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Legal Reform in Business Dispute Resolution: A Study of Legal Pluralism in Indonesia, Vietnam, and Thailand

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Abstract

Legal pluralism in the resolution of business disputes in Indonesia, Vietnam, and Thailand illustrates the intricate interplay between the particular and the general elements of the national laws, international laws, and other legal systems, which allow for flexibility in resolving disputes, but at the same time brings problems for legal integration and certainty for the business people. This study examines the role of legal pluralism in the resolution of business disputes in Indonesia, Vietnam, and Thailand. Legal pluralism creates an interaction between national law, international law, and other legal systems, providing flexibility in dispute resolution while also posing challenges to integration and legal certainty for business practitioners. The research approach employed is a legal study focusing on literature regarding legal pluralism and business dispute resolution systems. The analysis method used is normative-qualitative, utilizing legislative, conceptual, and comparative methods. The research findings show

that legal pluralism in business dispute resolution in Indonesia, Vietnam, and Thailand offers flexibility but also creates legal uncertainty. In Indonesia, the coexistence of civil, Islamic, and customary law leads to overlapping jurisdictions. Vietnam's state-controlled legal system incorporates arbitration and mediation but struggles with enforcing international awards. Thailand balances civil law with Buddhist-influenced mediation, favoring informal resolution but facing enforcement challenges. While legal pluralism enhances accessibility to justice, its effectiveness depends on legal integration and enforcement mechanisms to ensure certainty and fairness in business disputes.

Keywords
Legal Pluralism, Business Disputes, Customary Law, Arbitration, Legal Certainty.

Introduction

Due to globalization and economic growth, the business world is confronted by multifarious, complex legal challenges. The business dealings comprise a legal relationship that spans more than a single legal domain of national law. It also involves international law, customary law, and other legal systems that operate within the realm of business. This is best captured by the term legal pluralism, which refers to the coexistence of multiple legal systems within a single jurisdiction. Legal pluralism is an important phenomenon, especially when it comes to the issue of business legal disputes and settlements in countries like Indonesia, Vietnam, and Thailand, which have multi-legal systems. These three countries have differences in law that provide the basis for her approaches to the resolution of business legal disputes.[1] Over the years, Indonesia, a country with a blend of customary law, Islamic law, and Western influence, has encountered difficulties integrating the many legal norms in a more globalized world.

The urgency of legal reform in business dispute resolution, particularly in the context of Indonesia, Vietnam, and Thailand, is underscored by juridical, philosophical, and sociological considerations. Juridically, the coexistence of multiple legal systems within these jurisdictions comprising national laws, international legal

[1] Robert C. Bird, "On the Future of Business Law," *Journal of Legal Studies Education* 35, no. 2 (2018): 304.

frameworks, and customary legal traditions has created a landscape of legal pluralism that complicates business dispute resolution. The lack of harmonization among these systems has led to inconsistencies in arbitration, enforcement of contracts, and recognition of dispute resolution mechanisms, thus affecting legal certainty for business actors. Furthermore, as globalization continues to drive economic integration, the necessity for a streamlined, predictable, and enforceable dispute resolution framework becomes more apparent. International agreements, such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, are often undermined by national courts' reluctance to enforce foreign arbitral decisions, creating uncertainty in cross-border commercial transactions. Therefore, legal reform is crucial to establish a coherent and predictable framework that accommodates both national sovereignty and international legal obligations.

Philosophically, legal pluralism in business dispute resolution reflects deeper questions about the nature of justice, fairness, and the role of law in economic transactions. Different legal traditions, whether derived from civil law, customary law, or religious principles, embody distinct conceptions of justice. In Indonesia, for instance, the interplay between state law, Islamic law, and customary law presents a unique challenge in ensuring that legal outcomes align with both local traditions and the demands of global commerce. Vietnam, with its socialist legal heritage, maintains strong state control over business dispute resolution, which can limit the impartiality and autonomy of arbitration mechanisms. Meanwhile, Thailand's legal system integrates Buddhist-influenced dispute resolution practices, emphasizing mediation and conciliation over adversarial litigation. These philosophical differences raise critical questions about the appropriate balance between legal formalism and informal dispute resolution and whether a pluralistic legal system can deliver both efficiency and fairness. Reform is thus necessary to reconcile these philosophical divergences and ensure that business law upholds principles of justice while remaining effective in a rapidly evolving global market.

Sociologically, the urgency of legal reform is evident in the practical challenges faced by business actors navigating multiple legal regimes. The lack of legal certainty disproportionately impacts small

and medium-sized enterprises (SMEs) and foreign investors, who often struggle with the unpredictability of dispute outcomes. In Indonesia, for example, the enforcement of business contracts varies significantly depending on whether disputes are resolved through national courts, religious courts, or customary arbitration. In Vietnam, state intervention in business disputes can undermine the autonomy of arbitration, discouraging foreign investment. Thailand, despite having a well-developed arbitration system, still faces challenges in harmonizing national law with international arbitration standards. These disparities create an uneven playing field where large corporations with extensive legal resources can navigate the system more effectively than smaller businesses. Consequently, legal reform is imperative to promote economic inclusivity, enhance investor confidence, and foster a dispute resolution system that is both efficient and accessible to all business stakeholders.

Vietnam is unique in that, being a socialist legal system, it is transforming a market economy. Vietnam's market transformation is providing new dynamics to the country's business legal relations and dispute management.[2] Lastly, Thailand, with its Theravada legal tradition and Western law, has some unique dispute-resolution mechanisms that are fascinating to learn.[3] In these three countries, business conflicts can be resolved in several ways other than litigating them in national courts, including using various alternative mechanisms, such as arbitration, mediation, and other types of negotiations specific to local customs or culture. This selection of perspectives brings to the fore the reality of legal pluralism, where the law of the state is not always the sole applicable legal order in a business conflict.[4] Nevertheless, the practice of legal pluralism in dealing with

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[2] RR Dewi Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints," *AHKAM : Jurnal Ilmu Syariah* 23, no. 1 (2023), https://doi.org/10.15408/ajis.v23i1.32549.

[3] Ngoc Anh Nguyen, "Understanding the Socialist-Market Economy in Vietnam," *Emerging Science Journal* 6, no. 5 (June 28, 2022): 952–66, https://doi.org/10.28991/ESJ-2022-06-05-03.

[4] Vikas H. Gandhi, "Intellectual Property Disputes and Resolutions," *Journal of Intellectual Property Rights* 26, no. 1 (2021): 14–19, https://doi.org/10.56042/jipr.v26i1.39447.

business conflicts has its own difficulties. In Indonesia, for instance, customary law continues to be acknowledged in certain business practices, more so in local communities with active trading. However, issues arise where customary law competes with state law, especially in disputes with foreign elements or big investors.[5]

One of these issues is the land disputes between indigenous peoples and large companies, which are commonly heard in courts and where decisions are made that do not fully take into account the principles of customary law. In Vietnam, the major constraint in settling business disputes is associated with a strong and centralism character of the state. Even after Vietnam adopted some market economy principles, many of the laws still demonstrate the heritage of the socialist legal system, which tends to have the upper hand in business activity. Consequently, the State monopoly of economic power has caused the abuse of legal processes in resolving disputes by imposition of political and state directions, with disregard for the independent settlement of disputes.[6] At the same time, Thailand's legal system attempts to incorporate certain aspects of the local culture, and as a result, the resolution of business disputes is impacted. Mediation in Thailand is often practiced at the community level to resolve business conflicts.

However, there is an apparent disunity between the national law system and the local cultural dispute resolution practices, particularly with foreign companies or international investors.[7] In spite of the hurdles, the scope of implementing dispute resolution practices with pluralistic legal approaches does have its advantages. The ability to select an appropriate method of resolving disputes is one of them. In

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[5] Maarten Manse, "The Plural Legacies of Legal Pluralism: Local Practices and Contestations of Customary Law in Late Colonial Indonesia," *Legal Pluralism and Critical Social Analysis* 56, no. 3 (September 2024): 328–48, https://doi.org/10.1080/27706869.2024.2377447.

[6] Nguyen Van Song et al., "Vietnamese Agriculture before and after Opening Economy," *Modern Economy* 11, no. 04 (2020): 894–907, https://doi.org/10.4236/me.2020.114067.

[7] Brian Z. Tamanaha, "Legal Pluralism Across the Global South: Colonial Origins and Contemporary Consequences," in *Washington University in St. Louis Legal Studies Research Paper No. 21-06-01*, 2021, 30–33.

customary law or local practices, arbitration mediation is usually less expensive and swifter than court actions.[8] In addition, thanking pluralism allows for more social and cultural responsiveness and, therefore, more equitable solutions to be reached for all parties involved in the conflict. Still, while the above advantages are exceptional, some drawbacks are threatening the use of pluralism in settling business disputes. The most serious issue is the tension between state law and non-state law. For instance, some customary law arbitration awards are routinely annulled by national courts on the grounds of legal unreasonableness. Customary law or culture-based mechanisms can be problematic when it comes to attaining recognition and enforcement of awards, especially in the scope of international business.

