

Indonesian Trial Process and Legal System Background Notes

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The Indonesian legal system is a Civil Law system rather than a Common Law system (The Common Law System is found chiefly in Australia, England, America and other former British colonies). As the Indonesian legal system is derived from French and German models, its procedures are entirely different to those in Australia.

For example, Civil Law systems do not use juries. Instead, decisions as to guilt or innocence are made by a panel of three judges. One of these judges is the Chair (*ketua*) and is usually more senior than the other two judges. Typically, the judges produce a single, joint judgment (*Putusan*). It is virtually unknown for a judge (*hakim*) to dissent from the decision of the other two members of the panel and dissenting judgments are rarely produced and never released (except, recently, in the Commercial Court (*Pengadilan Niaga*)).

Typically, Civil Law judgments are much shorter than Common Law judgments. In Indonesia, for example, the judgment may be only a few pages. In major cases, judgments tend to be long, of a length to be expected in a Common Law Appeal Court, but this is usually because the Courts often summarise all the evidence in the judgment (This is not usual in Common Law judgments). Legal reasoning to distinguish previous cases and so forth is relatively rare, because Civil Law systems do not have a system of precedent.

Precedent, in Common Law systems, is the principle that previous cases with similar facts on an identical point of law will bind courts of equal or lower status. In Civil Law systems, courts are not bound by decisions of courts at the same level or higher. This means that there is little need for law reporting in Indonesia and certainly not for published authoritative sets of judgments. Some, limited collections of judgments are published (for example, *Yurisprudensi*) but they are ad hoc in nature. In fact, statements as to preferred interpretation or policy issued by the Supreme Court in the form of *surat edaran* (circular letters), rather like practice notes in the Common Law System, tend to be more influential than previous decisions, even of the Supreme Court.

Another key distinction between Common Law and Civil Law systems is that Civil Law systems are 'inquisitorial' in nature while Common Law systems are 'adversarial'. This means that in Common Law systems the judge acts as an impartial referee while the parties present their witnesses in an attempt to convince a jury or, in most cases, the judge. The judge generally does not ask questions of witnesses (*saksi*) and is usually active only in enforcing the rules of evidence and procedure.

In an inquisitorial system, however, the judges conduct an enquiry into the truth of what occurred, that is, the facts behind the legal issues in dispute. For this reason, judges control the proceedings and may directly question witnesses. In some Civil Law systems, the judges may even dominate the hearing to such an extent that lawyers are left with few questions to ask at all.

The layout of an Indonesian court reflects the inquisitorial nature of Civil Law proceedings. The judges face the witness who sits alone in a chair in the centre of the court. Lawyers are placed off to the sides, reflecting their relatively reduced significance in proceedings. Judges may sometimes even call witnesses that the parties have not called, demand that additional witnesses attend or even refuse to hear from witnesses called by the parties. There is also less emphasis on the rules of evidence in inquisitorial systems as judges tend to allow most material in and then decide on its merits at a later point.

In Indonesia, prosecution is always conducted by state officials known as *jaksa* or prosecutors. These are always government employees and private lawyers are never hired to represent the prosecution. Normally, police conduct initial investigations and then hand a brief to the prosecution. Issues such as arrest and detention can only be decided on the application of an accused person at a pre-trial hearing (*praperadilan*) and can never be raised at the main trial.

References

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