



Civil Law System in Indonesia and Its Comparison with Other Legal Systems*

Nur Rohim Yunus,¹ Fitriyani Zein,² Amrizal Siagian³

^{1, 2} Universitas Islam Negeri Syarif Hidayatullah Jakarta

³ Universitas Pamulang Banten



[10.15408/sjsbs.v9i3.26168](https://doi.org/10.15408/sjsbs.v9i3.26168)

Abstract

Civil law in a general sense is defined as the overall rule of law that regulates behavior between individuals and other people, the behavior of community members in family relationships, and in community interactions. However, in its application, there are differences in methods and methods apart from being bound by standard rules which are the main basis as the basic norms of a country. The research method used in this study is a qualitative research method with a comparative studies approach. The results of the study indicate that there are similarities in the objectives of the civil law system in several countries. However, in Indonesia, the legal system is based on the values of Pancasila and the 1945 Constitution and aspires to justice for all its people. The legal system in Indonesia recognizes the existence of legal pluralism, Islamic law, and customary law. This is not found in the legal system of other countries.

Keywords: Legal System; Ratio; Civil law

Abstrak:

Hukum Perdata dalam pengertian umum diartikan sebagai keseluruhan aturan hukum yang mengatur tingkah laku antara orang perorangan dengan orang lain, tingkah laku warga masyarakat dalam hubungan keluarga, dan dalam pergaulan masyarakat. Namun dalam aplikasinya, terdapat perbedaan cara dan metode selain terikat pada aturan baku yang menjadi landasan utama sebagai norma dasar suatu negara. Metode penelitian yang digunakan pada penelitian ini adalah metode penelitian kualitatif dengan pendekatan comparative studies. Hasil penelitian menyatakan bahwa ada kesamaan tujuan pada sistem hukum perdata pada beberapa negara. Namun pada negara Indonesia, sistem hukumnya berdasarkan nilai-nilai Pancasila dan UUD 1945 serta mencita-citakan keadilan bagi seluruh rakyatnya. Sistem hukum di Indonesia mengakui adanya pluralisme hukum, hukum Islam, dan hukum adat. Hal inilah yang tidak terdapat pada sistem hukum negara lain.

Kata Kunci: Sistem Hukum; Perbandingan; Hukum Perdata

*Received: February 12, 2022, Revision: April 25, 2022, Published: August 25, 2022.

¹ **Nur Rohim Yunus** is a lecturer in Constitutional Law at Syarif Hidayatullah State Islamic University, Jakarta.

² **Fitriyani Zein** is a lecturer in Civil Law at Syarif Hidayatullah State Islamic University, Jakarta.

³ **Amrizal Siagian** is a lecturer in Criminal Law at Pamulang University, Banten.

A. INTRODUCTION

Civil law is a series of laws between people or legal entities with each other regarding rights and obligations.⁴ Meanwhile, Kusumadi Pudjosewojo defines civil law as the whole rule of law that regulates behavior between individuals and other people, the behavior of community members in family relationships, and in community interactions.⁵ Currently, the Civil Law applicable in Indonesia can be divided into Civil Law in a narrow sense and Civil Law in a broad sense. Civil law in a narrow sense includes all the regulations contained in the Civil Code (BW), namely: personal law, property law (property law), family law, inheritance law, engagement law, as well as evidence and expiration law. While Civil Law in a broad sense includes all the regulations contained in the Civil Code, the Commercial Code along with other additional laws and regulations, such as: agrarian law, customary law, Islamic law, labor law, and so on.⁶

Civil law can also be interpreted as material civil law and formal civil law. Material Civil Law is the legal rules that regulate civil rights and obligations, such as commercial law, marriage law, inheritance law, contract law, customary law, and so on. While formal civil law is the legal rules that regulate how to implement and maintain civil rights and obligations (material civil law), for example civil procedural law.⁷ If in conducting a Civil Law relationship between one or more legal subjects and other legal subjects or more, a dispute/dispute arises, then it is resolved by the Procedural Law known as Formal Law. Formal Civil Law is a series of laws on how to defend Material Civil Law with the intermediary of judges. Formal Civil Law is used by judges to settle disputes or disputes between one or more legal subjects and other or more legal subjects based on the evidence determined by the applicable laws and regulations for a judge's decision to be made.

Material Civil Law can also be interpreted as a series of regulations that regulate legal relations between one person (legal subject with one or more cursive authors) and other people (other legal subjects/more cursive writers) in society, such as: buying and selling law; Lease legal relationship; Exchange law relationship; and other legal relations.⁸

B. METHODS

Comparative law is an activity that is commonly carried out in every country, including Indonesia. This is done for the sake of the law itself, either by compiling the system, updating it or adapting it and responding to legal problems in the midst of the times. Therefore, before discussing the comparison of the Indonesian civil law system with the civil law systems of other countries. It is better to first mention the meaning of

⁴ Wirdjono Prodjodikoro, 1992. *Asas-Asas Hukum Perdata*, Jakarta, Sumur Bandung, h.10-11.

⁵ Kusumadi Pudjosewojo, 1990. *Pedoman Pelajaran Tata Hukum Indonesia*, Jakarta: Sinar Grafika, h.72-73.

⁶ P.N.H. Simanjuntak, 2007. *Pokok-Pokok Hukum Perdata Indonesia*, Jakarta: Djambatan, h.9.

⁷ P.N.H. Simanjuntak, 2007. *Pokok-Pokok Hukum Perdata Indonesia*, Jakarta, Djambatan, h.10.

⁸ Hartono Hadi Soeprapto, 2000. *Pengantar Tata Hukum Indonesia*, Yogyakarta, Liberty, Edisi 4, h.80.

comparative law. Comparative law is an effort or method that can be used in all branches of law, for example civil law. Such as the comparison of civil law in Indonesia with Malaysia, the State of Brunei Darussalam, civil law in Timor-Leste, civil law in the United States, England, and so on.⁹

According to Rudolf B. Schlesinger that Comparative Law is a method of investigation with the aim of finding deeper knowledge related to certain laws. This method is not said to be a branch of law (is not a body of rule and principle). Meanwhile, Barda Nawawi Arief said that comparative law is a science that systematically studies and explores the criminal law of two or more legal systems using the comparative method.¹⁰

Comparative law efforts have existed and developed since the end of the 19th century. Currently, comparative law efforts are very much needed because countries globally interact and need each other and are related between one country and another. Because among the purposes of comparative law, seen from the perspective of natural law theory, you will be able to see the similarities and differences in order to develop the natural law itself. Meanwhile, the pragmatic goal is to make legal comparison efforts to find differences and similarities in order to carry out legal reforms. Another purpose of comparative law can be to find answers to legal problems in a country or society.

Comparative law, especially civil law, is very necessary, especially to know the laws and life views of other nations. By knowing each other the laws of other countries will be able to avoid forms of disputes and forms of misunderstanding with each other so as to achieve peace. Comparison of civil law is very important in developing civil law both nationally and internationally. For example, Indonesia can learn and understand the civil law of the United States of America, Britain, Malaysia, the Philippines and other countries, and vice versa. These countries can also learn Indonesian civil law by comparing and conducting research on which parts of the law are different and which parts of the law have similarities and can then be applied.

