

## Ensuring Certainty through Legal Reasoning: What Can Indonesia Learn from the United Kingdom and the United States?

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#### ABSTRACT

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**Purpose of the study:** This study examines the principles and methodologies of legal reasoning by judges in the United Kingdom and the United States. Legal reasoning ensures legal certainty by endorsing consistency, predictability, transparency, and adherence to legal principles and precedents. Legal reasoning accommodates a structured and principled approach to judicial decision-making. The Indonesian legal system, which predominantly adheres to a civil law tradition, stands to gain valuable insights from such common law models. Learning from common law models of legal reasoning can be used to overcome the prevailing problems with Indonesian judgment which is deemed to be lacking legal certainty.

**Methodology:** This study is primarily normative legal research designed to analyze and contrast legal reasoning practices in the United Kingdom and the United States. Normative legal research engages evaluating and prescribing legal norms, principles, and standards. The sources of data and legal materials used for analysis include statutes, case law, and other legal registers.

**Results:** This paper found that elements of common law legal reasoning feasible in Indonesia are the requirement for judges to provide *ratio decidendi* and *obiter dicta* in the judgment. The lesson Indonesia can learn from legal reasoning exercised by judges in the UK and the US is that Indonesian judges should not leave the parties' argument in their decision. However, the judges should focus on their own reasons in the judgment. In addition, Indonesian judges should not be too formalistic as this can result in a strict law enforcement without broader policy considerations or context. This paper posits that Indonesia's path to legal certainty lies in the consistency of legal reasoning in the judgment. The experiences of the United Kingdom and the United States authority, when thoughtfully adapted, promise a

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brighter future for Indonesian judiciary in which legal certainty thrives and justice prevails.

**Applications of this study:** This analysis can provide insight into how the UK and the US that follow a common law system approach will provide takeaways or lessons that Indonesia can implement in order to ensure the principle of legal certainty.

**Novelty/ Originality of this study:** This research offers a novel point of view on the way the problem of lack of legal certainty in Indonesian judiciary can be controlled by enactment of elements in the common law system. The author did not find any studies using the United Kingdom and the United States approaches to legal reasoning as case studies as the reference for Indonesia to ensure legal certainty. Therefore, this research provides a novelty in the field of jurisprudence.

**Keywords:** Legal Certainty, Legal Reasoning, Common Law System, Civil Law System

### **ABSTRAK**

**Tujuan:** Tujuan penelitian ini adalah menganalisis asas dan metodologi penalaran hukum yang dilakukan oleh hakim di Inggris dan Amerika Serikat. Penalaran hukum merupakan unsur yang penting dalam kepastian hukum karena dengan penalaran putusan hakim dapat memberikan konsistensi dan prediktabilitas, transparansi dan kepatuhan terhadap asas hukum dan yurisprudensi. Penalaran hukum memberikan panduan structural dalam putusan hakim. Sistem hukum Indonesia yang mengikuti civil law system dapat mengambil manfaat dari common law system yang berlaku di Inggris dan Amerika Serikat. Dengan mempelajari system di dua negara tersebut, penalaran hukum dapat digunakan untuk mengatasi masalah kurnagnya kepastian hukum di Indonesia.

**Metodologi:** Penelitian ini adalah penelitian hukum normative yang didesain untuk menganalisis dan membandingkan praktek penalaran hukum di Inggris dan Amerika Serikat.

**Temuan:** Hasil penelitian ini menunjukkan bahwa elemen dari penalaran hukum di system common law yang dapat diterapkan di Indonesia adalah keharusan bagi hakim untuk mencantumkan ratio decidendi dan obitur dicta. Pelajaran yang dapat diambil oleh Indonesia dari penalaran hukum di Inggris dan Amerika Serikat adalah bahwa putusan hakim tidak perlu memuat argumen para pihak secara keseluruhan karena hakim

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*seharusnya fokus pada penalaran hukum, memberikan argumentasinya sendiri. Selain itu, dalam memutus perkara, hakim tidak bersikap terlalu formalistik karena hal itu akan mengesampingkan konteks perkara dan pertimbangan lain. Hal ini akan memberikan kepastian hukum. Penelitian ini menunjukkan bahwa apabila Indonesia ingin mewujudkan kepastian hukum salah satunya dapat dicapai melalui penalaran hukum. Pengalama Inggris dan Amerika Serikat bila diterapkan dapat memberikan masa depan yang lebih baik bagi penegakan hukum di Indonesia dimana kepastian dan keadilan hukum dijunjung tinggi.*

***Kata kunci:*** *Kepastian hukum, Penalaran hukum, system common law, system civil law*

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## INTRODUCTION

The significant discrepancy between common law jurisdictions such as the United States (the US) and the United Kingdom (the UK) from civil law jurisdictions as in Indonesia is the role of past cases. In Indonesia, judges are independent to disregard past cases, while in the US and the UK, the judge treats past cases as precedents which means they are bound to be followed (Rigoni, 2014, p. 133). An example of precedent in the UK is the case of *Donoghue v. Stevenson* which established the principle of negligence. In this case, the court held that manufacturers owed a duty of care to consumers, establishing the general principle of duty of care in negligence law. In the US, an example of landmark precedent is in *Miranda v. Arizona* case in which the US Supreme Court instituted precedent regarding the rights of individuals in police custody. Precedent in common law countries is a pivotal element for legal certainty as it guarantees that a person in corresponding situations is regarded indistinguishably. Consequently, judges cannot plant their personal views in the judgment.

