






The European and Asian Countries' Philosophy Towards Health Law Reform: A Comparative Review and The Philosophy of Legal Realism

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Abstract

Global health issues drive the importance of philosophically based health law reform, with Europe prioritizing social justice and human rights, while Asia combines local traditions and modernization to respond to health challenges adaptively and inclusively. The purpose of this study is to analyze the differences in the principles of health law reform between European and Asian countries and the influence of each region's philosophy on the reform approach based on a review of the philosophy of legal realism. This study uses a normative legal method with a conceptual and legislative approach, analyzing primary, secondary, and tertiary legal materials through document studies and legal interpretation to understand the philosophy, norms, and concepts of health law reform in Europe and Asia based on the philosophy of legal realism. The results of the study show differences in the main principles of health law reform between Europe and Asia, where Europe emphasizes equality, universal access, and social justice, while Asia is more pragmatic by integrating local cultural values and market efficiency; European philosophy focuses on social solidarity and the welfare state, while Asia prioritizes collectivism and adaptation to local contexts, with both reflecting the application of legal realism to meet the needs of society according to their respective social and cultural contexts..

Keywords: Health Law; Legal Realism; Law Reform; Ghana; Europe; Asian.

A. INTRODUCTION

Law Public health issues are one of the biggest challenges facing countries around the world today. Health is no longer just a domestic issue limited to one country, but has developed into a global issue involving cross-border collaboration. One of the most significant responses to this challenge is health law reform, which aims to create a legal system that is adaptive, fair, and able to respond to the needs of society amidst social and technological changes (Surya, 2013). These reforms involve not only improvements in health policy, but also the establishment of a philosophical foundation that guides the direction of health law development. In this context, the study of the philosophy of health law in various parts of the world is important to understand the basic framework that influences each country's health policy. Europe and Asia, as two regions with different legal and philosophical traditions, offer rich perspectives to study. European countries, which are generally rooted in continental legal systems and humanist traditions, often emphasize the protection of human rights and universal access to health services. On the other hand, Asian countries present a diversity of approaches influenced by unique cultural, religious, and legal traditions (Az & Yahyanto, 2016). A study of the philosophies of countries in these two regions towards health law reform can provide insight into how their legal systems respond to evolving health challenges.

Legal philosophy is an important foundation in understanding health law reform, especially when linked to the theory of legal realism. Legal realism emphasizes that law is not only composed of abstract norms, but also a social practice influenced by the needs of society, cultural context, and political dynamics (Bagenda, 2022). This approach is very relevant in analyzing health law reform, because health law is not

only concerned with technical arrangements, but also concerns moral and ethical values that underlie health policy. In Europe, the application of legal philosophy in health reform is often based on humanist values and principles of social justice. For example, Scandinavian countries such as Sweden and Norway have long been known for their state-based health systems that provide universal access to all their citizens. This system reflects a philosophy that emphasizes distributive justice, where health resources are allocated evenly to ensure the welfare of the entire community. This principle is also seen in the evidence-based policy approach, which is the basis for decision-making in health law reform in Europe (Irwin, 2019).

In contrast, Asian countries have a diversity of philosophies that reflect their social and cultural dynamics. Japan, for example, has a health system that combines public and private health insurance, influenced by a culture of collectivism and Confucian values. Meanwhile, in a country like Indonesia, health law reforms are often influenced by pluralistic legal traditions, including customary law, Islamic law, and colonial law (Kim, 2018). This approach reflects the unique challenges that Asian countries face in reconciling local traditions with the demands of modernizing health law.

The COVID-19 pandemic has become a critical moment in demonstrating how health law philosophy influences each country's response to the global health crisis (Sinjar, 2022). In Europe, solidarity and universality have been key principles in dealing with the pandemic. Many countries have strengthened their public health systems to ensure equitable access to treatment and vaccination, even for vulnerable groups. In Asia, the response to the pandemic has varied widely. China, for example, has taken a highly centralized approach relying on state authorities, while countries

like Indonesia have relied more on a decentralized approach involving local governments and local communities (Hotez et al., 2021).

