

The Role of the Civil Law System in the Development of the Legal System in Indonesia

¹Indah Herlina, ²Yoyon Mulyana Darusman

Study Program of Law Magister of Universitas Pamulang, South Tangerang City, Indonesia

Email : ¹indah777@gmail.com, ²dosen00040@unpam.ac.id

Abstrak

Negara Indonesia merupakan negara jajahan Belanda lebih 350 tahun. Pada masa itu penjajahan Belanda di Indonesia selain pengelolaan sumber daya alam juga diikuti dengan penerapan sistem hukum civil law Belanda diberlakukan di wilayah Indonesia. Pada saat Indonesia memproklamkan kemerdekaannya pada tanggal 17 Agustus 1945 yang diikuti dengan penetapan Undang-Undang Dasar 1945 pada tanggal 18 Agustus 1945, maka atas dasar azas kordonansi maka hukum Belanda yang berlaku pada saat itu menjadi hukum nasional Indonesia, sebagaimana yang diatur dalam Pasal II Aturan Peralihan Undang-Undang 1945. Tujuan dalam penelitian untuk mengetahui bagaimana peran sistem hukum civil law dalam perkembangan hukum nasional Indonesia. Penelitian ini menggunakan pendekatan kepustakaan, di mana mendalami semua peraturan perundangan-undangan yang berhubungan dengan penelitian. Hasil dari penelitian ini bahwa sistem hukum civil yang legism yang merupakan warisan dari colonial Belanda yang merupakan penganut mazhab hukum Eropa Kontinental secara umum telah memberikan pengaruh terhadap perkembangan nasional Indonesia.

Kata Kunci : Civil Law, Hukum Nasional, Indonesia

Abstract

Indonesia was a Dutch colony for more than 350 years. At that time, Dutch colonization in Indonesia, in addition to managing natural resources, was also followed by the implementation of the Dutch civil law system in Indonesia. When Indonesia proclaimed its independence on August 17, 1945, which was followed by the stipulation of the 1945 Constitution on August 18, 1945, then on the basis of the principle of cordonansi, the Dutch law in force at that time became Indonesian national law, as regulated in Article II of the Transitional Provisions of the 1945 Constitution. The purpose of the study was to determine the role of the civil law system in the development of Indonesian national law. This study uses a literature approach, which examines all laws and regulations related to the study. The results of this study are that the civil law system, which is a legacy of the Dutch colonial government, which is a follower of the Continental European legal school, has generally influenced the development of Indonesia's nationality.

Keywords: Civil Law, National Law, Indonesia

A. Background Research.

There are various legal systems adopted by countries, but the legal systems that are most widely applied in most countries in the world today are Civil Law and Common Law. The Common Law legal system first appeared in England during the Middle Ages and has been used and applied by its "former" colonies throughout the world, such as America, Canada, Australia, New Zealand, India, Hong Kong, Malaysia, Singapore and others.¹ Meanwhile, Civil Law first appeared and was developed in Europe at the same time (the Middle Ages) and has been used and applied by its "former" colonies as well, namely Indonesia, Spain, Portugal, the Netherlands, Norway, Denmark, Switzerland, Sweden, Turkey and others. Civil Law was also adopted by Russia and Japan in the 19th and 20th centuries as a form of renewal/improvement of their legal systems in order to gain political and economic power comparable to Western European countries.¹

Civil Law adheres to the codification ideology. The reason why Civil Law adheres to the codification ideology is among others because of the political interests of the Roman Empire, in addition to other interests outside of that. Codification is needed to create uniformity of law in and amidst the diversity of law. In order for the customs that have been established as king's regulations to be established as generally applicable law, it is necessary to think about a unity of law that is certain. The solution to this idea is legal codification. According to R. Soeroso, legal codification is the recording of law in a collection of laws in the same material⁷. Meanwhile, according to Satjipto Rahardjo, the general purpose of codification is to make the collection of laws simple and easy to master, arranged logically, harmoniously and certainly.²

