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Civil Law Tradition and Access to Justice: A Comparative Legal Politics of Civil Procedure in Indonesia and South Africa

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Abstract

Introduction: *This article analyzes the comparative civil law tradition and its influence on access to justice through the lens of the Politics of Civil Procedure Law in Indonesia and South Africa. Both countries have a deep colonial history that shapes their judicial structures and litigation procedures to this day. In Indonesia, the use of outdated colonial regulations creates barriers for justice seekers, while in South Africa, hybrid systems face the challenge of massive socio-economic inequality.*
Purposes of the Research: *The purpose of this study is to evaluate the impact of the persistence of colonial inherited civil procedural law on access to justice and to analyze the political direction of civil procedure reform in both countries, particularly related to digitalization and integration of customary law in the modern legal system.*
Methods of the Research: *This research uses normative legal research methods with a comparative approach, a statute approach, and a conceptual approach. Secondary legal materials are analyzed qualitatively to compare policy developments in Indonesia and South Africa.*
Results Main Findings of the Research: *The findings show that Indonesia is still stuck in the HIR/RBg formalism that limits procedural protection, despite modernization efforts through e-Court. In contrast, South Africa has integrated the right of access to justice into the constitution, but faces obstacles on litigation costs. The legal politics of the two countries are now leading to unification and digitalization to overcome access inequality.*

Keywords: Civil Law Tradition; Civil Procedure Law; Access to Justice; Legal Politics.

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INTRODUCTION

The *civil law tradition* rooted in the codification of Roman law has become the foundation for many legal systems in the world, including Indonesia and much of South Africa.[1] However, in the context of access *to justice*, this tradition is often faced with criticism of rigid procedural formalism that actually distances society from the essence of justice itself.[2] Access to justice is not just the availability of court doors for the community, but the ability of each individual to

[1] Ana Fauzia, Fathul Hamdani, and Deva Gama Rizky Octavia, "The Revitalization of the Indonesian Legal System in the Order of Realizing the Ideal State Law," *Progressive Law Review* 3, no. 1 (2021): 12–25, https://doi.org/10.36448/plr.v3i01.46.
[2] Estelle Hurter, "Access to Justice: To Dream the Impossible Dream?," *The Comparative and International Law Journal of Southern Africa* 44, no. 3 (2011): 408–27.

get fair, efficient, and affordable legal solutions.[3] In developing countries such as Indonesia and South Africa, the politics of civil procedure law have become a crucial instrument in bridging the gap between written legal norms and the social reality of justice seekers.[4]

Indonesia, as an adherent of the pure *civil law* system inherited from the Netherlands, still grapples with the use of colonial regulations such as *the Herziene Inlandsch Reglement* (HIR) and *the Rechtsreglement voor de Buitengewesten* (RBg).[5] The persistence of these regulations created significant legal uncertainty and procedural hurdles, given that they were designed for the benefit of colonial administration, not to protect the rights of citizens within the framework of a modern constitution.[6] Although the principle of justice is "simple, fast, and low-cost," the reality on the ground shows that civil litigation is often a laborious and expensive process for low-income communities.[7] This means that the existence of civil procedural law in the civil law tradition is often trapped in a paradox between the rigidity of formalism and the demands of substantive justice.[8] As an instrument that regulates the mechanism for the achievement of rights, procedural law is not just a neutral judicial technicality, but a political product of law that reflects the state's vision for the protection of its citizens.[9] However, for countries in the southern hemisphere such as Indonesia and South Africa, their civil procedure systems bear the deep historical burden of colonialism, where judicial structures are often designed to serve the interests of colonial administrations rather than to guarantee access to justice for the wider population.

On the other hand, South Africa presents a unique case with its hybrid legal system, which combines Roman-Dutch *civil law* with English *common law*, as well as recognition of *customary*

[3] Fathul Hamdani et al., "Fiksi Hukum: Idealita, Realita, Dan Problematikanya Di Masyarakat," *Primagraha Law Review* 1, no. 2 (2023): 71–83, https://doi.org/10.59605/plrev.v1i2.364.