The differences in this approach are inseparable from the legal philosophy underlying the health system in each country. In Europe, human rights and social justice are the main foundations of health law reform. This can be seen from their efforts to strengthen legal protection for patients and medical personnel, as well as the development of regulations based on scientific evidence (Sade, 2012). On the other hand, in Asia, health law reform often faces challenges due to conflicts between traditional norms and the need for modernization (Wijayanti, 2016). For example, in many Asian countries, health systems are still influenced by social hierarchies and community values, which often conflict with the principles of individual justice that characterize modern health law.

In this context, the philosophy of legal realism offers a relevant analytical framework for understanding health law reform in both regions. Legal realism emphasizes the importance of viewing law as a tool to meet the needs of society, rather than simply as a normative text. This approach allows for a deeper analysis of how legal systems in Europe and Asia respond to health challenges, both in local and global contexts.

Similar research related to health rights has been conducted by several previous researchers, such as the study by Haiti (2023) which analyzes the state's obligation to fulfill health rights through the provision of vaccines during a pandemic (Haiti, 2023). Another study was also conducted by Addy, et al. (2024) which analyzed the importance of the state's role in ensuring health rights, particularly related to vaccine safety (Addy et al., 2024). Another study was also conducted by Sarabdeen, et al.

(2025) which analyzed the protection of personal data in health, specifically medical records in various countries (Sarabdeen, J. and Mohamed Ishak, 2025). From the three previous studies mentioned above, the research conducted by the author can be considered original because, in substance, this research is different from the three previous studies.

In the era of globalization, cross-border health challenges such as pandemics, climate change, and migration require an inclusive and adaptive approach to health law. The formulation of the problem in this study is (i) what are the main differences in the principles of health law reform between European and Asian countries, based on the review of the philosophy of legal realism? and (ii) how do the philosophies of European and Asian countries influence the approach to health law reform?.

This research uses normative legal research methods (Marzuki, 2017), which focuses on the study of legal materials that are theoretical and conceptual in nature. This normative research aims to understand the philosophy of health law in European and Asian countries through comparative analysis, while linking it to the philosophy of legal realism. The approaches used in this study include the conceptual approach and the legislative approach, which allow for in-depth analysis of the theories, concepts, and legal norms that apply in both regions.

The conceptual approach is used to explore and understand the basic concepts underlying health law reform in European and Asian countries, including how state philosophy influences the formation of legal norms in the health sector. In addition, this approach is used to explore the application of the philosophy of legal realism in explaining the differences and similarities in health law reform in the two regions. On the other hand, the legislative approach functions to analyze relevant legal instruments,

such as health laws, government regulations, and international legal instruments adopted by European and Asian countries.

The sources of legal materials in this study consist of primary, secondary, and tertiary legal materials (Purwati, 2020). Primary legal materials include laws, regulations, and international legal instruments related to health systems and health law reform in European and Asian countries. Secondary legal materials include books, journals, scientific articles, and previous research results relevant to this topic. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other documents that help in understanding the terms and concepts used in the research. Data collection techniques are carried out through document studies of identified legal materials. This technique involves searching, collecting, and organizing various legal documents, academic literature, and related data from reliable sources (Sugiyono, 2019). With this technique, research can comprehensively examine the philosophy, norms, and concepts of health law in the countries studied.

Data analysis was conducted qualitatively (J. Moleong, 2017), by using legal interpretation techniques to understand the intent and purpose of the legal norms analyzed. The data obtained are analyzed systematically to identify patterns, similarities, and differences in health law reform in European and Asian countries. In addition, the legal realism philosophy approach is used to provide a strong theoretical basis in explaining the phenomena found, resulting in comprehensive and in-depth conclusions.

B. RESULT AND DISCUSSION

1. The Differences In The Principles of Health Law Reform Between European And Asian Countries Based on The Philosophy of Legal Realism

Health law reform is an important issue in modern state governance, especially in facing global challenges such as pandemics, demographic changes, and health disparities (Ranabhat et al., 2023). Countries in Europe and Asia have different approaches to health law reform, based on their respective social, political, cultural and legal traditions. These differences become clearer when analyzed through the perspective of the philosophy of legal realism, which focuses on the application of law based on social facts, real conditions and the practical needs of society. In Europe, health law reform is strongly influenced by the continental legal tradition which tends towards codification and is oriented towards the principle of social justice. European countries, such as Sweden, Germany and France, place universal access to health services as a basic right of every citizen. This inclusive health system is rooted in the idea that health is part of human rights that should not be excessively commercialized (Guarnieri, 2007).