The concept of legal pluralism is not an exclusive sociological phenomenon in developing nations; it is also a feature of international relations in the context of business dispute resolution. It has been noted that in some jurisdictions, there is an increasing tendency and acceptance of the use of multiple legal systems to solve business issues, either by incorporating customary law, creating international arbitration, or enhancing indigenous mechanisms of resolving disputes through culture. However, it is also part of a global trend in resolving business disputes. In many countries, studying the responses of Indonesia, Vietnam, and Thailand to the application of these theories to business law may provide invaluable insights into the development of an efficient legal system for any participant in world business. The author intends to conduct a study on a topic that focuses on the "Legal Pluralism Theory in Business Law Dispute Resolution: Comparison of Indonesia, Vietnam, and Thailand" because of the above-provided explanations. This research aims to analyze the application of the theory of legal pluralism in the mechanisms for resolving business legal disputes in Indonesia, Vietnam, and Thailand. Additionally, it examines the impact of legal pluralism on legal certainty and justice in business dispute resolution across these three countries.

The study of the use of legal pluralism theory to settle business legal disputes has captured the attention of scholars and legal practitioners worldwide. In Indonesia, the idea of legal pluralism has

[8] Jennifer L. Schulz, *Mediation & Popular Culture* (New York: Routledge, 2020).

been accepted for quite some time, particularly on the intersection between state law and customary law. Myrna A. Safitri addresses in her paper named, 'Colonial and National Policies on Legal Pluralism: a Case Study of Indonesia' how legal pluralism is catered for within colonial and national legal policies and its implications for indigenous peoples' rights. Moreover, an article in the Indonesian Law Journal Volume 15 No. 1, 2022, containing the study of the law of investment in Indonesia, also emphasizes arbitration as one of the most important and effective means of solving international commercial disputes. The article examines a number of regulations and practices of the law pertaining to the resolution of business disputes, including the activity of arbitration, both domestic and international.[9]

A study by Sally Engle Merry (1988) on legal pluralism explores how multiple legal systems interact within societies, emphasizing the implications for business dispute resolution.[10] Merry argues that while legal pluralism allows for local adaptability, it also creates inconsistencies in enforcement and legal predictability. This issue is particularly relevant in Indonesia, where disputes may be resolved through civil law, Islamic law, or customary law, leading to jurisdictional conflicts. Similarly, research by John Griffiths (1986) highlights the tension between formal and informal dispute resolution mechanisms, noting that while non-state dispute resolution can provide culturally appropriate outcomes, it often lacks the enforceability of formal legal processes.[11]

In the context of business arbitration, Brian Z. Tamanaha (2000) discusses the risks of fragmented legal authority in jurisdictions with

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[9] Clarissa Nadya Arina, "LOGICAL CONSEQUENCES IN INDONESIA'S POSITION IN INVESTMENT DISPUTES IN ARBITRATION FORUM ICSID," *Indonesian Law Journal* 15, no. 1 (2022), https://doi.org/https://doi.org/10.33331/ilj.v15i1.91.

[10] Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (July 1, 1988): 869–96, https://doi.org/10.2307/3053638.

[11] John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (January 1986): 1–55, https://doi.org/10.1080/07329113.1986.10756387.

strong legal pluralism.[12] His research indicates that businesses operating in pluralistic legal systems often face difficulties in predicting which legal norms will apply to their disputes, particularly when national courts interfere with arbitration decisions. This problem is evident in Vietnam, where, despite the adoption of the 2010 Arbitration Law, courts have occasionally refused to enforce foreign arbitral awards, citing national economic policies. Meanwhile, a study by Ralf Michaels (2009) explores global legal pluralism, emphasizing the need for harmonized dispute resolution frameworks in regions where multiple legal traditions coexist. Michaels' findings suggest that Southeast Asian countries, including Indonesia, Vietnam, and Thailand, could benefit from structured reforms that integrate national, customary, and international legal norms into a coherent dispute resolution mechanism.

Further, research by Boaventura de Sousa Santos (2006) analyzes how globalization impacts legal pluralism, arguing that business law must evolve to accommodate both local traditions and transnational legal norms.[13] His study is particularly relevant for Thailand, where Buddhist-influenced mediation practices are widely used alongside modern arbitration frameworks. While mediation offers advantages such as reduced costs and faster dispute resolution, its informal nature raises concerns about enforceability in complex commercial disputes, especially those involving foreign investors.

Regarding the resolution of international business disputes, an article produced by the University of Indonesia dealt with the use of foreign law in the settling of international contract disputes in Indonesia. This article illustrates how the choice of law by the contract parties determines not only the conduct of the dispute resolution process but also the result of such disputes.[14] Research regarding legal pluralism in resolving business disputes in Vietnam is sparse. Nonetheless, the legal system of Vietnam transitioning from a socialist model to a market economy offers compelling factors. This shift

[12] Caroline Humfress, "Legal Pluralism's Other: Mythologizing Modern Law," *Law and History Review* 42, no. 2 (May 9, 2024): 155–68, https://doi.org/10.1017/S0738248023000172.

introduces a hybridization of state law with non-state approaches, which encompasses traditional forms of dispute resolution in some communities. Analyzing how Vietnam incorporates its various legal systems in the business arena can be very revealing in regard to legal pluralism in the country. Legal pluralism is broadly understood as the coexistence of several systems of law within a single political system or jurisdiction. Thailand's mediation practices have a strong traditional orientation, which is often done to settle business disputes at the community level.

However, there are gaps at the interface of national law and local law, especially in cases with foreign elements. Further study is required to understand how Thailand reconciles state law with ethnocentric local dispute resolution systems. Like any other branch of business, questions of legal pluralism in the context of business dispute resolution practices have been addressed, albeit not exhaustively. Nevertheless, there seems to be a gravity-defying lack of scholarly attention given to the pluralism of business legal disputes in Indonesia, Vietnam, and Thailand. The literature has already documented such phenomena for single countries or parts of the frameworks of legal pluralism without much multinational analysis, increasing the plausibility of the pluralism of business legal disputes among the three countries named above, thus warranting the study "Legal Pluralism Theory in business Legal Dispute Resolution: Comparison of Indonesia, Vietnam, and Thailand." This study is of unique value to legal research because it compares and contrasts how legal pluralism is practiced in the three countries, looking into what makes legal pluralism more or less successful in these regions. In addition, this study highlights the complexities and possibilities of integrating multiple legal frameworks towards a more robust and just procedure for resolving business disputes.

The uniqueness of this study stems from the fact that the comparative method was used, which is not common in past studies. This study combines Indonesia, Vietnam, and Thailand not only for legal pluralism purposes, but also to observe the interrelations of the systems in the Southeast Asian region. The author of this study hopes that this study will assist the policymakers and businessmen in the region to manage business legal disputes more efficiently with an

appreciation of the varying legal systems. Additionally, this study seeks to contribute to the existing literature on legal pluralism in Southeast Asia which is, at best, scanty. This study can be conducted from different perspectives by selecting three countries which are different in terms of their legal systems, business cultures, and business practices. This serves as the starting point of future research in other countries or in other contexts. Above all, this study addresses the existing gap in applying legal pluralism theory to the resolution of business legal conflicts. Using a comparative approach and with deep scrutiny, this paper hopes to add value to legal theory and practice, more so in the area of business conflicts resolution in multijurisdictional countries.

Given these challenges, the urgency of this research lies in the need to develop a legal framework that accommodates pluralistic dispute resolution mechanisms while ensuring legal certainty, efficiency, and fairness in business transactions. This study seeks to fill the gap in existing literature by providing a comparative analysis of business dispute resolution in Indonesia, Vietnam, and Thailand, focusing on how legal pluralism affects legal certainty and access to justice. Unlike previous studies that have primarily examined legal pluralism in a single jurisdiction, this research offers a cross-country perspective, identifying best practices and proposing reforms to harmonize diverse legal traditions.

The significance of this research is twofold: first, it contributes to the theoretical understanding of legal pluralism in business dispute resolution, and second, it offers practical recommendations for policymakers, legal practitioners, and businesses operating in Southeast Asia. By exploring the intersection of civil law, customary law, and international arbitration, this study aims to enhance the predictability and effectiveness of dispute resolution mechanisms, ultimately fostering a more stable and attractive business environment in Indonesia, Vietnam, and Thailand.

In conclusion, the novelty of this research lies in its comparative approach and its focus on the integration of legal pluralism into modern business dispute resolution frameworks. While previous studies have addressed aspects of legal pluralism, arbitration, and mediation separately, this study synthesizes these elements to propose a more cohesive and adaptable legal framework. As globalization continues to

reshape business interactions, the findings of this research will be crucial in informing legal reforms that balance traditional dispute resolution practices with the demands of an increasingly interconnected commercial landscape.