Thus, whether comparative law is a method or as a branch of legal science, it appears that it has concretely contributed to the development of legal knowledge and legal scientists. Because knowing the differences and similarities of laws in various countries will be able to help the legal system. Among other things, it can help both change, draft and form legislation. In addition, it can assist the building of the judiciary in upholding the principles of justice. Then, comparative law can help treaty relations both nationally and internationally, for example by conducting research and translating the rule of law together.

Therefore, in looking at the practice of the criminal system, the author tries to compare with countries such as; The United States and the United Kingdom represent the Western countries. The Philippines and Britain represent neighboring countries

⁹ Romli Atmasasmita, 1989. *Asas-Asas Perbandingan Hukum Pidana*. YLBHI, Jakarta, h.20

¹⁰ Barda Nawawi, 1990. *Perbandingan Hukum Pidana*. Jakarta. Rajawali Pers, h.4.

and include former European colonies, namely Britain and Spain, as well as Indonesia, a former European colony (the longest colonized by the Dutch).

C. RESULTS AND DISCUSSION

1. History of Civil Law (*Burgelijk Wetboek*) in Indonesia

During the reign of King Julius Caesar in Western Europe during the 50th century B.C., Romans introduced civil law. Since then, Roman law has been applied in France, although it has merged with the pre-Roman French legal system (Galis). The Roman legal system remained in use until the reign of Louis XV, which began with efforts to unify the law and culminated in the Code Civil Des Francois.¹¹ Henceforth, in 1807 it was promulgated as Code Napoleon. The codification of the law is still strong with Roman law, although in its preparation it includes elements of local law, namely Old French customary law which was already applicable to the people of Western Europe before the Romans controlled France. While the legal content in the Civil Code is three mixed laws, namely Roman law, customary law (local law) and church law or Catholic law supported by the Roman Catholic church at that time.

In 1811, when France conquered the Netherlands, the whole Civil Code containing the three legal aspects of Roman law, French community law (German law), and church law was implemented in the Netherlands. Due to the fact that Indonesia was a Dutch colony, the Dutch also implemented their legal system in the Dutch East Indies (Indonesia), namely the Dutch civil law system, which was largely based on the Civil Code and came into effect on January 1, 1848 with the publication of *staatsblad* of 1847 Number 23. Nonetheless, the civil law that prevails in Indonesia is notably distinct from that of the Netherlands.

The Dutch East Indies political system substantially influenced the implementation of the law, particularly Dutch civil law in Indonesia, by dividing the population into three divisions. First, the European group, which includes all Dutch people, Europeans, Japanese, Americans, Canadians, South Africans, Australians, and those whose family law is based on the same principles as Dutch law and their descendants. Second, the group that is equated with Europeans who adopted Christianity at the time of BW. In addition, the Foreign Eastern group, which includes Chinese and non-Chinese Foreign Easterners including Arabs, Indians, and Pakistanis. Third, people who adopt or adopt the lifestyle of the Bumi Putra community. The grouping of these categories is governed by Article 163 IS, which is still in effect based on the terms of Article 2 of the 1945 Constitution's Transitional Rules.¹²

In 1837, the history of civil law drafting in Indonesia began. In order to compile the codification of the Indonesian Civil Code, also known as *Burgerlijk Wetboek* (BW), the Dutch government appointed Mr. C.J. Scholten van Oud Haarlem to head a committee. In an endeavor to codify the Civil Code in Indonesia, it is intended that the

¹¹ Wiriono Projodikoro, 1983. *Asas-Asas Hukum Perdata*. Bandung. Sumur Bandung, h.9

¹² Subekti. 1995. *Pokok-Pokok Hukum Perdata*. Jakarta. Intermedia, h.34.

law and social conditions in Indonesia will be comparable to those in the Netherlands. In addition, the Dutch government selected Mr. C.C. Hagemann as Chairman of the Supreme Court in the Dutch East Indies (Hooggerrechtshop) and tasked him with developing the codification of law in Indonesia. However, Mr. C.C. Hagemann was deemed incapable of performing his duties and was subsequently withdrawn to the Netherlands; Mr. Hagemann assumed his responsibilities. C.J. Scholten van Oud Haarlem.

After Mr. C.J. Scholten van Oud Haarlem was appointed chairman of the codification committee, together with Mr. A. A. van Vloten and Mr. Mayer who each became a member of the committee. In carrying out its duties, this committee was considered by the Dutch government as still failing and was later replaced by a new committee. That is, Mr. C.J. Scholten van Oud Haarlem and its members Mr. J. Schneither and Mr. A.J. van Ness. Finally, this committee is considered successful in codifying the Indonesian Civil Code. Because they are considered able to animate Dutch civil law which will be applied in Indonesia. On April 30, 1847, the results of the codification of the Indonesian Civil Code were announced through Staatsblad No. 23 and entered into force January 1848.

With the passage of civil law (KUHPperdata) in 1847 for the European group in the Dutch East Indies, the *bewuste rechtspolitik* group launched and organized work activities linked to the codification effort in order to reinforce the dominance of the legal system in the Dutch East Indies.¹³ In the meantime, the application of the Civil Code in the Dutch East Indies was based on the following historical context: first, unwritten customary law would create legal uncertainty because, if people relied solely on the customary law system, they would have difficulty estimating the accomplishments or scope of the law to be decided by the judge. Second, the application of different rules to different population groups will cause public confusion.

The Dutch government's enforcement of civil law in Indonesia was inspired by the influence and power of liberal politics in the Netherlands, which sought to make significant changes to the colonial legal system. The Dutch term for this policy is *bewuste rechtspolitik*. The codification of Dutch civil law serves as a model for the codification of European civil law in Indonesia, based on the principle of concordance. This codification of civil law was validated through Koninklijk Besluit on April 10, 1838, with the publication of Staatsblad 1838 Number 12, which declared the codification to be in effect as of October 1, 1838. The Dutch government, via the Governor General of the Dutch East Indies, declared the Civil Code or *Burgelijk Wetboek* (BW) legitimate in Indonesia on 1 May 1848.¹⁴

Except for the three groups listed above, the Dutch government's *Burgelijk Wetboek* (BW) civil law code does not apply. This is based on Article 131 of the IS and the decision of the King of the Netherlands dated 15 September 1916, Staatsblad 1917

¹³ Soetandjo Wingjosoebroto, 1995. *Dari Hukum Kolonial ke Hukum Nasional*. Jakarta. Rajawali Press, h.56.

¹⁴ P. N. H. Simanjuntak, 2014. *Hukum Perdata Indonesia*. Jakarta. Kencana, h.5.

No. 12 jo. 528, which went into effect on 1 October 1917. The Bumi Putera group and the Foreign East group can voluntarily submit themselves to BW and WvK in whole or in part. As stated by Mr. Scholten (Chairman of HGH), voluntary submission would afford Europeans with benefits and security when entering into treaties with non-Europeans. For example, any contract governed by European law. This implies that by utilizing European law, their interests are more secure, as it is a written law that ensures legal certainty, as opposed to the customary law utilized by the Bumi Putera group.

The Dutch administration also recognized that the Dutch East Indies region was a colony, not a state, with no state law other than customary law or local community law. In light of this realization, the implementation of the law in favor of the Dutch government was consistent with their political goals. Therefore, the political practice of "divide et impera," or the politics of division and control, is the spirit of the Dutch government's colonial law to colonize and control Indonesia.