The judge is accountable for resolving legal problems according to the evidence and legal arguments presented by the disputants. The product is a judgment or order. A judgment is an authoritative resolution of a legal controversy. The judge may seek support and justification of their decision by writing a legal opinion. If controversy concerning the explication or applicability of the law is found, the judge may seek vindication of his interpretation using statutory interpretation or by determining the *ratio decidendi* of prior legal decisions (Boonin,

1963, p. 436). It upholds the pivotal capacity of judges as legal interpreters and their ability to shape the law via their decisions.

In the common law system, legal reasoning is central to the development of the law. Judges, by dint of their reasoned decisions, contribute to the progression of legal principles and doctrines. Legal reasoning advocates legal certainty as it equips a rationale for the decision, facilitating parties to understand why a particular outcome is reached. As a result, legal reasoning can reduce uncertainty and ambiguity (Rigoni, 2014, p. 137). Furthermore, legal reasoning is a significant tool for guaranteeing fairness and equity in the legal system. It entails judges to reckon all relevant factors and make just and equitable decisions. A well-reasoned decision elevates public confidence in the judiciary. It demonstrates that decisions are established impartially, based on law, rather than arbitrary whim (Rigoni, 2014, p. 138). Briefly, legal reasoning is the ground of a just and effective legal system. It ensures that judgments depart from a thoughtful analysis of the law, evidence, and arguments, which in turn, upholds the rule of law and justice in society.

Indonesian courts have faced challenges related to a lack of predictability and legal certainty. As a civil law country, while having its strengths and drawbacks, Indonesia encounters challenges due to certain characteristics of the system. For instance, the absence of binding precedent brings about judges not being compelled to follow previous decisions. Each case is frequently decided on its own merits and the interpretation of statutes and regulations. Consequently, judges in one court may make decisions unlike judges in another court within one jurisdiction. The absence of binding precedent impedes legal practitioners from predicting how a court might decide a particular case, leading to uncertainty. Moreover, Indonesia relies heavily on statutory codes that embody a wide range of legal matters. Meanwhile, the codes can provide clarity and uniformity, they may also be rigid and lack the flexibility required to adapt to evolving societal needs and values. This will lead to inconsistent interpretations and applications of the law.

Legal reasoning is the process of extracting rules from past cases and following those rules in present cases. Legal reasoning is dominantly concerned with choices, decisions, actions, and evaluations, not simply with the rational justification of cognitive claims. It handles legal rules prescriptively as guides and directives in making judgments rather than simply as vehicles for drawing legal inferences (Boonin, 1963, p. 443).

Through a case study conducted in the UK and the US, this study dissects the common law approach to legal reasoning. Grasping the legal reasoning approaches in the UK and the US imparts valuable insights for Indonesia in ensuring legal certainty thanks to consistency and predictability in judicial decisions. Either the UK or the US legal systems have a strong tradition of upholding the rule of law - ensuring that laws are carried through consistently and fairly helps build trust in the legal system, promoting legal certainty. This research explores the doctrines of precedent, *stare decisis*, and judicial discretion, enlightening the way judges utilize these instruments to render decisions that provide legal certainty characterized by clarity, consistency, and adaptability within evolving legal landscapes. This paper responds to the following research questions: How can Indonesia integrate elements of common law legal reasoning to enhance legal certainty in its civil law-based legal system? What lesson can Indonesia learn from legal reasoning exercised by judges in the UK and the US in respect of upholding legal certainty?

In answering the research questions, this paper examines what principles in legal reasoning in common law countries can be adopted by civil law countries to improve legal certainty in the judgment. It will further discern how statutory law and judicial decision-making interact elaboratively in common-law countries. This essay bespeaks how the judiciary strikes a careful balance between upholding the legislative intent and guaranteeing justice and fairness by evaluating significant decisions and legal principles. The common law legal reasoning principles are relevant to and applicable to the Indonesian legal system, as this study accentuates. It contends that adopting selected aspects of common law reasoning could enhance legal clarity, promote judicial consistency, and facilitate legal adaptability which eventually will advocate legal certainty within the Indonesian setting.