One of the key principles that underpins health law reform in Europe is equality. European countries actively ensure that every citizen, regardless of social or economic status, has equal access to health services. For example, the universal health care systems implemented in the Scandinavian countries provide free or very affordable health care to the entire population, funded by progressive taxation that is managed transparently (Fredriksson, 2024). Evidence-based policy approach is the main foundation of health law reform in Europe. Legal realism in this context is seen

from the government's efforts to formulate health policies based on scientific data, risk analysis, and recommendations from health experts (Lauterbach, 2023). During the COVID-19 pandemic, for example, the European Union coordinated collective vaccine procurement and established evidence-based health protocols. This reflects the pragmatic application of legal realism to protect public health. In addition, transparency and accountability are also important elements in health law reform in Europe. Countries such as Germany and the Netherlands have strict regulations that ensure that health care providers, pharmaceutical companies, and related institutions are legally responsible for the quality of services provided. This approach reflects the application of legal realism that puts the needs of the community as the main priority (Emanuel et al., 2021).

In Asia, health law reform tends to be more diverse due to differences in legal traditions, cultures, and levels of economic development in each country. Countries such as Japan, South Korea, Indonesia, and India have unique approaches, often influenced by local values, religion, and pragmatism in addressing public health challenges (Jazuli et al., 2022). The principle of social harmony has become one of the main foundations of health law reform in many Asian countries. In Japan, for example, the national health insurance system is designed to ensure that all people, including the elderly, receive adequate health care. This approach is oriented not only to individual needs, but also to overall social stability (Tulchinsky, 2018). On the other hand, countries with Muslim majorities, such as Indonesia and Saudi Arabia, often incorporate religious values into health law reforms. For example, regulations in Saudi Arabia ensure that health products such as medicines and vaccines comply with halal

principles. In the context of legal realism, this approach reflects the adjustment of the law to the needs and values of local communities (Susetyo et al., 2019).

Pragmatism is another hallmark of health law reform in Asia. Countries such as India and China, for example, are more open to private investment in the health sector to increase service capacity. However, this often creates challenges in terms of equity of access (Vedam et al., 2022). For example, in India, expensive private healthcare is a barrier for low-income people, despite government initiatives such as Ayushman Bharat to expand access to healthcare. One striking difference between Europe and Asia in health law reform is the approach to market regulation. In Europe, governments typically take a larger role in regulating health care markets to protect people from economic exploitation. In contrast, in many Asian countries, the approach tends to be more flexible, with the aim of encouraging innovation and growth in the health sector (Abubakar et al., 2022).

For example, in India, expensive private healthcare is a barrier for low-income people, despite government initiatives such as Ayushman Bharat to expand access to healthcare. One striking difference between Europe and Asia in health law reform is the approach to market regulation. In Europe, governments typically take a larger role in regulating health care markets to protect people from economic exploitation. In contrast, in many Asian countries, the approach tends to be more flexible, with the aim of encouraging innovation and growth in the health sector (Mubeen, 2025). Cultural and political factors also play an important role in shaping the principles of health law reform. In Europe, strong democratic traditions encourage public participation in health policy formulation. For example, in the UK, the National Health Service (NHS) often conducts public consultations before implementing new policies (Stewart et al.,

2020). This approach reflects the philosophy of legal realism that provides space for the community to be involved in the legislative process. In Asia, health law reforms are often carried out through a top-down approach, where the government takes a dominant role in designing policies. For example, in China, health system reforms are often decided directly by the central government without going through a broad consultation process. This approach reflects an authoritarian political tradition that prioritizes efficiency over participation (Jakovljevic et al., 2023). In addition, cultural values also influence health law reform. In European countries, the secular approach is more dominant, so that health policies are designed without considering religious aspects. In contrast, in Asia, religious and traditional values are often the main considerations in formulating health policies (Jenichen, 2019).