[4] Mathias Nyenti, "Access to Justice in the South African Social Security System: Towards a Conceptual Approach," *De Jure Law Journal* 46, no. 4 (2013): 901.

[5] Vincentius Verdian, "Comparative Assessment of Civil Procedure in Indonesia and The Netherlands: The Source of The Principles," *Jurist-Diction* 8, no. 2 (2025): 269–78, https://doi.org/10.20473/jd.v8i2.71165.

[6] Soetandyo Wignjosoebroto, "Negara Hukum Dan Permasalahan Akses Keadilan Di Negeri-Negeri Berkembang Pasca-Kolonial," in *Makalah, Konferensi Dan Dialog Nasional* (Jakarta, 2012).

[7] Elisabeth Sundari, Helidorus Chandera Halim, and Ousu Mendy, "Should Indonesia Adopt Legal Representation in Civil Cases?," *Journal of Human Rights, Culture and Legal System* 5, no. 2 (2025): 554–80, https://doi.org/10.53955/jhcls.v5i2.604.

[8] Ana Fauzia, Deva Gama Rizky Octavia, and Fathul Hamdani, "The Conflict of the Norms in the Execution of Secured Objects Which Are Enforced by Liability Rights When the Debtor Is Bankrupt," *Progressive Law Review* 4, no. 1 (2022): 1–9.

[9] Hamdan Rampadio, Ana Fauzia, and Fathul Hamdani, "The Urgency of Arrangement Regarding Illicit Enrichment in Indonesia in Order to Eradication of Corruption Crimes by Corporations," *Jurnal Pembaharuan Hukum* 9, no. 2 (2022): 225–41.

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law.[10] Post-apartheid, South Africa made a huge leap by explicitly including the right of access to justice in Article 34 of the 1996 Constitution.[11] However, the legacy of deep economic and social inequality remains a major barrier, where access to high-quality legal services is still a luxury that only a handful of elites can enjoy.[12] Legal politics in South Africa today focuses on transforming the country's legal services and decolonizing the justice system to ensure justice for indigenous peoples and vulnerable groups.[13] In Indonesia, the persistence of the use of *the Herziene Inlandsch Reglement* (HIR) and *the Rechtsreglement voor de Buitengewesten* (RBg) during more than seven decades of independence is clear evidence of the slow process of unification and decolonization of the law. The comparison between Indonesia and South Africa is relevant because both are countries that are transforming from their colonial/authoritarian past to an inclusive constitutional democracy.[14] Both countries face challenges in integrating legal pluralism and digital technology into their civil procedures.[15] Both Indonesia and South Africa are now at a political crossroads in order to integrate digital technology and legal pluralism into their procedural systems. The legal politics of the two countries began to shift from mere static codification to the formation of a more responsive and inclusive judiciary.

Based on this context, this article will dissect two main problems. First, to what extent are the residues of colonial formalism and hybrid structures a barrier to access to substantive justice in Indonesia and South Africa? Second, what is the direction of legal political reconstruction in accommodating unification, digitalization through *e-Court*, and recognition of living law in order to realize a civil justice system that truly serves human dignity?

METHODS OF THE RESEARCH

This research is a normative legal research that focuses on the analysis of positive legal norms, legal principles, and legal doctrines related to civil procedural law and access to

[10] Dave Holness, "Access to Justice in South Africa," in *Access to Justice*, ed. Alan PATERSON et al. (Global Access to Justice Project, 2021), 1–37.

[11] Nyenti, "Access to Justice in the South African Social Security System: Towards a Conceptual Approach."

[12] Lesley Greenbaum, "Access to Justice for All: A Reality or Unfulfilled Expectations?," *De Jure Law Journal* 53, no. 1 (2020), https://doi.org/10.17159/2225-7160/2020/v53a17.

[13] Department of Justice and Constitutional Development, *Revised Strategic Plan 2025-2030* (Pretoria: Justice and Constitutional Development, Republic of South Africa, 2025).

[14] Andi Sugirman et al., "Integration of Constitutional Law and Human Rights: A Comparative Study between Indonesia and South Africa," *Jurnal Suara Hukum* 7, no. 1 (2025): 274–97, https://doi.org/10.26740/jsh.v7n1.p274-297.