The improving legal certainty as a discourse in Indonesian courts has not been widely studied. Among the few research is a study concerning how the common law system influences the Indonesian judicial system. The research discovered that Indonesian judges began to introduce several practices used in common law countries to improve legal certainty (Wantu, 2023, p 125). Another research was conducted by Butt who criticizes “the judicial reasoning of Indonesia’s Supreme Court. He claims that most of the Indonesian court’s decisions were critically flawed, with either very little or no reasoning, and inconsistencies with past decisions

(Butt, 2018, p 67). This research is contrary to the research by Wantu and Butt as this research highlights the effort to improve legal certainty through studies from the US and the UK.

Although available literature has given valuable contributions to the topic of improving legal certainty in court decisions, a notable research gap exists in the comparative analysis. Thus, addressing this gap is essential. This research accommodates such an issue left by previous researchers by learning from other countries' experiences. This paper is to advocate a measured integration of common law reasoning techniques into the existing civil law framework while focusing on ensuring legal certainty in judicial decision-making. This paper serves as a vital resource for legal scholars, practitioners, and policymakers in Indonesia seeking to fortify the country's legal reasoning framework.

## RESEARCH METHOD

The study "Ensuring Certainty through Legal Reasoning: What Can Indonesia Learn from the United Kingdom and the United States" is normative legal research. The object of the study comprised legal norms and used secondary materials. Data collection was carried out through a literature review via an extensive review of legal materials such as academic articles and textbooks to understand their respective legal reasoning traditions. Data analysis was conducted qualitatively, involving a systematic examination of case law, legal texts, and expert opinions to identify commonalities and differences in legal reasoning methodologies.

Normative legal research involves evaluating and prescribing legal norms, principles, and standards. The sources of data and legal materials used for analysis include statutes, case law, and other legal registers. The analysis was applied qualitatively. This research intends to qualitatively analyze the lessons Indonesia can take from the UK and the US legal reasoning to secure legal certainty carried out in three steps. The first is the systematization of legal materials. Next is the evaluation of legal materials. The final is analyzing the legal materials.

## RESULTS & DISCUSSION

### *A. How can Indonesia integrate elements of common law legal reasoning to enhance legal certainty in its civil law-based legal system?*

#### *a. Understanding Legal Reasoning in the Legal Certainty Context*

Legal reasoning in the judicial process should be preoccupied with the administration of justice. It explains the basis of the judgment in the court. Edward Levi elucidates that legal reasoning is a description of the process in the field of case law, interpretation of the statutes, and the constitution. Further, he asserts legal reasoning as reasoning by examples formed from varying case law (Levi, 1948, p. 105).

Legal certainty refers to principles used in courts in litigation as well as characteristics of an ideal legal order. In court litigation, legal principle encompasses principles used as interpretative tools in legal reasoning, while the character of the ideal legal order is the fundamental values of a legal system (Paunio, 2019, p. 1470). This denotes that legal certainty serves as an aid in legal reasoning, facilitating judges to make sense of laws and legal arguments. Essentially, legal certainty in legal action is about assuring that legal rules and principles are clear, predictable, and consistently applied in the judgment. This part does not examine legal certainty as an ideal legal order. Nevertheless, the focus lies on legal certainty as a principle used as an interpretation tool in legal reasoning.

Legal certainty is a fundamental principle that should prevail in law enforcement. Legal certainty demands a balance between stability and flexibility. A distinction can be made between formal and substantive legal certainty (Paunio, 2019, p. 1469). Formal legal certainty implies that laws and litigation should be predictable, meaning that laws should satisfy requirements of clarity, stability, and intelligibility so that those with legal disputes can predict the legal consequences of their actions as well as the outcome of legal proceedings. The statement laws and litigation should be predictable underscores the significance of consistency, stability, and foreseeability within the legal system. Predictability in laws and litigation is rudimentary to ensure fairness and justice. Predictability magnifies legal certainty, which is essential for creating a stable and reliable legal environment. Substantive legal certainty is associated with the rational acceptability of legal decision-making. In this sense, it is insufficient if laws and adjudication are predictable: they should also be accepted by the legal community (Paunio, 2019, p. 1469). Ideally, both formal and substantive legal certainty should be written in judge decisions.

Rodriguez-Blanco contends that legal philosophy has been dominated by an impoverished conception of practical reasoning and intentional action. Rodriguez-Blanco adopted Anscombe's work such as the method for unearthing the rational underpinning of

intentional actions by requesting actors to explain why they do what they do. For Rodriguez-Blanco, following the law and accepting its authority intentionally and deliberately is a form of intentional action (Rodriguez-Blanco in Herstein, 2016, 4-5). Judge decisions should be justified in terms of the law and it would be harmful if the law itself is ambiguous. The laws are more central that every decision should be justified by explicit discussion of the relevant rules. The rules are not a mere framework for decision-making; they are an essential part of the process; the concern with certainty and the urge to make dichotomous judgments (Ellsworth, 2005, p. 699).