With the implementation of the Dutch Civil Code in the Dutch East Indies (Indonesia) long before Indonesia declared itself as an independent nation known as the Republic of Indonesia, this particularly applies to all Dutch citizens. The Civil Code has evolved into one of the legal systems governing social life in Indonesia.¹⁵ Article II of the Transitional Rules of the 1945 Burgerlijk Wetboek (BW), which had been in existence during the Dutch East Indies period, was ruled to be still valid after Indonesia gained independence, provided that no new rules or legislation came into force based on the Constitution. It is the Burgerlijk Wetboek (BW) or Indonesian Civil Code that serves as the foundation for Indonesian law.

The newly constituted Indonesian government quickly set out to replace colonial law with a national legal system. While it was intended to replace colonial law, this has not happened because of competing visions for how to restructure the legal system, with some calling for the adoption of national law and others demanding that all traces of colonial law be eliminated. But there are still advocates of a combined application who want to see it through. However, opposing viewpoints often hold that customary law will be adopted as the basis for national law.

2. Scope of Comparative Civil Law

The term comparative law, as stated by Barda Nawawi Arief, is found in several foreign terms, including in English, Comparative Law, Comparative Jurisprudence, Foreign Law. In French Droit Compare, Dutch Rechtsvergleichung or in German Vergleichende Rechlere.¹⁶ Furthermore, Barda Nawawi cites Rudolf B. Schlesinger's view that comparative law is a strategy for gaining an in-depth understanding of specific laws, and that comparative law is neither a collection of rules nor a field of science, but rather a way for studying the foreign law of a legal subject. Barda Nawawi Arief himself stated that comparative law is a science that uses the

¹⁵ Subekti, 1995. *Pokok-Pokok Hukum Perdata*. Jakarta. Intermedia, h.10.

¹⁶ Barda Nawawi Arief, 1990. *Perbandingan Hukum Pidana*. Jakarta. Rajawali Pers, h.3.

comparative approach to methodically study the (civil) law of two or more legal systems.

Soedjono Dirdjosisworo explained that the comparison of law between one country and another or comparing the legal system of one nation with the laws of other nations.¹⁷ R. Soeroso said that comparative law is a branch of science that uses comparative methods in order to find the right answer to concrete legal problems.¹⁸ Sunaryati Hartono said that doing a legal comparison would be able to provide benefits, including: 1). Universal needs (same needs) will acquire the same modes of regulation; 2). Specific needs based on different situations and historical differences will lead to different ways.¹⁹ While some legal research experts say that: comparative law is a field of science and a method. In this study, the elements of the system are compared as a basis for comparison which includes the structure of legal institutions and legal substance which includes the set of rules or legal behavior, and the legal culture which includes the set of values adopted by the community. The three elements above can be compared both in terms of similarities and differences.²⁰

In other words, comparative law will be useful and beneficial for the state and its residents in establishing a legal order by examining and comparing the flaws and benefits of each legal practice in order to manage the lives of citizens and foster a feeling of justice.

3. Various Comparison of Civil Law

Civil law is one of the laws that regulate relationships between individuals; it has a regulatory nature and seeks to safeguard individual interests. Book I regulates people (*van personnel*) from Article 1 to Article 498, Book II regulates objects (*van zaken*) from Article 499 to Article 1232, Book III regulates engagements (*van zaken verbintenissen*) from Article 1233 to Article 1864, and Book IV regulates proof and expiration (*van berwijs en verjaring*). In the meantime, based on the systematics of legal science, the systematics of civil law is split into sections on individual law (*personenrecht*), family law (*familie recht*), property law (*vermogenrecht*), and inheritance law (*vermogenrecht*) (*erfrecht*).

Civil law is also referred to as private law because it regulates everything pertaining to private persons, including the death and birth of a person, marriage, divorce, property, and inheritance to business enterprises. Several very important principles are included in the Civil Code, such as in the engagement, namely the principle of contract freedom, the principle of consensualism, the principle of trust, the principle of binding force, the principle of legal equality, the principle of balance, the principle of legal certainty, the principle of morality, and the principle of propriety.²¹

¹⁷ Soerdjono Dirdjosisworo, 1983. *Pengantar Ilmu Hukum*. Jakarta. Radjagrafindo Persada, h.60.

¹⁸ R. Soeroso, 1999. *Perbandingan Hukum Perdata*. Jakarta. Sinar Grafika, h.8.

¹⁹ Sunaryati Hartono, 1991. *Kapita Selekt Perbandingan Hukum*, Bandung. Citra Aditya Bakti, h.2.

²⁰ Zainuddin Ali, 2014. *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, h.43.

²¹ Mariam Darus Badruzaman, 2001. *Kompilasi Hukum Perikatan*. Bandung: Penerbit Citra Aditya Bakti, h.83.

In addition, the Civil Code contains regulations that apply and are regulated outside of the Civil Code, such as land regulations, namely Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Marriage Law, namely Law Number 1 of 1974 concerning Marriage (currently revised to Law No. 16 of 2019 concerning Marriage), and the law of Mortgage. In practice, pluralism characterizes Indonesia's civil law. In other words, the practice of civil law that is implemented consists of multiple legal provisions, in which the law's validity is based on diverse population groupings and has a distinct legal system.²²

4. Status of Civil Law in Indonesia

Civil law in force in Indonesia today cannot be separated from the Dutch East Indies Colonialism in Indonesia. During the Dutch East Indies colonial period in Indonesia, based on Article 163 IS (Indische Staat Regeling), it was divided into 3 (three) groups, namely:

- a. European groups, namely: 1). All Dutch; 2). All persons from Europe but not including the Dutch; 3). All Japanese (including the 1986 Dutch-Japanese trade agreement Staatblad 1898-49; 4). Everyone who comes from another place whose family law is based on the same as the Dutch Family Law; 5). Legal and recognized children according to the Ministry of Law Number 2, 3 and 4 who were born in the Dutch East Indies.
- b. The Bumi Putra group are all Indonesian natives.
- c. Foreign Eastern Groups are all people who are not European Groups and not Men's Earth Groups. There are two Foreign Eastern Groups: Chinese Foreign Eastern Groups and Non-Chinese Foreign Eastern Groups originating from India, Arabia, Africa and so on.

Each of the population groups above applies a different Civil Law, namely: 1) . All Dutch people apply BW Civil Law, WVK is known as Western Civil Law. 2). Everyone who comes from China applies Civil Law which is different from Western Civil Law and Customary Civil Law. 3). All Native Indonesians apply the Customary Civil Law.

Despite the absence of a system for classifying the population, the Western Civil Law (BW) is still in effect in Indonesia unless and until it is superseded by a national Civil Law. According to Article II of the Transitional Rules of the 1945 Constitution, all preexisting State Bodies and Regulations continue in operation immediately unless and until they are found to be in agreement with the Constitution. As long as no new laws or regulations are implemented that are in conformity with the Constitution of 1945, the present ones will stay in effect.

At the moment there is no national Civil Law to replace the Western Civil Law (BW). The formation of the National Civil Law is only partial. For example, Law

²² Agus Salim, 2006. *Teori dan Paradigma Penelitian Hukum*, Yogyakarta, Tiara Wacana, h.8.

Number 1 of 1974 concerning the Principles of Change and Law Number 60 of 1960 concerning Agrarian Principles.

