

## COMPARATIVE STUDY OF INDONESIAN AND MALAYSIAN ENVIRONMENTAL LAWS

Muhammad Yusuf Rachmat<sup>1)\*</sup>, Nur Handayati<sup>2)</sup>, Wahyu Prawesthi<sup>3)</sup>, Pawitra Citra<sup>4)</sup>

<sup>1,2,3,4</sup> Faculty of Law, The University of Dr. Soetomo, Indonesia

<sup>1)\*</sup> [tommytommy09@yahoo.com](mailto:tommytommy09@yahoo.com)

### *Abstract*

This research is a comparative study of two laws in the world, Indonesian environmental law and Malaysian environmental law, two Southeast Asian nations with diverse ecosystems and environmental challenges. Indonesia and Malaysia were once subject to long periods of colonial rule and occupation. It was during these periods that English laws and Dutch laws gradually introduced into the two respective countries with varied consequences. This study explores the historical context, legal frameworks, and challenges faced by both countries in their efforts to protect and conserve their natural environments. Through a systematic examination of these aspects, this research aims to provide insights into the strengths and weaknesses of their environmental legal systems and offers recommendations for enhancing environmental governance.

*Keywords: Environmental, Law, Legal Protection.*

### INTRODUCTION

Indonesia and Malaysia have similarities and differences in the legal systems. Both countries recognize Islamic Law and Customary Law. Customary Law. Generally Malaysian legal system is influenced by the tradition of English Common Law System while the Indonesian legal system more adopt the tradition of Dutch civil law system in addition to the system of Islamic law and customary law systems also affect the national law of each country. Comparative study of constitutional law system Malaysia and Indonesia is a constitutional law studies using normative legal research with comparative law approach to examine the advantages and disadvantages of the legal systems of both countries, especially in the state system between the two countries including the judicial system, in order to obtain a overview of the differences and similarities of national legal systems of both countries.

Based on the research results through research found that institutional format Malaysia and Indonesia have differences in terms of both form the state and the ruling party. Malaysia is a country that adheres to the type of federal state which includes federal and state government system with a democratic monarchy. While the Indonesian state, which includes the unitary form of the central government and autonomous regions with a republican system of government with

the principles of constitutional democracy. However, with regard to Western law, Malaysia adheres to the "Common Law System", while Indonesia is a country that is included in the "Civil Law System". The protection and preservation of the environment are of paramount importance in addressing global environmental challenges. Indonesia and Malaysia, two neighboring countries with rich biodiversity and critical ecosystems, have developed distinct legal frameworks to address environmental issues. Some countries around the equator have a tropical climate, one of which is countries in the Southeast Asia region, this has an impact on soil fertility. Indonesia is a country that has an abundance of natural resources, natural resources are one of the components supporting the sustainability of living things that need to be maintained and preserved.

One of the natural resource components is forest. Forests as a gift and mandate from God Almighty are natural resources owned by the state and are priceless. Therefore, forests must be managed, utilized, and preserved (the preamble of Law of the Republic of Indonesia No. 41 of 1999 concerning Forestry). This is certainly in line with Indonesia's constitutional mandate, "The land, water and natural resources are controlled by the state and used for the prosperity of the people" (Article 33 Paragraph (3) of the Undang-Undang Dasar 1945 Constitution). This means that forests are natural resources owned by the state and must be managed, utilized, and preserved for the prosperity of the people. of the people. This comparative study aims to assess the effectiveness of their environmental laws and identify areas for improvement. (Reviansyah, 2021)

## **LITERATURE REVIEW**

Environmental laws are vital instruments for safeguarding natural resources, preserving ecosystems, and addressing environmental challenges. This literature review examines existing scholarship on the comparative study of Indonesian and Malaysian environmental laws, shedding light on the historical development, legal frameworks, enforcement mechanisms, challenges, and opportunities within these two Southeast Asian nations.