*b. Comparative Analysis: The Common Law System of the United Kingdom and the United States*

Judicial precedents consist of two types: persuasive and binding precedent. The precedent is binding on an inferior court since it should as a matter of law follow that precedent of the superior court. Meanwhile, precedent is said to have only persuasive authority if a court can only either follow or reject it. The binding force of precedent applies in Common law countries while the persuasive force of precedent applies in Civil Law countries including Indonesia. In other words, the Indonesian court is independent to depart from the decisions of another court because that decision is unbinding on it.

Over the years judges in the UK and the US have been deciding cases. Their decisions have created a body of legal principles known as case law. Case law is the consequence of judicial reasoning in deciding cases in particular fact situations. The law declared by the judge in the reasons for the judgment will directly affect the parties of the case. The said law will also change, indirectly, plaintiffs involving similar legal principles before other courts in those jurisdictions because of the doctrine of precedent.

Precedent implies that judges are bound to cohere with interpretations of the law made by judges in higher courts, either in cases with similar facts or involving similar legal principles. Some rules make up the doctrine of precedent including: a judge should stick to the law pronounced by judges in higher courts in the same jurisdiction within similar fact cases and a court should give reasons for its decision in a case. The reason has to include an elaboration on why the court has opted to follow or not follow a previous decision like its antecedents. When an earlier decision is violated, it is believed to be distinguished from the earlier case. Commonly, courts are not confined to following their earlier decisions although they often do (Lewis, 2021, p. 874).



The common law court should follow previous decisions according to the principle of *stare decisis*. This doctrine implying “to stand by decisions and not to disturb settled matter” has long been accepted in the common law system (Catlett, 1946, p. 160). Mr. Justice Brandeis said:

*Stare decisis* is usually the wise policy because in most matters it is more important that the applicable rule of law be settled than that it be settled right. This is commonly true, even when the error is a matter of serious concern, provided correction can be had by legislation (Supreme Court of the United States, 1932, p. 162).

There are two elements in common law court decisions, namely: *ratio decidendi* and *obiter dictum*. *Ratio decidendi* of a case is “any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him” (Williams, 2006, p. 993). When following precedent, the part of the previous decisions that should be abided by are not all of them but only the *ratio decidendi* or reason for the decision (Williams, 2006, p. 92). The second element of the common law decision is *obiter dictum*. *Obiter dictum* is the statement of the law that the judge states, besides the *ratio decidendi*. Another definition of *obiter dictum* is the pronouncement of law that falls outside the *ratio decidendi*, and is non-binding (Adaramola, 2008, p. 229). Judges in the UK and the US propose a distinction between *ratio decidendi* and *dictum*. It is *ratio decidendi* that plays a significant role in the case law because it is a legal reasoning that directs the judge to reach a decision. If the *ratio decidendi* does not sustain the decision, therefore, *dictum* may be declared to be an *obiter dictum*. It is the ground to distinguish the decision (Kora, et al, 2020, p. 7137).

Case law has been characterized as reasoning by rules, from which judicial precedent emerges. According to Farrar, English case law is the product of practical reasoning emerging from decision-making and combining the attributes of reasoning with those of reasoning by rules (Farrar & Dugdale, 1990, p. 86). The operation of the rules of precedent appears to count in a similar operation of deductive logic to that applied in statute law: the judge merely applies the legal principles established in the precedent to the facts in hand to determine the outcome of the case.

Under the basic principles of the United Kingdom’s constitution, the UK is a rule-of-law country. This indicates that the judiciary is articulated to deliver their judgments in an

entirely fair and reasonable manner as well as applying the rules of law in the decision-making process. There are different terms used for judge-made law, such as precedent and case laws. In English law, precedent interprets that the law applied in the preceding case with similar facts and the same rules should be applied to the new ones. This is based on the principle of justice and equality and gives certainty to the law. Conversely, the disadvantages are it makes the law rigid and dilatory in evolution and development (Zvyagina, 2018, p. 34).

The English legal system is established upon the presumption that judges are talented to improve the law and decisions from existing cases heard at the courts. This suggests that judges in the English legal system are supplied with significant authority to interpret and apply the law as well as shape their judgment (Zvyagina, 2018, p. 36). In the UK, judges can contribute to the development of the law. This can be carried out by clarifying legal principles, adapting them to changing circumstances, and filling gaps in the law.

Legal Reasoning in the United States is primarily characterized by the principles and practices of the common law tradition. Central to US legal reasoning is the doctrine of *stare decisis*. This principle holds that courts are bound by and should follow prior decisions (precedent) unless compelling reasons are found to depart from them. Courts at all levels, from local to federal, rely on precedent to provide consistency and predictability in the judgment (Paulsen, 2000, p. 1545).

Legal reasoning in the US involves analyzing and interpreting case law, which comprises judicial decisions in previous cases. Judges consider these decisions to apply established legal principles to the facts of the case prior to them when reasoning through a case (McAllin, 2010, p 12). Legal reasoning in the US allows the evolution of the common law through judicial decisions. Judges are authorized to modify and develop legal principles and doctrines based on changing societal norms and needs. This requires judges to mindfully weigh legal precedent, statutory language, constitutional principles, and the arguments of the parties to arrive at a just reasoned decision (Kora, et al, 2020, p. 7137).