The main principle that underlies the Continental European legal system is that "law has binding force, because it is manifested in regulations in the form of statutes and is systematically arranged in certain codifications or compilations". This principle is adopted considering that the main value that is the goal of law is legal certainty. Legal certainty can be realized if human legal actions in social life are regulated by written legal regulations. With this legal objective and based on the legal system adopted, judges cannot freely create laws that have binding legal force. Judges only function to determine and interpret regulations within the

¹ C. Law, "The Common Law and Civil Law Traditions" (Online), tersedia di <https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf> (26 April 2021).

² Satjipto Rahardjo, *Ilmu Hukum*, Cet. Ke-8, (Bandung: PT Citra Aditya Bakti, 2014), hlm. 92. (Placeholder1) (Placeholder2) (Placeholder3) (Placeholder4) (Placeholder5) (Placeholder6)

limits of their authority'. A judge's decision in a case is only binding on the parties to the case (doctrine of *Res Ajudicata*).³

The legal system is a system of rules, namely in the form of commands, prohibitions, and permissions. There are two legal systems in the world, namely the Civil Law System and the Anglo-Saxon. Indonesia adheres to the Civil Law or Continental European system as a form of inheritance from the Dutch Colonial government. The research method used is the normative legal research method with secondary data types. The results and discussion of this study are that the Civil Law system is codified from Ancient Roman Law which developed in mainland European countries.⁴ This system has a long history and is inseparable from the economic, political and intellectual factors of Western Europe, and began in the 13th century. In its series, this legal order recognizes the separation of public law and private law. The characteristic of the Civil Law system is that it has a codification or legal record that maintains the law as a basis or means for judges to act and enforce the legal system recorded in the law. The national legal system based on the Civil Law legal order has three dimensions, namely the maintenance dimension, the renewal dimension and the creation dimension. Together with these aspects, the Civil Law system contributes to the legal system in Indonesia, including the discovery of new laws, the creation of new laws and judges as mouthpieces of the law in enforcing the laws that occur in community life.⁵

B. Focus of Problems

From the background, the problems are as follows:

1. How did the origins of Continental European law help build the Indonesian legal system?
2. How did the development of the Continental European legal system and the Islamic legal system in Indonesia greatly influence the Development of the National Legal System?

C. Literacy References

In general, the legal system in the world consists of 2 systems, namely the Continental European Legal System (civil law) and the Anglo-Saxon Legal System (common law). The civil law system has a source of law that comes from the codification of written law (written code). John Henry Merryman in his writings stated that there are 3 (three) sources of law in a country with a civil law system, namely statutes, derivative regulations (regulations), and customs that do not conflict with the law (customs), where judges' decisions in the civil law system are often considered not to be law. Meanwhile, the Anglo-Saxon legal system (common

³ <https://eriton.staff.unja.ac.id/2021/04/07/sistem-civil-law>

⁴ C.Law. *Op.Cit*

⁵ Satjipto. *Op.Cit*

law) has historical roots in the Kingdom of England which uses court decisions as its legal basis, where when a case is decided by a judge, the decision is not only binding on the parties to the case but also applies generally to similar cases.⁶

Indonesia is one of the countries that adheres to the Continental European Legal System (civil law). The limitation of the role of judges to make laws in countries that adhere to the civil law system is a policy that has socio-political reasons and objectives⁸. In the civil law system, the courts do not use a jury system. This also applies to the courts in Indonesia. Although globally Indonesia adheres to the Continental European Legal System (civil law), after the third amendment to the 1945 Constitution, the Legal System adopted in Indonesia is the Pancasila Legal System. According to Mahfud MD, the Pancasila Legal System adopted in Indonesia uses a "prismatic concept", namely a concept that takes the best aspects of two conflicting concepts (between *Rechtstaat* and The Rule Of Law) which are then combined as a separate concept so that it can always be applied according to the lives of Indonesian society and every dynamic.⁷

