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## History of Burgerlijk Wetboek In Indonesia

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#### Abstract

*Civil Law is a provision that regulates the rights and interests of individuals in society. The history of the development of civil Law in Indonesia cannot be separated from the history of legal science development in other European countries. Law in Indonesia is a mixture of European legal systems, religious Law, and customary law. Most of the systems adopted, both civil and criminal, are based on continental European Law. This study uses a research methodology that reviews normative juridical studies conducted by synthesizing deductive conclusions from statements in data sources such as library materials including journals, books, documents, and literature or secondary Law such as laws, legal theory, court decisions, relevant expert opinion and related to the discussion in this journal. This research is an analytical prescriptive that synthesizes data, analyzes, and concludes qualitatively. Civil Law in Indonesia comes from the Dutch language, namely Burgerlijk Recht, derived from the Burgerlijk Wetboek (B.W), which in Indonesia is known as the Civil Code (KUH Perdata). Civil Law in Indonesia is somewhat different from the civil Law that applies in the Netherlands. Burgelijk Wetboek's systematics consists of Van Personen, Van Zaken, Van Verbintenissen, Van Bewijaeu Veryaring.*

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## Introduction

Civil Law is a provision that regulates the rights and interests between individuals in society. In legal traditions in mainland Europe (civil Law), known to divide the Law into two, namely public Law and private Law or Law civil. The Anglo-Saxon system (common Law) is not known for such a division.(O'Connor, 2015; Shpagonov, Ivanishin, Rodionova, & Kolodub, 2020) The history of the development of civil Law in Indonesia cannot be separated from the history of legal science development in other European countries. In a sense, the development of civil Law in Indonesia is greatly influenced by legal developments in other countries.(Usman, 2011; Yahya, 2005) Law in Indonesia is a mixture of the European legal system, Religious Law, and customary law. Most of the systems adopted, both civil and criminal, based on continental European Law, particularly from the Netherlands because of the historical aspects of the past Indonesia, which is a colony as the Dutch East Indies (NederlandschIndie). One of the governing areas of law rights and obligations is the subject law and the relationship between legal subjects (Imron, 2014; Nasir, 2018).

Civil Law is also called private Law or civil Law as opposed to public Law if public Law regulates things that are relating to the state and interests general (for example, politics and elections (governance law state), daily government activities (state administrative or administrative law), crime (criminal Law), then civil Law regulate the relationship between residents or residents everyday state, such for example maturity someone, marriage, divorce, death, inheritance, property, business activities and other acts of a civil nature (Vollmar, 1989).

### **Formulation of the problem**

This journal will discuss the History of Burgerlijk Wetboek in Indonesia.

Then formulated the problem:

- 1) Definition of Civil Law
- 2) Burgerlijk Wetboek Legal History
- 3) systematize Burgelijk Wetboek
- 4) The amendments to the Civil Code Applicability in Indonesia

The purpose of writing articles is: Tracing and analyzing the development of civil law from time to time and its impact on the historical development of Indonesian law. The importance of this research is to remind us of the history of Indonesia, especially in terms of the development of law which is very attached to human life

### **Research Methods**

This journal uses juridical reviewing research methodology normative. Normative legal research is carried out by analyzing the synthesis of deductive conclusions from the statements contained in data sources such as library materials including journals, books, documents, literature or secondary legal practice such as laws, legal theory, court decisions, expert opinions relevant and related to the issues discussed in this journal. The approaches used include statutory, conceptual, and analytical approaches. This research is a prescriptive-analytical in which data synthesis, discussion, and conclusions are analyzed in qualitative research (Ibrahim, 2006).

## **Results And Discussion**

### **A. Definition of Civil Law**

Civil Law in Indonesia comes from the Dutch language, namely Burgerlijk Recht, derived from the Burgerlijk Wetboek (B.W), which in Indonesia is known as the Civil Code (KUH Perdata). Indonesian Civil Law, which is sourced from the Civil Code, is written Civil Law, which was codified on 1 May 1848. Many Civil Laws are regulated outside the Civil Code in its development, namely in various laws and regulations made after codification. According to Prof. The subject of civil law's definition in a broad sense includes all material private Law, namely all the main laws that regulate individual interests. Furthermore, according to him, the word Civil Law is sometimes used in a narrow sense instead of Commercial Law (Muhammad, 2014).