The binding force of precedent and *stare decisis* does not imply that a precedent is unchangeable. If the precedent is deemed wrong, the court should weigh the considerations on both ends. The court can overrule the earlier cases and announce a new rule in its judgment. Changing precedents in English law can be exhibited through disagreeing, overruling, and distinguishing. In some exceptional cases, the law may authorize some courts to act upon the otherwise excluded reason for disagreeing with the precedent's substantive merit. Such

authorization is referred to as the power to overrule. Overruling occurs when a higher court overturns a previous decision, explicitly stating that it is no longer an adequate law. The higher court should provide reasons for its decisions. The overruled precedent loses its *erga omnes* force. (Lewis, 2021, p. 893).

Differentiating the facts of the first case from those of the second example is what is suggested by distinguishing. Due to a difference in the facts or legal concerns, the court pans out that precedent is irrelevant to the current case. Inferior courts may differ the facts of a case from a precedent, making it inapplicable. This does not alter the precedent but only avoids its application in the current case. The House of Lords (the UK Supreme Court) issued a Practice Statement in 1966, allowing the House of Lords to overrule its precedents when “it appears right to do so” (Lewis, 2021, p. 893). This is a rare and cautious way of changing precedent.

In the US, changing a precedent can be more daring. American law acknowledges several ways to amend precedent, namely overruling, distinguishing, abrogation by legislation, amendment to the constitution, and gradual erosion (McAllin, 2010, p 35). Overruling and distinguishing under American law is similar to that of English law. Meanwhile, abrogation by legislation is defined as formally annulling or repealing a precedent through an act of legislation constitutional authority, or custom (Paulsen, 2000, p. 1538).

The common law tradition that is applicable in the UK and the US augments the idea that judges can "improve" the law and render judgments based on prior cases. Judicial rulings (precedents) are a crucial component of the legal framework of common law systems as in England. Decisions made in earlier instances may influence legal principles and serve as a foundation for future decisions. In this sentence, the idea of *stare decisis*, which literally means "to stand by things decided," is implied. Unless there are strong grounds to deviate from them, judges are expected to observe and respect the precedents established by preceding decisions. The legal system is consistent and predictable thanks to this fidelity to precedent.

The UK and the US recognize that judges entail some latitude in their decision-making. They should follow the law and they also have a certain latitude in how they interpret it and apply it to particular situations. Nonetheless, the common law system leaves judges with narrow discretion. The previous precedent may be distinguished if only the subsequent judge for similar cases asserts that there be some new factor that should be taken into consideration. Otherwise, the court should comply with the case law. (Kora, et al, 2020, p. 7136)

In conclusion, Indonesia can integrate elements of common law legal reasoning to enhance legal certainty in its civil law-based legal system. This can be applied by requiring judges to write a clear *ratio decidendi* and *obiter dicta* in every court decision. That being said, judges are required to provide strong arguments for their decisions. The *ratio decidendi* should correspond with the following requirements: should be directly related to the issue and come from disputes of law (not disputes of fact). The reason should not be based on the facts of the case; the law that the case applies; and the orders of the case. Instead, it is the necessary steps that the judge needed to resolve the case. The *ratio decidendi* of a case is any rule of law expressly or impliedly treated by the judge as an imperative step in reaching their deduction, having regard to the line of legal reasoning adopted (The Law Project, 2021, p. 5).

While *obiter dicta* are non-binding, Indonesian judges need to mention it in their judgments. The Indonesian judge should write comments or observations, in passing on a matter arising in a case before him that does not require a decision. *Dicta* are still studied and valued for their usefulness. It serves as the ground for the judge's opinion.

***B. What lesson can Indonesia learn from legal reasoning exercised by judges in the UK and the US with respect to upholding legal certainty?***

*a. Applicability to the Indonesian Legal System*

Since Indonesia was once a Dutch colony, hence Indonesia is a civil law country. In a civil law system, legal principles are primarily derived from statutes and regulations rather than judicial decisions and precedents. The judicial system of Indonesia embraces a hierarchical structure with the Supreme Court as its highest judicial authority. The system includes general courts, military courts, administrative courts, and religious courts to address different types of inquiries. The doctrine of *stare decisis* does not appertain to this system. Akin to the UK and the US, Indonesian judges are given discretion to interpret laws. However, they are not bound by the previous decision made by the higher court due to the persuasive force of precedent that applies in Indonesia. Consequently, it is optional for the judge whether to apply the case law or make their legal reasoning.