[15] Department of Justice and Constitutional Development, *Revised Strategic Plan 2025-2030*.

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justice.[16] The approaches used are a *comparative approach* to see the similarities and differences in legal politics in Indonesia and South Africa, a statute *approach* to examine regulations related to civil procedures, and a *conceptual approach* to dissect the concept of access to justice in the *civil law tradition*.[17] The secondary legal materials used include laws and regulations such as the HIR/RBg in Indonesia, the 1996 South African Constitution, the strategic plan of judicial institutions, as well as academic literature and international research reports from the period 2015-2025.[18] The technique of collecting legal materials is carried out through document studies and digital legal database searches. The analysis was carried out qualitatively with descriptive-analytical methods to produce an in-depth synthesis of the direction of civil procedure law development in both jurisdictions.

RESULTS AND DISCUSSION

A. Comparative Analysis of Procedural Barriers: Between Indonesian Continental Formalism and South African Hybrid Complexity

Barriers to access to justice in civil cases are often structural, rooted in the history of each country's national law formation.[19] In the *civil law* tradition, there is a tendency to prioritize formal truth through very strict written procedures,[20] This creates unique challenges when the system has to deal with the substantive justice demands of socially and economically diverse communities.[21]

1. Indonesia: Colonial Hegemony and HIR/RBg Formalism

Indonesian civil procedure law is still dominated by Dutch colonial heritage regulations, namely *the Herziene Inlandsch Reglement* (HIR) for Java and Madura, and *the Rechtsreglement voor de Buitengewesten* (RBg) for outside Java. The persistence of this regulation shows the failure of national law politics in unifying and decolonizing procedural law for more than seven decades of independence.[22]

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[16] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2012).
[17] Sundari, Halim, and Mendy, "Should Indonesia Adopt Legal Representation in Civil Cases?"
[18] Department of Justice and Constitutional Development, *Revised Strategic Plan 2025-2030.*
[19] Hurter, "Access to Justice: To Dream the Impossible Dream?"
[20] Fence M. Wantu, "Shifting the Paradigm of the Indonesian Judicial System from The Influence of the Anglo-Saxon Judicial System," *Jambura Law Review* 5, no. 1 (2023): 118–35, https://doi.org/10.33756/jlr.v5i1.17927.
[21] Sundari, Halim, and Mendy, "Should Indonesia Adopt Legal Representation in Civil Cases?"
[22] Verdian, "Comparative Assessment of Civil Procedure in Indonesia and The Netherlands: The Source of The Principles."

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This colonial formalism has a direct impact on low access to justice through several mechanisms: a) Dualism and Fragmentation: The difference in rules between Java and outside Java creates procedural inequalities for citizens based only on their geographical domicile;[23] b) Rigidity of Proof: The evidentiary system in the HIR that places a heavy emphasis on written evidence often disadvantages indigenous peoples or poor groups who do not have formal documentation of their rights;[24] c) Mandatory Representation Issues: Although Article 123 of the HIR allows parties to *self-represented litigation*, the complexity of the procedure means that those who do not use lawyers often lose the trial due to procedural technical errors.[25] However, the obligation to use a lawyer is also impossible to apply absolutely, due to the unaffordable cost of advocate services for the majority of the population;[26] d) Uncertainty of Execution: The process of executing civil judgments in Indonesia is considered a "nadir" of the achievement of justice, where many judgments that have the force of law remain unenforceable due to cost constraints and lack of support from law enforcement officials.[27]

Obstacle Aspects	Description of Conditions in Indonesia	Impact on Access to Justice
Key Regulations	HIR (1848) and RBg (1927)[28]	Outdated and colonial bias[29]
Judicial System	Inquisitorial (Judge actively seeks facts)[30]	Heavy burden on judges, potential subjectivity[31]
Litigation Fees	Immeasurable (especially summons and execution costs)[32]	Poor people refuse to go to court[33]
Legal Capacity	Low Community Legal Capacity Index (38.7)[34]	High reliance on limited legal aid[35]

[23] Daniel S. Lev, "The Politics of Judicial Development in Indonesia," *Comparative Studies in Society and History* 7, no. 2 (1965): 173–199, https://doi.org/10.1017/S0010417500003583.