### **a. Historical Context**

Scholars have explored the historical evolution of environmental laws in Indonesia and Malaysia. They note that these laws have been influenced by colonial legacies, post-independence development agendas, and environmental crises. For instance, Indonesia's

experience with illegal logging and deforestation has led to the creation of specific legislation, such as the Timber Legality Verification System in response to international pressure and environmental concerns. Malaysia's environmental laws have similarly evolved to address issues like industrialization and habitat degradation (Nur Hani & Aniza, 2018).

#### **b. Challenges Faced**

Study has identified and examined the key challenges faced by Indonesia and Malaysia in environmental governance. Common issues include deforestation, habitat destruction, pollution, and climate change impacts. Studies highlight the complex interplay of socioeconomic factors, policy gaps, and political dynamics that contribute to these challenges (Koh et al., 2019). Climate change, in particular, has emerged as a pressing concern, requiring adaptation and mitigation strategies (Afifi & Dinas, 2019).

#### **c. Future Directions and Recommendations**

Scholarship in this area also provides valuable recommendations for improving environmental governance in Indonesia and Malaysia. Suggestions include enhancing coordination among government agencies, fostering international collaboration, strengthening legal enforcement, and promoting sustainable resource management practices (Koh et al., 2019). These recommendations aim to address the challenges identified in both countries and contribute to more effective environmental protection. In summary, the comparative study of Indonesian and Malaysian environmental laws is a rich and evolving field of research. Scholars have explored various aspects of these legal frameworks, highlighting both their strengths and weaknesses. This body of literature underscores the importance of continuous collaboration, policy reform, and adaptive governance to address pressing environmental challenges in Southeast Asia.

### **RESEARCH METHODS**

The method used in this research is a qualitative method. This study approach combining legal analysis, policy review, and case studies. Data were collected through an extensive review of environmental legislation, and government reports.

## RESULTS AND DISCUSSION

### Results

The historical development of environmental laws in Indonesia is marked by a response to challenges such as illegal logging and deforestation. Significant milestones include the enactment of the Environmental Impact Assessment in 1976 and the Environmental Management Act in 2009. Meanwhile Malaysia's environmental legal framework has evolved to address issues related to industrialization and habitat degradation. The Environmental Quality Act was established in 1974, followed by the National Forestry Act in 1984. Indonesia's environmental laws are comprehensive, covering a wide range of environmental aspects, including land use planning, pollution control, and wildlife conservation. The country also has a dedicated Ministry of Environment and Forestry. Malaysia's legal framework for the environment is more sectoral in nature, with different ministries overseeing various environmental aspects. The Department of Environment plays a crucial role in enforcing environmental regulations. Legal Systems in the Court Structure in Indonesia

The Indonesian people use a legal system from the Dutch heritage, this happened because of the Dutch colonization of Indonesia for more than three hundred years. The civil law that arrived in Indonesia today still uses the Dutch Civil Code which in the country of origin is no longer used or has been replaced. The influence of the Netherlands, which has a common law legal system, is the reason why Indonesia divides between Public Law and Private Law but still under one roof of Justice. (Sigit, 2020)

Court Structure in Indonesia There are four (4) courts in Indonesia based on Article 24 paragraph (2) of the 1945 Constitution, including the following:

1. General Court Environment: covers civil law and criminal law disputes;
2. Religious Courts: which oversees the law for Muslim individuals in the field of waqf and family law as well as other issues in the field of muamalah.
3. Administrative Court: covers disputes between individuals who are citizens and State administrative officials.
4. Military Court: only covers crimes or offenses committed by the military.

The aforementioned courts are structurally the courts of first instance and legal efforts can be submitted to the courts of the next level and ultimately all of them lead to the Supreme Court

(MA). Under the Supreme Court there are High Courts for General Courts and Religious Courts in each provincial capital, each with the following explanation:

1. General courts are also called District Courts.

The legislation governing general courts, also known as District Courts, is Law No. 13 of 1965 on Courts within the General Judicial Environment and the Supreme Court. The District Court, which is the court of first instance, is authorized to decide criminal and civil cases in the jurisdiction at the district or city level.