From the perspective of legal realism philosophy, the differences in the principles of health law reform between Europe and Asia reflect how law can adapt to the needs of diverse societies. In Europe, health law reform serves to strengthen social solidarity and ensure that all people receive equal health services. Meanwhile, in Asia, this reform focuses more on flexibility and adjustment to social, cultural, and economic dynamics (Scheppelle et al., 2021). These differences also have practical implications in the context of international cooperation. As countries seek to harmonize health regulations globally, these differences in principles often create challenges. For example, when it comes to standards for drug procurement and vaccine distribution, European countries tend to prioritize the principle of fairness, while Asian countries are more flexible in adapting to local needs (Vogler et al., 2021). Health law reforms in European and Asian countries show different approaches, influenced by legal traditions, cultures, and societal needs. From the perspective of the philosophy of legal

realism, these approaches reflect how law can function as a tool to address practical challenges in health systems. In Europe, the principles of equality and universal access are the main foundations, while in Asia, pragmatism and social harmony are the focus. By understanding these differences, we can develop a more inclusive and adaptive approach in designing health law reforms at the global level.

2. The Philosophy Of European And Asian Countries In Health Law Reform

The approach to health law reform is heavily influenced by the philosophical values underlying public policy in a country (Maulana & Avrillina, 2024). In Europe and Asia, fundamental differences in social, political and cultural philosophies shape how the two regions view health systems. These values influence not only legal arrangements but also the implementation of reforms aimed at improving access, quality and efficiency of health services. A comparison of the philosophies of European and Asian countries reveals how historical contexts, cultures and local needs shape approaches to health law reform. Europe is known for its philosophy of social solidarity, which is at the heart of health law reform. After World War II, many European countries adopted the concept of the welfare state, which places the welfare of citizens as the primary responsibility of the government. This principle emphasizes that all individuals, regardless of social or economic status, have the right to adequate health protection (Mavrozacharakis & Tzagkarakis, 2018). One of the most prominent examples of the application of this philosophy is the National Health Service (NHS) in the UK. This system is designed on the principle of universal access, where every citizen is entitled to free health care at the point of service, funded through taxation. The principle of solidarity in the NHS emphasizes that society shares in the costs of

health care, so that the burden does not fall solely on individuals. In addition, health law in the UK places a premium on transparency, accountability and public participation, reflecting strong democratic values (Powell & Exworthy, 2003).

Other countries such as Germany and Sweden have also adopted a similar approach but with variations. Germany, for example, has a mandatory health insurance system that combines the public and private sectors. This system allows citizens to choose their provider, but ensures universal access through state subsidies for the less well-off. The German philosophy of solidarity prioritizes a balance between individual freedom and social responsibility, reflecting a more flexible approach (Ridic et al., 2012). On the other hand, Sweden has a highly centralized welfare model. The government plays a major role in the provision of health services, with a focus on social justice and equity of access. The system is designed to reduce health disparities among different groups in society, which is a top priority in the country's health law (Irwin, 2019). In contrast to Europe, many Asian countries have a strong tradition of collectivism, emphasizing social harmony and shared responsibility. This philosophy is rooted in cultural values such as Confucianism in East Asia, which places the family and community as the primary unit in supporting individual well-being. In the context of health law reform, this philosophy is reflected in policies that prioritize sustainability and efficiency, while maintaining community involvement (KIM, 2007).

Japan is one example of an Asian country that has successfully integrated collectivist values into its health system. Japan's universal health insurance system requires every individual to be enrolled in an insurance program, either through the government or private sector (Katori, 2024). Although the system is decentralized, there is a strong focus on equity of access and cost control, reflecting the philosophy

of social harmony. In addition, Japan places great emphasis on disease prevention through public health programs, which are legally administered by local governments. Singapore, on the other hand, has adopted a more pragmatic approach. Singapore's healthcare system is known for its "3M" model (MediSave, MediShield, and MediFund), which combines individual responsibility and a social safety net. MediSave allows citizens to save for their own healthcare needs, while MediFund provides assistance to those who cannot afford it. This philosophy reflects the influence of Confucian values that emphasize the importance of individual self-reliance, but maintains the role of the state in ensuring that no one is left behind (Stephanie & Sharma, 2021).