According to Prof. Dr. Sudikno Mertokusumo, Civil Law is a whole regulation that studies the relationship between one person and another in family relationships. In relationships, Civil Law in Indonesia comes from the Dutch language, namely Burgerlijk

Recht, sourced from Burgerlijk Wetboek (BW), which in Indonesia is known as Kitab Civil Law Law (KUH Perdata). Indonesian Civil Law, which is sourced from the Civil Code, is written Civil Law, which was codified on 1 May 1848. Many Civil Laws are regulated outside the Civil Code in its development, namely in various laws and regulations made after codification. According to Prof. The subject of civil law's definition in a broad sense includes all material private Law, namely all the main laws that regulate individual interests (Mertokusumo, 2007)

Furthermore, according to him, the word Civil Law is sometimes used in a narrow sense instead of Commercial Law. According to Prof. Dr. Sudikno Mertokusumo, Civil Law is a whole regulation that studies the relationship between one person and another in family relationships and social relationships (Kansil, 2003).

## **B. Burgerlijk Wetboek Legal History**

Civil Law initially originated from the Romans, which is approximately 50 BC during Julius Caesar's reign to rule in Western Europe; since then, Roman Law was enforced in France even though it was mixed with original laws that existed before the Romans controlled Galis (France). This situation continued until Louis XV's reign, namely with the initiation of efforts towards a legal entity, resulting in a codification called "Code Civil Des Francois" 7 on 21 March 1804, which was later enacted again "Code Napoleon." This codification is very Roman, but the compilers also included many elements of the original Law, namely Old French customary law (German law), which had been in effect in Western Europe before the Romans controlled France. The third mixture in the Civil Code contents is church law or Catholic Law supported by the Roman Catholic church at that time. In 1811, the Netherlands was colonized by France, and the entire Civil Code, which contained the three elements, namely Roman Law, German Law, and Church law, was enforced in the Netherlands. (Duve, 2018, 2020; Sharafi, 2015) Because Indonesia was a Dutch colony, Dutch civil Law was primarily based on the Civil Code. It also applies to Indonesia since 1 January 1848 with Staatsblad 1847 No. 23. However, civil law in Indonesia is somewhat different from the civil Law that applies in the Netherlands, especially when compared to the French Civil Code, only the principles are mostly taken from the Civil Code (Subekti, 1980).

The enactment of the Dutch civil Law in Indonesia is closely related to the legal politics of the Dutch East Indies government, which divides the population of the Netherlands Indies into three groups, namely: (1) European groups, namely all Dutch people, people who come from Europe, Japanese people, people whose family laws are based on principles - the same principles as Dutch Law and their descendants; (2) Chinese and non-Chinese Eastern Easterners, such as Arabs, Indians, and Pakistanis; (3) Those who have immersed themselves and adapted their lives to the Earth Son class. The classification is regulated in article 163 IS (Indische Staatsregeling), which is still in effect until now based on Article 2 of the Transitional Rules of the 1945 Constitution.<sup>8</sup> Regarding what laws apply to each group are regulated in article 131 IS, which states, that: First, for the European group, civil and commercial law in force in the Netherlands applies based on the concordance principle. Second, for the Chinese Foreign East group, the civil Law regulated in BW and Commercial Law regulated in the KUHD (WvK) applies with several exceptions and

additions as regulated in the 1917 Stablad Number 129 jo Stb. 1925 Number 557. Exceptions and additions include: (a) Marriage Ceremony; (b) Marriage Prevention; (c) Civil Registration Office (Burgerlijk Stand); (d) Adoption (adoption); (e) Regulations concerning kongsi. For foreign easterners who are not Tinghoa, European civil Law applies as long as the property law is concerned. The family law and inheritance law are subject to their original laws. This is regulated in the Staatblad Year 1924 Number 556, which came into effect on 1 March 1925. Third, from the earth group, based on the provisions of article 131 paragraph 6 IS, customary civil Law applies, namely all unwritten legal regulations but live in people's daily actions – day (Subekti, 1980).