METHOD

This study employs a normative legal research method aimed at analyzing the legal norms relevant to the business legal controversies in Indonesia, Vietnam, and Thailand.[15] The focus of this study is the analysis of legal norms related to the resolution of business legal disputes in Indonesia, Vietnam, and Thailand, using normative legal research methods. The legal pluralist approach considers the concept of law broad enough so as to include regulations and statutes, as well as the decisions of the courts and legal scholars. This approach helps to understand the interaction of state law with other business laws, such as custom law, and non-adversarial dispute settlement, such as mediation and arbitration. This will enable this research to explain the application of legal pluralism in the resolution of business disputes in all three states. To accomplish the stated research goals, this research makes use of several methodological approaches. One such approach is to construct an argument based on minutes of statutes and relevant laws from each country. For instance, in Indonesia, there is Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which allows for out-of-court settlement of business disputes.

Additionally, Vietnam has rules regulating commercial arbitration, which were developed after the legal reform in 2010. On the other hand, Thailand is famous for its dualistic legal system that recognizes customary law in certain business activities. Moreover, this research utilizes a predefined approach to understand the concept of legal pluralism and the contextual application of such theory in regard to business conflict resolution. This shall be looking into contributions by Sally Engle Merry, John Griffiths, and Boaventura de Sousa Santos, who focus on the relationships between state law and non-state law in conflict resolution. This will assist in showing that legal pluralism goes beyond the limits of written norms to include practices and mechanisms that emerge in the

[15] Peter Mahmud Marzuki, *Penelitian Hukum*, 13th ed. (Jakarta: Kencana, 2017).

business cultures of the three nations. Also, there is a comparative approach to show the similarities and differences in the application of legal pluralism in business conflict resolution in Indonesia, Vietnam, and Thailand. This will seek to determine the effectiveness of business conflict resolution norms and practices in each country in an effort to quantify the acceptance of legal pluralism. For illustrative purposes, Indonesia is an example because it has a legal system that accepts the presence of customary law, even though its use within the realm of business is very limited.

On the other side, Vietnam is known for its socialist legal system. However, it is undergoing remarkable improvements in business dispute resolutions, which is in contrast to Thailand, which still practices mediation as its dispute resolution tool. In collecting data, this study analyzes a variety of different sources of legal materials ranging from primary and secondary to tertiary. Primary legal materials encompass laws and regulations pertinent to the three countries that govern business dispute resolution, which are the Indonesian Arbitration Act, the commercial arbitration regulations in Vietnam, and the mediation and arbitration regulations in Thailand. In addition, court decisions pertaining to business dispute cases will also be analyzed to understand how legal norms are applied in real life. Considering secondary legal material, these include books, scientific publications, and other pieces of academic work discussing issues of legal pluralism, business dispute resolution, and comparative law of Southeast Asia. Previous literature on the primary business dispute resolution mechanisms in developing countries will be the main focus of this study. Furthermore, these studies are supplemented with works and views of legal scholars related to the use of legal pluralism in business affairs.

Apart from this, secondary legal materials comprise legal dictionaries, legal encyclopedias, and other international legal resources that collate and explain the terms, guaranteeing an in-depth understanding of the topic. Using library research as the method, this work is gathered from the review of a variety of legal materials and scholarly articles concerning business disputes in Indonesia, Vietnam, and Thailand. The legal documents that were analyzed were obtained from legal journals, textbooks, and on-site databases, such as the ASEAN Law Journal, World Bank Legal Database, and hukumonline.com. This

legal pluralism library study was to better understand the context of business law in the three countries. Following the gathering of data, a set of normative-qualitative data analysis processes were performed, in this case, a review and interpretation of legal pluralism business dispute resolution rules and principles. There are multiple modalities to this analytical process. To begin with, there is a legal interpretation that, for this purpose, presumed the existence of laws that govern court regulation norms regarding business dispute resolutions in all three countries and sought to ascertain what the relevant laws endorsed specifically to all three nations.

The next stage is legal systematization, which involves the classification of identifiable laws for pluralism to determine the business dispute resolution patterns and tendencies of the three identified nations. Furthermore, the study utilizes comparative analysis for business dispute resolution practices in Indonesia, Vietnam, and Thailand. This analysis mainly seeks to evaluate the effectiveness of the legal systems and their pluralism accommodation loopholes. The information gathered from this analysis is intended to serve as the basis for recommendations that should, in turn, assist in making strides toward effective business dispute resolution systems in the three nations. Considering the methodology of this research, it is anticipated that this research will have meaningful academic contributions in explaining the application of legal pluralism in business legal disputes. Aside from this, this research can also serve as the foundation for more comprehensive legal policies concerning business disputes in countries with complex legal systems like Indonesia, Vietnam, and Thailand.

Result and Discussion

A. The Application of Legal Pluralism Theory in Business Legal Dispute Resolution Mechanisms in Indonesia, Vietnam, and Thailand

Following Legal pluralism is best understood as the existence of several legal systems that operate within a single national jurisdiction.[16] This thesis shows that there is more than state law that affects the life of society. Systematic legal pluralism tends to reiterate the works of Griffiths, who,[17] for instance, pointed out the interplay between state law and non-state legal systems, as well as Moore's concept of social autonomous field, which underscored the functioning of non-legal social customs in conjunction with the formal legal regime.[18] Santos, in particular, studied matters about legal pluralism within the scope of globalization and social equity.[19] In a legal pluralistic structure, there are generally three components that encompass law: state law, customary law, and religious law. State law is the law formulated by the government and includes statutes in a legal system. Custom law is built upon the traditions or practices of a particular community. Religious law, such as Islamic Sharia or Canon law, has its foundation in inspired texts and authoritative teachings.

These systems have numerous common points of intersection as well as points of conflict. For instance, in Indonesia, all citizens, including indigenous people, accept as law the combination of national law and customary law, as well as religious law in family law concerning marriage and succession. Contexts vary with regard to the adoption of legal pluralism. For instance, South Africa has customary law that is a part of their Constitution, so it is formally integrated into the legal system. In some countries, it works informally, and communities follow

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[16] Brian Z. Tamanaha, *A Realistic Theory of Law*, *A Realistic Theory of Law*, 1st ed. (Cambridge: Cambridge University Press, 2017), https://doi.org/10.1017/9781316979778.

[17] Griffiths, "What Is Legal Pluralism?"

[18] Sally Falk Moore, "Legal Pluralism as Omnium Gatherum," *FIU Law Review* 10, no. 1 (January 2014): 1–15, https://doi.org/10.25148/lawrev.10.1.5.

[19] Boaventura de Sousa Santos, "The Heterogeneous State and Legal Pluralism in Mozambique," *Law and Society Review* 40, no. 1 (2006): 39–75.

the local customs even when there is state law.[20] Barriers to implementation could include the possible concealment of social inequalities, legal confusion, and clashes of particular legal systems. Undoubtedly, if properly managed, legal pluralism fosters social diversity, integration, and greater access to justice.

For example, in land claim conflicts, communities might prefer customary approaches due to their availability and compatibility with societal norms. The scope of legal pluralism involves the existence of various laws in a particular area, including state law, customary law, canon law, and international law.[21] It is possible to have various legal systems coexisting in the same geographical area, like a region where statutory law and customary law together coexist. Generally, certain customs and religious laws are incorporated into the jurisdiction of the country, hence enabling the customs to settle their disputes by the set goals. Legal pluralism is also further characterized by its uniqueness and effervescence, which permits any law to be responsive to social and cultural transformations. The implementation of the law is context-dependent on social, cultural factors and economic factors, and oftentimes, there are wars with different kinds of pluralistic legal systems where settlement is achieved through bargaining. Legal norms are participatory, particularly in the case of creating customary laws, and national systems are impacted by international events, thus creating international laws that override domestic laws.

Hence, legal pluralism as a concept offers both advantages and challenges in what it seeks to achieve, which is the acceptance of a multiplicity of legal norms through which the society operates. At a minimum, a certain legal complexity enables resolving the issues of boundaries between systems, but integrating it under a single code incurs serious difficulties. In terms of legal metaphors, almost all countries and cultures of the world make use of pluralism to resolve business conflicts.

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[20] Berihun A. Gebeye, "Decoding Legal Pluralism in Africa," *The Journal of Legal Pluralism and Unofficial Law* 49, no. 2 (May 2017): 228–49, https://doi.org/10.1080/07329113.2017.1351746.

[21] Kalindi Kokal and Siddharth Peter de Souza, "Ideas, Narratives and Experiences. A Reflection on Legal Pluralism and the Cause of Justice in South Asia," *Legal Pluralism and Critical Social Analysis* 55, no. 2 (May 2023): 125–39, https://doi.org/10.1080/27706869.2023.2239589.

