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Jury System in France Cour de Assies: Could it be adopted in the Indonesian Criminal Court?

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Abstract. This qualitative article provides findings on the possibility of implementing the France *Cour de Assies* jury system in Indonesian criminal court. The researcher explains the reasons for adopting the jury system in the French assize court, the position of the jury, the procedure for appointing jurors, explaining the advantages of the jury. The comparative perspective allows the researchers to reveal what is less known and gain better insight into two more things: the relationship between criminal justice and public involvement in modern society; and the meaning of criminal justice. Researchers use secondary data comprising books, journals, or references about the French *Cour de Assies*, including legislation, judicial decisions, customs, and doctrines. The adoption of the jury system in Indonesia is essential, considering that Indonesia is a democratic country; therefore, it must include the involvement of the public in the judiciary. It is possible to involve the public in case of examination in court as a jury, which is the obligation of a democratic country. This article suggests that the jury system in the *Cour de Assies* France can be accepted because, in Indonesian criminal justice, it is necessary to involve the public in determining if someone is guilty.

Keywords. Comparative Law, France, Indonesia, Criminal Court, Jury System

I. Introduction

Laws grow and are developed in various ways in each country through comparative law (Chauhan, 2020). According to Bath (2015), a Comparative study is a tool employed both in natural and social sciences. It compares two or more legal systems systematically using the comparative method through the critical analysis approach, aiming to find elements of similarities and differences to provide benefits, both from a theoretical and practical perspective (Atmassasmita, 2009). In addition, Fuady (2010) mentions that comparative law is knowledge and method of learning legal science by reviewing over one legal system. Legal rules and jurisprudence and the opinions of competent experts in various legal systems find similarities and differences to conclude certain concepts and then look for the causes of similarities and differences historically, sociologically, and normative.

Comparing laws can be done in two ways, namely macro and micro (Orucu, 2004). Macro comparisons are concerned with the entirely legal system. Micro-comparisons are concerned with specific institutions or particular problems. In addition, Momirov & Faurie

(2009) have four comparative legal methods: first, comparative law of reasoning, which is oriented towards descriptive illustrations of how to regulate legal regulations in various legal systems without further analysis. Second, the comparison of applied law uses descriptive legal comparisons to choose between the legal systems under study, which are the best and suitable to be followed and used. The third is the Comparative History of Law, which deals with the history, sociology of law. Fourth, modern legal comparisons have used critical, realistic, and non-dogmatic methods.

There are five legal systems globally (University of South Carolina, 2018), one of which is the civil law system. The civil law system is a legal system adopted by many countries globally, which is made in a legal book called codification. For example, Indonesia and France adhere to the same legal system, namely the European Continental Law System (Civil Law System). However, there are differences between the two countries, one of which is related to the criminal justice system in France and Indonesia.

France has implemented a jury system in Cour d'assises. In contrast, Indonesia has not implemented a jury system in its criminal court because the judicial process depends on the judge at trial. Apart from Cour d'assises, France has other criminal courts to handle criminal cases, namely the Tribunal de Police and the Tribunal Correctionnel, but both do not apply a jury system. France itself adopted the jury system from England (Schioppa, 2007). The jury system is a manifestation of public participation in the judicial process, so the community (Horan, 2019) will feel that decisions fairer.

The description above motivates the author to compare the French and Indonesian criminal justice systems related to the jury system. Therefore, in this article, the authors discuss the below problems:

1. What are the strengths of the jury system in France's Cour de Assies?
2. What advantages if Indonesia applies a jury system like the one in France's Cour de Assies?

2. Method

According to Suteki (2020) in the book entitled "Legal Research Methods," the notion of the method is a scientific activity related to a (systematic) way of working to understand a subject or object of research, as an effort to find answers that can be scientifically accounted for and including its validity. The writing of this article uses the library research method. The library research method is library research carried out by reading, studying, and recording various literature or reading materials under the subject, then filtered and outlined in a theoretical framework of thought. The legal material used to be the source in this research is secondary legal material, which is literature such as journals and books related to the content of the study to be discussed.

The author uses a normative juridical approach to support the literature research method, an approach based on the primary legal materials by examining theories, concepts, legal principles, and legislation related to this research. This approach is called the literature approach. It sought the source of the data to be researched from secondary data and then analyzed the data. Sources of research data got through intermediary media as existing journals, books, and articles. After the data collection from the research results, the data will be processed and analyzed using qualitative data processing techniques. Finally, it is presented in a descriptive analysis by systematically arranging and getting scientific conclusions.

3. Literature Review

In this description, the author will describe the previous research, which became the authors' research references. Thus, the authors can enrich the theory used to review the research carried

out. During the last investigation, the writer did not find the same title as the author's research. However, the authors propose several studies as references to enrich the research material in the author's research.

Previous scholars note that the jury system is essential for democracy because of impartial viewpoints (Normey, 2019; Dyer, 2016; Lahav, 2014; Hearsay, 2014; Dzur, 2010; Leib, 2006). However, the jury may not always produce the best results, lack of legal background, and personal biases (Nedim, 2013). Humans, imperfections where innocent people slip through the cracks, especially in murder and criminal acts of violence (Gaille, 2020), created the jury system. Ryan (1999) mentions that Juries disregard the judge's instructions or the law itself when reaching a verdict. They know too much about a case from media publicity to render a fair judgment.

The author uses an article from Pradyawan & Agung (2017) entitled Transplantation of the Jury justice system to the Indonesian criminal justice system. This paper describes the use of the jury justice system in the Indonesian criminal justice system, the jury system that should be adopted in the Indonesian judiciary, and the community's existence to provide better decisions and fulfill a sense of justice. In the legal systems of modern countries, there has been an adoption between the common law or civil law traditional legal systems to find substantive justice in the judicial process. The authors also use Robertson and Shammas's (2021) ideas on the importance of jury service for citizens to involve themselves in the criminal justice system. In addition, jury service is also essential to maintain the legitimacy of democracy and avoid epistemic crises and sort truth from falsehood.

4. Analyses

Before the author discusses the formulation of the problem, the author will first explain the criminal justice system in France and Indonesia.

4. 1. The Criminal Justice System in France.

It divided the Criminal Court of France into three (3) levels: *First*, the Tribunal de Police is a criminal jurisdiction that judges all criminal acts committed by adults with a minor offense crime class level. *Second*, the Tribunal Correctionnel is a criminal jurisdiction of the first degree, which is competent to assess minor offenses (delits) where matters relating to implementing a criminal act (*infraction pénale*) are considered *délit*, similar in severity to minor crimes. Under French law, a minor offense is punishable by a prison sentence (*peine d'emprisonnement*) or a minimum fine of 3750 euros. In addition, the law establishes ten years as the maximum length of imprisonment for disciplinary offenses. *Third*, Cour d'assises, is a trial for those suspected of having committed serious crimes (murder, rape, armed robbery, etc.), attempted crimes, and those accused of being accomplices. Cour d'assises is not a typical court in France but is usually held every three months for two weeks. We found this type of Court in the respective Departments. Its composition and duties are not standard, as it is the only Court composed of professional judges (three) and a jury (nine nationals elected). Special Cour d'assises try certain crimes without a jury, such as acts of terrorism or acts related to drug transactions. Cour d'assises can be appealed.

The ultimate level of jurisdiction in France is the Court of Cassation or the Supreme Court in the French justice system. This Court is the last choice in the judicial order in France. It created the Court of Cassation in 1790. The Court of Cassation does not judge facts but checks whether lower courts have appropriately applied laws in civil and criminal matters. It never sits as an appeal court. Instead, the decision allows regarding law application even though the decision is not binding on the lower courts. Since 1991, the Court of Cassation has also provided its opinion to other jurisdictions on new and complex legal matters. The Court of Cassation is

composed of *conseillers* judges, the Office of the Prosecutor, the Office of the Court, the Superior Council of the Judiciary, and specially certified lawyers.

The French justice system does not adopt the principle of a jury trial in civil cases but for criminal cases tried at *Cour d'assises*. And with the existence of the law of July 28, 1978, we may call every registered citizen with certain conditions upon to carry out these functions. There are several cumulative requirements to become a judge, namely:

1. Citizen of France
2. Minimum age 23 years
3. Know how to read and write French
4. Not under interdiction or legal incompetence
5. Never been convicted before for committing a criminal act or for violating civil rights deprivation
6. He is not a public official who has been dismissed from his function.

At this Court, the Chief Judge will guide the jury in carrying out their functions. And before the trial begins, the jury members attend an information session where they receive general information about the progress of this Court procedure regarding their rights and duties. As for the rights of the jury, namely:

1. Receive a copy of the indictment of defense (if any)
2. Asking witnesses and defendants through the Chief Judge
3. Make notes during the trial.
4. To be compensated 40.10 euros per day when the jury sits or takes part in the trial.

In addition, the judges also have several obligations, namely:

1. Judges are asked to attend the trial with great care. If a jury member is truly negligent, the Court may, either on its motion or at the request of a party, replace him with a substitute juror.
2. The jury must be careful not to take sides and not reveal their opinion or the accused's guilt, not on the witness's credibility, nor the value of the evidence.
3. Outsiders cannot influence jury members.