Case law in the Indonesian legal system is called jurisprudence which is defined as the decisions of the Supreme Court that accommodate legal breakthroughs that are continuously shadowed by courts below the Supreme Court hierarchy (Simanjuntak, 2019, p. 84). Even though jurisprudence (case law) has an influential function, it has an obscure legal position in

the Indonesian legal system, both at the theoretical and practical levels (Simanjuntak, 2019, p. 89). Theoretically, case law is not widely studied in Indonesian legal education. The Faculty of Law emphasizes the teaching of the understanding of legal knowledge, norms, and principles. In terms of legal practice, case law in non-binding as the binding force of precedent is not acknowledged. The legal basis for case law to be significant is Article 5 (1) Law No 48 of 2009 on Judiciary stipulating that Judge and Constitutional Court Judge shall explore, follow, and recognize legal values and sense of justice in the society. This article suggests that the judge's decision shall represent the sense of justice in society.

Indonesian court is heavily criticized for either very little or no reasoning and inconsistencies with past decisions. They are also lambasted for poor decision-making and integrity in criminal, civil, and administrative law cases (Butt, 2019, p. 89). The bulk of most Supreme Court decisions comprises the parties' arguments, which the court appears to simply copy into the judgment. The court's legal reasoning is rather relatively short (Butt, 2019, p. 74). In his research, Butt examined 50 decisions concerning cases on material review and found that in some decisions the court gave some legal reasoning, yet they were not easily understood. In other instances, Butt found that the Courts did not insert any reasons for their decisions, declaring simply that the application was "not proven or had no basis."

It has long been known that the Supreme Court rarely provides clear and thorough legal reasons in its rulings. It is believed that several factors contribute to the issue. Judges, for instance, do not spend sufficient time considering their cases and formulating their decisions because of the Supreme Court's overwhelming caseload and administrative burdens. The court has a tremendous caseload with between 10,000 and 15,000 new cases filed with it yearly and only about 40 judges available to consider them at any given time. (Supreme Court, 2017, p. 24). Over the past decade or so, the Court has significantly reduced its backlog and now often resolves the majority of cases within a year. This accomplishment, however, should have been the result of judges taking less time to decide each case, which cannot have improved the quality of their decisions (Butt, 2019, p. 91).

Another explanation can be found in the remnants of the civil law tradition of the Dutch left Indonesia with. In the past, certain courts in nations with civil law favored writing extremely brief opinions that were intended to appear to reach inescapable conclusions without taking into account other arguments (Bell, 1997, p. 1243). However, in the Indonesia of today, this

explanation should be given very little, if any, weight. Today, many countries of civil law use far more discursive judgment styles and the Indonesian Constitutional Court has shown that the country's longstanding legal system does not preclude judgments from including in-depth reasoning (Butt, 2019, p. 91). Finally, the Court's inexperience and lack of technical or legal expertise make them incapable of writing sufficient legal reasoning.

Even though the binding force of precedent does not pertain to Indonesia, it has long been accepted that, for the sake of legal certainty and predictability, courts should, whenever possible, follow prior decisions (Lotulung, 1997). Nevertheless, it has historically been challenging for Indonesian judges to uphold earlier judgments for two fundamental reasons. First, not even judges had access to the majority of previous judgments. For several decades following independence, a limited percentage of Supreme Court rulings were published each year, although they were espoused an as-needed—and occasionally seemingly random—basis (Pompe, 2005).

Second, even if a pertinent prior decision is present, its applicability will be in doubt if it lacks adequate legal support for a later court to follow. It will be particularly challenging to follow a ruling if it doesn't specify the pertinent legal framework or how the court implemented it. Almost every Supreme Court case described in this article possesses these flaws. Bedner describes the flaws in Indonesian judges as follows: The uniformity of the law will decrease if judges are unable to read and understand precedents. Indonesian judges are commonly regarded as being too formalistic due to their entire reliance on the law. It also suggests that the Supreme Court has substantially diminished its influence over Indonesia's legal development. The effects on the nature and practice of judicial reasoning are far more detrimental. Examining the case's facts and typically applying broad, general legislative principles to them constitutes "doing law" for Indonesian judges. Judges are compelled to reinvent the wheel in every case and come up with a broad variety of decisions in otherwise equivalent situations (Bedner, 2013, p. 256).

#### *b. Potential Benefits of Common Law Reasoning*

In common law jurisdictions, judges utilize a planned and logical process known as legal reasoning to explicate the law, reach judgments, and establish precedents. In making legal reasoning, the judge starts with identifying the key facts of the case. Understanding the conditions and occurrences that gave rise to the legal issue is obligatory for this. Then, the judge establishes the pertinent legal problem or query. The fundamental legal ideas at issue should be encapsulated in this situation. The judge probes pertinent laws, rules, and constitutional clauses.

To do this, it is to analyze the language and intent of these law provisions to ascertain how they apply to the situation. The judge considers earlier rulings (precedents) to discover cases with related legal difficulties. The court evaluates these precedents' reasoning and applicability to the current situation. The judge then decides whether the current case's facts and legal difficulties conform to or deviate from precedents. The judge should follow a binding precedent if one exists. In the absence of a clear precedent, the judge may seek guidance in similar cases. By outlining his justification for the ruling, the judge applies legal logic. This entails developing a logical and convincing case based on statutory interpretation, prior cases, legal theories, and policy concerns (Lewis, 2021, p. 875).

