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The Indonesian and French Justice System (in Comparison of Structure and Mechanism)

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Abstract.
The Indonesian and French justice systems share similarities in structure, mechanism, and trial stages. However, the Indonesian system is considered better due to its structure and non-overlapping trial examination mechanisms. The highest court in Indonesia is the Supreme Court, while in France, the highest court is the Courts de Cassation and the Council of Cassation. Experts often reference the French judicial system, but the author believes the existing judiciary, particularly the Constitutional Court, should be maintained, and there is no need to imitate the French judicial system.

Keywords: strict liability, criminal acts, environmental crime

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1. INTRODUCTION

Law is a human tool that is conditional on value. Some legal values can be known as rules, as guidelines and contain values. Law, as a rule, is more than just a rule of pragmatism, therefore law is also not only a set of rules but must be justified by common sense, good and right by humans. [1].

The use of law varies greatly among countries with strong legal traditions. In new countries, there is no need to be isolated anymore, it must also be very diverse, depending on the degree of pluralism in social and political life, elite structure, bureaucratic development, and cultural receptivity[2]. The weaknesses of formal legal institutions in new countries are weaker than those of other institutions. These other institutions may also not carry out the same function. Or, of course, all institutions in a given society may be equally bad at work. If so, it is less appropriate to focus attention on the absence of a strong legal system, given the differences in legal culture, than on the poor performance of the tasks performed by political and social institutions [2].

The presence of judicial institutions in the history of mankind starts from a simple form and system. In the end, the forms and systems of justice developed to become

increasingly complex and modern. According to Djoko Soetono, there were 4 (four) stages as well as 4 (four) types of rechtspraak known in history, namely :[3] *Rechtspraak naar ongeschreven recht (customary law), namely, courts based on unwritten legal provisions, such as customary courts; Rechtspraak naar precedent, namely a trial based on the principle of precedent or previous judge's decisions, as practiced in England;*

1. *Rechtspraak naar rechtsboeken,* courts based on legal books, as in practice with religious (Islamic) courts that use compendiums or books of Ahlussunah wal jama'ah scholars or books of Shi'a scholars;

2. *Rechtspraak naar wetboeken*, money court is based on the provisions of the law or the code of law. This court is the embodiment of positive law or modern wetgeving which prioritizes written laws and regulations *(schreven wetgeving).*

The court is a judicial institution that guarantees the upholding of justice through the application of the intended Laws and Codes. The structure can be multi-tiered according to the nature of the case and related fields of law. There are cases which are sufficiently resolved through the first and at the same time final courts, there are also cases which are resolved in two levels, and there are also cases which are resolved in three stages, namely the first level, the appeal level, and the cassation level. All of this can be carried out properly if implemented in a unified justice system, which is manifested in all components of the judiciary, including parties in the judicial process, judicial hierarchy, as well as procedural and interrelated aspects in such a way as create justice.

If justice is interpreted as social happiness, then social happiness will be achieved if individual social needs are met. Fair rules are rules that can guarantee the fulfillment of these needs. But the fact cannot be avoided that one person's desire for happiness can conflict with the wishes of others. So justice is the fulfillment of the desires of as many people as possible. How far is the limit to the level of fulfillment to fulfill happiness so that it deserves to be called justice This question cannot be answered based on rational knowledge. The answer to this question is a judgment of value, which is determined by emotional factors and is subject to subjective character so that it is relative, a judgment of value is a statement where something is declared as a goal. Such a statement is always made by emotional factors [4].

To further clarify whether the Indonesian justice system is better than other countries' judicial systems, it is important to try to compare the existence of the Indonesian judicial system with the French judicial system, as countries that are more often used

as comparisons for experts from various countries for the development of the justice system in each. country concerned.

The discussion regarding the judicial system will be very closely related to the judiciary. The discussion on judicial institutions is very closely related to judicial power (Indonesia), and the discussion on judicial institutions in France is closely related to the Quality of Jurisdiction.

One part of the judiciary that is very interesting to study is the constitutional judiciary. The existence of the Constitutional Court as a new state institution in Indonesia is positioned parallel to the Supreme Court which is also the actor of judicial power in Indonesia.

Based on Article 24 C of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court is given the following powers:

1. Examining the Law Againts the Constitution
2. Deciding disputes over the authority of state institutions whose powers are granted by the Constitution;
3. Decide the dissolution of political parties; and
4. Resolving disputes about the results of general elections.