Meanwhile, customary civil Law is still not uniform by the many customary law environments (*adat rech skiringen*) in Indonesia. In the meantime, based on the provisions of article 131 paragraph 2 IS, the regulations for Europeans can be applied to the Indonesian native / Foreign Eastern group as a whole or with changes, to make new regulations that apply to all groups together and there are deviations - deviation in general / society requires. First, several provisions of BW and WvK are stated to apply to the male earth-class, namely: (a) Articles concerning work or labor agreements (Art. 1601-1603 BW old); (b) Articles concerning games and gambling articles 1788-1791 BW); (c) Articles concerning the Law of the sea (book II title IV KUHD Stb. 1933 Number 49). Second, several regulations that apply to all groups (*Gemeen schappelijk recht*), namely: (a) Author Rights Act (*Auterswet St. 1912-308*); (b) General regulations concerning cooperatives (*Stb. 1933 Number 108*); (c) Ordinance against usury (*Stb. 938 No. 524*); (d) Air freight ordinances (*Stb. 1939 No. 98*). Third, several regulations were specifically made for Indonesians, namely: (a) Indonesian association Ordinance (*Stb. 1939 No. 570*); (b) Indonesian affiliated airline Ordinance (*Stb. 1939 - Number 569*), and (c) Indonesian Christian marriage ordinance (*Stb. 1933 Number 74 jo S. 1933 Number 73*) (Wirjono Prodjodikuro, 1974).

### **C. Systematize Burgelijk Wetboek**

Burgelijk Wetboek's systematics consists of: First, Concerning Persons (*Van Personen*), which regulates personal body law and family law. Second Regarding Objects (*Van Zaken*), which regulates objects, including the Law of inheritance. Third, regarding the Engagement (*Van Verbintenissen*), which regulates the Law of property regarding the rights and obligations that apply to specific people or parties. Fourth, Concerning proof and Past Time (*Van Bewijaeu Veryaring*). The Justinianse system institutions positively influence the systems above. If we compare the two systematics above, there are differences or inaccuracies: First, BW regulates family law as part of book I (the Law of private bodies) because there are family law relationships that affect competence. Acting from the right subject or person. Second, BW regulates inheritance law as part of book II (book of objects) because the legislators view inheritance rights as a material right over the deceased's assets. Inheritance is considered as a way to obtain eigendom, while eigendom is a material right. Third, in the systemic science of property law and engagement law, it is not regulated separately because asset law as a rule that regulates legal relations that can be valued in money can be generated because of the material rights regulated in book II BW or those arising from an engagement as regulated in book III BW. Fourth, the regulation of evidence and overdue items in book IV BW is considered inaccurate because it is a procedural Law,

while BW regulates basic civil Law (Wirjono Prodjodikuro, 1974).

#### **D. The amendments to the Civil Code Applicability in Indonesia**

In studying and applying the provisions of Civil Law, it is necessary to pay attention to the existence of Indonesian legislation provisions that affect and change the content and effect of the Civil Code in Indonesia. Thus, it can be seen which articles are deemed invalid or revoked in connection with the new regulations. With the enactment of Law Number 5 of 1960 dated 24 September 1960, Stb. 1960 Number 104 concerning Basic Agrarian Law (UUPA) revoked all property rights provisions relating to land from book II BW (KUHP) except regarding mortgages. This means that all provisions concerning material rights relating to land are regulated in Agrarian Law and are no longer subject to civil Law. With the existence of the Supreme Court Circular dated 5 September 1963 Number 3 of 1963, several articles or provisions were deemed invalid, namely: (a) Articles 108-110 BW concerning the inability to act on a wife; (b) Article 284 paragraph 3 BW regarding the recognition of illegitimate children born to an Indonesian woman; (c) Article 1682 BW concerning the mandatory grant with a notary certificate; (d) Article 1579 BW concerning termination of the lease because they will use the goods themselves; (e) Article 1238 BW concerning filing a lawsuit for the implementation of an agreement. (f) Article 1460 BW concerning risks in the sale and purchase agreement of goods; and (g) Article 1603 paragraphs 1 and 2 BW discriminates against European and non-European persons in labor agreements. With the enactment of Law Number 1 of 1974 dated 2 January 1974, Jo. Government Regulation Number 9 of 1975 dated 1 April 1975 concerning the Basic Marriage Law, which considers all regulations governing marriage no longer valid as long as it has been regulated in the Law, namely: (1) The provisions of marriage in the Civil Code (BW); (2) the Christian Indonesian Marriage Ordinance (Buwelijksor donantio chesten Indonesiers) as stated in Staatsblad 1933 number 74; (3) Mixed Marriage Regulations (Regeling Opde Gemengde Huwelijcken) as stated in the Statute Book of 1898 number 158; (4) Other regulations governing marriage. Law no. 42 of 1999 concerning fiduciary guarantees has replaced the arrangements on fiduciary warranties that have been used in Indonesia since the Dutch colonial era as a form of guarantee that was born from jurisprudence. This form of guarantee is widely used in lending and borrowing transactions because the charging process is considered simple, easy, and fast but does not guarantee legal certainty (Ahmad Supriyadi, 2012).