Common law legal reasoning as practiced in jurisdictions as in the UK and the US offers several potential benefits. Firstly, the common law system relies on precedent or case law which provides a clear and consistent framework for legal decision-making. Judges are bound by previous decisions, thus promoting legal certainty and predictability. The authority of judges gives the legal system the flexibility to evolve and adapt to ever-changing societal norms and needs. Secondly, common law reasoning fosters the development of legal principles via the accumulation of precedents. Over time, this will lead to a more refined and sophisticated body of legal principles. Thirdly, common law decisions are typically accompanied by detailed written opinions that unfold the reasoning behind the judgment. This transparency ensures that the public and legal professionals can understand the basis for the decision. Fourthly, the principle of *stare decisis* encourages consistency in the law. It ascertains that cases alike are decided similarly, hence promoting legal certainty.

Adapting to common law legal reasoning in Indonesia would be a significant legal and structural change. Changing from a persuasive force of precedent into a somewhat binding force of precedent would require significant legal and institutional reforms. Judges and legal professionals would need to undergo training to become proficient in legal reasoning using precedent. Indonesian society has a unique cultural and legal identity. This legal pluralism adapts the principle of legal reasoning to become more challenging.

According to rule-based theories, judicial reasoning is the process of drawing rules from precedent and applying them to present instances (Alexander & Sherwin, 2008, p. 31). Within the Common law system, the practical approach to legal analysis is widely associated with legal realism. Legal realism challenges formalistic and doctrinal approaches to law. It advocates for

a pragmatic and empirical analysis of the law, highlighting the influence of social, economic, and political factors on legal decision-making. Legal realists are comprehensively skeptical of formalistic legal reasoning that relies solely on statutes, precedents, or abstract legal principles. Legal realists argue that such approaches may not capture the complexities of practical legal issues. This implies a method of studying and applying the law based on pragmatic considerations, actual effects, and the workings of the legal system. It pinpoints how laws and court rulings are used in real-world situations. A legal theory and school of thought known as legal realism first appeared in the early 20th century. According to legal realists, the law is beyond a set of impersonal rules; it also considers social context, practical concerns, and the opinions and biases of judges. Legal realism juxtaposes a cogent emphasis on the fact that judges' decisions are frequently influenced by their values, the need for predictability, and the desire to produce just results. This pragmatic approach acknowledges that law is not merely academic but also has a significant role in addressing contemporary problems and accomplishing particular societal goals (Boonin, 1963, p. 435). In the US, legal realism is connected with Karl Llewellyn who introduced “nine common points of departure”. Llewellyn suggests that rather than using logical inference from legal norms, the law is made up of the facts and decisions of particular cases. Because it emphasizes that jurisprudence should follow the procedures of natural science, legal realism is sometimes perceived as a naturalistic approach to law. Rather than relying on theoretical presumptions about the law, it should be supported by empirical data and theories that have been verified against the realities of the real world (Fuller, 1934, p 431-432).

*c. Ensuring Legal Certainty in Indonesia: Proposed Reforms*

Indonesia should ensure that legal certainty is strongly upheld by judges since legal certainty is an underlying component of the rule of law. As Article 27 (1) of the Indonesian Constitution prescribes that all individuals shall be equal before the law. This symbolizes that regardless of social or economic status, every Indonesian is subject to and protected by the law. Equality and legal protection can be given if the legal system provides a high level of legal certainty. Not only is legal certainty important for equality and protection, but it also enhances access to justice. When people are confident in the legal system, they are more likely to seek redress for grievances and engage in lawful activities (Miller & Sarat, 1980-1981, p. 536). Furthermore, legal certainty can improve judicial efficiency by giving straightforward legal standards and principles, reducing the time and resources spent on court litigation.



The Indonesia can initiate changes to ensure legal certainty. First is the requirement for judges to provide sufficient reasons in the decision. Judges do not need to copy the arguments from both of the parties. By doing so, judges only focus on their reasoning. Secondly, similar to judges in the UK and the US, Indonesian judges should not be too formalistic. Formalism refers to an approach in which judges strictly apply the literal texts of statutes. The formalistic approach results in inflexibility and injustice. Formalistic only makes judges simply assert that under the relevant law, this should apply without elaborating further on the reasons for such a finding. This can result in seemingly unjust outcomes or fail to address the underlying justice of a particular case. Indonesian judges need to adapt to societal changes and evolving norms. Judges should be given the discretion to interpret and implement the law. This way, the law can be directed to achieve specific policy goals or address societal issues.

