

Comparison of Judicial System Components Between the Republic of Indonesia and the United States

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ABSTRACT: This study was conducted with the aim of knowing what legal system is applied between the Republic of Indonesia and the United States of America, to find out how the differences in the components of the judicial system exist between the Republic of Indonesia and the United States, and what factors cause differences in the components of the judicial system between countries. The Republic of Indonesia and the United States of America The type of research used by the author is normative legal research, namely legal research that views law as a social phenomenon, this type of research is carried out by examining library materials or primary data using data collection techniques by means of library research or library research to collect research data.

KEYWORDS: Judicial System, Republic of Indonesia, United States of America.

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I. INTRODUCTION

Comparing the legal system of a country with other countries is not an easy job in the sense of just seeing and comparing the sound of the provisions of a rule. In a rule of law there is also a social context and the purpose of the birth of these legal provisions, therefore the reality of the existence of a legal system that places law as a tool of social engineering,¹ and the existence of a legal system which holds that the law is born from the development of society so that it places court decisions that have permanent legal force (in kracht van gewijsde)² or jurisprudence as a source of law is a necessity. The Indonesian legal system, for example, both in the field of law, civil law and constitutional law, still uses the legal system and the method of approaching the "Civil Law" legal system. The legal system of "Civil Law" places codification of law as the only source of law in the practice of applying the law. In contrast to the legal system "Common Law" which places jurisprudence as a source of law in the practice of applying the law.

How many and diverse legal systems in the world, the dichotomy of the legal system "Civil Law" and the legal system "Common Law" illustrates the purpose and different social contexts of the two legal systems in the countries that apply them.

The comparative law method has several objectives, namely finding the right answer to a concrete problem when there are differences in legal systems in various parts of the world which actually have the most essential goal, namely to provide order and peace to the people of a country, even every country.

The development of the legal system in Indonesia cannot be separated from the civil law legal system. This was because Indonesia was colonized by the Dutch for too long, which then implemented a European legal system based on the principle of concordance in the Dutch East Indies as its colony. Even now, after more than half a century of Indonesia's independence, there are still many legal provisions inherited from the Dutch that are still used as positive law.

From this, awareness arises of the importance of studying comparative legal systems in order to obtain a comprehensive understanding of the legal system that exists in the world globally in order to obtain internal benefits, namely adopting positive things for the development of national law. As well as external benefits, namely being able to take the right attitude in conducting legal relations with other countries with different legal systems.

¹Rahardjo, Satjipto. (2009). *Membangun dan Merombak Hukum Indonesia: Sebuah Pendekatan Lintas Disiplin*. Yogyakarta: Genta Publishing.

²Mertokusumo, Sudikno. (2008). *Hukum Acara Perdata Indonesia*. Yogyakarta: Liberty.

II. STATEMENT OF THE PROBLEM

1. What is the difference between the legal system of the Republic of Indonesia and the United States of America?
2. What components of the justice system are found in the Republic of Indonesia and the United States of America?
3. What are the factors that cause differences in the components of the judicial system between the Republic of Indonesia and the United States of America?

III. THEORETICAL FRAMEWORK

A. Theoretical Basis

1. Comparative Theory of Law

Atmasasmita³ argues that comparative law is a science that systematically studies the law of two or more legal systems by using the comparative method. Comparative law is a legal discipline that aims to find similarities and differences as well as to find close relationships between various legal systems; look at the comparison of legal institutions and concepts and try to determine a solution to certain problems in the legal systems with objectives such as legal reform, legal unification and others.

2. Legal System Theory

Friedman⁴ argues that the effectiveness and success of law enforcement depends on three elements of the legal system, namely the legal structure (structure of law), legal substance (substance of the law) and legal culture (legal culture). The legal structure concerns law enforcement officers, legal substance includes statutory instruments and legal culture is a living law adopted in a society.

3. Legal Certainty Theory

According to Mertokusumo⁵, legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed.

4. Benefit Theory

According to Bentham⁶ (Utilities Theory). Law aims to achieve expediency. This means that the law guarantees happiness for as many people or society as possible. According to Subekti⁷, the purpose of law is to administer justice and order as a condition to bring prosperity and happiness. According to Soekanto⁸, the purpose of law is peace in human life which includes external interpersonal order and personal internal peace.

5. Justice Theory

According to Aristotle, justice is appropriateness in human action. Feasibility is defined as the midpoint between the two extremes of too much and too little. The two extreme ends involve 2 (two) people or objects. If the 2 (two) people have the same thing in a predetermined size, then each person must get the same object or result. If they are not the same, there will be a violation of these proportions which means injustice.