In addition, Indonesia also adheres to a customary law system. The Indonesian community is built as a whole, not as an individual, where the internal relationship is organic, so that the understanding of organic relationships extends to the environment in the community and where the community gets its life. So it is undeniable that Indonesia, which has a diversity of tribes and local languages, in the application of its laws also pays attention to the customary law that applies in a region. Talking about the Indonesian Legal System, it cannot be separated from constitutional law. Jimly Asshiddiqie in his book has formulated at least seven types of sources of constitutional law, namely:

- a. Unwritten constitutional values;
- b. The basic law, both its preamble and its articles;
- c. Written legislation;
- d. Judicial jurisprudence;
- e. Constitutional conventions or constitutional conventions;
- f. The doctrine of legal science that has become *ius commisionis opinio doctorum*;
- g. International law that has been ratified or has been applied as customary international law.⁸

⁶ Siregar, P. J. W. (2022). Perbandingan Sistem Hukum Civil Law Dan Common Law Dalam Penerapan Yurisprudensi Ditinjau Dari Politik Hukum. "*Dharmasiswa*" *Jurnal Program Magister Hukum FHUI*, 2(2), 37.

⁷ C.Law. *Op.Cit*

⁸ Satjipto. *Op.Cit.*

D. Research Methods

In accordance with the title and problems that will be discussed in this study and in order to provide useful results, this study was conducted with normative legal research. The normative legal research method is a library legal research conducted by examining library materials or secondary data alone.⁹ This research was conducted in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject matter. The scope of normative legal research according to Soerjono Soekanto includes: (a) Research on legal principles; (b) Research on legal systematics; (c) Research on the stages of legal synchronization vertically and horizontally; (d) Comparative Law; (e) Legal history.¹⁰

E. Results & Discussion

1. Development of Civil Law System (Eropa Kontinental).

Based on its history, Civil Law/Roman German/Continental European law originates from Ancient Roman Law. Initially, in Continental European countries, customary law was applied, which was their respective original laws, such as in France, customary law known as "droit de coutumes" and in the Netherlands, it is known as "gewoonte recht."¹⁹ This legal system developed in mainland European countries and is often referred to as "Civil Law" which originally came from the codification of laws applicable in the Roman Empire during the reign of Emperor Justinian in the 6th century.¹¹

The system comes from the Greek word "system" which can be interpreted as a whole consisting of various parts. According to Subekti, a system is a regular arrangement or order, a whole consisting of parts that are related to each other, arranged according to a plan or pattern, the result of a writing to achieve a goal. In general, according to the Big Indonesian Dictionary, a system is a whole or whole that is organized and complex, a collection or combination of things or parts that form a whole or complex whole. There are components that are connected and have their respective functions connected to become a system according to a pattern. A system is a regular arrangement of views, theories, principles.¹²

Meanwhile, in England, which originally also adopted the feudal German legal system, it escaped the influence of the infiltration of Roman Law (Roman Law System), so that in England the original native law was applied. The legal system adopted by Continental

⁹ Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2003), hlm. 13.

¹⁰ *Ibid.*

¹¹ Dedi Soemardi, *Pengantar Hukum Indonesia*, Jakarta: Indhillco, 1997, Hlm. 73

¹² Alwi Dan Hasan, *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka, 2003, Hlm. 849

European countries which is rooted and sourced from Roman Law is called Civil Law. The use of this terminus is because Roman Law originally originated from the great work of Emperor Justinianus "Corpus Juris Civilis". So the word Civil is taken from the word Civilis. In its spread, this system was adopted by Continental European countries, so it is also called the Continental European system.¹³