From some legal scholars' perspectives, Southeast Asian countries like Indonesia, Vietnam, and Thailand may seem heterogeneous in their legal system traits, but they all share some form of legal pluralism in the Industrial relations dispute resolution processes. The following is a graphic that represents the basic principles of implementing legal pluralism theory in resolving business legal disputes in Indonesia, Vietnam, and Thailand:

Aspect	Indonesia	Vietnam	Thailand
Legal System	Civil Law with the influence of customary law and Islamic law	Civil Law with influences of socialist law and customary law	Civil Law with the influence of customary law and Buddhist legal principles
Dispute Resolution Mechanisms	1. Litigation through the District Court and Religious Court (for sharia business cases) 2. Arbitration through BANI 3. Mediation and negotiation based on customary law and local culture	1. Litigation through the People's Court 2. Arbitration through VIAC 3. Mediation based on Decree No. 01/2014/QD-TTg	1. Litigation through the Commercial and Bankruptcy Cour 2. Arbitration through THAC 3. Mediation based on the Mediation Law 2019
Role of Customary Law	Still recognized and used in resolving local community disputes, especially in customary-based businesses.	Used in initial negotiations but has no binding legal force in the national judicial system	Used in local community negotiations and mediation, especially regarding land ownership and Indigenous community businesses

Role of Islamic Law	Applicable in Sharia business, regulated by the Sharia Banking Law, and resolved in the Religious Court	Not explicitly accommodated in the national business law system	No significant influence on the business legal system
Arbitration	Recognized through Law No. 30 of 1999, BANI is the main institution.	Recognized through the Vietnam Arbitration Law 2010, VIAC is the main institution.	Regulated in the Arbitration Law 2002, THAC is the main institution.
Mediation	Widely used in local customary communities and businesses as an alternative dispute resolution.	Growing since Decree No. 01/2014/QD-TTg	Supported by the Mediation Law 2019 as the main alternative for dispute resolution
Support for International Law	Recognizes the 1958 New York Convention on International Arbitration, but the execution of foreign arbitration decisions still has obstacles	Ratified at the 1958 New York Convention, but challenges remain in the implementation and recognition of foreign arbitral awards.	Recognizing the 1958 New York Convention and the ASEAN free trade agreement has a growing arbitration system.
Key Challenges	1. Harmonization of customary, Islamic, and national laws 2. Legal uncertainty in the application of customary law	1. Government intervention in business disputes 2. Uncertainty in the execution of international arbitral awards	1. Disharmony between national law and customary law 2. Inconsistency in dispute resolution based on cultural and religious norms

	3. Settlement of sharia business disputes that are separate from the general system	3. Limited application of customary law in the national system	3. Effectiveness of the mediation system in large-scale business disputes

In the context of business law, disputes can be resolved through litigation in court or through alternative dispute resolution (ADR) processes, including mediation, arbitration, and negotiation.[22] Each country has a set of rules for dispute resolution that complements the domestic system, local legal cultures, and international legal systems. Because of the presence of customary law, Indonesian law is unique in its complexity.

It encompasses Islamic law and positive law, which are based on Civil Law from Continental European legal traditions. Therefore, the resolution of business law disputes tends to complicate matters as these three legal systems are superimposed, which is an example of legal pluralism in action. Bygone traditions and customs often guide business relations within and outside of Indonesia. This is particularly true for some regions that are conservative in modern business practices. The other aspects of Islamic law that are gaining popularity are the Sharia-compliant products offered by Islamic banks and Sharia-compliant economics. Customary law, on the other hand, is positively correlated with the civil law system in Indonesian jurisdiction.[23] Government laws and regulations that cover various business transactions and legal disputes indispensable in positive law are at the core of the Indonesian judicial system. These three legal systems interact in various ways, such as through litigation, which is done in district courts; arbitration, where customary law principles are often used; mediation, which is also commonplace; and even Sharia-based dispute resolution, which is used in Islamic businesses.

[22] Stephen B. Goldberg et al., *Dispute Resolution: Negotiation, Mediation, Arbitration, and Other Processes* (Alphen aan den Rijn: Kluwer Law International B. V., 2020).

[23] John Linarelli, "Legal Certainty: A Common Law View and a Critique," in *The Shifting Meaning of Legal Certainty in Comparative and Transnational Law*, 1st ed. (Hart Publishing, 2017), 159–76, https://doi.org/10.5040/9781509911288.ch-007.

Although this legal pluralism offers choices for business actors to select a mechanism of conflict resolution that best fits their needs, there are still obstacles that emerge in regard to legal integration and regulatory assurance, particularly when there is a clash of norms from different legal systems.[24] Consequently, Indonesia has to deal with ensuring the compatibility of the existing range of legal systems and the need to provide legal certainty and justice when solving business disputes. Business dispute resolution in Indonesia can be done through two major avenues: the courts and the ADR system. District Courts are the main venue of business litigation, as provided for in Law Number 48 of 2009 on Judicial Power and Law Number 2 of 1986 on General Courts. However, along with the issuance of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, the use of ADR mechanisms is on the rise. In the resolution of business disputes, customary and Islamic law are often applied, in particular in dealings with indigenous or sharia-compliant businesses.

The 1945 Constitution in Article 18B, paragraph (2), acknowledges customary law by stating that the unity of indigenous legal communities is respected by the state as long as these communities remain active and evolve. In Indonesia, Islamic financial institutions are governed by Law Number 21 of 2008 on Islamic Banking, which explicitly provides for the dispute resolution mechanism that arises in Islamic banking transactions. Under this provision, Islamic banking disputes are heard within the religious court and not in the district court, which deals with civil and other business matters. The placement of Islamic banking dispute resolution in the Religious Court indicates the existence of legal pluralism in the Indonesia legal system where a specific Islamic law is applicable in particular business areas, specifically, the Islamic financial industry. It shows the performance of the state's business reconciling different sources of law by allowing the application of Islam in resolving business disputes about the traditional legal system that governs the other non-Islamic financial industry.[25]

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[24] Caroline Humfress, "Legal Pluralism's Other: Mythologizing Modern Law," *Law and History Review* 42, no. 2 (May 2024): 155–68, https://doi.org/10.1017/S0738248023000172.

[25] Nun Harrieti, "Legal Implications of the Establishment of Alternative Institution of Dispute Resolution of Indonesian Banking (LAPSPI) on Sharia Banking Dispute

Nevertheless, some issues stem from the integration of legal pluralism within the confines of a single jurisdiction, such as the need for reconciliation between Islamic law and domestic legislation and the vexed question of jurisdictional specificity in cases of disputes with conflicting legal antecedents. Furthermore, Indonesia leads with arbitration as the main strategy for solving multifaceted business disputes, which especially serves foreign companies, as it offers faster, more flexible alternatives to litigation. As any arbitration institution, BANI merged concepts of international arbitration and business arbitration, so it is now known for its low costs and efficiency in recognizing and enforcing foreign businessmen. BANI boasts of its efficient cross-border case procedures due to the involvement of multi-disciplinary arbitrators from different branches of law and industry.[26] In Indonesia, the use of arbitration is affected by legal pluralism, whereby it is up to the parties involved to select the applicable law for resolving the dispute, including national, international, or business law.

Despite the various perks of arbitration, like confidentiality and more control over the outcomes of the hearings, obstructive parties often create complications in executing the arbitral awards.[27] Consequently, despite being the first institution of choice for arbitration in international business disputes in Indonesia, BANI suffers from a lack of uniformity between national policies and international legal frameworks. Vietnam has an underlying socialist legal system shaped by a blend of French legal traditions and local customary practices. This reveals a mix of imposed legal rules and evolved legal practices within a society. The business legal system is predominantly under the jurisdiction of the laws of the Republic of Vietnam, which the National Assembly formulates

Settlement in Indonesia," *FIAT JUSTISIA:Jurnal Ilmu Hukum* 11, no. 4 (April 12, 2018): 381, https://doi.org/10.25041/fiatjustisia.v11no4.1102.

[26] Vania Shafira Yuniar and Florentiana Yuwono, "The Comparison Of Arbitration Dispute Resolution Process Between Indonesian National Arbitration Board (BANI) And London Court Of International Arbitration (LCIA)," *Journal of Private and Commercial Law* 6, no. 1 (June 1, 2022): 77–99, https://doi.org/10.15294/jpcl.v6i1.30265.

[27] Supeno Supeno and Herma Yanti, "Regulations Concerning International Arbitral Awards in Indonesia," *Al-Daulah Jurnal Hukum Dan Perundangan Islam* 12, no. 2 (October 1, 2022): 298–325, https://doi.org/10.15642/ad.2022.12.2.298-325.

concerning business activities, contracts, and disputes.[28] Nonetheless, during the range of customary laws, local negotiations, and dispute settlements within the community, particularly in the business arena where close social networks exist, are practiced. Furthermore, as Vietnam integrates into different FTAs and world economic bodies, the impact of international law is growing, which promotes international arbitration and other forms of dispute resolution.

Even though there exists a strong state control of the implementation of the law, the intricate intersection of national law, localized customary law, and international law creates gaps in legal certainty and the effectiveness of business dispute resolutions in Vietnam. The Vietnamese Arbitration Law of 2010 and the Vietnam Civil Procedure Code of 2015 are two documents that outline how businesses in Vietnam resolve disputes. It is within these documents that Vietnam is understood to accept arbitration as the key method in solving Vietnam's business disputes internationally and domestically.[29] VIAC, or the Vietnam International Arbitration Center, is the primary institution dealing with business arbitration in Vietnam. Besides arbitration, mediation is also increasingly becoming popular in the business conflict resolution scene in Vietnam, more so after the passage of Decree No. 01/2014/QD-TTg of Commercial Mediation, which provided legal endorsement of the practice of mediation in business disputes.[30] This enables them to legally exercise mediation as a first step in solving disputes before proceeding to arbitration or court litigation. Businesses are starting to appreciate the reduction of time and paperwork associated with resolving disputes using mediation compared to a more formal approach.

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[28] Chat Le Nguyen, "The International Anti-Money Laundering Regime and Its Adoption by Vietnam," *Asian Journal of International Law* 4, no. 1 (January 10, 2014): 197–225, https://doi.org/10.1017/S2044251313000349.

[29] Carolina Arlota, "The Impact of (Mis)Communication on International Commercial Arbitration," in *Oxford Research Encyclopedia of Communication* (Oxford University Press, 2020), https://doi.org/10.1093/acrefore/9780190228613.013.915.

[30] Umut Turksen and Ha T. Nguyen, "The Free Trade Agreement and Investment Dispute Settlement Between the European Union and Vietnam: A Critical Assessment," *Vietnamese Journal of Legal Sciences* 3, no. 2 (December 1, 2020): 43–83, https://doi.org/10.2478/vjls-2021-0003.

In addition, being able to mediate disputes without litigation incites less strain on the courts, allowing for the formation of more positive, long-lasting business relationships while maintaining a more fruitful society. With regard to legal pluralism, Vietnam also takes into account the existence of customary laws in business dispute settlements in rural areas where there are business transaction customs. While customary law remains important in the life of a local community, its use is rather informal and cannot be said to have legal force in the legal jurisdiction of the country. As such, customary law is typically resorted to during the preliminary stages of the dispute, for instance, during recourse to the negotiation or mediation process between the parties before the actual claim is filed in a formal dispute-resolving institution such as a court or an arbitration tribunal.[31] In reality, this practice can be more effective in settling disputes in the shortest time possible and with minimal disruption to the local customs. Still, in some situations, the practice may raise concerns over legal consistency or certainty, particularly in cases where customary law runs into conflict with the national law.

Hence, although conventional laws remain applicable to business operations, their effectiveness and relevance are largely correlated with how favorable such laws are about the wider legal framework and how ready other parties to the dispute are. Furthermore, international treaties like the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards have also impacted business law in Vietnam since these treaties allow foreign arbitral awards to be recognized and enforced in Vietnam. This signifies that Vietnam's system of business laws supports legal pluralism by incorporating internal law, ethnic law, and international law within the business dispute management system of the country.[32] Thailand's legal structure is

[31] John Gillespie and Hong Thi Quang Tran, "Legal Pluralism and the Struggle for Customary Law in the Vietnamese Highlands," *The American Journal of Comparative Law* 70, no. 1 (October 25, 2022): 1–42, https://doi.org/10.1093/ajcl/avac024.

[32] Anangga W. Roosdiono and Muhamad Dzadit Taqwa, "Questioning the Validity of the New York Convention 1958 on Recognition and Enforcement of Foreign Arbitral Awards in Indonesia," *Pandecta Research Law Journal* 19, no. 2 (2024), https://doi.org/https://doi.org/10.15294/pandecta.v19i2.4099.

founded on Civil Law, but it also integrates customary law and elements of Buddhism, particularly in business-related functions and in settling disputes. In business dispute resolution, Thailand employs multiple systems reflecting legal pluralism, which include court litigation, growing alternative forms of arbitration, and out-of-court resolutions like mediation and negotiation.[33]

The civilian Thai judicial system emphasizes the importance of a judge's interpretive power about the law. Still, in dealing with local people and certain traditional enterprises, some degree of customary law prevails. For international companies doing business in Thailand, arbitration is one of the most preferred options because of its speed and efficiency in settling commercial disputes.[34] In Thailand, mediation has been practiced to resolve domestic business conflicts using a strategy that incorporates harmony and compromise as part of Thai culture. The modest Thai legal system concerning business disputes displays a character of legal pluralism that permits the existence of multiple interacting legal orders or systems to work together and better provide for the needs of the parties. In Thai business litigations, Thailand Italian maintains the commercial legal base by relying on the Thai Civil Procedure Act, which governs the judicial processes comprehensively, including stages of lawsuits, evidence, and executing judgment.

Moreover, the country possesses a Commercial and Bankruptcy Court, a special juristic person for the adjudication of business and bankruptcy cases. This court is tasked with enhancing the workflow and achieving legal certainty for business people. This court is charged with tackling inherently deep business disputes, such as those dealing with trade contracts, investment agreements, business competition, or even corporate bankruptcies, but it does so through much more defined and focused procedures than ordinary courts. The presence of this unique legal institution demonstrates Thailand's commitment to fashioning a

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[33] Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H Noho, and Aga Natalis, "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems," *Cogent Social Sciences* 8, no. 1 (December 31, 2022), https://doi.org/10.1080/23311886.2022.2104710.

[34] Sirilaksana Khoman, Luke Nottage, and Sakda Thanitcul, "Foreign Investment, Corruption, Investment Treaties and Arbitration in Thailand," 2024, 393–421, https://doi.org/10.1007/978-981-99-9303-1_15.

legal framework that meets the challenges of the economy and trade while ensuring legal protection for investors and businessmen in the conduct of their business in the country. Disputes that do not go to court in Thailand are solved using the Thai Arbitration Act of 2002 for domestic and international arbitration. It attempts to resolve business disputes outside the formal courtroom setting by making the process more effective and transparent. It is a step towards increasing the business actors' confidence in arbitration.

In compliance with these regulations, the Thailand Arbitration Center (THAC) serves as an independent body in business arbitration. THAC acts as a dispute resolution center for many businesses, both domestic and foreign, and provides services such as arbitration, mediation, and legal consultation. To improve efficiency and ease the strain on courts, Thailand has integrated mediation into its dispute resolution system. Mediation procedures were largely regulated with the Mediation Act of 2019, establishing a legal approach to resolving business disagreements peacefully and less rigidly. The disputing parties are allowed to come to a decision freely, with help from an impartial mediator, before the case goes to court.[35] Thailand employs the 2002 Thai Arbitration Act as an out-of-court settlement mechanism for both domestic and international disputes. The application of mediation further shows the local legal and cultural values that seek to enhance trust and harmony in the resolution of contests, which has greatly benefited the community and business people.

Furthermore, in some business dealings with local people, the mediation and negotiation processes employed to resolve disputes are still influenced by the local culture through sociocultural Customary Law.[36] These customary rules are particularly important in business transactions involving land and other economic resources the indigenous people own and the natural resources that surround their lives.[37] In the context of

[35] Francis Goh and Amnart Tangkiriphimarn, "Looking Around: Should Thailand Promote Mediation Effectiveness and How?," *Thai Legal Studies* 3, no. 2 (December 30, 2023), https://doi.org/10.54157/tls.270008.

[36] E. Kofi Abotsi, "Customary Law and the Rule of Law," *Arizona Journalof International & Comparative Law* 37, no. 2 (2020): 137–66.

[37] Leni Sipra Helen Rahakbauw, "Preserving Tradition and Harmony," *JIHK* 5, no. 1 (September 14, 2023): 12–23, https://doi.org/10.46924/jihk.v5i1.177.

resolving disputes through customary law, there are always the so-called customary leaders or headmen of the communities who act as mediators in the disputes. This legal mechanism is much easier and simpler in resolving disputes as it reduces the time and resources required to settle a dispute using the formal court system. However, the approach helps reinforce social stability, order, and peace in society. Customary law will always be respected, but there must be a balance between indigenous business practices and legal certainty. The biggest obstacle is the intersection between business sector interests and indigenous peoples' rights. Thailand, for example, is a signatory to a number of international instruments that affect the mechanisms Thai businesses use to resolve disputes, such as the 1958 New York Convention and the ASEAN Free Trade Agreement.

The New York Convention allows Thailand to accept and execute foreign arbitrational decisions, giving legal protection to Thai businesspeople who have international business partnerships. In addition, business people can trade without many restrictions put in by individual member states under the ASEAN free trade agreement, which has enhanced the scope of foreign direct investment in the region.[38] Due to these provisions, Thailand's legal environment is more supportive of international business standards, which increases foreign investors' faith in the country's legal system. Indonesia, Vietnam, and Thailand practice the concept of legal pluralism in computing business legal disputes by incorporating the elements of statute, customary, and international law.

In Indonesia, the legal pluralism model manifests itself in the interplay between customary legal systems, Islamic legal systems, and the national legal system in the adjudication of business conflicts. In Vietnam, legal pluralism is demonstrated through the exercise of a national law that stems from customary law and is rooted in international law. At the same time, Thailand practices legal pluralism through the incorporation of business customary laws in dispute resolution at the local community level and the modernized arbitration and mediation systems that have been developed. This legal pluralism enables business-

[38] Herning Setyowati and Alma Nurulita, "The Role of ASEAN in Dispute Resolution between Thailand and Cambodia," *International Law Discourse in Southeast Asia* 2, no. 1 (January 31, 2023), https://doi.org/10.15294/ildisea.v2i1.66152.

related disputes in those three countries to be settled more responsively to the expectations of the businessmen, regardless of whether these are local or international. Despite these developments, there is still an undesirable situation where a multitude of systems continue to cooperate with the goal of achieving practicality and providing certainty for the business community.