2. Religious Court (PA)

The law governing the Religious Court is Law No. 7 of 1989 concerning Religious Courts, the duty and authority to examine, decide and resolve the actions of judges at the first level among people who are Muslims in the fields of marriage, inheritance, wills, grants, waqf and shadaqoh, where all fields are based on Islamic law. The Religious Court is a special court for citizens who are Muslims on matters related to muamalah relations.

3. State Administrative Court (TUN)

The State Administrative Court is governed by Law No. 5 of 1986 as amended by Law No. 9 of 2004 concerning the State Administrative Court. The State Administrative Court (TUN) is authorized to resolve disputes between citizens and State Administration Officials. The object of the case is the decision of the State Administrative Official related to administrative issues issued by the state administrative official. And in the State Administrative Court, there are 2 (two) types of remedies, including Administrative Efforts, which consist of administrative appeals and objections, and lawsuits.

4. Military Court (PM)

Military Courts are regulated by Law No. 31 of 1997 concerning Military Courts. This court is authorized to try crimes or offenses committed by members of the military.

5. Specialized Courts found in Indonesia

Specialized Courts in Indonesia each have their own rights, as further explained below, among others: Sigit Somadiyono, Comparison of Legal Systems Between Indonesia and Malaysia :

- a. The Commercial Court was created and established by Presidential Decree No. 97 of 1999. The authority of the Commercial Court, among others, is to hear cases of

Bankruptcy, Intellectual Property Rights, as well as other commercial disputes prescribed by Law.

- b. The Human Rights Court was created and established by Law No. 26 of 2000. The Court The Human Rights Court is to try gross violations of human rights, such as the cases of gross human rights violations in East Timor and Tanjung Priok in 1984. Man The central part of human rights violations issued Presidential Decree No. 53 of 2001 concerning the establishment of an Ad Hoc Human Rights Court at the Central Jakarta District Court, which is now amended by Presidential Decree No. 96 of 2001.
- c. Juvenile Justice, established and established by Law No. 3 of 1997, where the implementation of the CRC, which was passed, that every child is entitled to protection, both against exploitation, abuse and ill treatment in the criminal justice process. And the Jurisdiction of Juvenile Justice in criminal cases are those who are 8 years old but have not reached 18 years old.
- d. The Tax Court, established and established by Law No. 14 of 2002, and has jurisdiction to resolve disputes in the field of taxation. A tax dispute itself is a dispute arising in the field of taxation between a taxpayer or tax insider and the competent authority as a result of the issuance of a decision that can be appealed or appealed to the Tax Court based on tax law, including a lawsuit over the implementation of collection under the tax bill collection law.
- e. The Fisheries Court, established and constituted by Law 31 of 2004. This court has the authority to examine, try, and decide criminal acts in the field of fisheries, and operates within the general courts and has jurisdiction in accordance with the local laws of the district court concerned.
- f. The Anti-Corruption Court, established and established under the mandate of Article 53 of Law No. 30 of 2002 on the Corruption Eradication Commission. This court has jurisdiction to handle corruption cases and is domiciled in Jakarta.

### **Legal System in Court Structure in Malaysia**

Malaysia is a former British colony. As a former British colony, Malaysian law is influenced by the English common law tradition (Common Law System) and Malaysia is one of 53 (fifty-three) member states of the British Commonwealth. Malaysia did not abandon or overhaul their entire basic legal order that had been in effect long before British law became the

legal order of the country, this was because Malaysia wanted to keep the law in accordance with the values that existed and lived in their society. So that in creating legal awareness it will be easier to grow and create than to completely overhaul the entire old legal culture with a new culture. The tradition of the English common law system stands at the center of the Islamic legal system (implemented by the courts or Sharia Courts) and the customary laws of the various indigenous groups. The Judicial System in the country of Malaysia is divided and adapted to the laws made without eliminating the arbitration system in accordance with the values that exist in their society. The sources of Malaysian law consist of three, namely: written/national law, Islamic law and customary law.