Based on the 1917-12 Staatblad, although the Bumi Putra Group can submit to laws other than Customary Law, namely:

- 1) Complete submission; namely: Submission for the Bumi Putra Group voluntarily (no coercion by other legal subjects) for all fields of Western Civil Law/BW and Commercial Law (WVK).
- 2) Submission in part; namely: Submission for the Bumi Putra Group in part in the field of Civil Law (Western/BW). Example: The field of family property law and the field of family law.
- 3) Submission to perform certain actions, namely; The submission of the Bumi Putra Group to carry out legal actions regulated in Western Civil Law (BW). Examples: Provisions on sale and purchase agreements, Provisions on lease agreements. Provisions on goods safekeeping agreements, and provisions on inheritance agreements and so on.
- 4) Submission quietly, namely: Submission carried out by the Bumi Putra Group in terms of carrying out acts of Civil Law is only regulated in Western Civil Law (BW). Thus, the legal actions carried out by the Bumi Putra Group are not regulated only in the Western Civil Law (BW). Example: Issuance of securities (Wissel, Aksep and Chegue).

Sources of material Civil Law are regulated in European Civil Law which in the Civil Code is written and codified, meaning that it is recorded in the legislation in a complete and orderly manner. The laws and regulations governing the Material Civil Law are: Civil Law (Book of Civil Law Law)/BW (Burgelijk Wetboek).

The Civil Law Systematics are as follows: Book I regulates "About People" (Van Personen). Book II deals with "About Things" (Van Zaken). Book III regulates "On Engagement" (Van Verbintensissen). Book IV regulates "Regarding Evidence and Expiration" (Van Bewijsen Verjang). What is regulated in book IV Concerning Evidence and Expiration (Van Bewijsen Verjang) is actually included in Formal Civil Law (Civil Procedure Law) but in history there has been an opinion that there is a division of Civil Law into 2 parts: Material Civil Law and Civil Law Formal.

In terms of legal science, Civil Law can be divided into four (4) sections:²³

- a. Individual Law (*Personen recht*). Individual law is a law that contains regulations regarding humans as subjects in law, regulations regarding a person's competence in law.
- b. Family Law (*Familie recht*). Family law is a law that regulates relationships that arise due to family relationships, such as marriage, the relationship between parents and children, guardianship, and guardianship.

²³ Mariam Darus Badruzaman, 2001. *Kompilasi Hukum Perikatan*. Bandung: Penerbit Citra Aditya Bakti, h.19-20.

- c. Property Law (*Vermögens recht*). Property law is a law that regulates legal relationships that can be valued in money, this property law includes 2 kinds of rights, namely: 1). Absolute rights, namely absolute rights that apply to everyone, both rights to objects and rights to intangible goods, such as: property rights, business rights, copyrights, patents, and so on. 2). Relative rights, namely: rights that arise due to a legal event where one party is bound to another party, such as: sale and purchase agreement, lease agreement, work agreement, and so on.
- d. Inheritance law (*Erfrecht*). Inheritance law is a law that regulates the procedures for transferring assets from a person who has died to a living person or his heirs.

Broadly speaking, the objects or materials of Civil Law include: Personal Law; Family Law; Inheritance law; Law of Matter; Guarantee Law; Law of Engagement (General); Special Covenant Law.

1). Private Law

A legal subject has rights and responsibilities. When people are by nature legal subjects. Humans are legal subjects since they are born and die as individuals. Even in Article 2 of the Civil Code, it is stated that a fetus is regarded to have been born if it is in the best interests of the fetus. If there is a specified bequest, the unborn child's portion of the inheritance must be accounted for if the child's father dies and leaves property.

In the sense of being a supporter of rights and obligations, every individual is a legal subject, but not every legal subject is able to act in Civil Law actions. According to Article 130 of the Civil Code, "persons who are not legally competent are minors, the mentally ill, and married women." According to Western Civil Law, legally competent individuals are those who are adults, 21 years of age, or married before the age of 21. Mentally sick individuals sometimes recover, and those who enjoy spending their family's fortune are incapable of obeying the law. The final individual is a married woman. In Civil Law proceedings, married women must be permitted or represented by their husbands.

2). Family Law

Positive Family Law consists of: Heredity; parental power; Trusteeship; Maturity; Forgiveness (curatele); and Marriage.

First; Descendants. The regulation of children in Article 55 of Law Number 1 of 1974, confirms that the origin of a child can only be proven by an authentic birth certificate. The Authentic Deed is issued by the authorized official. In Article 42 of Law Number 1 of 1974 it is explained that a legitimate child is a child born in or as a result of a marriage carried out based on the applicable laws and regulations. Children out of wedlock can be recognized by their parents if after the child is born, the parents enter into a legal marriage in accordance with the applicable laws and regulations. The child of an adulterous relationship cannot be a legitimate child and the father can

acknowledge the child. The act of denying a child from a relationship must be based on evidence and evidence by a District Court Judge.

Second; Parental Authority Marriage between a man and a woman gives rise to parental rights and responsibilities towards their offspring. Article 45 explains that both parents are required to support and educate their children to the greatest extent possible. The law's obligations apply until the child attains independence or has completed a formal marriage. The commitment to provide for and educate their child or children does not end when a couple's marriage dissolves. Article 49, paragraph 1, explains that a kid under the age of 18 or who has never been married is under parental supervision. The father and mother of a child or children may have their parental rights revoked at the request of: the other parent (in a divorce); the child's family in a direct line; adult siblings; and the authorized official with the District Court's decision on the grounds of: gross neglect of obligations to children; and very bad behavior. In the meantime, Article 49, paragraph 2 of Law No. 1 of 1974 explains that even though their authority has been removed, they are still required to care for the child.

Finally, guardianship. Guardianship is governed by Article 50, paragraphs (1) and (2) of Law No. 1 of 1974. Article 50 paragraph (1) of Law Number 1 of 1974 states: Children who have not reached the age of 18 (eighteen) or who have never been married and who are not under the jurisdiction of their parents are placed under the authority of a guardian. Article 50, paragraph 2, of Law Number 1974 explains that guardianship relates to the person and property of the ward.

Article 51 of Law Number 1 of 1974 explains that: 1). The guardian can be appointed by one parent who exercises parental authority before he dies by a will or verbally in the presence of two witnesses; 2). Guardians as far as possible are taken from the child's family or other people who are adults, think healthy, fair, honest and have good behavior; 3). The guardian is obliged to take care of the child under his control and his property as well as possible by respecting the child's religion and belief; 4). The guardian is obliged to make a list of the assets under his control. At the time of starting his position and recording all changes in the property of the child or children; 5). The guardian is responsible for the property of the children under his guardianship and the losses incurred due to his fault or negligence. Court judges can decide and make court decisions because the guardian is very negligent of his obligations and the guardian has very bad behavior. In addition, the court judge can decide on compensation for losses that arise in the property of children under his guardianship.

Fourthly; Maturity (*handlichting*). A person is considered an adult under the BW Civil Law if they are 21 years old or married before that age. Children who have not yet reached this age and are unmarried may apply for maturity (*handlichting*). There are two varieties of maturation (*handlichting*): 1). Perfect maturity (*handlichting*). All BW Civil Law acts can be taken by a person who has been deemed to be of full age; 2). Maturity (*handlichting*) is imperfect, specifically: a statement that compares the status of a child who has not yet achieved the age of maturity to that of an adult in certain ways. Example: managing a business held by his father, whose

parents have since passed away. The prerequisites are that the youngster must be 18 years old and have the court judge's approval.