B. Legal Comparison

1. Legal System

The legal system is a unified process that includes the existence and operation of the legal system component in that process. The legal system includes 3 (three) major sub-processes, namely:

- a. The process of law formation which includes components;
- b. The process of implementing the law which includes components;
- c. The law enforcement process which includes components.

An important tool in legal systematization is legal construction. Without a legal system, new regulations are not recognized as legal regulations and will not be able to solve the problem. There are those who argue that the systematic nature of law is a fact inherent in the nature of the law itself or given by regulating human behavior called norms, then the law provides certainty in human relations, meaning that every human behavior can be ascertained whether behavior is prohibited or behavior that is prohibited, permitted by law, along with sanctions as a result for those who behave prohibited by law. In addition, there are those who argue that systematic law is an order to the jurist, and systematic law is his creation.

In order for the legal system to function as an independent unit and determine its identity, it must be distinguished from other legal systems and other types of normative systems, such as the system of morality,

³Atmasasmita, Romli. (2000). *Pengantar Hukum Pidana Internasional*. Bandung: Refika Aditama, p. 12.

⁴Friedman, Lawrence M. (2009). *Sistem Hukum: Perspektif Ilmu Sosial* (Trans. by M. Khozim). Bandung: Nusamedia, p. 16.

⁵Mertokusumo, Sudikno. (2007). *Penemuan Hukum Sebuah Pengantar*. Yogyakarta: Liberty, p. 120.

⁶Bentham, Jeremy. (2014). *Teori Perundang-undangan: Prinsip-Prinsip Legislasi, Hukum Perdata dan Hukum Pidana* (Trans. by Nurhadi). Bandung: Nuansa Cendekia.

⁷Subekti, Raden. (1989). *Hukum Acara Perdata Indonesia*. Bandung: Bina Cipta.

⁸Soekanto, Soerjono. (1986). *Pengantar Penelitian Hukum*. Jakarta: UI Press, p. 135.

customs, religion, customs, local wisdom. The determining factor for its identity is its scope and sources. The scope of the enactment of the legal system has criteria that determine which norms are addressed to which community groups are the subjects or norms of dress. In the modern legal system, the scope of the enactment of laws or regulations is determined mainly by territorial (national borders) and the criteria of the person. While the primitive legal system, the scope of enactment of laws or regulations is determined by membership in ethnic groups or clans. The source of the validity of the legal system - should be seen as an independent entity, namely which juridical criteria are applied in practice by judges and other authorities.

Scholten⁹ said that law is a system, law is the work of humans, so there must be shortcomings and incompleteness, and by its nature it is not complete and cannot be completed, because it is the basis for decisions that add something new to the system. The elements that make up the system are norms and court decisions. The norm is about how something applies or works.

2. Characteristic of Legal System

a. The Legal System is Continuous, Continuous, and Autonomous

The function of the legal system is to maintain or seek a balance of order in society or *restitutio in integrum*. Every system, including the legal system, recognizes a division in it, where each part must not conflict with each other. Division or classification is a feature of the legal system. To make a classification there must be a benchmark or criteria. Therefore, the criterion is the principle as the basis for division. Legal classification, for example, is based on ways to defend it into formal/adjective law and substantial law. Classification based on time is divided into *ius constituetum* and *ius constituendum*. Classification based on its working power into imperative law and facultative law.

b. The Legal System has a Consistent Nature in Dealing with Conflict

In the legal system there is an interaction between elements or parts, the interaction allows conflict to occur. It is not uncommon for conflicts to occur between one statutory regulation and another, between statutory regulations and court decisions. laws and regulations with custom.

c. The Law does not Require a Conflict between Elements or Parts

If there is a conflict, it will not be allowed to continue until it drags on. This is consistently overcome by the legal system by providing legal principles. Therefore, it can be said that the legal system is a unit in which there are answers or solutions to all problems that arise in the system.

d. The Legal System is Complete

The legal system is complete, meaning it completes the ambiguity, shortcomings and voids of the law. There are no laws and regulations that can regulate all activities of human life completely, clearly and completely, because the activities of human life are very broad, both in type and in number. The legal system's ambiguity, shortcomings and vacancies are overcome by the legal system by way of legal discovery.

e. The Legal System has a Fundamental Concept

A basic concept that is used as the basis for further concepts without further explanation. This fundamental concept is closely related to the language of law. Legislation, agreements, court decisions are all formulated in language. Events in court and other law enforcement can be seen as processes that use language as a means of communication.

3. Comparative Legal Terms

The comparative law method has several objectives, namely finding the right answer to a concrete problem when there are differences in legal systems in various parts of the world which actually have the most essential goal, namely to provide order and peace to the people of a country, even every country.

