey, 2002; SWGDE, 2018), digital evidence is often trusted to be credible and value-neutral representations of the truth (e.g., Erlandsen, 2019; Kaufmann, 2017; Reedy, 2020). According to Brookman et al. (2020, p. 23), "the 'voice' of science and technology seems to carry greater weight than other forms of information (in the minds of criminal justice actors at least) in criminal justice narratives of this kind". Such presumptions

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Received: 10 May 2022 Accepted: 18 July 2022

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Reviewing editor: Heng Choon (Oliver) Chan, Department of Social and Behavioral Sciences, City University of Hong Kong, Hong Kong

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LAW, CRIMINOLOGY & CRIMINAL JUSTICE | RESEARCH ARTICLE Spousal violence in India: does risk of spousal violence higher among polygynous unions?

Margubur Rahaman¹, Dr. Avijit Roy²*, Dr. Nanigopal Kapasia² and Dr. Pradip Chouhan³

Abstract: This study aims to understand the risk of spousal violence in the context of polygyny in India. National Family Health Survey (2015–16) data has been used in this study. The study population consisted of women who answered the questions regarding spousal violence and the number of additional wives of their husbands. Chi-square significance test and multi-level logistic regression were used to establish the association between spousal violence and polygyny. Findings of the study suggested that women in polygyny marriages experienced higher spousal violence than women in monogamy unions. In particular, the likelihood of overall spousal violence was higher among polygyny marriages (39.9%; 95% CI = 38.5-41.4) than in monogamy marriages (32.6%; 95% CI = 32.3-33). Simultaneously, the likelihood of spousal violence was significantly high in polygyny marriages among Muslims compared to Hindus. Muslim women in polygyny unions (30.4%; 95% CI = 29.4-31.4) faced significantly higher spousal violence than monogamy unions (43.8%; 95% CI = 39.6-48). The study revealed regional variability in relationship between spousal violence and polygyny in India. In the south region, women in polygyny



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PUBLIC INTEREST STATEMENT

The socio-economic level (SES) of the spouse, the type of the marriage, and variations in the sociocultural space all play a key role in spousal violence. Because both polygyny and spousal violence are considered violations of Indian law, it would be interesting to understand how these parameters relate to the likelihood of spousal violence in India. Nevertheless, India has a noticeable incidence of domestic violence and polygyny. The results showed that spousal violence against women in polygyny unions is pronounced varied with SES in India. Despite the gender equality movement being active in India and worldwide, a substantial number of women have been living with their spouses without even the most fundamental human rights and dignity.





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