# COMPARISON OF ANGLO SAXON AND CONTINENTAL EUROPEAN LEGAL SYSTEMS

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***Abstract:*** Every country including Indonesia has a legal system to regulate its government. The legal system in principle regulates the life of a society so that conflicts do not occur. Even though conflicts cannot be avoided, the legal system has a role in resolving these conflicts. The comparison that will be put forward by the author in this study is the difference in the legal system of the problem, namely Indonesia and the Netherlands are countries that adhere to the civil law system, while Australia adheres to the common law system, where the fundamental difference between the two legal systems can be seen in the legal system Civil Law takes a written form which is codified in statutes. Meanwhile, the Common Law legal system refers more to customary law, which tends to be unwritten. Although the main legal source of Civil Law is statutory regulations, jurisprudence also has an important role in applying law to the Civil Law system. In contrast to the Common Law legal system, where the main source of law is jurisprudence (judge made by law/binding force of precedent), where legal issues are resolved by case and the results are reflected in judge decisions (jurisprudence).

***Keywords****: Legal System, Anglo Saxon, Continental Europe.*

## Introduction

Talking about the legal system cannot be separated from the concept of law, in which the legal system and legal concepts are related to one another. The system according to the Big Indonesian Dictionary is a set of elements that are regularly interrelated so as to form a totality. Whereas law is a regulation in a country that is binding and forces every citizen to obey it. So that it can be understood that the legal system is a whole set of rules about what humans should do and what should not be done which are binding and integrated from one unit of activity to another to achieve goals.

Every country including Indonesia has a legal system to regulate its government. The legal system in principle regulates the life of a society so that conflicts do not occur. Even though conflicts cannot be avoided, the legal system has a role in resolving these conflicts.

In the world of justice, the legal system has a major influence on the application of law, especially for judges in examining and deciding a case. The court is a place where justice seekers can obtain the expected justice. "Justitia est constans et perpetua voluntas jus suum cuique tribuendi" (Justice is a constant and eternal will to give everyone what is due) (Kumorotomo, 1996).

In this study, the author will try to make a comparison regarding the Anglo Saxon legal system with Continental Europe from several points of view.

## Literature Review

### 1. Legal System

Actually law is formed from the results of abstraction of human thought, however, this abstract human thought will later exist as a guide in living his life. So the fruit of human thought in the form of ideas and ideas needs to be poured into a legal norm as the forerunner to the formation of positive law as a guide in dynamic social conditions of society. Departing from the dynamic conditions of society, legal entities are not only seen as blue prints in the form of written law, but legal entities should also be seen as symptoms that can be seen in a human community through various behaviors related to legal aspects. Interpreting law as a symptom in society means observing the relationship between law and non-legal factors, especially patterns and behavior factors that are formed in the community, or what is called legal culture (Friedman, 2009).

The word "system" comes from the Greek word "systema" which can be interpreted as a whole consisting of various parts. According to Subekti, a system is an orderly arrangement or arrangement, a whole consisting of parts that are related to each other, arranged according to a plan or pattern, the result of writing to achieve a goal where in a good system there should be no a conflict between the parts and also there should be no duplication or overlap between the parts, so that it can be said that a system contains several principles that guide its formation (Syafiie, 2003).

Social change in society and national development have a sequential relationship, as has happened in many developing countries including Indonesia, that good national development will lead to progress towards strengthening an active and consistent social system. Conversely, societal changes will also have an impact on whether or not the desired process of national development goes smoothly. The connection between change and development can perhaps be understood as a form of relationship based on the ideals of the State to bring society to the planned or desired goals. The role of the legal system is crucial in the success of a country's national development. If the way the law works is stagnant, it is certain that efforts to improve all elements of life and the process of developing the state administration system to realize national goals will not materialize. Particularly the function of the legal system in providing certainty (Subeitan, et al, 2022).

The relationship between social change and the legal system can be observed through the formation of a legal culture in society, social change which has a positive impact on bringing people to be more aware of the orders and prohibitions in law so as to create legal awareness, the mindset and way of acting in society has assessed the operation of law logically and reason as aspects that can create social order. Meanwhile, social change that has a negative impact will base the community when dealing with social issues on legal feelings, meaning that people's evaluation of the law is expressed spontaneously, directly, and as it is (Al Kautsar, 2022).

## Method

A study cannot be said to be research if it does not have a research method (Koto, 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively

and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto, 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

## Result and Discussion

### 1. The Anglo Saxon Legal System

The Anglo American legal system or common law system was applied and began to develop since the 16th century in England. Supported by geographical conditions and continuous political and social developments, this legal system is rapidly expanding outside the territory of the United Kingdom, such as in Canada, America and the countries of the former British colonies (commonwealth countries). In this system, there is no known source of standard law as is the case in civil law. The highest source of law is only the habits of the people which have been developed in court and have become court decisions. The source of law that comes from this custom is what later makes this legal system called the common law system or unwritten law (unwritten law) (Cruz, 2009).