Corpus Juris Civilis is a Compilation of Laws compiled by Roman legal experts, namely Ulpianus, Papinianus and Gaius under the direction and guidance of the Byzantine King Justinianus in the 6th century AD, so it is also commonly referred to as Justinian's law. Corpus Juris Civilis is a compilation of legal rules made under the direction of King Justinian in the form of a codification of laws sourced from the decisions and edicts of previous kings with additional modifications adjusted to the social and economic conditions at that time. Corpus Juris Civilis consists of several parts, namely:

- a. The Institute is a systematic treatise in the form of a small textbook intended as an introduction for those who are new to studying law.
- b. The Digest or Pandect Digest or Pandect is the most important part of Corpus Juris Civilis. This section contains a compilation of several edited Roman juris opinions, arranged according to titles or categories taken from the classical era to the 3rd century AD.
- c. The Code is a collection of legal rules including edicts and decisions from the time of Hadrian arranged chronologically under each title so that the evolution of a concept can be traced, where the facts in a case are distinguished from similar facts in previous cases.
- d. The Novels is a collection of rules made by Justinian himself, based on a personal collection, and began to be disseminated between 529 and 544 AD.¹⁴

The legal system is a complete unity of order consisting of elements or parts that are interrelated with each other to achieve a goal as a guideline and rule in giving sanctions to those who violate it in order to create peace, justice and order. Today the legal system is increasingly developing and influencing the civilization of countries in the world. There are two legal systems in the world¹⁵, that:

¹³ Nurul Qomar, *Perbandingan Sistem Hukum dan Peradilan: Civil Law System dan Common Law System*, Op. Cit., hlm. 25-26.

¹⁴ <http://openjournal.unpam.ac.id/index.php/jlsp/index>

¹⁵ Jurnal Dialektika Hukum Vol. 4 No.2 Desember 2022

1. **Civil Law System or Continental Europe** Historically, Civil Law originated from codified Roman law created during the reign of Emperor Justinian and spread throughout the European continent and the world. In the Civil Law system, the main principle underlying this system is that law obtains binding force because it is manifested in regulations in the form of laws and is systematically arranged in certain codifications or compilations.
2. **Common Law System or Anglo Saxon** In the history of common law, this legal system developed under the influence of the Adversarial system in the history of England, based on court decisions based on custom and precedent traditions. This legal system can be found in several countries such as North America or the British Commonwealth countries, both in Australia and Asia.

The main principle that underlies the Continental European legal system is that “law obtains binding force, because it is manifested in regulations in the form of legislation and is systematically arranged in a certain codification or compilation”. This basic principle is adopted considering that the main value that is the goal of law is legal certainty. Legal certainty can only be realized if human legal actions in social life are regulated by written legal regulations. With that legal objective and based on the legal system adopted, judges cannot freely create laws that have general binding force. Judges only function to determine and interpret regulations within the limits of their authority. A judge's decision in a case is only binding on the parties to the case (doctrine of *Res Ajudicata*).¹⁶

The two legal systems above are widely adopted by countries around the world. This is the background to the birth of different regulations in each country according to the legal system they apply. Of the two legal systems above, the Civil Law system or the Continental European legal system is still used by Indonesia today, because many regulations or legal materials still use the remaining rules left over from the Dutch era, this is none other than because historically Indonesia was colonized by the Dutch for approximately 350 years so that Indonesia before independence had to follow the legal system imposed by the colonial party at that time.¹⁷

General Characters of Europe Continental Mazhab¹⁸ :

69 ¹⁶ R. Abdoel Djamali. Pengantar Hukum Indonesia. Edisi Revisi. (Jakarta : Rajawali Press, 1993). Hlm

¹⁷ Jurnal Dialektika Hukum Vol. 4 No.2 Desember 2022 Hlm.183

¹⁸Yoyon M. Darusman, Bambang Wiyono, Teori dan Sejarah Perkembangan Hukum– 1 sted. Hlm.27

- a. Law is specifically always formulated in the form of statutes and made by lawmakers to regulate public order and society. Outside of that, there is no longer any law that can be used as law.
- b. Law is specifically always arranged in one statute book (codification) to guarantee legal certainty.
- c. Law enforcement officers begin the process of investigation or inquiry (police), prosecution (prosecutor's office), trial (judge) including defense (advocate) is the mouthpiece of the law in order to create legal justice.

Until now, Indonesia is still bound by colonial (Dutch) laws. Article 1 of the Transitional Constitution of the Republic of Indonesia in 1945 states that "All Legislation is Still Valid as Long as it Does Not Contradict the Constitution". The legal sources inherited from the Dutch remain valid as long as new laws have not been enacted.⁷ The legal sources in Civil Law usually include statutes, jurisprudence and customs that do not conflict with the law. Indonesia itself adopted a hierarchical system of legislation and the 1945 Constitution of the Republic of Indonesia was made the highest in the hierarchy of legislation in Indonesia.¹⁹

2. The Contribution of Civil Law System the Law in Di Indonesia.

Contribution of Continental European Legal System to the Development of National Legal System in Indonesia", explains about the origin of Continental European law which helped build the Indonesian legal system. The type or characteristics of the Continental European legal system in its legal characteristics, namely fundamentally prioritizing written law. Second, in the history of the development of the legal system adopted by the Indonesian nation, it initially tended to have a Continental European character. Over time, various legal systems complement each other and color the development of the Indonesian legal system. With this, it provides evidence that Indonesia is working on a legal system that has national characteristics in a legal system that applies in Indonesia.²⁰

The development of the Continental European legal system and the Islamic legal system in Indonesia greatly influenced the Development of the National Legal System. This was evident when the Founding Fathers established the laws that were in force during the

¹⁹ Erick Christian Fabrian Siagian, dkk, "Sejarah Sistem Hukum Eropa Kontinental (Civil Law) Dan Implementasinya Di Indonesia.", Jurnal Lex Specialis Vol. 1. No.1, 2021, Hlm. 44

²⁰ Novi Eka Saputri Dan Eny Kusdarini, Kontribusi Sistem Hukum Eropa Kontinental Terhadap Pembangunan Sistem Hukum Nasional Di Indonesia, Jurnal : Masalah-Masalah Hukum, Jilid 50 No.4, 2021, Hlm. 363.

Dutch colonial period based on Article II of the Transitional Provisions of the 1945 Constitution to be enforced in the Republic of Indonesia. Likewise, the Islamic legal system influenced the national legal system, this can be seen when the founding fathers drafted the 1945 Constitution, formerly known as the Jakarta Charter, including the words in the Jakarta Charter, a State based on Belief in the One Almighty God "with the obligation to implement Islamic law for its adherents", although in the end these words were not included in the 1945 Constitution.²¹

In the development of the legal system in Indonesia, when viewed historically, the Indonesian state refers more to the Civil Law or Continental European legal system. The Continental European legal system is called so because the Continental European legal system is a legal system that developed in countries in Europe. In addition, the Continental European legal system can also be interpreted as the Roman legal system because the Continental European legal system originated from a collection of legal principles used by the Roman people during the reign of Emperor Justinian. The codification of law or a collection of various legal principles consists of various kinds of legal rules called the *Corpus Juris Civilis* (codified law) since before the time of Justinian. Thus, it is used as the main principle in the formation of law by mainland European countries including Indonesia because Indonesia is a country that has experienced colonization by the Dutch government.²²

All processes of legal system development in Indonesia were built and developed regularly and systematically by referring to the combination of principles that had been in effect until the colonial power ended. These regulations can be found in the *Regering-Reglements 1854* which were in effect until the end of the colonial position. The principles contained therein are the principles of legal supremacy (contained in the *Rechtsstaats doctrine*) which as far as possible are not stipulated (*eenheidsbeginsel*).²³

F. Closing

1. Conclusion

The main principle that underlies the Continental European legal system is that "law has binding power, because it is manifested in regulations in the form of legislation and is

²¹ Nandang Albian, Pengaruh Sistem Hukum Eropa Kontinental dan Sistem Hukum Islam terhadap Pembangunan Sistem Hukum Nasional , *At-Tatbiq: Jurnal Ahwal AlSyakhsiyyah (JAS)* Vol. 04 Edisi 01, 2019, Hlm. 74

²² Novi Eka Saputri*, Eny Kusdarini, Masalah-Masalah Hukum, Kontribusi Sistem Hukum Eropa Kontinental Terhadap Pembangunan Sistem Hukum Nasional Di Indonesia Jilid 50 No.4, Oktober 2021, Hlm. 363-372

²³ Novi Eka Saputri dan Eny Kusdarini, *Op.Cit.* Hlm. 370

systematically arranged in a certain codification or compilation. The legal system is a complete unity of order consisting of elements or parts that are interrelated with each other to achieve a goal as a guideline and rule in giving sanctions to those who violate it in order to create peace, justice and order.

The "Contribution of the Continental European Legal System to the Development of the National Legal System in Indonesia", explains the origins of Continental European law which helped build the Indonesian legal system. The types or characteristics of the Continental European legal system in its legal characteristics, namely fundamentally prioritizing written law. Second, in the history of the development of the legal system adopted by the Indonesian nation, it initially tended to have a Continental European character. Over time, various legal systems complement each other and color the development of the Indonesian legal system. With this, it provides evidence that Indonesia is working on a legal system that has national characteristics in a legal system that applies in Indonesia

2. Recommendation

In connection with the current development of society, the Indonesian government and all legal stakeholders must immediately align the legal principles of civil law which are legism with the legal principles of common law which are realism.

References / Bibliography :

- Andi Hamzah, *Asas-Asas Hukum Pidana*, Jakarta: PT. Rinek Cipta, 2010.
- Dedi Soemardi, *Pengantar Hukum Indonesia*, Jakarta: Indhillco, 1997.
- Nurul Qomar, *Perbandingan Sistem Hukum Dan Peradilan: Civil Law System Dan Common Law System*, Makassar: Pustaka Refleksi, 2010.
- Yoyon M. Darusman, Bambang Wiyono, *Teori dan Sejarah Perkembangan Hukum*, www.unpam.ac.id, 2019
- Satjipto Rahardjo. *Ilmu Hukum*. (Bandung: Citra Aditya Bhakti, 2012).
- Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2003),
- Santoso, L. *Perbandingan Sistem Civil law dan Hukum Islam Serta interaksinya dalam Sistem Hukum indonesia*. (Istinbath: Jurnal Hukum, 13(2), (2016)

Journal

- Erick Christian Fabrian Siagian, dkk, "Sejarah Sistem Hukum Eropa Kontinental (Civil Law) Dan Implementasinya Di Indonesia.", Jurnal Lex Specialis Vol. 1. No.1, 2021, Hlm. 44
- Nandang Albian, Pengaruh Sistem Hukum Eropa Kontinental dan Sistem Hukum Islam terhadap Pembangunan Sistem Hukum Nasional , At-Tatbiq: Jurnal Ahwal AlSyakhsiyyah (JAS) Vol. 04 Edisi 01, 2019, Hlm. 74
- Novi Eka Saputri*, Eny Kusdarini, Masalah-Masalah Hukum, Kontribusi Sistem Hukum Eropa Kontinental Terhadap Pembangunan Sistem Hukum Nasional Di Indonesia Jilid 50 No.4, Oktober 2021, Hlm. 363-372
- Siregar, P. J. W. (2022). Perbandingan Sistem Hukum Civil Law Dan Common Law Dalam Penerapan Yurisprudensi Ditinjau Dari Politik Hukum. " Dharmasisya " Jurnal Program Magister Hukum FHUI, 2(2), 37
- <http://openjournal.unpam.ac.id/index.php/jlsp/index>