Other countries in Asia, such as South Korea and Thailand, also exemplify how local values shape health law reform. South Korea, for example, has adopted a national health insurance system similar to Japan's, but with stronger government control. This system reflects Korea's collectivist values, where the state is seen as the primary protector of people's well-being (Lee, 2003). The philosophical differences between Europe and Asia create unique approaches to health law reform. In Europe, the primary focus is on social justice and individual rights. Legal reforms are often oriented towards creating a framework that ensures universal access, protects consumers from discrimination, and guarantees the quality of health services. The European Union, for example, has a legal framework that regulates patient mobility across member states, ensuring that all EU citizens have equal rights to access high-quality health services (Pomaza-Ponomarenko et al., 2023). In contrast, in Asia, health law reforms are more flexible and adaptive to local needs. Many Asian countries face challenges such as large populations, uneven geographic distribution, and limited resources. Therefore,

legal reforms in the region often focus on creating pragmatic and efficient solutions (Lim et al., 2023). For example, India's health law emphasizes expanding access to basic health services in rural areas, while trying to address the issue of limited financing. Globalization has also played a significant role in shaping health law reforms in both regions. In Europe, globalization has encouraged harmonization of health standards among member states of the European Union. This approach not only ensures equity in access, but also allows for better cooperation in addressing cross-border issues such as antibiotic resistance and pandemics (Labonté & Schrecker, 2007). In Asia, globalization is driving the adoption of new technologies and innovation in healthcare. Countries such as India, China, and Indonesia are beginning to develop legal frameworks for telemedicine and the digitalization of healthcare. While this approach reflects the need to compete globally, local values continue to influence how these technologies are implemented (Sharma et al., 2022).

The philosophies of European and Asian countries significantly influence their approaches to health law reform. Europe, with its philosophy of solidarity and social justice, places the state as the primary agent of universal access. In contrast, Asia, with its tradition of collectivism and pragmatism, prioritizes a more flexible approach, involving individuals and communities in supporting health systems. Although different, both approaches share the same goal of improving people's well-being through equitable and effective health systems. In an era of globalization, collaboration between the two regions can lead to more innovative, inclusive and sustainable health law reform. By learning from each other's strengths, European and Asian countries can create health systems that are not only in line with local values but also capable of meeting the global challenges of the future.

C. CONCLUSION

The main differences in the principles of health law reform between European and Asian countries, when viewed through the philosophy of legal realism, lie in the goal orientation and pragmatic approach taken. European countries, with their continental legal tradition, focus on the principles of equality, universal access, and social justice, as seen in health systems that guarantee the right to basic health care for all citizens. Their policies are often based on scientific data and community participation in the formation of regulations. In contrast, Asian countries, with more diverse legal traditions and cultures, tend to adopt a pragmatic and adaptive approach. Reforms in Asia often integrate local cultural values, such as social and religious harmony, and support market flexibility to attract investment. Both regions reflect the application of legal realism in responding to the needs of society according to their respective social, cultural, and political contexts.

The philosophies of European and Asian countries shape different approaches to health law reform. In Europe, the principle of social solidarity and the concept of the welfare state form the basis of law, ensuring universal access to health care through government-managed taxes. This philosophy is reflected in systems such as the NHS in the UK or compulsory insurance in Germany, which emphasize social justice and state responsibility. In contrast, Asian countries, such as Japan and Singapore, prioritize the values of collectivism and pragmatism. Health systems in Asia often combine individual responsibility with state support, as in Singapore's "3M" model. This philosophy reflects social harmony and efficiency by taking into account local needs, while remaining open to the influence of globalization in health care innovation. These different values enrich global health law reforms, allowing for adaptation to the

needs of diverse communities. To improve the effectiveness of health law reforms, European and Asian countries can learn from the strengths of each other's philosophies, such as integrating European principles of social solidarity with Asian pragmatic and efficient approaches. Collaboration in the exchange of innovative technologies, research, and policies can help create inclusive and sustainable health systems. Asian countries can strengthen the role of governments in ensuring equitable access, while Europe can adopt a community-based approach to improve efficiency. By accommodating local values while adopting global best practices, health law reforms can be designed to be more responsive to the social, economic, and technological challenges of the modern era

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