Customary law consists of English law and the rule of equity has developed in Malaysian courts, where there is a high possibility of conflict with written law. Adjustment of the applicability of the law is considered an appropriate solution to resolve conflicts of law.

There are two high courts, one in Peninsular Malaysia, known as the High Court in Malaya, and the other in East Malaysia, known as the High Court in Sabah and Sarawak. With the exception of all matters within the jurisdiction of the Syariah courts, these courts have unlimited jurisdiction for the region. They can also receive appeals from the Sessions Court and Judgments of the Court. The High Court position in Malaysia examines cases as well as the first level of appeal to the Sessions Court and the Judgments of the Court of First Instance. The structure of the Judiciary in Malaysia is as follows

#### 1. Court of Appeal

Some of Malaysia's Courts of Appeal are the Supreme Court and the Federal Court (Supreme Court). The Court of Appeal consists of the Chief Justice and 10 (ten) judges. The power of the Court of Appeal is to hear appeals of the high courts and has other jurisdiction as prescribed for federal law.

In Malaysia, the Court of Appeal is the court that reviews the decisions of the high courts. In Indonesia, the Court of Appeal refers to the High Court. Whereas in Malaysia it is a court of first instance with the same level of appeal for the Court of Session and the Magistrate's Court.

#### 2. Federal Court

The Federal Court consists of the chief justice of the federal court, the president of the court of appeal, the chief justice of the high court, and seven other judges appointed by the king under the advice of the chief justice of the Federal Court. The Federal Court has

jurisdiction to determine the validity of a law on the basis that it is a matter outside the power of parliament and state legislatures to make laws. Later, the king can raise questions about the effect of legal provisions from the Federal Court.

The Federal Court also has jurisdiction to determine disputes between states and the federation or other states. When the question of the impact of a law on proceedings in another court, the Federal Court has jurisdiction to determine the question and remand the case to another court in accordance with the provisions of the Federal Court.

### 3. The Sessions Court

The Sessions Court has criminal jurisdiction to prosecute all crimes untouched by the death penalty. It also has jurisdiction in civil cases relating to vehicle accidents, landlord-tenant cases and other cases with a compensation amount of about 250,000 ringgit, and can also hear cases with higher demands on agreement with the relevant parties. However, civil disputes related to its request for something, e.g. contract annulment, court judgment, declaratory judgment, or execution of trust are outside the jurisdiction of the Sessions Court.

### 4. Court of First Instance.

The Court of First Instance hears criminal cases with sentences limited to 10 years imprisonment or a fine. It can decide on a 5-year prison sentence, a \$10,000 fine, 12 lashes of flogging, or a combination of all three. This court can also hear appeals by the Pengulu Court. The Magistrate's Court hears second class civil cases with a claim of 30,000 ringgit and criminal cases with a 12-month jail term or fine. This court can award up to 6 months' imprisonment, a fine of 1,000 ringgit, or a combination of these two penalties.

### 5. Pengulu Court

Pengulu Courts are found in West Malaysia and handle cases involving parties of Asian nationals who use and understand the Malay language. These courts also handle civil matters with a claim of 50 ringgit and misdemeanors with a maximum fine of 25 ringgit fine.

### 6. Juvenile courts (Children's courts)

Crimes committed by juveniles (between the ages of 10 to 18) are tried by the juvenile court, regardless of the gravity of the crime committed. It consists of two counselors (one of whom, if possible is female). The judge decides on a case and the advisors only give advice on punishment. A prison sentence is a last resort compared to sending to a designated special school.



## 7. Sharia court

Sharia courts are courts in the states that are somewhat separate from the federal courts, which do not have jurisdiction in Sharia courts. In other words, that federal courts do not have jurisdiction in sharia cases under the authority of sharia courts.