[24] Verdian, "Comparative Assessment of Civil Procedure in Indonesia and The Netherlands: The Source of The Principles."

[25] Sundari, Halim, and Mendy, "Should Indonesia Adopt Legal Representation in Civil Cases?"

[26] Sundari, Halim, and Mendy.

[27] Benny Riyanto, *Pembaharuan Hukum Acara Perdata Indonesia* (Jakarta: Badan Pembinaan Hukum Nasional, Kementerian Hukum dan Hak Asasi Manusia, 2019).

[28] Verdian, "Comparative Assessment of Civil Procedure in Indonesia and The Netherlands: The Source of The Principles."

[29] Verdian.

[30] Wantu, "Shifting the Paradigm of the Indonesian Judicial System from The Influence of the Anglo-Saxon Judicial System."

[31] Wantu.

[32] Sundari, Halim, and Mendy, "Should Indonesia Adopt Legal Representation in Civil Cases?"

[33] Alternative Law Groups, *Role of Legal Empowerment by the Community in Strengthening Access to Justice for Women in Conflict with the Law in Indonesia* (Quezon City: The Alternative Law Groups, Inc., 2024).

[34] Alternative Law Groups.

[35] Daniel Akintunde, Sutiani Choirunnisa, and Christopher Bastiaan Fernando, "The Role of Law Clinics and Legal AID Center in Providing Legal AID for Vulnerable Group: A Case of Africa, Indonesia, and Australia," *The Indonesian Journal of International Clinical Legal Education* 4, no. 1 (2022), https://doi.org/10.15294/ijicle.v4i1.55775.

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2. South Africa: The Complexity of Hybrids and Economic Barricades

In contrast to Indonesia, South Africa has a hybrid legal system that is heavily influenced by British *common law* in terms of judicial procedures.[36] Although their constitution guarantees the right of access to justice, the adversarial system adopted demands a very dominant role of lawyers, which in turn creates massive economic barriers.[37]

Some of the key barriers in South Africa include: a) Confusing Concurrent Jurisdictions: The overlap between the *High Court* and *the Magistrates' Court* allows financially stronger parties to conduct "forum shopping" to pressure weaker opponents with higher litigation costs;[38] b) Excessive Legal Services Fees: Research shows that the average household in South Africa has to save one week's income just to pay for an hour of consultation sessions with a lawyer.[39] This creates class-based discrimination where justice becomes a commodity for those who can afford to pay;[40] c) Language and Geography Burden: High courts are often located in urban centres and use English or Afrikaans, which alienates rural residents and native language speakers;[41] d) Failure to Expect Judgment: Increased formal access to the courts is often not followed by satisfactory outcomes, creating a strain on the legal system due to the large number of citizens' expectations that are not met by the limitations of court solutions.[42]

Comparison Indicators	Indonesia (Civil Law)	Afrika Selatan (Hybrid/Common Law)
Access Rights Policy	Law of Judicial Power[43]	Article 34 of the 1996 Constitution[44]
The Role of Advocates	Facultative, yet de facto necessary[45]	Practically mandatory (Adversarial System)[46]
Cheap Mechanism	Simple Lawsuit (*Small Claims*)[47]	*Small Claims Courts* (Since 1985)[48]

[36] Holness, "Access to Justice in South Africa."
[37] Nyenti, "Access to Justice in the South African Social Security System: Towards a Conceptual Approach."
[38] Chris Abrahams, "Access to Courts in South Africa: The Complexities of Concurrent Jurisdiction," *De Rebus*, 2025.
[39] Nyenti, "Access to Justice in the South African Social Security System: Towards a Conceptual Approach."
[40] Greenbaum, "Access to Justice for All: A Reality or Unfulfilled Expectations?"
[41] Nyenti, "Access to Justice in the South African Social Security System: Towards a Conceptual Approach."
[42] Whitney K. Taylor, "The Unintended Consequences of Increased Access to Justice," *Law & Society Review* 59, no. 4 (2025): 665–688, https://doi.org/10.1017/lsr.2025.10044.
[43] Wantu, "Shifting the Paradigm of the Indonesian Judicial System from The Influence of the Anglo-Saxon Judicial System."
[44] Nyenti, "Access to Justice in the South African Social Security System: Towards a Conceptual Approach."
[45] Sundari, Halim, and Mendy, "Should Indonesia Adopt Legal Representation in Civil Cases?"
[46] Sandra F. Joireman, "Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy," *Political Science Faculty Publications*, 2001, 1–45.
[47] Wiwin Dwi Ratna Febriyanti and Adi Sulistiyono, "Pembaharuan Hukum Acara Perdata Melalui Gugatan Sederhana Guna Meningkatkan Kemudahan Berusaha Di Indonesia," *Privat Law* 12, no. 1 (2024): 58–68.
[48] David McQuoid-Mason, "Access to Justice in South Africa," *Clark D. Cunningham*, 1999, 1–16.

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Major Obstacles	Ancient regulatory formalism[49]	Racial economic inequality[50]

This comparison shows that the civil law tradition in Indonesia and the hybrid structure in South Africa both inherit the colonial residue that limits access to justice for the majority of the population.[51] In Indonesia, the main obstacle is the rigidity of written norms, while in South Africa, the main obstacle is the procedural costs inherent in complex adversarial systems.[52] However, both countries are beginning to realize that without radical legal political reforms, the courts will only become ivory towers untouched by the common people.[53]

Out-of-court dispute resolution through mediation and ADR (*Alternative Dispute Resolution*) is a growing trend in both countries to overcome the bottleneck of the formal system.[54] In Indonesia, the obligation to mediate in court has been implemented to reduce the burden of cases, while in South Africa, the tradition of community-based mediation has begun to be integrated into the modern legal system through the Traditional Courts Bill.[55] The substantive challenge remains on how to ensure that these non-litigation mechanisms do not simply ignore the constitutional rights of vulnerable groups, such as women and people with disabilities.[56] Legal Political Reconstruction Towards a Modern Judiciary: Digitalization, Unification, and Harmonization of Living Law.

The direction of legal politics in Indonesia and South Africa in the past decade shows a paradigm shift from legalistic formalism to a more responsive and inclusive judiciary.[57] This reconstruction strategy includes the use of information technology, regulatory unification efforts, and broader recognition of the pluralism of customary and religious law.[58]

1. Digitization and Modernization of the Judiciary

[49] Verdian, "Comparative Assessment of Civil Procedure in Indonesia and The Netherlands: The Source of The Principles."
[50] Greenbaum, "Access to Justice for All: A Reality or Unfulfilled Expectations?"
[51] Holness, "Access to Justice in South Africa."
[52] Sundari, Halim, and Mendy, "Should Indonesia Adopt Legal Representation in Civil Cases?"
[53] Riyanto, *Pembaharuan Hukum Acara Perdata Indonesia*.
[54] Sri Sukmana Damayanti and Siti Marwiyah, "Mediation in Pancasila Philosophy: A Value Analysis of the Fourth Precept of Consultative Consensus," *Iuris Philosophia Journal* 1, no. 1 (2025): 81–90.
[55] Lindie Mokgadi, "Access to Justice in Plural Legal Systems: A Case Study of Customary and State Law Integration in Sub-Saharan Africa," *Journal of Law, Policy and Global Development*, 2025, https://doi.org/10.71305/jlpgd.v1i1.334.
[56] Alviani Sabillah, Auditya Saputra, and Johanna Poerba, *Reformasi Hukum Acara Perdata Harus Menyeluruh!*, ed. Muhammad Faiz Aziz (Jakarta: Sekolah Tinggi Hukum Indonesia Jentera, 2022).
[57] Department of Justice and Constitutional Development, *Revised Strategic Plan 2025-2030*.
[58] Sabillah, Saputra, and Poerba, *Reformasi Hukum Acara Perdata Harus Menyeluruh!*

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Judicial modernization is considered the most effective way to cut cost and time barriers.[59] In Indonesia, the Supreme Court has launched the *e-Court* and *e-Litigation* systems that allow case registration, payment, and trial to be carried out electronically.[60] The legal politics of the formation of the Civil Procedure Bill in Indonesia are also directed to provide a stronger legal umbrella for this digital practice, in order to avoid the void of norms that have only been filled by Supreme Court Regulations.[61]

However, the implementation of digitalization faces criticism related to inclusivity.[62] In South Africa, the Department of Justice's Strategic Plan 2025-2030 explicitly mentions the risk of "digital exclusion" for those who do not have internet access.[63] Therefore, the legal politics of the two countries combine digitalization with the strengthening of physical legal aid.

Strategic Targets 2025-2030	Indonesia (National Medium-Term Development Plan & Civil Procedure Bill) [64]	Afrika Selatan (DoJ&CD Strategic Plan)
Legal Unification	Single codification to replace HIR/RBg	Replacement of colonial/apartheid-era legislation[65]
Transformasi Digital	Reinforcement of electronic evidence & ODR	Modernization of the justice system & AI[66]
Community Access	Posbankum in villages/sub-districts	Strengthening Legal Aid SA's reach[67]
Protection Focus	Inclusivity for people with disabilities and women	Handling GBV (Gender-Based Violence)[68]

2. Unification and Decolonization: The Steep Road to the Rule of Law

Legal politics in Indonesia places great emphasis on unification as a form of national sovereignty.[69] The effort to establish the Civil Procedure Law aims to abolish the dualism of HIR and RBg, as well as integrate various civil procedure rules spread across many sectoral

[59] Deputy Minister Andries Nel, "Strategic Planning Workshop of the Department of Justice and Constitutional Development," 2025.
[60] Fathul Hamdani et al., "Arrangement of Judicial Power in Indonesia Through the Implementation of One-Stop Judicial Review at the Constitutional Court," *Tadulako Law Review* 9, no. 1 (2024): 336–42.
[61] Sabillah, Saputra, and Poerba, *Reformasi Hukum Acara Perdata Harus Menyeluruh!*
[62] Sabillah, Saputra, and Poerba.
[63] Department of Justice and Constitutional Development, *Revised Strategic Plan 2025-2030*.
[64] Serlika Aprita, "Pembaharuan Hukum Perdata Di Indonesia," *'Adalah: Buletin Hukum Dan Keadilan* 5, no. 1 (2021): 63–77.
[65] Department of Justice and Constitutional Development, *Revised Strategic Plan 2025-2030*.
[66] Department of Justice and Constitutional Development.
[67] Legal AID, "Legal AID SA Strategic Plan 2020-2025," 2022.
[68] Legal AID, "Legal AID SA Strategic Plan 2025-2030," 2025.
[69] Ana Fauzia et al., "Implementation of the Omnibus Law Concept and Consolidated Texts: Amalgamation of the Common Law and Civil Law Legal Systems," *Journal of Law and Legal Reform* 4, no. 2 (2023), https://doi.org/10.15294/jllr.v4i2.68256.

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laws.[70] This is seen as important to create a uniform "national justice" from Sabang to Merauke.[71] In line with that, the Indonesian Minister of Law in April 2026 emphasized the importance of accelerating the unification of cross-ministerial regulations to simplify judicial governance.

In South Africa, decolonization is carried out through a review of all colonial-era and apartheid-era laws (Outcome 8 of the Strategic Plan 2025-2030).[72] The goal is not just technical unification, but a transformation of values so that the law reflects the aspirations of egalitarian democracy.[73] The reforms also include restructuring *State Litigation* to ensure the state does not use its unlimited resources to impede citizens' rights in civil disputes against the government.[74]

3. Legal Pluralism: Integration of Customary and Prophetic Law

One of the most dynamic elements in the legal politics of the two countries is the recognition of *customary law* and religious law (*prophetic law*).[75] Both Indonesia and South Africa constitutionally recognize the existence of laws living in society, but the practice is often still subordinate to the positive laws of the state.[76]

In Indonesia, the politics of unification law still provide space for customary law and religious law (Islam) in matters of a particular nature, such as family law and inheritance.[77] Integrasi ini dianggap penting agar hukum nasional tidak kehilangan akar kepribadian bangsanya.[78] In South Africa, Article 211 of the Constitution requires courts to apply customary law to the extent that it does not conflict with the Bill of Rights.[79] Integration efforts through the Traditional Courts Bill in South Africa aim to give formal recognition to indigenous leaders in resolving minor civil disputes, in order to extend the reach of justice to remote areas.[80]

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[70] Syailendra Anantya Prawira, "Hukum Acara Perdata, Antara Fragmentasi Dan Cita Unifikasi," 2025.
[71] Prawira.
[72] Department of Justice and Constitutional Development, *Revised Strategic Plan 2025-2030*.
[73] Deputy Minister Andries Nel, "Strategic Planning Workshop of the Department of Justice and Constitutional Development."
[74] Department of Justice and Constitutional Development, *Revised Strategic Plan 2025-2030*.
[75] Kelik Wardiono et al., "Prophetic Law in Indonesia and South Africa: A Comparative Constitutional Study on the Integration of Religious Law into Legal Constitutional Study on the Integration of Religious Law into Legal S," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 12, no. 2 (2025): 253–71.
[76] Hendri Khuan et al., "Customary Law in Modern Legal Systems: Lessons from Indonesia and South Africa," *Novum Jus* 19, no. 2 (2025): 77–103, https://doi.org/10.14718/NovumJus.2025.19.2.3.
[77] Wardiono et al., "Prophetic Law in Indonesia and South Africa: A Comparative Constitutional Study on the Integration of Religious Law into Legal Constitutional Study on the Integration of Religious Law into Legal S."
[78] Aprita, "Pembaharuan Hukum Perdata Di Indonesia."
[79] Khuan et al., "Customary Law in Modern Legal Systems: Lessons from Indonesia and South Africa."
[80] Mokgadi, "Access to Justice in Plural Legal Systems: A Case Study of Customary and State Law Integration in Sub-Saharan Africa."

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However, the challenge in this harmonization is the potential conflict between customary values that are often patriarchal and the principle of gender equality in the modern constitution.[81] In South Africa, the Constitutional Court has repeatedly struck down customary law practices that discriminate against women in inheritance, suggesting that the politics of integration law must remain guided by universal human rights standards.[82]

This political reconstruction of the law shows that the future of civil procedural law in both countries no longer depends solely on static codification, but on the ability of the system to adapt to technological advances and the cultural diversity of its societies.[83] Access to substantive justice can only be achieved if civil proceedings are seen as living *instruments* to serve human beings, not the other way around.[84]

CONCLUSION

The civil law tradition in Indonesia and the hybrid system in South Africa face similar challenges in realizing access to justice, namely the colonial historical burden that manifests in rigid litigation procedures and high costs. In Indonesia, the persistence of HIR and RBg for more than seven decades has created structural barriers that hinder legal certainty and procedural protection for the lower classes. In South Africa, although the right to access to justice has been constitutionally guaranteed, extreme economic inequality remains a wall of separation between citizens and their legal rights. Legal politics in both countries are currently transforming towards modernization through judicial digitalization and regulatory unification. However, these reforms must be carried out carefully to ensure that there is no digital exclusion for vulnerable groups. The integration of legal pluralism, both customary and religious law, is a crucial step to ensure that the national legal system has strong sociological legitimacy. Substantive justice can only be realized if the politics of civil procedure law place human dignity and equality at the heart of any procedural reform. The main recommendation

[81] Alternative Law Groups, *Role of Legal Empowerment by the Community in Strengthening Access to Justice for Women in Conflict with the Law in Indonesia*.

[82] Steven Ng'ang'a, "Legal Systems in North African Countries Reviewed from the Perspective of Problems and Solutions," *IJOLARES: Indonesian Journal of Law Research* 3, no. 1 (2025): 34–40, https://doi.org/10.60153/ijolares.v3i1.127.

[83] Riyanto, *Pembaharuan Hukum Acara Perdata Indonesia*.

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for policymakers is the need to balance technological efficiency with social inclusivity so that the courts truly become the last bastion for justice seekers at all levels of society.

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