Legal reasoning and legal certainty are closely interconnected within the context of the legal system. Judges and other legal experts use legal reasoning to interpret the law, apply well-established legal principles, and arrive at fair judgments. Legal certainty is enhanced once legal reasoning is transparent, coherent, and consistent with prior judgments. This indicates that people and organizations can anticipate how the law will be enforced in specific circumstances. Moreover, the idea of *stare decisis* states that earlier rulings should be observed in subsequent cases and precedent are frequently used in legal reasoning (Kora, et al, 2020, p. 7134). This reliance on precedent amplifies legal certainty by establishing a foundation for predictable and consistent results. Thus, legal certainty is established and preserved in a legal system using legal reasoning. It makes sure that the law is enforced consistently, openly, and predictably, which gives people and organizations confidence in the legal system and their capacity to comprehend and abide by the law. Predictability guarantees that laws are applied consistently and uniformly and, therefore, can promote fairness by treating much alike cases. Predictability in court decisions allows parties to anticipate legal consequences and structure their behavior accordingly. Moreover, predictability acts as a deterrent to potential wrongdoers and promotes lawful behavior. Therefore, following the reasoning of judges in Indonesia by drawing from the experiences of the UK and the US can be a valuable endeavor.

Indonesia can consider several reforms and measures to increase legal certainty by studying the common law system. Although Indonesia predominantly uses a civil law system, common law traditions' features might be applied to improve legal certainty. Firstly, Indonesia

should establish more adequate precedent-setting system in which rulings by higher courts are enforceable by lower courts. This guarantees uniformity in judicial judgments and increases predictability. Second is to encourage judges to deliver thorough, written decisions that explain their rationale. This encourages openness and offers a transparent knowledge of how the law is applied in particular situations. Third is to provide clarity in the interpretation of laws and constitutional provisions, essential legal concepts and principles should be codified. This diminishes uncertainty and reinforces legal certainty. Last is to identify trends and contradictions in legal thinking by creating procedures for the routine review and analysis of judicial decisions. This will result in continuous advancements. These reforms can improve legal certainty and bring Indonesia's legal system closer to common law principles while still taking into account the particular cultural, economic, and social characteristics of the nation. Promoting economic progress, the rule of law, and the defense of individual rights all require legal certainty.

Here are several steps to be taken to implement the above proposals. First is to start with lawmakers who should make sure that legislation is clear, unambiguous, and easily understood. The lawmakers should also simplify the legal landscape, for example by modernizing the outdated laws to ensure they are relevant to contemporary societal needs. Secondly, the judiciary needs to conduct judicial training and capacity building for judges and legal professionals to build up their understanding of the law and improve consistency in legal interpretation. Implementing these steps requires a coordinated effort from the legislative body and the judiciary.

## CONCLUSION

Indonesia can integrate elements of common law legal reasoning to increase legal certainty in its civil law-based legal system by mandating that each court ruling include a concise *ratio decidendi* and *obiter dicta* written by the judges. Judges should present a compelling case for their rulings. The following conditions must be satisfied by the *ratio decidendi*: must originate from legal issues and be directly relevant to the matter at hand (not disputes fact). Any legal rule that a judge treats, either explicitly or implicitly, as a necessary step in reaching their conclusion—while keeping in mind the legal reasoning used—is known as the *ratio decidendi* in a given instance. Additionally, Indonesia's shifting from a persuasive force of precedent into a somewhat binding force of precedent would require significant legal

and institutional reforms. Judges and legal professionals would need to undergo training to become proficient in legal reasoning using precedent. Indonesian society has a unique cultural and legal identity. This legal pluralism adapts the principle of legal reasoning more challenging.

Indonesia can learn from the legal reasoning of judges in the UK and the US concerning upholding legal certainty. Indonesia should ascertain that legal certainty is strongly upheld by judges since legal certainty is an imperative component of the rule of law. Indonesia could consider several reforms and measures to increase legal certainty by taking lessons from the common law system. The reforms include: firstly, Indonesia ought to put up a more effective system of precedent-setting wherein decisions made by higher courts are binding on inferior courts. This improves predictability and ensures consistency in court rulings. Next is to urge courts to provide comprehensive written rulings that include a justification. This promotes directness and provides a clear understanding of how the law is implemented in certain circumstances. Thirdly, key legal concepts and principles ought to be codified to facilitate understanding when interpreting laws and constitutional requirements. This increases legal certainty and diminishes uncertainty. Last but not least is to establish protocols for the regular examination and analysis of court rulings to spot patterns and inconsistencies in legal thoughts. The execution of these reforms can be aided by the codification of important legal ideas, improved access to legal information, and cooperation with specialists in common law. Legal certainty can be further promoted by bridging the gap between the legal system and the populace through public legal education and ongoing evaluation of judicial rulings. It is crucial to pinpoint that any reforms should respect Indonesia's rich legal traditions and be in line with the country's particular cultural, economic, and social setting. By doing so, Indonesia may strengthen its legal framework, strengthening the rule of law, economic prosperity, and public confidence in the court.

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