The application of legal pluralism in business dispute resolution remains a subject of extensive debate, particularly regarding its impact on legal certainty and justice. In jurisdictions such as Indonesia, Vietnam, and Thailand, where multiple legal systems coexist, the challenge lies in balancing the flexibility offered by legal pluralism with the need for consistency and predictability in legal outcomes. While proponents argue that legal pluralism accommodates diverse legal traditions and enhances access to justice through alternative dispute resolution (ADR) mechanisms such as arbitration, mediation, and customary negotiations, critics contend that the multiplicity of legal frameworks often leads to inconsistencies, regulatory conflicts, and unpredictability in business dispute resolution.[39]

One of the fundamental challenges of legal pluralism is the interaction between state law and non-state legal orders, including customary law, religious law, and international arbitration. In Indonesia, the co-existence of civil law, Islamic law, and customary law has created jurisdictional overlaps that sometimes result in conflicting interpretations of business regulations. For instance, disputes involving sharia-compliant financial transactions are adjudicated in religious courts, while other commercial disputes fall under civil law, leading to fragmentation in legal enforcement. Vietnam, with its socialist legal system, integrates arbitration and mediation as part of its dispute resolution framework; however, national courts often retain discretionary power over the enforcement of foreign arbitral awards, creating uncertainty for investors. Meanwhile, Thailand has adopted a more arbitration-friendly approach, balancing formal legal structures with mediation practices rooted in Buddhist traditions. This divergence

[39] Samuel Hamonangan Simanjuntak, "Legal Pluralism as Pancasila's Reflection to Realize Substantive Justice in Law Enforcement and Law-Making," *Pancasila: Jurnal Keindonesiaan*, April 25, 2022, 37–48, https://doi.org/10.52738/pjk.v2i1.88.

in legal frameworks across the three countries highlights the broader question of whether legal pluralism strengthens or weakens the overall effectiveness of business dispute resolution.[40]

The role of ADR in pluralistic legal systems further illustrates the complexities of balancing flexibility with legal certainty. Indonesia, Vietnam, and Thailand have all embraced arbitration as a means of resolving business disputes outside the formal judicial system. The ratification of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards has facilitated cross-border arbitration. Yet, challenges persist in the recognition and enforcement of these awards within domestic legal systems. In Indonesia, for example, despite the presence of institutions such as the Indonesian National Arbitration Board (BANI), national courts retain the authority to review and, in some cases, overturn arbitration decisions, raising concerns about the reliability of arbitration as a dispute resolution mechanism. In Vietnam, judicial reluctance to enforce foreign arbitral awards, often justified by considerations of national economic policies, undermines investor confidence in arbitration. Thailand, on the other hand, has developed a more structured approach to arbitration through the Thailand Arbitration Center (THAC), which promotes international best practices and reduces government interference, making the country a more attractive venue for international business dispute resolution.[41]

Government intervention in business dispute resolution is another crucial factor affecting legal certainty under legal pluralism. Vietnam, with its state-controlled legal framework, exemplifies the risks of excessive government influence in business dispute resolution. The Vietnamese government retains significant control over arbitration and litigation, sometimes overriding private contractual agreements in favor of national economic priorities. This creates an unpredictable legal environment that may deter foreign investors from seeking impartial dispute resolution. In contrast, Indonesia, despite its complex legal

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[40] Wardhani, Noho, and Natalis, "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems."

[41] Hendri Jayadi, "Legal Certainty Implementation of Arbitration Decisions in Indonesia," in *Proceedings of the Arbitration and Alternative Dispute Resolution International Conference (ADRIC 2019)* (Paris, France: Atlantis Press, 2020), https://doi.org/10.2991/assehr.k.200917.003.

pluralism, allows for greater autonomy in arbitration proceedings, although the lack of harmonization between national, customary, and religious laws still presents challenges. Thailand, by contrast, has positioned itself as a more neutral arbitration hub, limiting state intervention and encouraging private dispute resolution mechanisms that align with international standards. The extent to which governments should intervene in business disputes under pluralistic legal systems remains a contentious issue, with scholars debating whether such intervention enhances legal stability or undermines the autonomy of businesses in choosing dispute resolution mechanisms.[42]

The compatibility of legal pluralism with international business law also raises concerns about the harmonization of diverse legal traditions with global business demands. As businesses operate across multiple jurisdictions, legal predictability and consistency become essential for fostering trade and investment. The European Union, for instance, advocates for a harmonized business dispute resolution framework to facilitate cross-border commerce. However, in Southeast Asian countries such as Indonesia, Vietnam, and Thailand, the persistence of customary and religious dispute resolution mechanisms sometimes clashes with international arbitration norms. In Indonesia, for example, customary arbitration practices coexist with national courts, creating ambiguity in legal enforcement. In Vietnam, the tension between international arbitration principles and national legal sovereignty often results in inconsistencies in the enforcement of arbitral awards. Thailand, while more arbitration-friendly, still faces challenges in integrating Buddhist-influenced mediation practices with formal legal frameworks. The question of whether legal pluralism can effectively coexist with global business standards remains open, necessitating further legal reforms to enhance predictability while preserving local legal identities.[43]

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[42] Nguyen Chi Thang, "Investor-State Dispute Settlement Mechanism in Vietnam's New Generation Free Trade Agreements: Challenges and Recommendations," *Lex Scientia Law Review* 7, no. 2 (November 30, 2023): 740–70, https://doi.org/10.15294/lesrev.v7i2.70577.

[43] Robert Howse and Joanna Langille, "Continuity and Change in the World Trade Organization: Pluralism Past, Present, and Future," *American Journal of*

In conclusion, the application of legal pluralism in business dispute resolution in Indonesia, Vietnam, and Thailand illustrates both the advantages and complexities of maintaining multiple legal systems within a single jurisdiction. While legal pluralism provides businesses with multiple avenues for resolving disputes, it also introduces legal uncertainty, jurisdictional conflicts, and enforcement challenges. Indonesia struggles with reconciling civil, Islamic, and customary law within its business dispute resolution framework, leading to inconsistencies in legal outcomes. Vietnam's strong state control over arbitration and judiciary processes creates unpredictability for investors, while Thailand's arbitration-friendly policies present a more stable yet still evolving model. The broader debate on legal pluralism and its impact on business dispute resolution highlights the need for legal harmonization and institutional reforms to enhance certainty, fairness, and efficiency in commercial transactions. Moving forward, a structured approach to integrating national, customary, and international legal norms will be critical to ensuring that legal pluralism contributes to a more predictable and just business environment in Southeast Asia.

B. The Impact of the Implementation of Legal Pluralism on Legal Certainty and Justice in Business Dispute Resolution in Indonesia, Vietnam, and Thailand

The simultaneous coexistence of different legal systems within one jurisdiction is referred to as legal pluralism. Legal pluralism permits the utilization of various methods to resolve disputes within businesses, such as the state judicial systems, customary law, religious law, arbitration, as well as mediation.[44] This has developed in many countries including Indonesia, Vietnam, and Thailand which, because of history, culture,

International Law 117, no. 1 (January 25, 2023): 1–47, https://doi.org/10.1017/ajil.2022.82.

[44] Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (July 1988): 869–96, https://doi.org/10.2307/3053638.

and world law, have complex legal systems.[45] The impact of the application of legal pluralism on legal certainty and justice in settling business disputes in Indonesia, Vietnam, and Thailand is summarized in the following table:

Aspect	Indonesia	Vietnam	Thailand
Flexibility of Dispute Resolution Mechanism	Litigation, arbitration, and mediation channels based on customary and Islamic law are available	Using a combination of litigation, arbitration, and mediation with a strong influence of state law	More flexible dispute resolution system with a focus on mediation and arbitration
Legal Certainty	Legal uncertainty often occurs due to overlaps between national law, customary law, and Islamic law	Problems in the implementation of international arbitration awards and government intervention in the judiciary	More stable than Indonesia and Vietnam, but still facing challenges in harmonizing customary and national laws
Access to Justice	Small business actors have difficulty accessing arbitration due to high costs; customary law-based settlements provide a cheaper alternative	Foreign investors face challenges in enforcing their rights due to government interference in the legal process	Mediation provides easier access for local business actors to resolve disputes without having to go through the courts
Advantages of Legal Pluralism	Allows parties to choose a legal system that suits their interests in resolving disputes	Facilitating a wider range of dispute resolution mechanisms, including customary law-based mediation	Increasing flexibility in resolving business disputes by prioritizing cultural values and social harmony

[45] Jorge Luis Fabra-Zamora, "The Conceptual Problems Arising from Legal Pluralism," *Canadian Journal of Law and Society / Revue Canadienne Droit et Société* 37, no. 1 (April 2022): 155–75, https://doi.org/10.1017/cls.2021.39.

Disadvantages of Legal Pluralism	1. Difficulty in harmonizing customary law, Islamic law, and national law 2. National arbitration can still be sued in district courts, creating legal uncertainty	1. Strong role of government in resolving business disputes 2. Courts are often reluctant to enforce international arbitration awards	1. Non-uniform interpretation of customary law 2. Inconsistency in the application of national law in business cases involving cultural and religious norms
Impact on Foreign Investors	Foreign investors prefer international arbitration due to legal uncertainty in the national litigation system	Foreign investors face obstacles in the implementation of international arbitration awards due to government intervention	Thailand is more attractive to foreign investors due to support for international arbitration and a more effective mediation system
Related Regulations	- Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution - Sharia Banking Law No. 21 of 2008 - Article 18B paragraph (2) of the 1945 Constitution concerning recognition of customary law	- Vietnam Arbitration Law 2010 - Vietnam Code of Civil Procedure 2015 - Decree No. 01/2014/QD-TTg on Commercial Mediation	- Thai Arbitration Act 2002 - Mediation Act 2019 - Thai Civil Procedure Act

The effects of legal pluralism on the certainty of the law and justice in the area of business dispute resolution is multifaceted. Legal pluralism may offer a combination of different mechanisms, resolving disputes more flexibly than what is obtainable in a monolithic legal system. On the downside, a lack of clear supervision and control of the different

systems may result in legal pluralism, causing legal uncertainty.[46] Such uncertainty could be detrimental to the business environment, to the particular detriment of investors who will seek defined legal protections on their economic activities. Indonesia is a unique legal jurisdiction for it is a conglomeration of national, customary, and Islamic law, which applies to a number of spheres of life, including the business of resolving business disputes. The business law of Indonesia is primarily governed by the civil law system derived from the Dutch Colonial rule. However, case law and Islamic law do have an important place in business transactions with the indigenous people and in Sharia-compliant economics.[47]

In a litigation context, legal certainty is provided for by Law Number 48 of 2009 on Judicial Power that, among other things, reiterates the independence of the judiciary and the rule of law for all seeking justice. Moreover, Law Number 37 of 2004 covers the issues of Bankruptcy and Suspension of Payment of Obligations, which guides the resolution of bankruptcy through the Commercial Court. This provides business creditors and debtors with certainty in business dealings with regard to resolving business disputes stemming from debts. On the other hand, there is customary law, which is provided for in 18B (2) of the Constitution of 1945, that can engender legal ambiguity in resolving business disputes, more so with reference to people of an indigenous nature. The ignorance about the extent and boundaries of application of customary law to specific business matters often creates conflicts of interpretation and application of the law by judges and the parties to the disputes.[48] Customary law can also be recognized by courts as a resource, but in other situations, the national law that is Civil Law is preferred for the resolution of disputes, thus creating contradictions in

[46] Gordon R. Woodman, "Legal Pluralism and the Search for Justice," *Journal of African Law* 40, no. 2 (July 1996): 152–67, https://doi.org/10.1017/S0021855300007737.

[47] Dwi Asmoro* and Ade Saptomo, "Islamic Law in the Development of Indonesian Law," *Riwayat: Educational Journal of History and Humanities* 7, no. 1 (January 10, 2024): 138–47, https://doi.org/10.24815/jr.v7i1.36816.

[48] Fradhana Putra Disantara, "Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 6, no. 1 (January 2021): 1–36, https://doi.org/10.35673/ajmpi.v6i1.1129.

decisions.

This is further compounded by the variance of the customary law of different regions, as different communities have different traditions and norms that dominate them. Therefore, business people in these regions where the custom law is strong will have difficulties in adopting the right strategy for the resolution of disputes. Customary practices need to be aligned with national legislation to ensure that the rights of indigenous people are protected while simultaneously providing legal clarity in business disputes. For out-of-court business dispute settlement, Indonesia has Law 30 of 1999 on Arbitration and Other Forms of Dispute Resolution, which allows for mediation and arbitration. BANI, or the Indonesian National Arbitration Board, is one of the frequently used arbitration institutions for business disputes. However, in some matters, appeals of decisions made by national arbitrators can still be lodged with the district courts, which may delay the conclusion of the disputes and make the legal framework for business practitioners ambiguous.

The governing body of Vietnam relies upon a unified legal framework inspired by socialist law, which accentuates the capacity of the state to manage legal affairs and resolve conflicts. The Vietnam Code of Civil Procedure from 2015 prescribes court practices in Vietnam, including the business jurisdiction of the courts, the procedures of obtaining evidence, and the appeals process.[49] These measures define essential regulations concerned with the governmental jurisdiction over business disputes in Vietnam, which have to be solved by judicial means. In addition, Vietnam has the 2010 Arbitration Law that facilitates non-litigious dispute resolution by providing an established scheme for arbitration in Vietnam.[50] This enables business partners to settle disputes using arbitration in domestic or foreign companies, provided that the decisions of arbitration are conclusive and compulsory. Even though

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[49] I Gede Agus Kurniawan et al., "The Business Law in Contemporary Times: A Comparison of Indonesia, Vietnam, and Ghana," *Substantive Justice International Journal of Law* 7, no. 2 (December 18, 2024): 114–41, https://doi.org/10.56087/substantivejustice.v7i2.297.

[50] Anh Duong Vu and Corinne Nguyen, "Arbitration in Vietnam," *Journal of International Arbitration* 31, no. Issue 5 (October 2014): 675–82, https://doi.org/10.54648/JOIA2014031.

arbitration is developing in Vietnam, there are difficulties concerning the enforcement and recognition of international arbitration awards by local courts, which tend to lack the assurance of law and government control in some cases.[51]

On the other hand, like any other country, Vietnam continues to face enormous challenges when it comes to rendering international arbitration seats in the country, especially as it pertains to ensuring that local and foreign business disputes are settled without a hitch. Some Vietnamese courts are dubious about the enforcement of international arbitration awards made for Vietnam, which was supposed to bring a sense of security to companies doing business in Vietnam, where there is absolute uncertainty. Various courts in Vietnam still maintain some power to terminate arbitral awards through discretionary means that dampen foreign investors' faith in the legal system, despite the fact that the country acceded to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

While Thailand possesses a comprehensive framework for resolving business disputes through the civil law system, it still incorporates aspects of customary law and Buddhist practices. This shows their unique legal system because it incorporates traditional elements in various dealings and resolves disputes in an unorthodox manner. The Thai business litigation system aligns with the Thai Civil Procedure Act, which gives a basis for resolving disputes in the law courts. Thai courts have an important duty in establishing legal certainty for business participants in issues concerning contracts, bankruptcy, and other business disputes. Despite these advantages, where politicians are given the authority and the right to legislate guidelines for business litigation, a segment of the business population chooses arbitration and mediation because the litigation system is lengthy and too complicated, even when there is adequate legal structure. At the same time, the combination of civil law with custom and Buddhism gives the Thai legal system a unique touch, being effective without a very rigid structure like in most Western countries.

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[51] Quang Chuc Tran, "Recognition and Enforcement of Foreign Arbitral Awards in Vietnam," *Journal of International Arbitration* 22, no. Issue 6 (December 2005): 487–503, https://doi.org/10.54648/JOIA2005032.

Because the litigation process is costly and time-consuming, a lot of business participants in Thailand prefer arbitration and mediation as methods of alternative dispute resolution. The Thai Arbitration Act 2002 provides the legal framework for arbitration in the country, with the Thailand Arbitration Center (THAC) as the major institution that deals with business disputes. THAC has been successful in providing prompt and professional arbitration services, enabling parties to settle disputes in a much shorter time than it would take in court.[52] Furthermore, support from the government for arbitration as a means of settling disputes has fostered its increasing adoption in many business areas. In Indonesia, the business community is able to select from a variety of legal cultures and systems, which include dispute resolution through litigation, arbitration, as well as mediation and custom-based deliberation. This variety of mechanisms should enhance the minimization of business disputes in justice with sufficient recognition of other legal norms like customary law and Islamic law within sharia economic activities.

Nonetheless, in practice, there are many hindrances to attaining justice, especially those that are economic and involve unequal access to legal resources.[53] In addition, the legal framework inequality to those parties who have economic power makes the system unjust for resolving disputes, where large corporations with better legal funding are more likely to secure winning decisions.[54] Another problem that appears is the fragmentation in the integration of legal pluralism where the application of the law on the state and the custom law does not always work out smoothly, hence posing a problem of legal ambiguity for business people. Therefore, though legal pluralism does provide room for resolving

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[52] Thomas Bennett, "Indigenous Peoples, Customary Law and Human Rights – Why Living Law Matters, by Brendan Tobin," *The Journal of Legal Pluralism and Unofficial Law* 47, no. 1 (2015): 140–44, https://doi.org/10.1080/07329113.2015.993878.

[53] Gamal Moursi Badr, "Islamic Law: Its Relation to Other Legal Systems," *The American Journal of Comparative Law* 26, no. 2 (1978): 187, https://doi.org/10.2307/839667.

[54] Teddy Prima Anggriawan et al., "The Urgency of Legal Aid in Online Dispute Resolution in the Modernization Era," *Journal of Law, Politic and Humanities* 4, no. 6 (October 8, 2024): 2553–60, https://doi.org/10.38035/jlph.v4i6.776.

business conflicts, there is still a lot to be done to enhance the reach and efficacy of the system so that justice can actually be provided to all. Disputes are usually preferred to be resolved between the parties by international arbitration because large companies find this mode quicker, more cost effective, and assuring greater legal protection compared to litigation in domestic courts.

In international arbitration, the parties are also free to choose an independent arbitrator who has special knowledge of the industry and is familiar with the business. At the same time, there is less restriction concerning what law will be applicable. At the same time, smaller businesses most times have to depend on the local courts, which not only consume excessively more time but are also more expensive, especially in the areas of hiring lawyers and paying court fees.[55] Like other countries, Vietnam also has significant challenges achieving fairness in solving business conflicts, especially looking at the adjudication of business arbitration laws, which is meant to ensure abundance for business people. Although Vietnam has developed an arbitration system that allows for out-of-court settlement of disputes, practice on the ground shows that in some cases, government intervention remains a principal challenge. The government of Vietnam,[56] which highly dominates most economic arms, tends to intervene in the settlement of business controversies, especially those which involve foreign firms or are in strategic of the economy. This can undermine the autonomy of arbitration institutions and cause legal ambiguity for investors who wish for objective and unprejudiced processes of dispute resolution.

Moreover, the enforcement of arbitral awards is also a problematic area because, although Vietnam is a party to the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards, there are some instances when international arbitral awards are

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[55] Akhmad Al-Farouqi Sastrowiyono, "The Pro's And Con's Of Arbitration: A Study Of International Arbitration With Perspective Of Indonesian And Korean Law," *Jurnal Lex Renaissance* 4, no. 2 (July 1, 2019), https://doi.org/10.20885/JLR.vol4.iss2.art2.

[56] I Gede Agus Kurniawan et al., "The Philosophical Approach to the Existence of Business Law: Comparison of Indonesia, Vietnam, and Ghana," *Jurnal Hukum Bisnis Bonum Commune* 8, no. 1 (2025), https://doi.org/https://doi.org/10.30996/jhbbc.v8i1.12382.

not easy to enforce because of administrative difficulties or varying legal policies of the domestic courts. Therefore, although the arbitration system in Vietnam provides a more rapid and simpler method of settling business disputes, virtually all parties to the business are often apprehensive of this mediation approach requiring much legal reforms with regards to independence of arbitration. The Vietnamese government maintains a firm grip on the judiciary, which opens the door to political intervention when settling business conflicts. In some situations, it is possible for judicial decisions to be swayed by government interests or national economic policies, particularly in conflicts involving state property or other strategic industries.

This scenario poses problems for foreign investors who hope to operate in a country with a pragmatic, unbiased, and independent legal system. The ambiguity of law stemming from the partiality of judges poses a threat to foreign investors. Therefore, most parties tend to prefer international arbitration or any other non-jurisdictional settlements that are regarded as more efficient and just than the state courts that are prone to political pressure. The Thai legal framework contains the Mediation Act of 2019, which enables mediation in the country. This framework allows for a flexible and speedy resolution of a conflict based on negotiation and mutual agreement between parties. The framework aims at relieving the courts of undue burden as well as offering an easier way out for business persons wishing to avoid complex and costly litigations. It is mediators who specialize in negotiation and law usually conduct mediation in business disputes and other sectors of the economy. The use of plural legal systems in resolving business disputes in Indonesia, Vietnam, and Thailand brings about a multifaceted challenge in relation to legal certainty and justice. Even though these different legal orders encourage flexibility and choice among business people, issues such as legal ambiguity and uneven distribution of justice persist as problems that should be solved. Hence, legal pluralism is required to be more effectively and accurately integrated to achieve legal certainty and justice for all the disputing parties.

However, critics of legal pluralism argue that it generates uncertainty and inconsistency, particularly in jurisdictions where multiple legal systems operate simultaneously without clear hierarchies or harmonization. Brian Z. Tamanaha, a prominent critic of unregulated

legal pluralism, warns that the coexistence of state law, customary law, and religious norms can result in fragmented legal enforcement, where businesses struggle to predict which legal principles will apply to their disputes. This challenge is evident in Indonesia, where Islamic law, customary law, and the civil law system often intersect, leading to conflicting judicial interpretations in business-related cases. Similarly, in Vietnam, where the state exercises strong control over legal institutions, the inconsistent application of customary law and international arbitration decisions creates uncertainty for both domestic and foreign investors. Thailand faces similar challenges, as Buddhist-influenced legal traditions and local mediation practices sometimes conflict with the formal legal system, raising concerns about the enforceability and uniformity of dispute resolution outcomes.[57]

At the international level, discussions on arbitration and alternative dispute resolution within pluralistic legal frameworks further illustrate the complexities of ensuring legal certainty and justice. The United Nations Commission on International Trade Law (UNCITRAL) and the International Chamber of Commerce (ICC) advocate for arbitration as a means of improving legal predictability in cross-border business disputes. The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is often cited as a mechanism that strengthens legal certainty by ensuring that arbitration rulings are enforceable across different jurisdictions. However, in countries with strong legal pluralism, such as Indonesia, Vietnam, and Thailand, the implementation of international arbitration decisions remains inconsistent. In Vietnam, for instance, local courts have annulled foreign arbitration awards on procedural grounds, weakening investor confidence in the dispute resolution system. Similarly, in Indonesia, national courts have occasionally refused to recognize customary or sharia-based arbitration rulings, thereby creating obstacles to legal certainty. While Thailand has developed a more structured arbitration system, the integration of customary dispute

[57] Sri Lestari, "The Legal Certainty for Resolving Consumer and Business Actor Disputes from the Perspective of Social Engineering Justice from Roscoe Pound," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 3 (December 27, 2023): 557–68, https://doi.org/10.29303/ius.v11i3.1309.

resolution mechanisms with formal legal structures remains an ongoing challenge.[58]

An alternative perspective within this debate argues that legal pluralism can be effectively managed through structured legal harmonization and institutional reforms. The European Union (EU) and some African jurisdictions, such as South Africa, have attempted to integrate legal pluralism into their business dispute resolution frameworks by establishing mechanisms that align customary and formal legal systems. In the EU, for example, legal harmonization efforts have focused on standardizing arbitration and mediation procedures while still allowing for national legal variations. Some scholars suggest that Southeast Asian countries, including Indonesia, Vietnam, and Thailand, could adopt similar approaches to mitigate the uncertainties arising from pluralistic legal frameworks, ensuring that diverse legal traditions coexist while maintaining consistency in dispute resolution.[59]

Ultimately, the debate on legal pluralism in business dispute resolution revolves around the balance between flexibility and predictability. While pluralism offers a range of dispute resolution mechanisms that reflect local cultural and religious values, it also introduces challenges related to legal certainty, enforcement, and fairness. Policymakers and legal scholars continue to explore potential reforms to preserve the advantages of legal pluralism while addressing its limitations. Whether through clearer legislative frameworks, enhanced arbitration mechanisms, or improved judicial training, the objective remains to ensure that legal pluralism contributes to a more just, efficient, and predictable business environment.

Conclusion

The implementation of legal pluralism in business dispute resolution in Indonesia, Vietnam, and Thailand presents both advantages and challenges. Legal pluralism allows for multiple legal

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[58] George A. Bermann, "The Future of International Commercial Arbitration," *Columbia Law School Scholarship Archive*, 2021.

[59] Paul Schiff Berman, "From Legal Pluralism to Global Legal Pluralism," *SSRN Electronic Journal*, 2014, https://doi.org/10.2139/ssrn.2609369.

systems to coexist, including national laws, customary traditions, religious laws, and international arbitration mechanisms. This flexibility provides businesses with diverse options for resolving disputes, accommodating cultural and legal traditions. However, it also introduces complexities, particularly in ensuring legal certainty and consistency in enforcement. In Indonesia, the interplay between civil, Islamic, and customary laws creates overlapping jurisdictions, making legal outcomes unpredictable. Vietnam's state-controlled legal system integrates arbitration and mediation but struggles with enforcing international arbitral awards due to government intervention. Thailand, on the other hand, has a more arbitration-friendly system but still faces difficulties in harmonizing national law with Buddhist-influenced mediation practices. These challenges highlight the need for a coherent and structured legal framework that integrates various legal traditions while ensuring predictability and fairness in business dispute resolution.

Despite the challenges, legal pluralism also offers significant benefits, particularly in improving access to justice and promoting alternative dispute resolution mechanisms such as arbitration and mediation. In Indonesia, customary law plays a crucial role in resolving business disputes within local communities, while the presence of the Indonesian National Arbitration Board (BANI) provides an option for commercial arbitration. Vietnam's legal reforms have encouraged the use of mediation, particularly through the Vietnam International Arbitration Center (VIAC), although enforcement issues remain. Thailand has made strides in developing a well-regulated mediation and arbitration system, with institutions like the Thailand Arbitration Center (THAC) enhancing efficiency and credibility in dispute resolution. Moving forward, the harmonization of legal pluralism with international business standards is essential. Legal reforms should focus on strengthening enforcement mechanisms, ensuring compatibility between different legal traditions, and fostering a dispute resolution system that is both effective and accessible. By addressing these issues, Indonesia, Vietnam, and Thailand can create a more stable and attractive business environment that balances legal certainty with cultural and legal diversity.

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