Among the authorities possessed, one of the things that are quite interesting to carry out an assessment is concerning the review of laws. In connection with this, the author wants to try to compare the existence of the Constitutional Court in Indonesia with the Constitutional Court in France. France is the country of choice for writers in making comparisons because France is often a reference for researchers to serve as objects of comparison. In this regard, it is necessary to compare the Indonesian judicial system and the French judicial system, to see the similarities and differences between the two judicial systems relating to the review of laws so that they can be used as a reference for the development of the Constitutional Court in Indonesia. Based on the background that has been described previously, the formulation of the problem to be studied is as follows:

1. What are the similarities and differences between the Indonesian justice system and the French justice system?
2. How is the existence of the constitutional court in France and the Constitutional court in Indonesia, concerning cases of reviewing laws?

2. METHODOLOGY/MATERIALS

For original research papers, this method is discretionary. The method is written descriptively and is intended to provide a description of the methodology of the study. This methodology aims to give the reader as much insight as possible, to explain the relevance of Judiciary in France and Indonesia.

3. RESULTS AND DISCUSSIONS

3.1. Indonesian Justice System

Talking about the judicial system in Indonesia, cannot be separated from the existence of judicial power institutions. Article 24 of the Constitution of the Republic of Indonesia formulates that: "Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, the state administrative court environment, and by a Constitutional Court".

The different judicial environments under the Supreme Court include general courts, religious courts, military courts, and state administrative courts. Meanwhile, to meet growing needs, several forms of tax courts, commercial courts, and so on were held. On the other hand, the role of the military, before joining the police and being actively involved in political activities, has fundamentally changed, so that the main role of the TNI is only associated with the function of national defense. This should also affect the existence of military justice as a separate judicial environment. However, because the amendment to the 1945 Constitution was made without being preceded by a comprehensive and in-depth study, the provisions regarding the four courts within the scope of the Supreme Court were simply adopted in the 1945 Constitution without critical consideration regarding the possibility of changing the number of courts from four to two. only, only three, or even more than there are at this time [4]. In Article 5 of Law number 4 of 2004 concerning judicial power, it is determined that:

1. A special court can only be formed in one of the judicial environments as referred to in Article 10 which is regulated by law;

2. The Islamic Sharia Court in the province of Nangroe Aceh Darussalam is a special court within the scope of the religious court as long as its authority concerns the authority of the religious court, and is a special court within the general court environment, as long as its authority concerns the authority of the general court.

The authorities of each of the judicial bodies in question can be explained as follows:

3.1.1. General Court

The existence of general courts is specified in article 2 of Law Number 8 of 2004 concerning Amendments to Law No.2 of 2004, which stipulates that "general justice is one of the perpetrators of judicial power for people seeking justice in general". Then in the explanation of the article referred to is as follows: "In addition to the general courts that apply to people seeking justice in general regarding civil and criminal cases, other judicial power actors are special courts for certain groups of people, namely religious courts, military courts, and State Administrative courts. What is meant by "people seeking justice" are every Indonesian citizen or foreigner who seeks justice in Indonesian income".

Furthermore, in Article 3 of Law Number 8 of 2004 concerning Amendments to Law No.2 of 2004, it is determined that "judicial power in the general court environment is exercised by the District Court and the High Court, and culminates in the Supreme Court as the highest state court". The District Court is a court of First Instance and is formed by a Presidential Decree. Meanwhile, the High Court is the Court of Appeal and is constituted by law.

The General Court, as confirmed in Law Number 48 of 2009 concerning judicial power, has the authority to examine, hear and decide on civil and criminal cases. Within the general court environment, in the civil field, there are special courts, which include: Industrial Relations Court, which handles cases related to labor disputes; and Commercial Court, which handles bankruptcy disputes. Apart from that, within the realm of general justice, there are also special courts that deal with criminal cases. What is meant by the judicial bodies in question are:

(a) The Human Rights Court, which deals with gross human rights violations, including genocide and crimes against humanity.

(b) Juvenile Court, which examines, and decides, criminal cases of children.

(c) The Fisheries Court examines, decides, and resolves criminal acts in the fisheries sector.

(d) The Corruption Court examines and decides on corruption, money laundering, and other crimes that are expressly determined by law as corruption crimes

(e) Furthermore, within the State Administrative Court, there is a Special Court, namely the Taxation Court, which handles disputes in the field of taxation.

3.1.2. Religious Court

Based on Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it can be seen that the Religious Courts are one of the courts under the Supreme Court, along with other judicial bodies within the General Courts, State Administrative Courts, and Military Courts. Based on Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it can be seen that the Religious Courts are one of the courts under the Supreme Court, along with other judicial bodies within the General Courts, State Administrative Courts, and Military Courts.

3.1.3. Military Court

Following Law Number 31 of 1997 concerning Military Justice. The Military Court has the authority to try military crimes committed by soldiers, who by law are equated with soldiers, members of a group/office/agency/which are equated with soldiers based on law, as well as someone who is not a soldier/who based on law, is equated with soldiers/members of a class/office/agency/which is equated/considered as soldiers.

3.1.4. State Administrative Court

Law number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts, stipulates that State Administrative Courts, between individuals/Civil legal entities, and State Administrative Bodies/Officials as a result of the issuance of State Administrative decisions, including employment disputes.

Concerning the Supreme Court as the pinnacle of justice in Indonesia, based on Law Number 4 of 2004 concerning Judicial Power, the Supreme Court has the authority to :

1. To adjudicate at the cassation level against decisions rendered at the final level by courts in all jurisdictions under the Supreme Court;
2. Examine statutory regulations under the law against the law;
3. Other powers granted by law.

Furthermore, regarding the existence of the Constitutional Court as one of the perpetrators of judicial power, based on Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the authority of the Constitutional Court is determined, namely:

1. Examine the Act against the Constitution
2. Deciding disputes over the authority of state institutions
3. Deciding the dispute over the dissolution of a political party
4. Deciding election result disputes
5. Decide on the opinion of the DPR regarding the alleged violation of law by the President and/or Vice President.

THE FOLLOWING IS THE CHART OF THE INDONESIAN JUSTICE SYSTEM

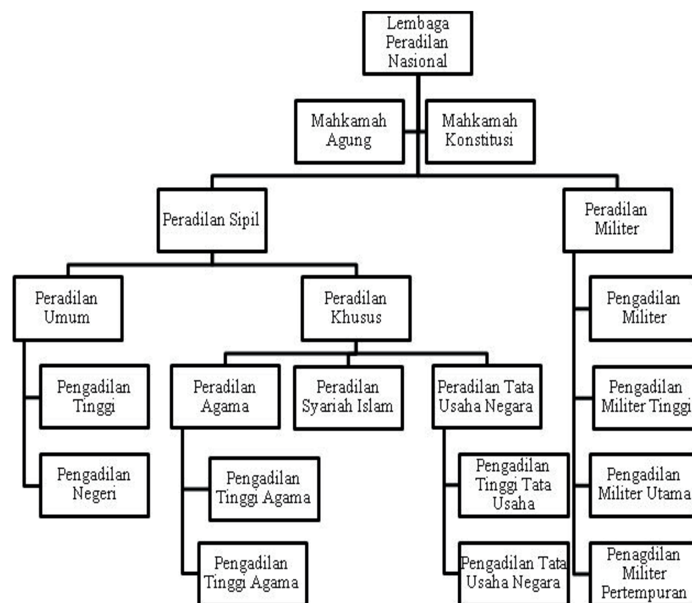

Figure 1:

3.2. French Judicial System

Broadly speaking, the French justice system consists of Administrative Courts and General Courts. The Administrative Court deals with issues related to Government Regulations or public institution disputes, while the General Court handles civil cases, namely cases between individuals or French citizens, as well as handling criminal cases, namely those related to criminal offenses. The structure of the French judiciary is juridically called the Quality of Jurisdiction, which consists of the Courts culminating in *La Court de Cassation*, and the Administrative Court (*Tribunal de l'Odre Administrative*), culminating in the Conseil d'etat. Trials culminating in *La Court de Cassation*, include

General Courts (*Les Jurisdiction de droit Commun*), and Special Courts (*Les Jurisdiction d'Exeption*).

In General Courts there is a Tribunal d'Instance, and a Tribunal de Grande d'Instance. Whereas in special justice, there are judicial institutions, which handle special cases in the civil field, including: Les Tribunaux de Commerce, Les Conveils de Prud-Homes (Labor Court), Tribunaux Paritaires Les Bauc Rurarax (PERSON'S RENTAL PRIVATE VIEWS) general, and Les Commissions de Securite Sociale. Apart from that, there are also special courts that deal with criminal cases, including Les Jurisdictions pur enfants (Special Court for children), Les Jurisdiction des forces armees (Military Court), Les Tribunaux Maritimes commerciaux (Commercial Court at sea), La Cour de Surete de l'Etat (Subversion Court), and La Haute Cour de Justice.

In connection with the stages of Examination in the French judiciary can be explained as follows :

1. In General Courts and Special Courts

- *Tribunaux de grande et tribunal d'Instance* (First Instance Court)
- *Courts d'Appel* (High Court)
- *Courts de Cassaton* (Court of Cassation)

1. On Administrative Courts

- *Tribunaux Administratifs* (First Instance Court)
- *Courts Administratives d'Appel* (High Court)
- *Conseil d'etat* (Cassation Court)

The head of the French judicial system is the Court of Cassation (Cour de Cassation). This court functions according to the principle of cassation, that is, it can annul the decision of the court below it, but normally it is not allowed to replace that decision with its own final decision in the case. Therefore, an appeal to the Court of Cassation is considered an extraordinary legal means and is not called "Appel", but "pouvoi en cassation". If the lower court's decision is annulled, the case will usually return to that court to obtain a new decision. In France, cases are not returned to the court whose decision has been annulled (usually one of the Courts of Appeal), but to another different court at the same level.

Court of Cassation for the point of law in question. However, if this second decision is appealed and annulled by the Cassation Court (which in this case will occur through a court decision avoided by all members), then the third Court Appeal referred to in the

case will be bound to follow the Cassation Court's view of the legal matter. The French Court of Cassation only handles legal issues (question of law) and is considered to be bound by the findings of facts that underlie the decision being appealed (a decision concerning "appreciation souveraine des judges de fait", meaning that the interpreter of a contract can only be re-examined only in special cases [5].

The French Court of Cassation cannot manage its lengthy workload because it is forced to decide thousands of cases a year, including many minor cases that are trivial in principle. The Cassation Court is divided into 6 (six) divisions (chambers), five of which handle civil cases and one handles criminal cases [5].

Under the Court of Cassation, there are 30 (thirty) Courts of Appeal. These courts met in major cities and appealed the decisions of the various courts of first instance. The Court of Appeal is called by the name of the city, for example, the Court d'appeal de Bourdeaux. Every case before the Court of Appeal is examined by three professional judges. In criminal cases, the equivalent court is the tribunaux correctional. Minor cases are heard by one of the 470 tribunaux d'Instances, while minor criminal cases are handled by the tribunaux de police. In these courts, cases are decided by a single professional judge.

There are many specialized courts, including some 230 commercial courts (tribunaux de commerce), presided over by lay judges, and elected from among employers themselves, and the conseils de prud'hommes, which hear cases relating to labor law and include representatives of workers and employers. Cases relating to agricultural rents are heard by one of the 40 tribunaux paritaires des baux ruraux, whose members also represent certain interests. Decisions from all of these courts can usually be appealed to one of the Courts of Appeal and then to the Court of Cassation. However, very serious criminal cases are first examined before a jury in one of the non-permanent cours d'assies whose decisions can be immediately appealed to the court of cassation [5].

France also has several administrative courts. Decisions issued by one of the 33 administrative tribunaux can be appealed to one of the five administrative courts d'appeal. The highest level of the administrative court is the cassation level. Conseil d'etat, which also functions as a consultative body providing opinions on proposed legislation. If there is a conflict of interest between the general court and the administrative court, it will be resolved by the Tribunal des conflicts [5].

The French state has developed an Administrative Court system through a long historical process. At a time when France was still known as "Gaul", Julius Caesar

conquered Gaul and placed it under the Roman empire. Such circumstances led to the entry of the influence of Roman law into France [6].

The “Curia Regis” institution was accepted by France and the institution was formed under the name “Conseil du Roi”. At the time of Napoleon Bonaparte, the institution was considered a remnant of the “ancient regime” era and was therefore abolished. Later, however, Napoleon Bonaparte re-established a similar body under the name “Conseil d’Etat”, which gradually developed into the Administrative Court of First Instance [6]. As the highest-level administrative justice body, the Conseil d’Etat has contributed to the development of administrative law (Droit Administrative). This can be seen in the development of the concept of “detournement de pouvoir”, which is the basis for filing lawsuits against government actions [6]. In France there is also a constitutional court, called the Constitutional Council (Conseil Constituionnel), composed of all former Presidents of France, and nine additional members. The authority of the Constitutional Council is to declare that a proposed law is contrary to the Constitution, but the Constitutional Council may only consider said words at the request of the President of the Republic, the Prime Minister, the chairman of one of the two chambers of the French parliament (the Senate and the National Assembly), or a group consisting of at least 60 members of the assembly [6].

The trial examination mechanism in France begins with the preparation of written documents that form the basis of the case by the parties, to then be debated orally in court. Witnesses are very rarely present in case examinations, but judges can use the services of an expert, who is expected to be able to investigate and present case facts impartially [6].

3.2.1. Analysis of the Differences between the Indonesian Judicial System and the French Judicial System

The difference between the Indonesian Judicial System [7] and the French Judicial System [8], which can be most easily understood is from the numenclature of each judicial institution, starting from the first level up to the cassation level by the Supreme Court, specifically for French administrative justice it does not culminate in the Courts de Cassation, but in the Courts de’etat. Regarding the numenclature, according to the author it is quite appropriate, because the authority possessed is in accordance with the numenclature.

In contrast to the judicial institutions in Indonesia, in the Level I judiciary in France, there are two judicial institutions, namely the “Tribunal d’Instance and the Tribunal de

Grande d'Instance, which handle civil and criminal cases, with differences in the severity of the cases handled. The existence of two judicial institutions handling the same case in one judicial environment, even though they are differentiated based on the severity of the cases handled, is a waste.

Another difference lies in the stages of case examination in the administrative field. In Indonesia, the State Administrative Court culminates in the Supreme Court, while the French Administrative Court culminates in the Court de'etat (a kind of Supreme Advisory Council).

Unlike the Indonesian Constitutional Court, which is known as the "Constitutional Court", in France there is also a constitutional court, called the Constitutional Council (Conseil Constitutionnel), consisting of all former Presidents of France, and nine additional members. The authority of the Constitutional Council is to declare that a proposed law is contrary to the Constitution, but the Constitutional Council may only consider the case at the request of the President of the Republic, the Prime Minister, the Chair of one of the two houses of the French parliament (the senate and the National Assembly), or a group consisting of at least 60 members of the assembly [6].

According to the author, the existence of the Constitutional Court should be intended for violations of the constitutional rights of its citizens [9]. This has been implemented in Indonesia through the Constitutional Court. The author disagrees if the review of the law is carried out while it is still in the form of a draft law as carried out by the constitutional council. Actions like this tend to be more politically nuanced, because after all the membership of the Constitutional Council comes from former Presidents, who are likely to have political influence.

Likewise, with the law that has been requested to be annulled, because it has never been implemented or tested by the public, of course, it cannot be known whether the repealed law harms the constitutional rights of Indonesian citizens or not.

4. CONCLUSION AND RECOMMENDATION

The Indonesian judicial system and the French justice system, in principle, have similarities or several similarities, both in terms of structure and mechanism as well as from the stages of the trial. The differences between the two justice systems are especially evident in the structure of the nomenclature and stages of the trial. Another difference appears from the top of the judiciary or the highest court. If in Indonesia the highest court is in one institution, namely the Supreme Court, then it is not the case only in France, which has two (2) highest institutions in the mechanism of examining cases handled,

namely the Courts de Cassation (Cussation Level Court) and the Council of Cassation. 'etat (Case Court). Based on a comparison of the two countries' judicial systems, both by looking at the similarities and visible differences, in the author's opinion, the Indonesian judicial system is better than the French judicial system, especially in terms of the structure of the judiciary and the non-overlapping stages or mechanisms of trial examination, because it is carried out under their competence. Although the French judicial system, especially its constitutional court, is often used as a reference by experts in making comparisons regarding the judicial system. Because according to the author, the Indonesian judicial system is better than the French judicial system, the existing judiciary, especially relating to the authority of the Constitutional Court, according to the author, needs to be maintained, there is no need to imitate the judicial system in force in France.

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