Fifth; Forgiveness (Curatele). Not all adults who are 21 years old or married before that age are healthy, but some are unhealthy or have memory problems. According to the prevailing laws and regulations, an adult but mentally ill must be placed under pardon (Curatele). In addition, people who squander their possessions must also be placed under guardianship (Curatele). Parties who can request a person under custody (Curatele) due to mental illness/insane, namely: Any family member; husband or wife; Prosecutors, if someone under guardianship (Curatele) can endanger the public interest. Meanwhile, parties who can request someone under guardianship (Curatele) for selling off their property/wasteful are: a very close family member; Husband and wife.

In order to become a person under pardon (Curatele), you have to write a letter to the court. Even if a person under guardianship (Curatele) is an adult in terms of age, his legal status is the same as that of a minor. Since a person under guardianship (Curatele) can't sue or be sued in Civil Law, the guardian must do it for them. Especially for a person who is under guardianship (Curatele) and wants to get rid of his property (which is wasteful), legal acts like making a will and getting married can be done according to the rules and laws.

3). Inheritance law

What is meant by inheritance law are: the provisions governing the transfer of inheritance from the heir to the heirs. Inheritance law recognizes several things as follows: a). Laws without a will or inheritance law ab intestato; and b). Inheritance law of wills (testament), those who are entitled to receive inheritance are divided into 4 groups, namely; Group I: Descendants of the deceased: children of the husband or wife who live the longest and grandchildren as substitute heirs; Group II: Parents, siblings and descendants of the deceased; Group III: Ancestors of the deceased either from the husband's side or from the wife's side; Group IV: Blood relatives up to the sixth degree.

4). Law of Object

What is meant by the law of objects are: the legal provisions governing objects and the rights attached to them. The distinction of objects in civil law if: Objects that can be replaced and objects that cannot be replaced; tradable and non-tradable objects; Divisible objects and indivisible objects; Moving objects, immovable objects (fixed).

5). Law of Obligations

The law of engagement refers to the rules governing the rights and duties of legal subjects in the realm of property law. The engagement derives its legal authority from the law and the agreement. An engagement occurs when a legal subject enters into an arrangement with another legal subject or subjects. Article 1338 of the Civil Code explains that all agreements signed in accordance with the stipulations of the law have the force of law for those who create them, meaning that the rights and responsibilities of each party or parties arise. Article 1320 of the Civil Code regulates the conditions for the legitimacy of the agreement, which are: an agreement between

those who bind themselves; the capacity to enter into an engagement; a specific thing; a justifiable purpose. A and B are considered subjective conditions. If it is not met, it is subject to cancellation. Conditions c and d are referred to as objective conditions, and if they are not met, the contract is void.

6). Marriage Law

Law Number 1 of 1974 about the Principles of Marriage and Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 govern marriage arrangements in Indonesia. Article 1 of Law No. 1 of 1974 defines marriage as an inner and outer relationship between a man and a woman as husband and wife for the purpose of building a joyful and eternal family (home) based on God Almighty. To be legitimate, a marriage between a man and a woman must comply with Article 2 of Law Number 1 of 1974. Paragraph (1) of Article 2 of Law No. 1 of 1974 explains that marriage is valid if performed in accordance with the laws of each religion. and this conviction According to Article 2, paragraph 1, the validity of the marriage is restored to each church and belief system. If the prospective bride is Muslim, the marriage must be based on Islamic marital law; otherwise, it must be based on the prospective bride's religion and beliefs. Consequently, Law No. 1 of 1974 does not govern mixed marriages (marriages of different religions). Article 2 paragraph 1 of Law Number 1974 specifies that every marriage must be registered in accordance with applicable laws and regulations. Article 2 paragraph 1 of the Law governs the dissolution of marriage.

The nature of law number 1 of 1974 is strictly administrative. Marriage registration does not indicate whether or not a marriage is valid. According to Law No. 1 of 1974, the marital principle is the principle of monogamy, which states that a man may only have one wife and a woman may only have one husband. According to the law, the principle of monogamy is not absolute monogamy, but rather the principle of open monogamy or conditional polygamy. As long as he meets the standards established by the law, a husband may practice polygamy.

The union between a husband and wife is eternal. If in cultivating a household there are conditions that cause it to be inconsistent with the aim of marriage and applicable rules and regulations, it can lead to a rupture in the relationship between the husband and wife. Regarding the dissolution of the marriage as a result of: the death of one of the spouses; Divorce, there is a court ruling with permanent legal effect.

5. Comparative Analysis of the Civil Law Systems of Indonesia and Other Countries

a. Civil Law System in Indonesia

The status of Indonesia's legal and judicial systems is determined by Pancasila and the 1945 Constitution. The founding fathers desired justice for all Indonesians in accordance with the Pancasila values and the constitution, particularly Articles 24 and 25, so that law enforcement would be conducted fairly, freely, and without interference from any party. The Indonesian legal system, particularly the penal system, is still affected by European law, particularly Dutch law. The Dutch have long colonized

Indonesia and established the rule of law there. The legal system in the Netherlands is divided into public law and private law, however both remain under the same court system. The horizontal composition consists of general courts, religious courts, military courts, and administrative courts or the State Administrative Court. The vertical composition consists of administrative courts or the State Administrative Court (PTUN). In addition to special courts, there are regular courts and Constitutional Court courts. Sharia Courts exist at the level of the regency or city, as well as at the provincial level, in the Aceh region.²⁴

As per Article 24 paragraph (2) of the 1945 Constitution, courts in Indonesia are divided into four categories: 1) General Court Environment: includes civil law disputes and criminal law; 2) Religious Court Environment: oversees the law for Islamic individuals in the fields of waqf, family law, and other issues in the field of muamalah; 3) Administrative Court Environment: covers disputes between individuals who are citizens and state administration offices; and 4) Military Court Environment: oversees the law for military personnel.

Civil law in Indonesia is a relic of Dutch colonial law, which was derived from Continental European law (European Continental System). Codification is one of the distinguishing features of continental European law. In other words, the law is drafted in an organized and comprehensive manner. The Dutch term for civil law codification is *Burgelijke Wet Boek*, which translates as Civil Code.²⁵ Civil law is a subset of private law (*privatrecht*), which is governed by the *Burgerlijke Wetboek* (BW). Civil law's structure consists of Material Civil Law and Formal Civil Law. Material Civil Law is civil law whose subject matter consists primarily of material contained in the Civil Code (*Burgerlijke Wetboek*). Meanwhile, the contents of the civil law include the Commercial Code, the Marriage Law, the Basic Agrarian Law, the Law on Mortgage Rights, and the Fiduciary Law. The Formal Civil Law contains the rules for the settlement of civil cases or what is often referred to as the Civil Procedure Law. While the Civil Code in Indonesia is organized into 4 books, namely, 1) Book I on people (*van Personen*), 2) Book II on Objects (*van zaken*), 3) Book III on engagement (*van verbintenissen*), and Book IV on evidence and expiration (*van Bewijs en Verjaring*).

Various organisations are currently considering reforming Indonesia's civil law. This is evidenced by the inadequacy of civil law acquired from the Netherlands (and used by the Indonesian government for more than seventy years) to respond to and track the development of diverse legal concerns in society. Officially in Book III, which addresses engagements that have not been specifically regulated by national law and are seen to be in violation of Indonesian legal standards. With the renewal of civil law, particularly the Law on Engagement, it will be possible to regulate it comprehensively by incorporating the developing principles, including those pertaining to the domestic area, customary law, Islamic law, and the principles of international trade contract law that continue to evolve.

²⁴ Bagir Manan, 2005. *Sistem Peradilan, Suatu Pencarian*. Yogyakarta: FH UII Press. h.15.

²⁵ Bambang Daru Nugroho, 2017. *Hukum Perdata Indonesia*, Bandung: PT. Refika Aditama, h.21.

Realizing that civil law has flaws, the Indonesian government has issued a number of civil procedural legislation, including Law Number 48 of 2009 on Judicial Power and Law Number 14 of 1985 on the Supreme Court, in an effort to strengthen civil law. However, the Supreme Court Law was later updated as Law No. 5 of 2004 and again as Law No. 3 of 2009. In addition, the Supreme Court published a Supreme Court Regulation to govern technical topics in order to facilitate court practice and ensure the protection and welfare of the people.

Consequently, a legal system that ensures laws that contribute to the safety and well-being of the people must exist. In Indonesia, justice and the resolution of legal issues are achieved through the court. The judicial body was established for the purpose of resolving legal disputes in the community in accordance with the division of its authority between the criminal law system and the civil law system.²⁶ Civil law is considered the oldest and at the same time the most influential system in the world.²⁷ This is a result of its specialization in regulating, both in the public and private interest.²⁸ Currently, civil law, which was formerly the primary source of law for Europeans, has come into touch with several nations and countries and has been modified to the requirements of their respective nations and merged with their country's existing legal system. This includes Malaysia, Brunei Darussalam, Timor-Leste, the United Kingdom, and the United States.

b. Civil Law System in Malaysia

Malaysia was a British colony in the past. As a former British colony, the Malaysian legal system is inspired by the British common law (common law system), and Malaysia is a member of the Commonwealth of Nations. Long before British colonization, the Malaysian government did not relinquish or change their fundamental legal structure. This is because Malaysia desires to keep the legislation in accordance with their society's beliefs. They believe that growing and developing legal awareness will be easier than replacing the entire old legal culture with a new legal culture. The British legal tradition is fundamental to the Islamic legal system and their society's customary law.

Prior to British intervention, the Malay state (Malaysia or Malaya) was governed by the customary law of the Perpatih. This Perpatih customary law predominates in Sembilan and portions of Malacca, whereas the Temenggong customary law predominates in other areas of the peninsula, alongside a variety of local laws. This involves the application of Islamic law to religious concerns, such as marriage and divorce.

In practice, Malaysia's judicial system is divided and adapted to the laws enacted without sacrificing the principles of their society. In the meantime, the sources of Malaysian law fall into three categories: written or national law, Islamic law, and

²⁶ Sigit Sumadiono, 2020. *Perbandingan Sejarah Positivisme Hukum di Indonesia Sebagai Penentu Politik Hukum Di masa Yang Akan Datang*. Legalitas: Jurnal Hukum. Vol 12. No. 1 Juni.

²⁷ Satjipto Rahardjo, 2012. *Ilmu Hukum*. Bandung. Cipta Aditya Bhakti, h.246.

²⁸ R. Soeroso, 2005. *Perbandingan Hukum Perdata*. Jakarta. Sinar Grafika. h.52.

customary or customary law. Customary law is comprised of English law, and equality norms have evolved in Malaysian courts where there is a high likelihood of disagreement with written law. It is believed that adjusting the rule of law is the best way to resolve legal problems. One court is located in Peninsular Malaysia and is known as the High Court in Malaya, while the other is located in East Malaysia and is known as the High Court in Sabah and Sarawak, with the exception of the Sharia Courts, which have jurisdiction over all matters. Additionally, they can accept appeals from the Session Court. Malaysian courts include the Court of Appeal, the Federal Court, the Session Court, the Court of First Level, the Court Decision, the Juvenile Court, and the Sharia Court.

c. Brunei Darussalam Civil Law System

Brunei Darussalam is a nation governed by an absolute monarchy. Brunei Darussalam is one of the Southeast Asian nations that has updated its civil law, particularly its family law. In Malay Islam Beraja (MIB), the state ideology of Brunei, the determination of the Syafi'i madhhab (fiqh law) and ahlu sunnah wal congregation are included (aqidah).²⁹ Equally, Brunei, in keeping with the times, does not deny that there are demands for development and renewal, as it is believed that traditional legal provisions are no longer capable of addressing issues in the present situation. Among the examples of legal change in Brunei is the Emergency Order, specifically the Islamic Family Law Act (1999) that controls family law matters, particularly those pertaining to marriage and divorce.³⁰ Then, this rule becomes a reference for family issues, such as the marriage system, divorce, and other issues pertaining to family life.

In the past, the British Resident and the Sultan were responsible for Brunei Darussalam's legal system. The British Resident is accountable for all aspects concerning the appointment of judges to lesser courts and their authority. In the meantime, it is the sultan's duty to wield the judicial authority to enforce the regulations and sharia law. In addition, the sultan possesses the authority to determine all "kathis" within his sphere of influence.

The courts of Brunei at that time had different jurisdictional powers, and the forms of sanctions also varied. The structure of the Court at that time was: 1) Resident Court, 2) First Level Judge Court, 3) Second Level Judge Court, 4) Indigenous and Kathis Judge Court.³¹ Brunei Darussalam, in contrast to Indonesia, which follows a civil law legal system, follows a common law legal system based on English law with a combination of sharia law systems for Muslims. Brunei only implemented a stringent Islamic law system in 2014, which was meant for both Muslim and non-Muslim

²⁹ Abd Ghofur, 2005. *Islam dan Politik di Brunei Darussalam: Suatu Tinjauan Sosio-Historis*. Jurnal Toleransi: Media Komunikasi Umat Beragama. Vol 7 No. 1.

³⁰ Ade Irma Imamah, 2018. *Hak penolakan Rujuk di Indonesia dan negara Brunei Darussalam Perspektif Hukum Islam, Gender dan HAM*. Tesis. Fakultas Syariah dan Hukum. UIN Syarif Hidayatullah. Jakarta, h.86.

³¹ Astim Riyanto, 2007. *Sistem Hukum Negara-Negara Asia Tenggara*. Jurnal Hukum dan Pembangunan. Vol 37. No. 2.

inhabitants. Constitution, statutes, additional legislation, Islamic law, judicial precedent law, and English law comprise Brunei's legal system. Since 1962, Brunei has been governed under a state of emergency, in which the Sultan can pass laws that the government deems to be an Emergency and his actions are not subject to court review.

d. Timor-Leste's Civil Law System

Timor Leste is a new country located in Indonesia's eastern region. Timor-Leste is a sovereign, independent state that received international recognition for its independence on May 20, 2002. As a sovereign state, Timor Leste has a constitution titled the Constitution of the Democratic Republic of de timor-leste (RDTL), which was enacted on 20 May 2002. According to this document, the nation and state's goals are to realize the welfare and prosperity of the nation, to manage the land and natural resources contained therein, and to ensure the security of the nation's borders (earth, water, and space).

Through the 2002 RDTL, within the scope of its civil law, particularly the legal issues of ownership of immovable objects and land titles, as stated in Article 54, paragraph (1), every individual state has private property rights that can be transferred to other individuals, regardless of whether they are alive or deceased at the time of the transfer, as long as they are in compliance with the law. Paragraph (2) private property must not be used in a way that is detrimental to its social function. Paragraph (3) official prosecution and expropriation of ownership for the public interest can only be carried out after proper compensation has been paid in accordance with the law. Paragraph (4) only national citizens have land ownership rights. The right of ownership in question covers the assets owned by a person during his lifetime. Personal property can be in the form of movable and immovable objects, and the property by the owner can be inherited or transferred to someone who is considered legally worthy.

The provisions in Article 54 stipulate the basic principles of private ownership and implicitly recognize that right and ownership contains its social function and provides an affirmation that only national citizens can have ownership rights to land. Furthermore, Article 141 explains that "the ownership, use and development of land, as an element of economic income, is regulated by law." In other words, based on the provisions of Article 141 above that land ownership, use and development have social functions in development development that can increase economic development that land has a dual function in everyday life.

Land and building ownership must give legal certainty and legal protection under the RDTL constitution. The law provides legal certainty and legal protection for land that is legally owned, the status of the subject of the land, the location of the land, its limits, and its extent. Therefore, the government of Timor-Leste issued Lei-No 1/2003, de Marco Regime Juridico dos Bens Moveis I parte: Titularidade dos Bens Imovies that explicitly regulates immovable property (Law Number 1 2003 concerning Immovable Assets and Property). In particular, Article 15 of the law provides that,

paragraph (1), all immovable property left behind, whether belonging to citizens of Timor-Leste or foreign nationals, is temporarily placed under government supervision. Paragraph (2) temporary administration of the objects referred to in paragraph (1) above is intended to (a) guarantee the legal rights of the citizens concerned over the said assets; (b) temporary use to third parties or to the Government, and (c) ensure that in its utilization it does not neglect its social function. Paragraph (3) permission to lease immovable objects, as regulated in the paragraphs above, to citizens of Timor-Leste or foreign nationals and to other individuals, either individually or collectively, is carried out by paying a fee. adequate rent. Paragraph (4) rental and administration methods as referred to in the paragraphs above will be regulated by separate laws and regulations.

e. British Civil Law System

As a nation, the British Empire does not have a single legal body that encompasses the entire kingdom's territory. However, the United Kingdom continues to adhere to the principle of an independent court, as stated in Section 3 of the Constitutional Reform Act of 2005 respecting the Guarantee of Continued Judicial Independence. While the judicial power institutions in England are dispersed across numerous regions with different names, designations, and judicial mechanisms, each of which is autonomously delegated to the area or territory where the judicial system is enforced, the judicial power institutions under British sovereignty are extremely diverse.

In addition to courts, the British legal system also includes people's courts (tribunals), which normally exercise authority over public administration. The Civil Problem Rules of 1998 regulates in great detail the procedure for court review of administrative actions. There is no obvious distinction between administrative, criminal, and civil matters in the United Kingdom's judicial procedure, making the adjudication of the types of cases heard by the courts a challenging subject.

The mechanism of the British legal system differs from that of other nations. The structure of the court building, which is separated into two categories, demonstrates this state. First, the court system is structured according to the qualifications of the competent judiciary. The category of material competence or matters under its power is separated into two categories of court, namely: 1) the district court and 2) the superior court. civil litigation courts; 2) Courts that decide on criminal matters. Second, there are disparities in the authority of lower and higher courts within the court hierarchy.³²

Scotland and Northern Ireland have different courts, and these differences are evident (Northern Ireland). Scotland's legal and judicial system is distinguished by the fact that the chairman and high court of Scotland are headed directly by the Lord President, as stated in Chapter 2 Article 1 of the Judiciary and Courts (Scotland) Act of 2008: "The Chief Justice of Scotland (1) Lord President is the chief justice of Scotland.

³² W. Martin, 2014. *"Court Administration and the Judiciary: Partners in the Delivery of Justice"*. International Journal for Court Administration, Vol. 6. No. 2, h.3.

(2) As the head of Scotland's judiciary, the Lord President is responsible for: a). Create and maintain arrangements to ensure safety and efficiency in Scottish courts; b). Represents the views of Scottish judges on the Scottish parliament and Scottish clergy; c). Placing representation in the Scottish parliament as a form of reference in matters relating to the judiciary or the administration of justice; d). Make and maintain appropriate arrangements for the welfare, training and coaching of judicial officials; e). Make and maintain appropriate arrangements for investigations and determine any issues concerning the conduct of judicial officials, and review any decisions issued.

While the paradigm of judicial practice in Northern Ireland follows the same premise as in England and Wales, this is not the case in Scotland. Where the government and Minister of Justice of Northern Ireland are solely accountable for the efficient operation of the courts. In Northern Ireland, the constitutional standing of the Lord Top Justice is established by his combined role as chief judge and president of the courts in Northern Ireland. In accordance with The Justice Northern Ireland Act of 2002. This statute assigns him a variety of responsibilities, including court organization responsibilities, the assurance of organizational advantages, and training and coaching for judges.

The senior courts in England and Wales are comprised of three levels of structure and are known as the high courts. The supreme court has the ability to decide civil matters and to hear appeals from regional court decisions. District courts in England and Wales are responsible for deciding civil cases.³³

f. United States Civil Law System

Permanent residents and non-permanent residents are subject to the same laws in the United States. To understand the United States' legal system, one can examine the nation's history, its court system, and the function of its judges. Originally, the majority of United States territory was a British colony (originally consisting of 13 states). The United States gained independence from British authority on July 4, 1771. When Britain colonized the United States, English law was the appropriate body of law and set of rules. Similarities exist between the nature of the law and the procedure in its courts and the British system.³⁴

After achieving independence from Britain, the United States government compiled the rule of law and a constitution (constitution), especially the Constitution, which serves as the foundation of the United States legal system. In contrast, the United Kingdom does not have a Constitution.³⁵ Because American society is not a homogeneous society, that is, it consists of various nations and then unites, and led to the emergence of the idea of a federal state. Based on the American constitution that the basic law, namely America adheres to a federal state, each state also has its own

³³ Lady Justice Arden, 2007. *The Judicial System of England and Wales. A Visitor's Guide*. England, Judicial Office International team. h.6.

³⁴ Mulyana, 1994. *Mengenal Hukum dan Pengadilan Amerika*. Era Hukum. No. 2. Tahun I, h.83-88.

³⁵ Charles F. Hemphill, 1984. *Basic Business Law*. New Jersey, Prentice Hall, h.12.

constitution and laws. Unless otherwise provided by the American constitution, jurisdiction generally rests with the states.

In other words, the federal government's legal jurisdiction is limited by the provisions of the Constitution. Consequently, there are two types of relevant laws in the United States: first, federal law, which applies to all countries, and second, state law, which applies just within the state in question. Despite the fact that the laws of the states share many similarities because they are based on the British legal system (common law system), each state has distinct laws. Thus, the United States has 52 legal systems, including 50 state legal systems, local laws that apply in Washington, D.C., and federal laws. The Constitution of the United States places federal law above state law. States cannot enact laws that are inconsistent with federal law. In the event of a dispute between state law and federal law, federal law will take precedence and state legislation will be ruled null and void.

While the primary source of law in the United States is what US judges utilize to decide cases brought against them, namely the judgments of previous judges in comparable cases, there are other sources of law (case law). The judge adjudicating a case is essentially required to reach the same conclusion as the prior judge in the same case. The name for this legal idea is the precedent principle. The principle is founded on the notion that persons in similar circumstances should be treated equally. Consequently, the publication of judicial decisions in the United States is crucial to the practice of law.

The federal form of government in the United States of America has repercussions for distinct court structures and court judgements. Consequently, there are two courts, namely federal courts and state courts, which operate concurrently but have distinct legal frameworks and jurisdictions.

All state courts have a trial court, an appellate court, and a supreme court, however these three tiers of courts go by different names depending on the state. Some states refer to their top court as the supreme court, while others use terms like "superior court" for their trial courts and "appellate court" for their higher courts of appeal. The naming conventions in New York can be a bit of a mouthful. The highest court is known as the Court of Appeals and its subordinate courts as the Supreme Court and the Appellate Division of the Supreme Court, respectively. Courts that only hear issues involving minors can be established in both criminal and civil law by individual jurisdictions.

The judge plays a crucial part in bringing matters to a just conclusion in the courtroom. The presiding judge of the trial. A judge's duties include not only making a final ruling on a case, but also providing an explanation for his or her decision and any supporting evidence. Most matters, especially those heard in first instance courts, are decided by a single judge. High courts have anywhere from three to nine judges. There are three judges, however in Indonesia there is only one.

According to the Constitution of the United States, a jury must be present at any trial. The members of the jury are regular citizens, not lawyers. In both criminal

and civil proceedings, the jury makes the ultimate determination of the facts. The evidence will be considered by the jury. The accused's guilt or innocence, for example. The judge's authority is limited here. The judge's sole responsibility is to ensure that the trial proceeds without any unnecessary delays. The jury hears and decides the case in a court of law. If a verdict has not been reached, the judge may potentially adjourn the trial and a new jury may be selected for the rescheduled hearing. Meanwhile, the concept of a jury does not appear to exist in Indonesian law courts.

D. CONCLUSIONS

Long before Indonesia declared its independence as a sovereign state, civil law had been in effect in the Dutch East Indies. The Dutch colonial authority recognized the need for civil law as a legal reference for a range of communities and rites of confirmation. As a result, a unified body of law, the *Burgelijk Wetboek* (BW), or the modern Civil Code, is required. Since the law in effect in the Netherlands was influenced by Roman law, the Dutch government established a commission to prepare the codification of law in Indonesia. The Dutch Civil Code is currently used as the primary source for Indonesia's civil law system. Nonetheless, the Civil Code resulting from Dutch colonial codification is still in use today, despite efforts to update it through the passage of new legislation. This includes, for example, revisions to the Marriage Law and the Land Law. Aside from Indonesia, countries like Malaysia, Brunei Darussalam, Timor-Leste, England, and the United States of America all have a civil law system. The state in each of these countries provides and ensures the courts run well in order to achieve justice based on the law and values who live in their respective communities, even though the practice of civil law in these countries is different and even seems complicated to other countries due to historical and cultural backgrounds.

REFERENCES

- Ali, Zainuddin. 2014. *Metode Penelitian Hukum*, Jakarta, Sinar Grafika.
- Martin, W., "Court Administration and the Judiciary: Patners in the Delivery of Justice". *International Jurnal for Court Adminstration*. Vol 6 No. 2. 2014.
- Arief, Barda Nawawi. 1990. *Perbandingan Hukum Pidana*. Jakarta. Rajawali Pers.
- Atmasasmita, Romli. 1989. *Asas-Asas Perbandingan Hukum Pidana*. YLBHI, Jakarta.
- Badruzaman, Mariam Darus. 2001. *Kompilasi Hukum Perikatan*. Bandung. Penerbit Citra Aditya Bakti.
- Dirdjosisworo, Soerdjono. 1983. *Pengantar Ilmu Hukum*. Jakarta. Radjagrafindo Persada.
- Hartono, Sunaryati. 1991. *Kapita Selekta Perbandingan Hukum*, Bandung. Citra Aditya Bakti.
- Hemphill, Charles F., 1984, *Basic Business Law*. New Jersey, Prentice Hall.

- Imamah, Ade Irma, 2018, "Hak penolakan Rujuk di Indonesia dan negara Brunei Darussalam Perspektif Hukum Islam, Gender dan HAM". Tesis. Fakultas Syariah dan Hukum. UIN Syarif Hidayatullah. Jakarta.
- Ghofur, Abd, "Islam dan Politik di Brunei Darussalam: Suatu Tinjauan Sosio-Historis". Hurnal toleransi.: Media Komunikasi Uamat Beragama. Vol 7 No. 1. 2005
- Manan, Bagir, *Sistem Peradilan, Suatu Pencarian*. Yogyakarta. FH UII Press. 2005.
- Martin, W., "Court Administration and the Judiciary: Patners in the Delivery of justice". International Jurnal for Court Adminstration. Vol 6 No. 2. 2014.
- Mulyana, *Mengenal Hukum dan Pengadilan Amerika*. Era Hukum. No. 2. Tahun I. 1994.
- Nugroho, Bambang Daru, 2017, *Hukum Perdata Indonesia*, Bandung. PT. Refika Aditama.
- Prodjodikoro, Wirdjono. 1992. *Asas-Asas Hukum Perdata*, Jakarta: Sumur Bandung.
- Pudjosewojo, Kusumadi. 1990. *Pedoman Pelajaran Tata Hukum Indonesia*, (Jakarta: Sinar Grafika.
- Rahardjo, Satjipto, 2012, *Ilmu Hukum*. Bandung. Cipta Aditya Bhakti.
- Riyanto, Astim. *Sistem Hukum Negara-Negara Asia Tenggara*. Jurnal Hukum dan Pembangunan. Vol 37. No. 2. 2007.
- Salim, Agus. 2006. *Teori dan Paradigma Penelitian Hukum*, Yogyakarta, Tiara Wacana.
- Simanjuntak, P. N. H. 2014. *Hukum Perdata Indonesia*. Jakarta. Kencana.
- Simanjuntak, P.N.H. 2007. *Pokok-Pokok Hukum Perdata Indonesia*, Jakarta, Djambatan.
- Soeprapto, Hartono Hadi. 2000. *Pengantar Tata Hukum Indonesia*, Yogyakarta, Liberty, Edisi 4.
- Soeroso, R. 1999. *Perbandingan Hukum Perdata*. Jakarta. Sinar Grafika.
- Subekti. 1995. *Pokok-Pokok Hukum Pertdata*. Jakarta. Intermasa.
- Sumadiono, Sigit, *Perbandingan Sejarah Positivisme Hukum di Indonesia Sebagai Penentu Politik Hukum Dimasa Yang Akan Datang*. Legalitas. Jurnal Hukum. Vol 12 No. 1. Juni 2020
- Wingjosoebroto, Soetandjo. 1995. *Dari Hukum Kolonial ke Hukum Nasional*. Jakarta. Rajawali Press.