The uniqueness or distinctiveness of the English legal order is the important role played by the Jury in the judiciary. The origins of this system can be traced back to the second period of the XII century, in other words to the same period as the formation of common law. Juries in new legal cases are formed as a result of a series of actions to avoid what is called "godsoordelen" or decisions of God's will or at least abolish them. In 1166, the king, for example, issued a new writ, namely the writ of novel disseisin, in which he ordered the sherrif to gather twelve people from certain areas to testify under oath whether the holder of power over a plot of land was wrong and without a verdict had removed the plaintiff from the land. the. Thus it has prevented or reduced the occurrence of judicial duels in most processes there (Aulia & Al-Fatih, 2017).

The Anglo-Saxon legal system is a legal system based on jurisprudence, namely the decisions of previous judges which then become the basis for the decisions of subsequent judges. The Anglo Saxon legal system tends to prioritize customary law, law that operates dynamically in line with the dynamics of society. Formation of law through the judiciary with a jurisprudence system is considered better so that the law is always in line with the real sense of justice and benefits felt by the community. This legal system is applied in Ireland, England, Australia, New Zealand, South Africa, Canada (except for the Province of Quebec) and the United States (although the state of Louisiana uses this legal system together with the Napoleonic Continental European legal system). Apart from these countries, several other countries also apply a mixed Anglo-Saxon legal system, for example Pakistan, India and Nigeria which apply most of the Anglo-Saxon legal system, but also apply customary law and religious law (Handoyo, 2009).

Judge/court decisions are a source of law in the Anglo-Saxon legal system. In this legal system, the role assigned to a judge is very broad. Judges function not only as a party tasked with establishing and interpreting legal regulations. Judges also play a major role in shaping the entire system of community life. Judges have very broad authority to interpret applicable legal regulations. In addition, it can create a new law that will become a guideline for other judges to resolve similar cases. This legal system adheres to a doctrine known as "the doctrine of precedent / Stare Decisis". This doctrine basically states that in deciding a

case, a judge must base his decision on legal principles that already exist in the decisions of other judges from previous similar cases (precedents).

**2. Continental European Legal System**

This legal system developed in mainland European countries and is often referred to as "Civil Law" which originally originated from the codification of law that was in effect in the Roman Empire during the reign of Emperor Justinian in the 6th century BC. The Civil Law system has three characteristics, namely codification, judges are not bound to the president so that laws become the main source of law, and the judicial system is inquisitorial. The main characteristic that forms the basis of the Civil Law system is that law gains binding force, because it is embodied in regulations in the form of laws and systematically arranged in codification. This basic characteristic is adhered to bearing in mind that the main value which is the goal of law is legal certainty. Legal certainty can only be realized if human legal actions in social life are regulated by written legal regulations. With the aim of the law and based on the legal system adopted, judges cannot freely create laws that have general binding force. Judges only function to establish and interpret regulations within the limits of their authority. A judge's decision in a case is only binding on the litigants (Res Ajudidicata Doctrine).

The second characteristic of the Civil Law system cannot be separated from the doctrine of the separation of powers which inspired the French Revolution. According to Paul Scolten, the real intention of organizing the organs of the Dutch state was to separate the powers of law-making, the powers of the judiciary and the cassation system, meaning that one power did not allow one to interfere in the affairs of another. Adherents of the Civil Law system provide great flexibility for judges to decide cases without the need to follow the decisions of previous judges. What the judges rely on is the rules made by parliament, namely laws. The second characteristic of the Civil Law system cannot be separated from the doctrine of the separation of powers which inspired the French Revolution. According to Paul Scolten, the real intention of organizing the organs of the Dutch state was to separate the powers of law-making, the powers of the judiciary and the cassation system, meaning that one power did not allow one to interfere in the affairs of another. Adherents of the Civil Law system provide great flexibility for judges to decide cases without the need to follow the decisions of previous judges. What the judges rely on are the rules made by the parliament, namely laws (Lemek, 2007).

The third characteristic of the Civil Law legal system is what Lawrence Friedman calls the use of the Inquisitorial system in the judiciary. In that system, judges have a big role in directing and deciding cases; judges are active in finding facts and careful in assessing evidence. According to Friedman's observations, judges in the Civil Law legal system try to get a complete picture of the events they face from the start. This system relies on the professionalism and honesty of judges. Forms of sources of law in the formal sense in the Civil Law legal system are in the form of laws and regulations, customs, and jurisprudence. In order to find justice, juries and judicial as well as quasi-judicial institutions refer to these sources. From these sources, the first reference in the tradition of the Civil Law legal system is statutory regulations. Civil law adhering countries place the constitution at the highest order in the hierarchy of laws and regulations. All civil law adhering countries have a written constitution (Wignjodipoero, 1983).

From the discussion of the first, second problems, a comparative study can be carried out. The comparison that will be put forward by the author in this study is the difference in the legal system of the problem, namely Indonesia and the Netherlands are countries that

adhere to the civil law system, while Australia adheres to the common law system, where the fundamental difference between the two legal systems can be seen in the legal system Civil Law takes a written form which is codified in statutes. Meanwhile, the Common Law legal system refers more to customary law, which tends to be unwritten. Although the main legal source of Civil Law is statutory regulations, jurisprudence also has an important role in applying law to the Civil Law system. In contrast to the Common Law legal system, where the main source of law is jurisprudence (judge made by law/binding force of precedent), where legal issues are resolved by case and the results are reflected in judge decisions (jurisprudence)..

## Conclusion

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