### **Discussion**

The comparison of legal frameworks reveals that Indonesia adopts a more comprehensive approach to environmental laws, whereas Malaysia follows a sectoral approach. This difference is reflected in the complexity of Indonesia's legal framework, which covers a wide spectrum of environmental issues in a single ministry, while Malaysia decentralizes authority across different ministries. Both Indonesia and Malaysia are signatories to various international environmental agreements. The study highlights the importance of international collaboration in addressing transboundary environmental challenges, such as regional air pollution and biodiversity conservation. When comparing several laws and regulations governing the environment, especially between Indonesia and Malaysia. Environmental management control is the role and responsibility of the state, in every regulation both countries have opposed and threatened all actions that are included in environmental destruction. Each country understands the importance of environmental balance and sustainability, in its regulations have regulated the provisions and prohibitions in the utilization of the environment as well as some criminal, civil, and administrative sanctions that will be accepted for violators.

### **CONCLUSION**

The study concludes by emphasizing the importance of robust and adaptive environmental laws in the face of global environmental challenges. It underscores the need for ongoing collaboration between Indonesia and Malaysia and encourages further research to monitor progress and refine environmental governance strategies in both countries.

The effectiveness of environmental laws depends on their enforcement. This section assesses the enforcement mechanisms in both countries, including the roles and responsibilities of relevant government agencies, penalties for non-compliance, and the use of technology for monitoring and enforcement. By looking at the Malaysian environmental legal system, in fact, Indonesia is no worse than in Malaysia, in fact Indonesia has many advantages, namely people who are competent in the field of law, and therefore, it is likely that the reason why the law in Indonesia is still obscene is because there are many people who do not obey the law.

legal system in Indonesia.

## ACKNOWLEDGEMENTS

The authors acknowledge the support and contributions of experts and organizations in both Indonesia and Malaysia who facilitated this comparative study. Furthermore, we appreciate the support and encouragement of our academic institutions, which provided the resources and infrastructure necessary for conducting this research.

## REFERENCES

- Agustina, S. (2015). *Implementasi Asas Lex Specialis Derogat Legi Generali Dalam Sistem Peradilan Pidana*. *Masalah-Masalah Hukum*, 44(4), 503–510.
- Afifi, T., & Dinas, P. C. (2019). *Challenges and opportunities for climate change adaptation in Southeast Asia: A review of the ASEAN region*. *Climate Risk Management*, 23, 72-89.
- Koh, J. M. S., Lee, J. S. H., & Ma, A. N. (2019). *The environmental governance challenge in Southeast Asia: Exploring the issue of climate change*. *Journal of Environmental Management*, 231, 863-873.
- Laws of Malaysia Act 313-National Forestry Act 1984
- Nur Hani, M. N., & Aniza, I. (2018). *An overview of environmental laws and policies in Malaysia*. *Procedia-Social and Behavioral Sciences*, 224, 477-484.
- Ryadi, A., Prasetyo, L. B., & Zainal, M. B. (2018). *Environmental governance in Indonesia: Centralized versus decentralized*. *Forest Policy and Economics*, 96, 88-96.
- Reviansyah, E., Galih R., Wahyu D. (2021). *Analisis Yuridis Tindak Pidana Illegal Logging Ditinjau Dari Perbandingan Hukum Indonesia, Filipina, dan Malaysia*. Universitas Singaperbangsa Karawang.
- Sigit, S. (2020). *Perbandingan Sistem Hukum Indonesia dan Malaysia*. Universitas Batanghari Jambi.
- Undang-Undang Dasar 1945
- Undang-Undang Republik Indonesia Nomor 18 Tahun 2013 tentang Pencegahan dan Pemberantasan Perusakan Hutan.
- Undang-Undang Republik Indonesia Nomor 41 Tahun 1999 tentang Kehutanan.
- Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup.