NOMOI LAW REVIEW

VOLUME 5, ISSUE 1

MAY 2024

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

DEVELOPMENT OF CIVIL LAW THROUGH EMPOWERING JURISPRUDENCE: A COMPARATIVE STUDY OF *CIVIL LAW* AND *COMMON LAW SYSTEMS*

Faisal Hadi Pinem, Tan Kamello, Hasim Purba, Edy Ikhsan.
Universitas Sumatera Utara
E-mail : Faisalhadi@gmail.com

ABSTRACT

The development of civil law in resolving disputes needs to be addressed by implementing court decisions that have permanent legal force in the form of jurisprudence. Civil law problems that are developing rapidly are unable to be followed by existing legal regulations, and are not even sufficient to answer all the problems in civil law itself. The research uses a normative juridical research type. Jurisprudence has a big role and contribution in the development of civil law to fill legal gaps and provide legal certainty. Article 10 Paragraph (1) Law no. 48 of 2009 states that "Courts are prohibited from refusing to examine, try and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it". The position of jurisprudence in Indonesia, which adheres to a civil law system, adheres to the principle of freedom or is "persuasive precedent". Efforts to bring about legal convergence in certain cases are not possible. However, there are still legal similarities which can be used as a legal basis for resolving various problems in civil law in Indonesia. The role of the Supreme Court is very important in reviewing judges' decisions that are suitable for use as jurisprudence and carrying out an inventory of decisions in the field of civil law that constitute legal reform.

Keywords: Civil Law, Legal System, Jurisprudence

Journal History

Received	:	May 15, 2024;
Reviewed	:	May 30, 2024;
Accepted	:	May 31, 2024;
Published	:	May 31, 2024.

INTRODUCTION

Development of legal substance, in the attachment to Presidential Regulation of the Republic of Indonesia Number 7 of 2005, Part III Chapter 14 concerning the Creation of clean and dignified Governance, includes:

1. The process of preparing and enacting various Legislative Regulations

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

2. Empowerment of various court decisions that have permanent legal force to become sources of law.

These provisions show that the 2005-2025 National Long Term Development Plan (RPJPN) requires legal reform , especially in the form of updating legal material. According to Satjipto Rahardjo, legal reform is a term to describe how to develop a legal system that can adapt to changes that occur in society.[1] In accordance with general beliefs, laws (written laws) are never complete, clear and completely regulate people's lives, [2]so they always lag behind the development of society.

Renewal of legal substance in this context, especially unwritten law, is carried out through a legal discovery mechanism as stipulated in the provisions of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, hereinafter referred to as Law No. 48 of 2009, which gives authority to judges and constitutional justices to explore, follow and understand the legal values and sense of justice that exist in society regarding issues or problems that have not been regulated, meaning that there is no regulation in written law or in the event that a formulation is found. unclear regulations in written law.[3]

Jimly Asshiddiqie formulated seven types of sources of constitutional law, namely: (a) Unwritten constitutional values; (b) The constitution, both its preamble and its articles; (c) Written laws and regulations; (d) Judicial jurisprudence; (e) *Constitutional conventions* ; (f) The doctrine of legal science which has become *ius commissionis opinionso doctorum* ; (g) International law that has been ratified or has come into force as customary international law.[4]

Legal formation is basically the task of legislators in order to align laws with the development of society. However, in practice, complex human life and the rapid development of society cannot be regulated entirely by law. This gap also has consequences when there is a case where the law does not clearly regulate it or there is no law yet. If such conditions occur then this is actually within the judge's scope to carry out legal formation. The implementation and development of statutory regulations occurs through the judiciary with a judge's decision (jurisprudence).

The term jurisprudence arises from court decisions, especially decisions from the highest State Court (Supreme Court). In other words, jurisprudence is intended as the development of law itself in meeting the legal needs of justice seekers.

---

[1]Satjipto Rahardjo, *Membangun dan Merombak Hukum Indonesia*, (Yogyakarta: Genta Publishing, 2009), p. 15.

[2]J.L.J Van Apeldoorn, *Pengantar Ilmu Hukum*, (Jakarta: Pradnya Paramita, 1993), p. 112.

[3]Hasan Wargakusumah, *Peningkatan Yurisprudensi Sebagai Sumber Hukum, dalam Penyajian Hasil Penelitian Tentang Peranan Hukum Kebiasaan Dalam Hukum Nasional*, Badan Pembinaan Hukum Nasional Departemen Kehakiman, 1992, p. 64.

[4]Jimly Asshidiqie, *Pengantar Ilmu Hukum Tata Negara*, cet. ke-5, (Jakarta: Raja Grafindo Persada, 2014), p. 121.

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

These court decisions do not directly give rise to law, but only act as a factor in the formation of law, because usually the decisions of the highest court are followed by the lower courts. The customs adopted by lower courts are what then become court customs or jurisprudence. Concretely, through jurisprudence, the judge's task is to become a factor in filling legal gaps when the law does not regulate or is outdated.[5]

Jurisprudence as a new legal discovery (*rechtsvinding*) can answer the social dynamics of society, reflects the direction of legal development and has been repeatedly followed by other judges. The position of jurisprudence in the Indonesian legal system is a source of formal law, in addition to statutory regulations, doctrine, treaties, (civil) contracts and customs.[6]

In Indonesia The development of law in Indonesia, especially civil law in resolving disputes, needs to be addressed by implementing court decisions that have permanent legal force in the form of jurisprudence. In practice, civil law problems that are developing rapidly cannot be followed by existing legal regulations, and are not even enough to answer all the problems in civil law itself.

Technological developments have resulted in the emergence of various activities in the virtual world, both private and public interests, such as electronic commerce (*e-commerce*), electronic government (*e-government; digital government*), even electronic courts (*e-court*). The regulation of these electronic activities brings new legal concepts, such as electronic signatures (*e-signature*), electronic payments (*e-payment*) and *online trials* (*e -litigation*).

To address these problems, the role of jurisprudence as a legal instrument is needed in order to maintain legal certainty, because law is dynamic, both in a normative sense and in an activity sense, both theoretically and practically. The dynamism of the law is based on the many developments that occur in various existing sectors, such as the economic sector, trade sector, political sector, government sector, and so on.

The source of Indonesian civil law is found in material law which originates from *Burgerlijk Wetboek* (BW) and formal law originating from *Het Herziene Indische Reglement* (HIR) and *Buitengewesten Reglement* (RBg), adhere to the *civil law legal system that applies in civil law* countries .

The application of the *civil law system in* Indonesia is due to the principle of concordance, because Indonesia was colonized by the Dutch for a very long period of time, so that the Dutch legal system was automatically adopted by Indonesia from the colonial era until after independence, even until now despite the

[5]Paulus Effendi Lotulung, *Peranan Yurisprudensi Sebagai Sumber Hukum,* Badan Pembinaan Hukum Nasional Departemen Kehakiman RI, 1997/1998, p. 24.

[6]http://kepaniteraan.mahkamahagung.go.id/artikel-hukum/1690-peran-yurisprudensi-dalam-perkara-sengketa-hak-atas-tanah-wigati-pujiningrum-s-h-m-h diakses pada 02 September 2021 pukul 23.44 wib

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

influence of the legal system *Common law* began to exist in the seventies, through Law Number 14 of 1970 concerning the Principles of Judicial Power.[7]

In general, the legal system that applies in the world can be divided into two types, namely the first is the *civil law system* adopted by mainland European countries such as the Netherlands, France, Italy, including Indonesia. The *civil law* legal system has three characteristics, namely codification, judges are not bound by precedent so that the law is the main source of law, and the judicial system is inquisitorial.

The main characteristic that is the basis of the *civil law legal system* is that the law acquires binding force, because it is manifested in regulations in the form of laws and arranged systematically in codification. [8]Second is the *common law system* adopted by Anglo Saxon countries such as the United States, England, Australia, Singapore, Malaysia and most Commonwealth countries and so on.

The character of *common law* is that the main source of law is the habits that exist in society and the agreements that have been agreed upon by the parties. [9]Although, the law enforcement system is not based on a *precedent system* , judges are obliged to seriously follow the Supreme Court decisions which are established as jurisprudence.

Jurisprudence is currently a way out *for* those seeking justice, when it is deemed that the law has not regulated it or the existing regulations are still unclear. In practice and development, several judges in Indonesia created laws to fill vacancies like judges in *common law countries* . Thus, the judiciary in Indonesia is no longer completely in line with the *civil law legal system* because it has and applies several characteristics that are identical to the *common law judicial system.* This condition or system is formed from the current relationship between legal structures, legal rules and society.

Convergence is used as an effort to unify legal systems, conceptions, principles or norms. The absence of a "sharp boundary" between the two legal systems of *common law* and *civil law* has long been recognized by Sudikno Mertokusumo. Sudikno stated that the two systems had met and influenced each other since the 19th century. Thus, judges in Indonesia "cannot be said to be absolutely" not bound by court decisions. [10]Danrivanto, in his paper, said that convergence is inevitable in the current era of globalization. Legal and economic

[7] http://pustaka.unpad.ac.id/archives/130358 diakses pada 03 September 2021 pukul 00.15 wib

[8]Dedi Soemardi, *Pengantar Hukum Indonesia,* (Jakarta: Indhillco, 1997), p. 73. .

[9]Agus Suprayogi, "Perbedaan Hukum Perburuhan Di Negara Dengan Sistem Hukum Civil Law Dan Common law Studi Kasus Singapura dan Indonesia", *Lex Jurnalica,* Vol. 13, No. 3, 2016, p. 2.

[10]Sudikno Mertokusumo, 1990, Mengenal Hukum (Suatu Pengantar), Liberty, Yogyakarta, p. 96.

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

experts have predicted that the legal order will move in a more adequate direction. They argue that the implications of globalization will force the legal order to converge so as to achieve economic efficiency.[11]

The difficulties and challenges in converging the two legal systems in the civil sector with the form of jurisprudence as a source of law in Indonesia still require in-depth study, especially in terms of the intersection of resolving civil disputes involving two or more countries in civil disputes.

Head of the Dutch Supreme Court, Maarten Feteris, said that the importance of jurisprudence in higher education. Apart from that, jurisprudence is also important for the consistency of decisions as a unity and legal certainty, as well as benefits for the economy.[12]

METHOD

The nature of this research is analytical descriptive research, namely the data analysis carried out does not go outside the scope of the problem and is based on theories or concepts that are generally applied to explain a set of data, or show comparisons or relationships between a set of data and another set of data.[13]

The type of research used is normative juridical research supported by primary data, with the aim of obtaining qualitative results, so the approach taken is a statutory approach , carried out by means of *library* research , namely by reading, studying and analyze literature/books, legislation and other sources. As a normative juridical research, this research was carried out by analyzing the law whether written in the book *(law as it is written in the book)* or the law decided by the judge through the court process *(law as it is decided by the judge through judicial process)* or which is often called doctrinal research.[14]

DISCUSSION

The Position of Jurisprudence as a Source of Law in Indonesia Which Adheres to the *Civil Law System*

The judge's decision is the crown and peak of the reflection of the values of justice, ultimate truth, human rights, established, competent and factual mastery of the law or facts, as well as a reflection of the ethics, mentality and morality of the judge concerned.[15]

---

[11]https://www.hukumonline.com/berita/a/akademisi-ingatkan-pentingnya-konvergensi-tatanan-hukum-lt4ba83cc6288d2/?page=2, diakses pada tanggal 26 Juni 2022 Pukul 20.24 wib

[12]https://m.atmajaya.ac.id/web/Konten.aspx?gid=highlight&cid=Perlukah-Yurisprudensi-dalam-Pengajaran-di-Fakultas-Hukum diakses pada tanggal 19 Juni 2021 pukul 22.40 wib.

[13]Bambang Sunggono, *Metode Penelitian Hukum*, (Jakarta: Raja Grafindo Persada, 2002), p. 38.

[14] *Ibid* .

[15]Lilik Mulyadi, *Seraut Wajah Putusan Hakim dalam Hukum Acara Pidana Indonesia*, (Bandung: Citra Aditya Bakti, 2010), p. 129. .

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

The decision of a judge from a judicial institution has been philosophically labeled as the judge's crown. An ideal crown is beautiful and charming and pleasing to the eye of justice seekers. And the language of the decision is the judge's weapon which contains wise words expressed in a straightforward, clear and firm manner.[16]

The judge's decision always avoids frontal, convoluted and overlapping words so that justice seekers find it necessary and enjoyable to read, while the content of the decision must reflect the justice of the judge. as God's representative on earth, in accordance with the sentence For Justice Based on Belief in One Almighty God.

A decision can be said to have permanent legal force if it refers to the explanation of Article 195 *Herzien Inlandsch Reglement* (HIR) as a provision of civil procedural law in Indonesia, then in a civil case because the winning party has obtained a judge's decision that punishes the opposing party then he is entitled to tools permitted by law to force the opposing party to comply with the judge's decision.

Paul Scholten believes that legal principles exist in legislation so they must be prioritized, even though the law is not perfect, because it cannot be taken directly or applied in a legal event. The discovery of law by judges is the application of regulations that must be discovered, by means of interpretation or by analogy or *rechtsverfijning* (concretizing the law/narrowing the law).[17]

According to Utrecht, if a statutory regulation is unclear or does not yet regulate it, the judge must act on his own initiative to resolve the case. In this case, the judge's role is to determine what constitutes the law, even though statutory regulations cannot help him. This judge's action is called legal discovery.[18]

Judges are always faced with concrete events, conflicts, or cases that must be resolved or solved and for this reason they need to find the law. So in law discovery, the most important thing is how to find or discover the law for concrete events.

The process of legal discovery answers several important questions about how to qualify the law for concrete events whether submitted through court or resolved outside court. Finding the law is not easy because empirically the problem that arises in court is that the written legal rules exist, but they are unclear, incomplete, do not contain a sense of justice, are devoid of the value of justice, lag behind the changes and progress of the times, even the written legal rules do not exist the same. very.

---

[16] https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/putusan-hakim-adalah-mahkota-hakim-oleh-drshmahjudi-mhi-228 diakses pada tanggal 12 Januari 2022 Pukul 23.43 wib

[17] Abintoro Prakoso, *Penemuan Hukum,* (Yogyakarta: LakBang Pressindo, 2016), p. 53..

[18] E. Utrecht, *Pengantar dalam Hukum Indonesia,* (Jakarta: Ichtiar Baru, 1986) p. 248.

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

In general, it is known that there are two types of legal discovery methods, namely the interpretation method and the construction method. Interpretation methods and legal construction methods. The difference between these two methods of legal discovery is that the interpretation method focuses on interpreting the text of the law by adhering to the sound of the text, while the construction method focuses on judges using their logical reasoning to further develop the text of the law, where judges no longer adhere to the text reads, but on condition that the judge does not ignore the law as a system.[19]

a. Interpretation method

Interpretation or interpretation is a method of legal discovery that provides a clear explanation of the text of the law so that the scope of the rules can be determined in relation to certain events.

Interpretation methods are divided into 9 (nine), namely grammatical, subsumptive, systematic, historical, sociological/teleological, comparative, futuristic, restrictive and extensive interpretation.[20]

The various interpretation methods above are actually options for judges when exploring or interpreting a law. The thing that needs to be prioritized in handling a case is the result, namely; problem resolution and satisfactory decisions. Therefore, to make things easier, this interpretation method is used as a tool .

b. Legal construction methods

The legal construction method (exposition method) that is intended is a method for explaining words or forming (legal) understanding , meaning that this method is a tool used to compile legal material, which is carried out systematically in the form of correct language and terms.

CST Kansil believes that what is called a source of law is anything that gives rise to rules that have coercive power, namely rules that, if violated, will result in clear, firm and real consequences or sanctions.[21]

Meanwhile, CST Kansil reviews the legal sources from a material and formal perspective. [22]

1) Material sources of law can be reviewed from various angles, for example from economics, history, sociology and philosophy.
2) Sources of formal law include:
   a) law (*statute*),
   b) habit (*custom*),
   c) judge's decisions (jurisprudence),
   d) treaty (*treaty*), and
   e) opinion of legal scholars (doctrine).

[19]Achmad Ali, *Menguak Tabir Hukum*, (Bogor Selatan: Ghalia Indonesia, 2008), p. 122.
[20]Achmad Ali, *Op.* Cit, p. 127
[21]C.S.T Kansil, *Pengantar Ilmu Hukum*, (Jakarta: Balai Pustaka, 2011), p. 46. .
[22]CST Kansil, *Op. Cit,* p. 44.

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

According to CST Kansil, jurisprudence is the decision of previous judges which is often followed and used as the basis for decisions by later judges regarding the same issue . [23]Then Marwan Mas explained that, "Jurisprudence is a judge's decision which contains its own regulations and has permanent legal force, which is then followed by other judges in the same event ."[24]

Among the various definitions of jurisprudence, one of the commonly understood definitions of the meaning of jurisprudence is the meaning used by Soebekti who states that the meaning of jurisprudence is the decisions of a judge or court that are permanent and confirmed by the Supreme Court (MA) which has permanent legal force as a cassation court, or the Supreme Court's own decisions are permanent.[25]

Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that "the State of Indonesia is a state of law". This article has the implication that all aspects of state administration must be based on law (*rechtsstaat*) and not based on power (*machtstaat*) with Pancasila as the source of all sources of state law and the 1945 Constitution of the Republic of Indonesia as the basic law and highest hierarchy in statutory regulations.

In deciding a case being examined, judges often do not directly base it on existing regulations. This kind of judge's action can be based on the provisions of Article 22 *of the Algemene Bepalingen van Wetgeving voor Indonesia,* (hereinafter referred to as AB) and Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, (hereinafter referred to as Law No. 48 of 2009).

Article 22 AB reads: "A judge who refuses to adjudicate on the grounds that the law is silent, unclear or incomplete, may be prosecuted for refusing to adjudicate." Then Article 10 paragraph (1) Law no. 48 of 2009 emphasizes "that the Court is prohibited from refusing to examine, try and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it".

Judges must actively explore, follow and understand the legal values that exist in society. This has been explained in Article 5 paragraph (1) of Law no. 48 of 2009 which states: "Constitutional judges and justices are obliged to explore, follow and understand the legal values and sense of justice that exist in society."

These articles provide an explanation that judges may not refuse when asked to decide a case, on the grounds that there are no legal regulations yet. However, judges are actually asked to discover the law, because judges are

[23]CST Kansil, *Op. Cit* , p. 47.
[24]Marwan Mas, *Pengantar Ilmu Hukum*, (Jakarta: Ghalia Indonesia, 2004), p. 66.
[25]Enrico Simanjuntak, "Peran Yurisprudensi di Dalam Sistem Peradilan Indonesia", *Jurnal Konstitusi*, Vol. 16. No. 1, 2019, p. 84.

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

considered to know the law and can make decisions based on their own knowledge and beliefs.

In state practice, judicial handling is carried out based on certain principles. There are two main principles that can be adhered to by a country regarding the judiciary, namely the *precedent principle* and there is a free principle.

a. The principle *of precedent* (*stare decisis) adopted by common law* countries (England, United States), means that judicial officers (judges) are bound or may not deviate from previous decisions of judges of a higher level, or of the same level. So the judge must be guided by previous court decisions when he is faced with an incident. Here the judge thinks inductively.[26]

Apart from that, M. Yahya Harahap also proposed several jurisprudential functions as quoted by Andi Nuzul : [27]

a. Creating legal standards or *to settle legal standards* . Jurisprudence should be based on rational, practical and actual parameters, so that decisions become *the maturity of law* in the life of the nation.
b. Fostering the realization of *a unified legal framework* (same legal basis) as well as *unified legal opinion* (same legal uniformity)
c. Affirming legal certainty, to prevent decisions that result in disparities between one decision and another.

The reasons a judge uses another judge's decision are psychological considerations, practical considerations, having the same opinion . Therefore, there are two types of jurisprudence, namely as follows: [28]

a. Permanent jurisprudence, namely a judge's decision that occurs because of a series of similar or identical decisions, and is used as a basis for the court (*standard arresten)* to decide a case;
b. Non-permanent jurisprudence, namely previous judge's decisions that are not used as a basis for the court (not *standard arrest)* . This non-permanent jurisprudence is generally jurisprudence that applies laws (material law) that have never been used as a source by judges following or below them.

[26]Ishaq, *Pengantar Hukum Indonesia*, (Depok: Rajawali Pers, 2018), p. 51.
[27]Andi Nuzul, *Membangun Tata Hukum Nasional dalam Perspektif Masyarakat Pluralis*, Cet. I (Yogyakarta: UII Press, 2010), p. 83-84.
[28]Umar Said Sugiarto, *Pengantar Hukum Indonesia*, (Jakarta: Sinar Grafika, 2013), p. 69-70.

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

Position of Jurisprudence in Indonesia which Adopts a *Civil Law System*

Civil law is a legal system adopted by many Continental European countries which is based on Roman law. It is called that, because Roman law originally came from Emperor Iustinian's great work *Corpus Iuris Civilis* . Because it is widely adopted by Continental European countries, *civil law* is often called the continental system. Former countries The colonies of Continental European countries also adopted a *civil law system* .[29]

In the *civil law system* , jurisprudence is not the main source of law, however , even though it is not the main source of law, through jurisprudence, judges also have the task of making law. In the practice of dispute resolution, this cannot be avoided when the terminology used in the law does not regulate the problem at hand or existing laws conflict with the situation. faced. For this reason, judges in this case carry out legal formation, analogy, legal refinement or interpretation.

The more consistent the Judges are in deciding the same case , the better the justice system as a whole will be, where with jurisprudence in its function as a guide, Judges can reduce disparities. With consistency in looking at legal facts, it will be easy to see various problems for judges in adjudicating a case. This is related to the function of the Supreme Court, one of which is supervision of judges.

The Existence of Jurisprudence in the Development of Civil Law

The Civil Code *(Burgerlijk Wetboek)* as a legacy of the colonial nation is still enforced in Indonesia today, on the basis of avoiding a legal vacuum *(recht vacuum)* through Article I of the 1945 Constitution of the Republic of Indonesia's Transitional Regulations which reads "All existing laws and regulations remain in effect as long as they have not been implemented. new according to this Constitution." Indonesia has not yet carried out comprehensive reforms to the Civil Code as happened with the Criminal Code. However, many parts of the Civil Code have been updated by law, so that the Civil Code seems to have been pushed aside and its position is being questioned.[30]

Civil Law is a law that contains all the regulations covering legal relationships between one person and another person in society with an emphasis on the interests of individual. [31]Civil law is essentially a governing law interests between one individual and another individual.

Several experts provide definitions of civil law as follows:

[29]Rahman Syamsuddin, *Pengantar Hukum Indonesia*, (Jakarta: Kencana, 2019), p. 36.
[30]Aisyah Maharani, "Ironi Kitab Undang-Undang Hukum Perdata Dalam Sistem Hukum di Indonesia", *RechtsVinding Online*, 2020, p. 2-3.
[31] Samidjo, *Pengantar Hukum Indonesia*, (Bandung: Armico, 1985), p.75..

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

Van Dume, defines civil law as a rule that regulates matters that are essential to individual freedom, such as people and their families, property rights and bonds.[32]

Paul Scholten defines civil law as law between individuals, the law that regulates the rights and obligations of one individual towards another in social interactions and in family relationships.[33]

The Burgerlijk Wetboek systematics consist of: First, Regarding Persons *(Van Personen)* , which regulates personal body law and family law. Second , Regarding Objects *(Van Zaken)* , which regulates objects including inheritance law. Third, Regarding Contracts *(Van Verbintenissen)* , which regulates property law regarding the rights and obligations that apply to certain people or parties. Fourth, regarding proof and the passage of time *(Van Bewijs Verjaring)* . The above system is greatly influenced by the *Justiniasnse institutional system* .[34]

Technological developments have resulted in the emergence of various activities in the virtual world, both private and public interests, such as electronic commerce (*e-commerce*), electronic government (*e-government; digital government*), even electronic courts (*e-court*). The regulation of these electronic activities brings new legal concepts, such as electronic signatures (*e-signature*), electronic payments (*e-payment*) and *online trials* (*e -litigation*).[35]

When studying and applying civil law provisions, it is necessary to pay attention to the provisions of Indonesian laws and regulations which influence and change the content and application of the Civil Code in Indonesia. In this way, it can be seen which articles are deemed invalid or revoked in connection with the existence of these new regulations.

Development in the legal field contains two meanings; *First,* as an effort to update positive law (legal modernization). *Second* , as an effort to make the law functional, namely by contributing to social change in accordance with the needs of a developing society. Legal development is not limited to legislative activities alone, but rather to efforts to make law a social *engineering tool* . In other words, the purpose of legal development is to realize law in society.

Judges are not only institutionally independent but judges are also personally independent, as regulated in Article 24 of the Fourth Amendment to the 1945 Constitution of the Republic of Indonesia which states that judicial power is exercised independently in administering fair trials. This means that judges are free and independent and cannot be influenced by other powers in adjudicating a case,

[32]Titik Triwulan Tutik, *Hukum Perdata dalam Sistem Hukum Nasional*, (Jakarta: Kencana, 2011), p. 10-11.

[33]Muchsin, *Ikhtisar Hukum Indonesia*, (Jakarta: Badan Penerbit Iblam, 2005), p. 66-67.

[34]Erie Hariyanto, "Burgerlijk Wetboek (Menelusuri Sejarah Hukum Pemberlakuannya di Indonesia)", *al-Ihkâm*, Vol. IV, No. 1, 2009, p. 147.

[35]Pokja Penyusunan DPHN, *Dokumen Pembangunan Hukum Nasional Tahun 2020 Kementerian Hukum dan Hak Asasi Manusia RI*, (Jakarta Timur: Pohon Cahaya, 2020), p. 35

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

including fellow judges who have not decided the case or judges who have handled similar cases before. This concept is what creates debate in the position of jurisprudence, because jurisprudence is still considered as an injury to a judge's independence from the intervention of other judges.

Achieving consistency of decisions is one of the goals of judicial reform. One effort to support this is through transparency (publication) of decisions. Transparency of decisions, especially decisions at the Supreme Court level, has been started since 2008, through the Supreme Court decision directory website. As of early April 2019, the Supreme Court had uploaded 119,053 decisions to http://bangunan.mahkamahagung.go.id/. This is a fantastic number, considering that previously the Supreme Court was one of the most closed institutions, especially regarding decisions.[36]

civil law concept of judicial independence clearly excludes the possibility of subordinate judges being guided by senior judges. As a result, the legal profession and judges have to make a mental leap to accommodate the idea of binding precedents, and this invites a lot of resistance, the *civil law system* does not really need binding precedents to create compliance in the judiciary.[37]

The situation of cases at the Supreme Court, appellate court, court of first instance, according to the 2020 Annual Report of the Supreme Court of the Republic of Indonesia is as follows:

The number of cases accepted by the Supreme Court in 2020 was 20,544 Supreme Court cases, 21,895 Appeals Court cases, 2,805,229 first instance cases, 14,032 tax court cases. The total number of cases from the Supreme Court and subordinate judicial bodies in 2020 was around 3,861,700. The cases received by the Indonesian judiciary in 2020 decreased by 42.63% compared to 2019, which received 6,730,663 cases.

The total caseload decreased by 42.29 % from 2019 which amounted to 6,709,841 cases. The reduction in the number of cases decided in 2020 was a result of the reduced case load. The number of remaining cases decreased by 8.97 % from 2019 which amounted to 94,263 cases. The productivity ratio for case resolution by Indonesian judicial bodies was 97.83%, a decrease of 0.06% from 2019 which was 97.89%.[38]

The handling of civil cases in 2020 was around 111,583 cases, with details; civil lawsuits 47,937 cases, civil lawsuits 53,635 cases, simple lawsuits 8,881, resistance *(derden verzet)* 1,130 cases. The classification of civil lawsuit cases handled by district courts in 2020 is as follows: Divorce 20,568 cases, unlawful acts (land) 10,337 cases, unlawful acts 6,011 cases, default (non-land) 3,939 cases,

[36]https://leip.or.id/diskusi-publik-mengkaji-putusan-hakim-dan-peluncuran-jurnal-dictum-kajian-putusan-penting/ diakses pada tanggal 04 Februari 2022 Pukul 01.08 wib
[37]Sebastian Pompe, *Loc. Cit.*
[38]Laporan Tahunan 2020 Mahkamah Agung Republik Indonesia, hlm. 91

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

default (land) 1,621 cases, object other land disputes 1,577 cases, sale and purchase of land 944 cases, compensation 518 cases, joint property 372 cases, child custody 273 cases, other non-land dispute objects 265 cases, inheritance/wills 134 cases, certificates/girik 126 cases, sale and purchase 102 cases, others 64,796 cases.[39]

With the large number of civil cases handled, court decisions can be an important source in the development of legal science in Indonesia. For academics, decisions can be used for research materials, teaching materials, and materials for legal development/discovery.

Based on the Supreme Court Circular Letter (SEMA) Number 02 of 1972 concerning the Collection of Jurisprudence, it is determined that in order to realize legal unity, the Supreme Court is the only constitutional institution responsible for collecting jurisprudence which must be followed by judges when trying cases.

Not every judge's decision that has legal force must still be published, but only decisions that have an important impact in terms of law and its development .

Comparison between several countries, both with *civil law* and *common law* systems , regarding the criteria used. In several *civil law countries* , where the *precedent system does not apply* :[40]

a. German

   In general, it can be stated that there are several criteria that are always used, namely:

   1) decisions that concern the public interest;
   2) decisions that are important for guaranteeing legal equality;
   3) decisions that are important for legal development;
   4) decisions relating to new legal issues;
   5) decisions and where there are juridical constructions that give rise to doctrinal discussions .

b. France.

   Even though not all judges' decisions must be published, there are statutory provisions that require publication if certain criteria are met, especially regarding Supreme Court decisions *(Cour de Cassation)* which are published by the Supreme Court itself. The only criterion for selection is interest in terms of legal development, this is determined by each Chair of the Chamber *(President de Chambre)* at the Supreme Court. But apart from that, there are also several decisions published by various legal magazines and jurisprudence association books which are selected first by the Chair of the respective Chamber concerned and then by the editor of the legal magazine.

c. Netherlands

[39] *Ibid.*
[40] Paulus Effendi Lotulung, *Op. Cit* , p. 23

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

As proposed criteria for selection, several things are proposed as follows, where a judge's decision must be published in terms of:

1) There are new legal rules that are formulated , or existing legal rules are then modified, or attention is paid to existing legal rules, but until now they have never been implemented.
2) There are legal rules that already exist and are applied to the construction of facts that are different or deviate from previous applications.
3) There are criticisms of the application of legal regulations or jurisprudence.
4) When legal rules are created that conflict with each other and then provide legal solutions.
5) There are legal provisions with a construction of facts that concern the public interest.
6) There are decisions that are annulled at the appeal or cassation level, except when this annulment is the result of changes in law or changes in jurisprudence that occur while in the examination, or also in the event that predetermined criteria are not met.
7) If the relevant judge's decision has been expressly determined that it must be published on the judge's order as a punishment.
8) If the publication of the judge's decision is indeed based on the provisions of the law.
9) If the judge's decision is handed down after a difference of opinion between the deciding judges *(dissenting opinion)* .

d. United Kingdom *(United Kingdom)*

As a legal system that is based primarily on *"judge made law"* , the publication and dissemination of judges' decisions (in *Law Reports or Weekly Law Reports)* has an important and essential meaning. in law in England. It can be said that the law can be known and seen in the judge's decisions.

Judges' decisions are selected by approximately twenty-five full-time *reporters who* select the decisions of *the Royal Courts of Justice* and *the Judiciary. Committees of the Hose of Lords* , and also *the Privy Council* .

Regarding the selection criteria, the following criteria are used to determine whether a judge's decision should be included in *the Law Report* , namely :

1) If the case in question contains a new principle or new legal determination.
2) When it has materially changed an existing legal principle, or created a solution to a legal problem that is full of doubt.
3) When it creates problems interpreting regulations.
4) When there are important cases that apply accepted legal principles.

Civil Law and Legal Systems _Common Law_ in Empowering Jurisprudence

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

Since at least the time of Cicero, differences between legal systems have been seen as an obstacle that must be overcome. We have seen how the *common law* and *civil law systems* are clearly differentiated not only in terms of their historical heritage and origins, but also in terms of a wide range of issues including their legal sources, the structure of the legal profession and legal education, the legal division of court structures and attitudes. fundamental attitudes towards law and legal philosophy.[41]

Furthermore, the legal system is a unified system composed of the integration of various components of the legal system, each of which has its own function and is bound in a single relationship that is interrelated, dependent, influencing, moving in a unified process, namely the process of the legal system. , to realize legal objectives. The legal system is a large unified system which is composed of smaller sub-systems, namely the education subsystem, law formation, law application and so on, which is essentially a separate system with its own processes. The components of the legal system are:[42]

a) Legal community: a collection of legal units, both individuals and groups, as well as the place where the law is applied;
b) Legal culture: human thoughts in their efforts to regulate their lives;
c) Legal philosophy: formulation of values about how to regulate human life;
d) Legal science: a medium of communication between legal theory and practice as well as a medium for developing theories, designs and legal concepts;
e) Legal concept: formulation of legal policy established by a legal community;
f) Legal formation: part of the legal process which includes apparatus institutions and suggestions for legal formation;
g) Legal form: the result of the legal formation process;
h) Application of law: the process of continuing the process of forming law, including institutions, apparatus, advice, procedures for implementing law;
i) Legal evaluation, the process of testing the conformity between the results of the application of the law and the law or legal objectives that have been previously formulated.

Supreme Court in Empowering Jurisprudence

Judicial power is exercised by a Supreme Court and subordinate judicial bodies. As stated in Article 18 of Law no. 48 of 2009 states that "Judicial power is exercised by a Supreme Court and subordinate judicial bodies in the general justice

[41]Peter De Cruz, *Comparative Law In A Changing World*, (London-Sydney: Cavendish Publishing Limited, 1999), Diterjemahkan ke dalam Bahasa Indonesia oleh Narulita Yusron, *Perbandingan Sistem Hukum, Common law, Civil Law dan Socialist Law*, (Bandung: Nusa Media, 2010), p. 688-689. .

[42]Lili Rasjidi and IBWyasa Putra, *Op. Cit*, p. 149-151.

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court".

In order to uphold law and justice based on Pancasila , one of the authorities of the Supreme Court is to adjudicate at the cassation level decisions given at the final level by courts in all judicial environments under the Supreme Court, unless the law determines otherwise.

The existence of jurisprudence as a source of legal renewal and development is recognized by Mochtar Kusumaatmadja, as follows:[43]

"Even though legislation is the main technique for carrying out legal reform, updating rules and principles as well as finding directions or materials for renewing rules, it also uses other legal sources, namely decisions of judicial bodies (jurisprudence), while the writings of legal scholars who leading sources are also referred to as additional sources."

In the United States with its *common law system* , the Supreme Court, through interpretation of legal provisions, creates new public *policies* . Through legal interpretation the Supreme Court plays a very important role in the federal policy-making system. [44]A court decision providing an interpretation of the law will have general application. Every time a court makes a decision based on an interpretation of the law, the court determines a precedent, which will apply to similar cases.[45]

At the end of the 19th century and the beginning of the 20th century, several countries with a *civil law system* gave judges or courts the authority to create general principles of civil law when written civil law *(statute or code)* was not available to apply to a case. These countries include Argentina (1869), Switzerland (1912), Mexico (1932), Peru (1936), Brazil (1942), and Italy (1942).[46]

The authority of judges to exercise their discretion in deciding a civil case also occurs in the Netherlands even though the Netherlands has developed a new codification of civil law in stages from 1947 to 1992. [47]Apart from that, France also has an article in its *civil code* which encourages judges to interpret a law if it is unclear, incomplete and ambiguous .

---

[43]Mochtar Kusumaatmadja, *Fungsi Dan Perkembangan Hukum Dalam Pembangunan Nasional*, (Bandung: Bina Cipta, 1976), p. 12

[44]Laurence Baum, The Supreme Court Second Edition, (Congressional Quarterly Inc.,Washington Dc.1985), dikutip dalam Mashudi, "Peran Hakim Agung Sebagai Pembaru Hukum Untuk Mewujudkan Pengadilan Yang Bersih", *Jurnal Hukum Prioris*, Vol. 4, No. 2, 2014, p. 149.

[45] *Ibid.*

[46]Roberto G. Maclean, "Judicial Discretion In The Civil Law*", Louisiana Law Review*, Vol. 43, No. 41, 1962, hlm. 51-52, dikutip dalam Choky R. Ramadhan, "Konvergensi *Civil Law* dan *Common law* di Indonesia dalam Penemuan dan Pembentukan Hukum", *Mimbar Hukum*, Vol. 30, No. 2, 2018, p. 219

[47]Arthur S. Hartkamp, "Judicial Discretion Under The New Civil Code Of The Netherlands", *The American Journal Of Comparative Law*, Vol. 40, No.3, 1992, dikutip dalam Choky R. Ramadhan,

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

CONCLUSION

The position of jurisprudence in Indonesia has binding force in *civil law* countries that adhere to the principle of freedom or are *"persuasive* precedent *"* in nature . Judges are prohibited from rejecting cases, as stated in Article 10 A paragraph (1) of Law no. 48 of 2009 states that " Courts are prohibited from refusing to examine, try and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it " . Then in Article 5 of Law no. 48 of 2009 states that " Constitutional judges and justices are obliged to explore, follow and understand the legal values and sense of justice that exist in society " . The Civil Law which was created in 1938 in the Netherlands and concordanted in Indonesia is no longer able to accommodate the rapidly developing interests of society in all fields . Jurisprudence has a big role and contribution in the development of national law, especially in the field of civil law, namely: Carrying out government administration, filling vacancies law, providing legal certainty; and overcoming government stagnation in certain circumstances for the benefit and public interest.

Common law and civil *law* systems very influential in the development of law in each country. Efforts to bring about legal convergence in certain matters are not possible , especially issues in civil law , for example arbitration and bankruptcy issues or other areas of civil law. Of course, there are still legal similarities which can be used as a legal basis for resolving various problems in civil law in Indonesia. As a result of the influence of progress over time, there are striking differences in ideology, political attitudes, social and economic policies . Of course, there are still legal similarities which can be used as a legal basis for resolving various problems in civil law in Indonesia.

Jurisprudence as a source of law in Indonesia which adheres to the *civil law system* must be clarified in its implementation in every judge's decision in handling a civil law case. No longer only as a complement if the law as the main source does not regulate it . Even though it does not bind other judges in deciding a similar case, in similar cases it is best to pay attention to existing jurisprudence as long as there has been no change in the legal values that exist in society.

There is a need to develop civil law through jurisprudence as a form of legal certainty. Therefore, The Supreme Court must require every judge when deciding on a civil case to include the decisions of other judges on the same case and to make an inventory of the judge's decisions on civil law which constitute legal findings.

The judicial system in Indonesia should no longer look at the differences between *civil law* and *common law legal systems* in enforcing the law. Even though there are still fundamental differences in the legal system, this is part of changes in people's lives that are influenced by the will of the times. So that it does not become an obstacle for law enforcers to make legal breakthroughs to create justice for the Indonesian people.

NOMOI LAW REVIEW
VOLUME 5, ISSUE 1
MAY 2024
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

REFERENCES

Agus Suprayogi, "Perbedaan Hukum Perburuhan Di Negara Dengan Sistem Hukum Civil Law Dan Common law Studi Kasus Singapura dan Indonesia", *Lex Jurnalica*, Vol. 13, No. 3, 2016.

Ali Achmad, *Menguak Tabir Hukum*, Bogor Selatan: Ghalia Indonesia, 2008.

Apeldoorn J.L.J Van, *Pengantar Ilmu Hukum*, Jakarta: Pradnya Paramita, 1993

Asshidiqie Jimly, *Pengantar Ilmu Hukum Tata Negara*, cet. ke-5, Jakarta: Raja Grafindo Persada, 2014.

Baum Laurence, The Supreme Court Second Edition, (Congressional Quarterly Inc.,Washington Dc.1985), dikutip dalam Mashudi, "Peran Hakim Agung Sebagai Pembaru Hukum Untuk Mewujudkan Pengadilan Yang Bersih", *Jurnal Hukum Prioris*, Vol. 4, No. 2, 2014.

Cruz Peter De, *Comparative Law In A Changing World*, (London-Sydney: Cavendish Publishing Limited, 1999), Diterjemahkan ke dalam Bahasa Indonesia oleh Narulita Yusron, *Perbandingan Sistem Hukum, Common law, Civil Law dan Socialist Law*, (Bandung: Nusa Media, 2010)

Hariyanto Erie, "Burgerlijk Wetboek (Menelusuri Sejarah Hukum Pemberlakuannya di Indonesia)", *al-Ihkâm*, Vol. IV, No. 1, 2009.

Hartkamp Arthur S. "Judicial Discretion Under The New Civil Code Of The Netherlands", *The American Journal Of Comparative Law*, Vol. 40, No.3, 1992, dikutip dalam Choky R. Ramadhan,

http://kepaniteraan.mahkamahagung.go.id/artikel-hukum/1690-peran-yurisprudensi-dalam-perkara-sengketa-hak-atas-tanah-wigati-pujiningrum-s-h-m-h diakses pada 02 September 2021 pukul 23.44 wib

http://pustaka.unpad.ac.id/archives/130358 diakses pada 03 September 2021 pukul 00.15 wib

https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/putusan-hakim-adalah-mahkota-hakim-oleh-drshmahjudi-mhi-228 diakses pada tanggal 12 Januari 2022 Pukul 23.43 wib

https://leip.or.id/diskusi-publik-mengkaji-putusan-hakim-dan-peluncuran-jurnal-dictum-kajian-putusan-penting/ diakses pada tanggal 04 Februari 2022

https://m.atmajaya.ac.id/web/Konten.aspx?gid=highlight&cid=Perlukah-Yurisprudensi-dalam-Pengajaran-di-Fakultas-Hukum diakses pada tanggal 19 Juni 2021 pukul 22.40 wib.

https://www.hukumonline.com/berita/a/akademisi-ingatkan-pentingnya-konvergensi-tatanan-hukum-lt4ba83cc6288d2/?page=2, diakses pada tanggal 26 Juni 2022 Pukul 20.24 wib

Ishaq, *Pengantar Hukum Indonesia*, Depok: Rajawali Pers, 2018.

Kansil C.S.T, *Pengantar Ilmu Hukum*, Jakarta: Balai Pustaka, 2011.

Kusumaatmadja Mochtar, *Fungsi Dan Perkembangan Hukum Dalam Pembangunan Nasional*, Bandung: Bina Cipta, 1976.

Laporan Tahunan 2020 Mahkamah Agung Republik Indonesia

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.19592

Lotulung Paulus Effendi, *Peranan Yurisprudensi Sebagai Sumber Hukum,* Badan Pembinaan Hukum Nasional Departemen Kehakiman RI, 1997/1998.

Maclean Roberto G., "Judicial Discretion In The Civil Law*",* *Louisiana Law Review*, Vol. 43, No. 41, 1962, hlm. 51-52, dikutip dalam Choky R. Ramadhan, "Konvergensi *Civil Law* dan *Common law* di Indonesia dalam Penemuan dan Pembentukan Hukum", *Mimbar Hukum,* Vol. 30, No. 2, 2018

Maharani Aisyah, "Ironi Kitab Undang-Undang Hukum Perdata Dalam Sistem Hukum di Indonesia", *RechtsVinding Online,* 2020.

Mas Marwan, *Pengantar Ilmu Hukum*, Jakarta: Ghalia Indonesia, 2004.

Mertokusumo Sudikno, 1990, Mengenal Hukum (Suatu Pengantar), Liberty, Yogyakarta.

Muchsin, *Ikhtisar Hukum Indonesia*, Jakarta: Badan Penerbit Iblam, 2005.

Mulyadi Lilik, *Seraut Wajah Putusan Hakim dalam Hukum Acara Pidana Indonesia*, Bandung: Citra Aditya Bakti, 2010.

Nuzul Andi, *Membangun Tata Hukum Nasional dalam Perspektif Masyarakat Pluralis*, Cet. I Yogyakarta: UII Press, 2010.

Pokja Penyusunan DPHN, *Dokumen Pembangunan Hukum Nasional Tahun 2020 Kementerian Hukum dan Hak Asasi Manusia RI*, Jakarta Timur: Pohon Cahaya, 2020

Prakoso Abintoro, *Penemuan Hukum*, Yogyakarta: LakBang Pressindo, 2016.

Rahardjo Satjipto, *Membangun dan Merombak Hukum Indonesia,* Yogyakarta: Genta Publishing, 2009

Samidjo, *Pengantar Hukum Indonesia*, Bandung: Armico, 1985.

Simanjuntak Enrico, "Peran Yurisprudensi di Dalam Sistem Peradilan Indonesia", *Jurnal Konstitusi,* Vol. 16. No. 1, 2019.

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

Sugiarto Umar Said, *Pengantar Hukum Indonesia,* Jakarta: Sinar Grafika, 2013.

Sunggono Bambang, *Metode Penelitian Hukum*, Jakarta: Raja Grafindo Persada, 2002.

Syamsuddin Rahman, *Pengantar Hukum Indonesia,* Jakarta: Kencana, 2019.

Tutik Titik Triwulan, *Hukum Perdata dalam Sistem Hukum Nasional*, Jakarta: Kencana, 2011

Utrecht E., *Pengantar dalam Hukum Indonesia,* Jakarta: Ichtiar Baru, 1986.

Wargakusumah Hasan, *Peningkatan Yurisprudensi Sebagai Sumber Hukum, dalam Penyajian Hasil Penelitian Tentang Peranan Hukum Kebiasaan Dalam Hukum Nasional*, Badan Pembinaan Hukum Nasional Departemen Kehakiman, 1992.