The Fiduciary Guarantee Institution allows fiduciary givers to control the pledged object, to carry out business activities financed from loans using fiduciary guarantees. Initially, objects that become fiduciary objects are limited to the property of movable objects that are tangible in the form of equipment. However, in subsequent developments, objects that become fiduciary objects include immovable property well as immovable objects. In its development so far, lending and borrowing activities using security rights or security rights have been regulated in Law Number 4 of 1996 concerning Mortgage Rights, which is an implementation of Article 51 of Law Number 5 of 1960 concerning the Basic Agrarian Law, and at the same time as a substitute for top land mortgage agency and credietverband. Other security rights that are widely used today are pawning mortgages other than land and fiduciary security. The Law relating to fiduciary security is Article 15 of Law No. 4 of 1992

concerning Housing and Settlements, which stipulates that houses built on land owned by other parties can be burdened with fiduciary guarantees. Besides, Law Number 16 of 1985 concerning Flats regulates ownership rights to apartment units, which can be used as collateral for debt with fiduciary burden if the land is land use rights over state land (Agustina, 2015).

The Dutch New *Burgelijk Wetboek* (BWBB) has been successfully transformed, overhauled, in short, modernized to keep up with the times, particularly in supporting various economic activities in a broad sense. Efforts for change and modernization were initiated in 1947 and only succeeded in late 1992 with the promulgation of BWBB, which was declared effective starting 1 January 1992. Book 1 (people and families) and Book 2 (Legal Entities) have been declared valid, namely buying and selling. And exchange (*koop en huur*), granting of power (*lestgeving*), deposit (*bewaargeving*), and underwriting (*borgtocht*) 9. Book 7A will contain select contracts in the old Dutch BW outside CHAPTER 1,7,9 and 14 books 7. Book 8 on transportation and transportation means (*verkeermiddelen en vervoer*) contains a transportation law that was declared in effect on 1 April 1992. experts with sufficient financial support and facilities, it will still take almost fifty years. What about Indonesia? It seems that modernization can only be done by making civil law rules partially in-laws that specifically regulate such as the Basic Agrarian Law, Marriage Law, Fiduciary Security Legal Institutions, and other civil law fields (Agustina, 2015).

## **Conclusion**

The history of civil law development in Indonesia is inseparable from the history of legal science development in other European countries. The development of civil Law in Indonesia is greatly influenced by law development in other countries, especially those with direct links. Indonesia as a country under the Dutch East Indies government; The Netherlands, then policies in civil Law cannot be separated from the policies that occur and are applied in the Netherlands.

The Civil Code (BW), which was drawn up in the early 18th century and enacted in Indonesia in the 19th century, turns out to be outdated or in other words no longer suitable to society's needs. Thus, it is hoped that the legislative body will make every effort to create national civil Law or if it is

*Burgelijk Wetboek* (Civil Code) applies in Indonesia based on the concordance principle. Several things are not in accordance with the values or with the development of society. Therefore, the judge, in interpreting the articles contained in the BW, must prioritize justice. Furthermore, hope that the legislative body will make a national civil law that can be accepted by all circles of society, where the Dutch themselves have modernized their old *Burgelijk Wetboek*.

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