Sinzheimer¹⁰ said that law does not move in a vacuum and deals with abstract things, but it is always in a certain social order and people who live in every group of people in a nation and state. Therefore, the legal system of a country will be different from the legal system of other countries.

4. Understanding Comparative Legal Systems

In Qamar's¹¹ book From an academic perspective, two different views are found in terms of whether comparative studies of legal systems are included in the study of disciplines or branches of law or not.

According to Suherman¹², the development of comparative legal studies is a science as old as the legal discipline itself. However, in its development, the comparative study of legal systems appeared in the 19th century as a special branch of the legal discipline. Intense deepening of this discipline originated in Europe,

⁹Scholten, Paul. (2003). *Struktur Ilmu Hukum* (Trans. by Bernard Arief Sidharta). Bandung: PT. Alumni, p. 65.

¹⁰Sinzheimer, Hugo. (1935). *De taak der Rechtsociologie*. Haarlem: H.D. Tjeenk Willink.

¹¹Qamar, Nurul. (2010). *Perbandingan Sistem Hukum dan Peradilan: Civil Law System, Common Law System*. Makassar: Pustaka Refleksi.

¹²Suherman, Ade Maman. (2004). *Pengantar Perbandingan Sistem Hukum: Civil Law; Common Law; Hukum Islam*. Jakarta: PT. Raja Grafindo Persada, p. 1.

which was pioneered by Montesquieu in France, by Mansfield in England and Von Feuerbach, Tilbaut and Gans in Germany.

The comparative role of the legal system in legal science is as an approach method to explore and reveal the similarities and differences of a science and or legal system that is highlighted, which has a degree of equality that can be juxtaposed between two or more of a legal system. Thus, it can be formulated that the comparison of legal systems is a science and method of approach in legal science to reveal the similarities and differences of two or more legal systems in a broad sense.

5. Purpose of Comparative Law

According to Atmasasmita¹³, the purpose of comparative law can be distinguished based on its origin and development. Viewed from the point of view of natural law theory, the purpose of comparative law is to compare legal systems to be able to see their similarities and differences in order to develop natural law itself. However, when viewed from a pragmatic point of view, the purpose of comparative law is not merely to seek similarities and differences, but rather to carry out legal reforms. In addition, from a functional point of view, comparative law aims to find answers to real and the same legal problems.

6. Benefits of Comparative Law

Regarding the benefits or uses of studying comparative law, Soedarto¹⁴ stated that the general benefits of studying foreign law are:

- a) give satisfaction to people with a scientific desire to know;
- b) deepen the understanding of the institutions of society and its own culture;
- c) bring a critical attitude towards the legal system itself.

C. Causes of Similarities and Differences in the Legal System

1. The Reasons for the Similarities in the Legal Systems in the World

a. Universal Needs of Society

According to Soebekti¹⁵, the similarities in various matters in the legal system are caused, among other things, because the sense of law and justice regarding these matters is the same everywhere. Exemplified in the law of inheritance, if the deceased has a child, then this child closes the other heirs. Likewise, there are regulations that protect people of good faith everywhere.

b. Similarities in Political and Cultural Patterns

The existence of a cultural pattern between two countries at the same time, for example, there are similarities between Indonesian customary law and Malaysian customary law because of the same cultural pattern due to heredity. Similarly, countries with the same political pattern, and countries with the same ideology.

c. There is an Exchange or Transfer of Culture between Nations

Passage can be in the form of passing the legal system as a whole, such as the Roman legal system which was passed in various countries in Western Europe. The Civil des Francais Code (also known as the Napoleonic Code) which contains many elements of Roman law was then enacted in Belgium. Likewise the Netherlands (and of course also the BW that applies in Indonesia) because it comes from the French Civil Code, so there are many elements of Roman law.

2. The reasons for the differences between legal systems in the world

a. State of the Soil, Climate, and Atmosphere

According to Hartono¹⁶, universal (same) needs will lead to the same methods/rules, and conversely, special needs, based on differences in atmosphere and history, give rise to different ways. He further explained that the special needs were caused by the special environment and atmosphere, society, gender, and so on, so that the arrangements also became different, such as the need for wool, which is the main need for Europeans whose continents have a cold climate, of course different. when compared to Indonesian people whose country has a tropical climate. Likewise, the needs of certain objects for people living in villages are different from those in cities. Arrangements regarding land also differ between archipelagic countries and mainland countries, between large land countries and small land countries.

¹³Atmasasmita, Romli. (2000). *Op. Cit.*, p. 83.

¹⁴Sudarto. (1983). *Hukum Pidana dan Perkembangan Masyarakat, Kajian terhadap Pembaharuan Hukum Pidana*. Bandung: Sinar Baru, p. 76.

¹⁵Subekti in Rahardjo, Satjipto. (1986). *Ilmu Hukum*. Bandung: PT. Alumni, p. 56.

¹⁶Hartono, Sunaryati. (1991). *Kapita Selekta Perbandingan Hukum*. Bandung: PT. Citra Aditya Bakti.

b. Way of Thinking, Way of Life, and Character of a Nation

Subekti¹⁷ stated that the way of thinking, outlook on life and the nature (character) of a nation are reflected in its culture and laws. According to him, different ways of thinking and life views also give birth to different arrangements. As an example, he put forward a comparison of the different ways of thinking of Westerners and Indonesians. Western people are described as thinking abstractly, analytically, systematically, while the Indonesian way of thinking is described as concrete and real. While the Western view of life is described as individualistic, liberal, and materialistic. Meanwhile, the Indonesian people's view of life is described as prioritizing the interests of the extended family and living in nature which includes a magical-metaphysical atmosphere. Therefore, there is a difference between BW and Customary Law in regulating what is called an agreement.

c. The History of Growth and Development of Different Laws

Civil Law, the main ideas, legal understandings, and legal principles are derived from Roman law. colonialism or because it was accepted by other nations. Unlike the Civil Law countries in general, England did not accept Roman law, because since the fifteenth and sixteenth centuries England already had its own lines and methods of development. its legal development is modeled after English law is included in the common law family law, which is a law that was originally created and developed by judicial bodies. Thus, there are differences between countries whose laws belong to the Civil Law family of law and countries that belong to the family of law. Common Law, because the development and growth of the law is different.

d. Differences in Political and Cultural Patterns

For example, it is stated in terms of arrangements regarding ownership of an object. The United States, which understands liberalism, prioritizes individual personal freedom in society compared to the interests of society, thus providing more protection for private property rights.

D. Legal Convergence and Comparison

Convergence is considered more appropriate by Merryman¹⁸ who states that the civil law and common law legal systems are more similar than significantly different from each other. Merryman's statement is as follows:

"The root question is whether the Civil Law and the Common Law are getting to be more alike (converging) or less so (diverging). I shall suggest that there are significant tendencies in both directions but that convergence, as I use the term, is the more powerful one."

IV. DISCUSSION

A. Differences in the Legal System between the Republic of Indonesia and the United States of America

1. Civil Law Legal System

a. Definition of Civil Law Legal System

Civil Law or what is also known as "Roman Law". This legal system is referred to as Roman law because this legal system originates from the codification of laws used during the Roman Empire, precisely during the reign of Emperor Justinian who ruled Rome in the 5th century AD between 527 and 565 AD.

In the Civil Law legal system, the law has binding power because the law consisting of these rules or regulations has been systematically compiled and codified. In this system, court decisions are based on applicable laws and regulations, for example the 1945 Constitution, MPR Decree, Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Decrees/Presidential Decrees, Supreme Court Decrees, Ministerial Decrees and others. so, court decisions are flexible (changeable) depending on the judge who decides based on the facts/evidence.

In the civil law legal system, there is no known jurisprudence that characterizes the common law legal system. The judge's decision only applies and binds the disputing parties or in one particular case and cannot be binding on the general public or used as a basis for deciding other similar cases. In this case, the judge only acts as a decision maker in accordance with the authority he has and his interpretation of the applicable laws and regulations. The civil law legal system is a legal system in which it adheres to the *frele recht lehre* flow, namely where the law is not limited by law but judges are given the freedom to implement the law or ignore it.

b. Characteristics of Civil Law

The characteristics of the Civil Law System can be stated as follows:

- 1) There is a coding system
- 2) Judges are not bound by precedent or the doctrine of *stare decisis*, so that the law becomes the main legal reference

¹⁷Subekti in Rahardjo, Satjipto. (1986). *Loc. Cit.*

¹⁸Merryman, John Henry. (1981). On the Convergence (and Divergence) of the Civil Law and the Common Law. *Stanford Journal of International Law*, 17, 357-395.

3) The judicial system is inquisitorial.

c. Sources of Law in the Civil Law System

In short, the sources of law in the Civil Law system consist of Statutes, Regulations and Customs. Statutes are laws, while regulations are regulations that have been made through power delegation from the legislature to the executive. The third source, namely custom or habit, is quite interesting to observe considering that custom is not an appropriate legal term in the world of positivism. Custom is a habit that is practiced in society that is not stated in written form (non-stutory law). As for the reason for qualifying a habit as a source of law, provided that the habit is a legal representation with a record or reserve that there is no statute and regulations that conflict with it (custom).

From the description it appears that the sources of Civil Law, among others:

- a) laws formed by the legislature (Statutes);
- b) legal regulations (State administration regulations, and others);
- c) habits (custom) that live and are accepted as law by the community as long as they do not conflict with existing laws.

Based on the area of application, which adheres to the Civil Law legal system, this system applies in many European countries and their colonies, such as Angola, Argentina, Arménia, Austria, Belgium, Bosnia and Herzegovina, Brazil, Germany, Greece, Haiti, Honduras, Italy, the Netherlands, Indonesia, and others. With a percentage of 23.43% of the world's population adheres to it or about 1.5 billion of the world's population.

In the Civil Law legal system, the position of judges in the judiciary has the following characteristics:

- a) The position of judges is very narrow because they are bound by the trias politica doctrine, judges only apply the law, not to make laws.
- b) The position of judges as the judiciary is parallel to other government positions, namely the legislative and executive so that each of these government institutions must respect each other and cannot cancel the decisions or products of each of these government institutions.
- c) Judges in the Civil Law legal system are law enforcement technicians as law enforcers.
- d) Judges in the civil law legal system are one part of the chain of government bureaucrats in the sense that judges are assigned and carry out the tasks assigned to them regularly by carrying out staffing discipline in accordance with applicable laws.

2. Common Law Legal System

a. Definition of Common Law Legal System

Common Law, or the legal system that originated in England, then spread to the United States and its former colonies.

Common Law Legal System is a legal system based on jurisprudence. This legal system tends to prioritize customary law, a law that runs dynamically in line with the dynamics of society. Formed through a judicial institution with a jurisprudence system is considered better, so that the law is always in line with the sense of justice and benefits that are felt directly to the community. This legal system is implemented in Ireland, the United Kingdom, Australia, New Zealand, South Africa, Canada and the United States. Apart from these countries, several countries also implement the Common Law system along with customary law and religious law, such as Pakistan, India, and Nigeria. The judge's decision is a source of law in the Common Law system. In this system, the role of judges is very broad. The function of judges is not only to determine and interpret legal regulations, but also to shape the whole order of people's lives. Judges can also create new laws that will serve as a guide for other judges to resolve similar cases. This legal system adheres to the Stare Decisis doctrine. The point is that in deciding a case, a judge must base his decision on legal principles that already exist in the decisions of other judges from previous similar cases.

b. Common Law Characteristics

If the Civil Law System has three characteristics, then the Common Law System is also found to have three characteristics, as follows:

- 1) Jurisprudence as the Main Source of Law

Jurisprudence as the main source of law in Common Law is a product of the development of English law which escaped the influence of Roman Law.

- 2) Adhering to the Stare Decisis Doctrine / Precedent System

The second characteristic of the Common Law System, is the doctrine of Stare Decisis, which is also commonly called Precedent. In Indonesia, it is known as precedent. This doctrine substantially implies that judges are bound to follow and or apply previous court decisions either made by themselves or by their predecessors in similar cases. British Court judges, by applying this doctrine the Court's authority is hierarchical, ie lower courts must follow the decisions of higher courts for similar ones. Although in the Common Law System, it is said that the Stare Decisis doctrine applies, it does not mean that there is no possibility of deviation by the court, by distinguishing, provided that the court can prove that the facts faced are different from the facts that have been

decided by the previous court. This means that the new fact is declared not similar to the fact that already has a precedent.

3) **Adversary System In Judicial Process**

The third characteristic of Common Law is the existence of an Adversary System. In this system, the two disputing parties each use their lawyers to face before the judge. The parties each formulate a strategy in such a way and present as many arguments and evidence as possible in the Court. So the litigants are opponents to each other who are led by their respective lawyers.

c. Common Law Sources

1) **Jurisprudence** (judicial decisions), namely judges have broad authority to interpret legal regulations and create new legal principles that are useful for other judges in deciding similar cases (judge law, rechterrecht, judge made law). In this case, judges are bound by legal principles in existing court decisions from similar cases (doctrine of precedent).

2) **Statute Law**, is regulations made by the British parliament law is the second source of law after jurisprudence. To implement the statute law, implementing regulations are made by the relevant government agencies. The function of statute law is only a complement to Common Law which sometimes has loopholes, and is not intended to regulate the problem as a whole.

3) **Custom**, that is a habit that has prevailed for centuries in England so that it becomes a source of value. From these values, judges explore and form legal norms. This custom is stated in a court decision.

4) **Reason** (common sense), Serves as a source of law if other sources of law do not provide a settlement to the case being handled by the judge, meaning that there is no legal norm capable of providing settlement of the case being examined. With reason, judges are helped to find legal norms to make decisions.

3. Indonesian Legal System

The Indonesian legal system is a formal structure of applicable legal rules and the underlying principles, which in turn are based on the Constitution of the Unitary State of the Republic of Indonesia and are imbued with the Pancasila philosophy. The elements of Indonesian positive law (system of rules) include:

- a. The law or legislation and the principles related to it.
- b. Customs and or customs that have been accepted as law.
- c. Court decisions that have permanent legal force (inkracht van gewisjde).
- d. International treaties or agreements.

The Pancasila legal system by Saleh¹⁹ as a national legal system that was born from the legal ideals and basic norms of the Republic of Indonesia contains harmony, harmony and balance between the interests of every person, society and state which in its implementation requires a complete attitude of self-control, consisting of on four main components, namely:

- a. Legal instruments, contained in various forms of legislation according to a predetermined order, and contain legal materials needed to administer the government.
- b. Legal institutions, a forum as well as a vehicle for carrying out various legal instruments that have been established, as well as processes and procedures are regulated in a relationship, and the coordination of legal institutions, including harmonious cooperation in government.
- c. Legal apparatus, as implementers, enforcers and controllers of various legal instruments that have been established.
- d. Legal culture, a work ethic and moral attitude that must be demonstrated by the legal apparatus.

Basically the legal system adopted by Indonesia can be referred to as a mixed legal system due to the recognition of customary law and religious law as a source of law in Indonesia as well as the existence of a free and active Indonesian foreign policy which can accept the development of the legal system from the State. other as long as it does not conflict with the prevailing norms.

Based on the above discussion, the researcher calls the Indonesian legal system a mixed legal system because Indonesia no longer adheres to the Civil Law legal system as a whole but has adopted several legal systems as its legal source.

4. United States Legal System

The United States of America became a federation composed of states with independent legal systems with all the powers that the Federal Constitution did not delegate to Federal organs. In the event that there are several fields that have the same jurisdiction between the state government and the federal government, then federal law is considered more important than state law.

The legal systems of the states are built entirely on the closely related common law tradition, with the exception of the state of Louisiana, which still exhibits traces of French law, such as the Civil Code Researcher of 1808. The respective states maintain and develop the rule of law in areas such as: contract law, corporate law, law,

¹⁹Saleh, Ismail. (1990). *Hukum dan Ekonomi*. Jakarta: PT. Gramedia Pustaka Utama.

family law, inheritance law, property law, tort, and conflict of law (international civil law). Meanwhile, the law of the sea, bankruptcy and patent law are governed by federal rules. The structure of the United States justice system includes:

a. Federal Judicial Structure

It is the United States Constitution that establishes the United States Supreme Court and gives Congress the power to establish federal lower courts. Congress has established two levels of federal courts under the Supreme Court: the United States District Courts and the United States Series of Courts of Appeals.

b. Structure of the State Court System

The structure of district court systems varies from state to state. Each district court system has unique characteristics; however, some general generalizations can be made. Most US states have courts of limited jurisdiction chaired by a judge where he hears civil and criminal cases. In addition, the states also have general courts of first instance, presided over by a judge. These courts of first instance are usually called series courts or superior courts and their function is to hear major civil and criminal cases. Some other states have special courts that hear only certain cases, such as traffic cases or family disputes.

c. Court Administration

Within the federal court system, the United States Judicial Conference, made up of 27 members (the Chief Justice of the United States and 26 judges from every geographic area of the United States), has overall administrative responsibility for all courts and has primary power in making policy related matters. with the implementation of the judicial branch of the government. This Judicial Conference is assisted by a large number of committees formed of federal judges (and sometimes also of district court judges and attorneys) where they study the different federal court systems and make recommendations. An important responsibility of the Judiciary Conference is to recommend changes in the rules of procedure used by all federal courts.

B. Differences in the Components of the Justice System in Indonesia and the United States

1. Police

In terms of organizational structure, the police in Indonesia are very different from the structure of the American Police. In the United States, the police are under the coordination line of the ministry of justice (minister of justice) / department of justice (department of justice), being under one roof with the prosecutor's office and the judiciary. The United States has a police system that is a fragmented system of policing or a police system that comes separately and independently. This is because the decentralized system of police authority whose jurisdiction only applies to their respective regions, the supervision carried out in this system is supervised by the regional government, and the regional police department is responsible for its duties to the regional government, there are 4 levels of the police hierarchy in America, the first is the State Police, the second is the City Police, the third is the County Police, and the last is the Special Duty Police. Meanwhile, in Indonesia, the police are non-departmental institutions that choose the Centralized system of policing or a centralized police system (Centralization) which means that the authority of the police is taken directly by the national/central government.

In addition to being different in terms of lines of coordination, there are significant differences between the Indonesian Police and the United States of America, but in its development, the police agency as a component of law enforcement in the judicial system has different tasks and functions as well as lines of coordination.

The main task of the police is to carry out investigations and investigations either on their own initiative or on public reports. In conducting investigations and investigations, the police are responsible for their own institutions, in this case a police institution with a higher structure and supervised by KOMPOLNAS or the National Police Commission, in which case KOMPOLNAS is an independent institution. The relationship with the prosecutor's office is only limited to coordination to control the police in carrying out investigations, especially if the suspect is detained. The Prosecutor's Office does not immediately give an order to conduct an investigation, the Prosecutor's Office only receives an investigation file from the police to then correct it, and provide advice if the investigation is deemed incomplete.

In Indonesia the police are not authorized to carry out prosecutions as the American police do. However, the police in Indonesia also have the same authority as the police in America, namely the authority to stop investigations or stop cases. However, what distinguishes between each of these countries is the reason for stopping the case, the reason for stopping the investigation is limited specifically to reasons as stated in Article 109 of the Criminal Procedure Code, while in America, generally in addition to the general reasons as stated in the Criminal Procedure Code. Article 109 of the Criminal Procedure Code, namely the reason for not having enough evidence or not being a crime. In America, the police have the authority to settle cases out of court or refuse them altogether for the prosecution process.

2. Attorney

The Prosecutor's Office in Indonesia is a non-departmental institution which means it is not under any ministry, the top leadership power is held by the attorney general who is responsible for the president, the position of the attorney general is at the ministerial level, therefore the prosecutor's office in Indonesia is not under any ministry. The attorney general (Supreme Court) leads the prosecutor's office which is divided into legal areas starting from the provincial level (high attorney) to district (state prosecutor) throughout Indonesia. This is of course different from the organizational structure. Prosecutors in America are generally under the ministry of law and are part of the executive power led by a attorney general (United States Attorney General). America is a federal country which is divided into several states, so the division of territory in America is also based on the states of the states. Despite being in the executive branch, prosecutors work at all levels of the judicial process, from the lower courts to the highest state and federal appeals courts.

The main task of the prosecutor's office in the Indonesian justice system is prosecution, and vice versa, prosecution is the sole authority that is only owned by the prosecutor's office, and not owned by other institutions. The authority to carry out prosecutions is *Dominus litis* the prosecutor's office both in Indonesia and America.

The main difference between the prosecutor's authority in Indonesia and the United States is the authority to settle cases outside the court. With regard to prosecution, the prosecutor's office in Indonesia only has the right to make a prosecution, to stop the prosecution. before entering the trial process and setting aside the case for reasons of public interest. The last authority is not owned by the prosecutor in the sense that the public prosecutor examines cases, but only belongs to the attorney general as the head of the prosecutor's office. Neither the termination of the prosecution nor the waiver of the case is not the settlement of the case outside the trial, because of how the case is continued but is stopped or put aside by the prosecutor for certain reasons. Case settlement is an attempt to resolve cases without a trial, while in America it is known as *Plea Guilty*. Cases can be resolved without involving the court, only between the prosecutor, the perpetrator (suspect/defendant) and the victim of the crime.

3. Court

In Indonesia, courts are brought under the Ministry of Law and Human Rights (HAM), and under the Minister of Law and Human Rights, where Indonesian courts are included in the Judiciary, which are independent and have a supervisory body called the Judicial Commission and are not bound by the executive body. Unlike the judiciary in America. Although carrying out a judicial function, the accountability and policy determination of the American judiciary is under the executive.

Both Indonesia and America have the highest court institution, namely the Supreme Court which is the estuary of every case that is examined starting from the first level and appeals. Courts in Indonesia, apart from being divided by region, are also divided based on their material jurisdiction, as is the case in America. Indonesia recognizes general courts, religious courts, state administrative courts and military courts, all of which have the same level, starting from the district court, the appeal court/high court and ending at the Supreme Court. Courts in Indonesia are included in the general court area along with other special courts, including juvenile courts, human rights courts and courts for criminal acts of corruption.

4. Correctional Institution

Correctional Institutions are generally known as correctional institutions. In America there is something called probation and parole. Both are the authority to carry out supervision. In Indonesia, trials (probations) are supervised by the judiciary with the institution of Supervisory and Observer Judges, and not only for the type of punishment. Other types of punishment imposed are also supervised by Supervisory Judges and Observers. While on parole (parole) is generally known in America, parole is one type of punishment in America, which is generally given for minor cases or part of an agreement and a guilty plea. In Indonesia, parole is not a type of punishment, parole is the right of the convict, which is given when a convict has served 2/3 (two-thirds) of his sentence.

5. Advocate

Another component related to the judicial system, which is included in the law enforcement component is an advocate. even though they are not government officials, advocates have the status of law enforcers as stated in Article 5 section (1) of Law Number 18 of 2003 on Advocates. If the four law enforcers described previously represent the state in their function to run the justice system (especially in terms of imposing penalties for legal customers), then advocates represent citizens in their relationship with the government/state through their legal instruments.

In America there is an institution that has the same function as an advocate, the institution is known as Attorney Defense. If advocates are more commonly known as legal advisors hired privately, Attorney Defense

is a legal aid agency provided by the state free of charge, for defendants who cannot afford to hire an advocate/lawyer to assist during the trial process. Most of the prosecutors or judges serving in America, whether at the state or federal level, started their careers in the attorney's office.

6. Jury

The Indonesian judicial system is familiar with the jury system, but from a sociological perspective. In the corruption trial for the first period (when the corruption court was regulated together with the corruption eradication commission in the KPK Law), the presence of more ad hoc judges than career judges (three out of five members of the panel of judges) was intended as representatives of the community who supervised career judges. who are stigmatized as corrupt judges in examining and deciding cases. Ad hoc judges at the Industrial Relations Court, Human Rights Court, Fisheries Court are basically representatives of the community in society such as representing workers and the business community, representing human rights observers or the Fisheries Society, which basically also represents the Indonesian people.

American courts are never bound by their own precedent. Compared to Indonesia, it is actually almost the same, because the Indonesian judiciary is not bound to use precedent or jurisprudence as the main source of law. The Indonesian judiciary places the law as the main reference and consideration in deciding a case, however, some understandings due to the lack of clarity in the sound of the law, jurisprudence also often become the reference for judges in deciding cases.

C. Factors that Cause Differences in the Components of the Judicial System between the Republic of Indonesia and the United States of America

1. Legal System

Looking at the legal system in the Republic of Indonesia, which adheres to the Civil Law system, and the United States, which adheres to Common Law, several experts examine the differences between these two legal systems. Since 1929, several experts have warned that to identify a country adopting a common law legal system or civil law, it is no longer possible to simply look at the existence of written law which is specifically related to the formation of law by codified judges. At that time, the United States, Indonesia and other countries with legal systems passed patent law.

The combination of classifications of the current legal system is more than just Civil Law and Common Law as well as recognition of convergence. Meanwhile analysis based on history can provide an overview of the context between the two legal systems that cannot be avoided, or even with the influence (customary law or religious law) and social, community, and political socialists that influence In Indonesia, for example, religious law structure and the legal system. Thus, a dynamic understanding of the role of the judiciary in the discovery and formation of laws can be shared which influences the drafting and ratification of laws. because international relations create a significant influence on the legal system in each country. Mixed legal system (mixed legal system) is a classic development and classification of a legal system.

2. Country Classification (State Form)

The basic difference between the legal system adopted by the Republic of Indonesia and the United States which has an impact on the judicial system is related to the legal system and the form of the state. Indonesia is a Unitary State (Republic) while America is a federation or union state commonly called a State. These two forms bring about fundamental differences regarding the structure of law enforcement in the two countries.

In terms of the components of law enforcement agencies, there is no fundamental difference between Indonesia and America except for the existence of a jury. In addition, the basic difference between the two is related to the structure and organization of each law enforcement agency. but between Indonesia and America have a slightly different justice system. The justice system in America is quite complicated, there is no standard form of the justice system in America because each state has its own judicial system, although in general there are similarities, there are factors that cause differences in the components of the justice system in the two countries.

V. CONCLUSION

1. The Dutch state has colonized Indonesia for 350 years and applied its legal system when it came to power, but now the legal system applied in the Republic of Indonesia is no longer purely based on the Civil Law legal system, but the Indonesian legal system is now better known as the mixed legal system. or (mixed of Law). Meanwhile, America, which was colonized by Britain in ancient times, where Britain applied the common law legal system, but currently America no longer adheres purely to the common law legal system, but adheres to the Anglo-American legal system in its country which began after the American Revolution.

2. In general, there are basic similarities between the components of the judicial system institutions found in the Republic of Indonesia and the United States of America, but in that component, it is related to the jury

system component as a component of the judicial system institution that functions as a determinant of the decision of guilt or innocence of a defendant in a trial which In Indonesian courts, the judge as chairman is in charge of determining the guilt or innocence of a defendant. In addition to the jury system, there are other differences regarding the implementation of the functions, lines of coordination, responsibility and authority of each of the components of the judicial system between the Republic of Indonesia and the United States of America, both components of the judicial system in the form of the Police, Prosecutors, Courts, Corrections, and legal aid institutions.

3. Between the Republic of Indonesia and the United States of America, there are two factors that influence the differences in the components of the judicial system in that country, namely; differences from the legal system applied as well as differences in the classification of the State in this case the form of the state

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