If the judges do not appear without a valid reason, they will face a fine of 3750 euros. In addition, if the jury knows the defendant or victim, then the jury must immediately report this to the clerk of the Court and the Chief Judge of the Court before the trial begins.

4.2. Indonesia's Criminal Justice System

Indonesia only knows one court of the first instance, which can adjudicate proceedings called the District Court. A case ends with a verdict. The form of the judgment to be handed down by the court depends on the result of deliberation starting from the indictment with everything proven in the examination at court. The forms of verdicts include free decisions (*vrijspraak*), decisions to release from all lawsuits, decisions stating that it does not allow the court to adjudicate, decisions that declare the charges unacceptable, decisions that say the charges void, and convictions. Concerning the criminal verdict, parties who cannot accept the contents of the decision can file legal remedies.

Based on Article 1 point 12 of the Criminal Procedure Code, legal remedies are the right of a defendant or public prosecutor not to accept a court decision as resistance or appeal or Cassation or the right of the convict to submit a request for reconsideration in matters and according to methods regulated in law. Based on this definition, several articles in the Criminal Procedure Code hold these legal remedies. There are 2 (two) types of legal remedies, namely ordinary remedies and extraordinary remedies.

The legal appeal remedy is one of the common legal remedies listed in Chapter XVII of the Criminal Procedure Code. A legal appeal remedy is a legal remedy that interested parties can request to examine the first-level judicial decision at the appeal level trial. Based on Article 67 of the Criminal Procedure Code, that all decisions of the court of the first instance can apply to appeal to the high court by the defendant or those specifically empowered for it or the public prosecutor with a few exceptions, namely (Hamzah, 2008: 290-291):

- a. Free verdict (*vrijspraak*);
- b. Apart from all lawsuits involving inaccurate application of the law;
- c. The court's decision is in a quick examination procedure.

Cassation is one of the common legal remedies submitted to the Supreme Court (MA) as a request to cancel the decision from the previous level. Cassation is stated in Article 43 to Article 55 of Law no. 14 of 1985 concerning the Supreme Court. The party can only file to the Cassation against The High Court Judgment. Cassation examination only covers all judges' decisions regarding the law (*Judex Juris*). Therefore, no re-examination of the case (*judex facti*) is carried out to not consider the examination at the cassation level a third level examination. The Supreme Court decides the petition for Cassation against the court's decision at the appellate level or the last level of all courts.

Judicial Review (*Peninjauan Kembali*) is an extraordinary legal effort submitted to the Supreme Court to review a court decision with permanent legal force (*inkracht van gewijsde*). Someone can only file judicial Review from the appeal and cassation legal remedies, including in the District Court decisions that cannot be appealed to the high court or high court decisions that cannot be appealed to the Supreme Court. Based on Article 263 paragraph (1) of the Criminal Procedure Code, the party entitled to file a review is the convict or his heir. It is solely the interest of the convicted to defend their rights from wrongful sentencing.

4.3. Advantages of the French Jury System

The jury system has advantages compared to the justice system, such as in Indonesia. This system prioritizes community involvement as a sovereign social element and limits the power and dependence of government exercised through judges and public prosecutors. So by applying the jury system, this jury system upholds equality and justice in society; this comes from community involvement in the criminal justice process which also functions to maintain the authority of judges in deciding a case. The role of the community in a criminal justice system can prevent arbitrary actions from the judge because the jury there plays a role in determining whether the suspect is guilty.

4.4. Implementation of the Jury System in Indonesia.

Suppose we refer to the advantages of the jury system as stated above. The authors suppose that a jury system is better than the judicial process that Indonesia is still implementing until now. According to the authors, it is classified as rigid because it only based the judge in deciding cases on the law.

It does not mean that the criminal justice system in Indonesia lacks justice; however, it's just that it is difficult to know whether they have achieved justice. The people who live in that place better understand how justice should be so that it is impossible to find justice if justice always in the judge's hand. As a democratic country, the author believes Indonesia needs to apply a jury system in its criminal justice like France. However, it does not apply to all criminal cases but only to severe criminal cases as Indonesia's first step in reforming its criminal justice law.

In addition, if Indonesia applies a jury system in its criminal justice, it will have a good impact on Indonesian law, which was previously rigid, becoming more flexible with the involvement of juries in criminal cases. It is because they base decisions not only on the law but also on the jury's conscience as a sovereign social element in making a verdict on guilt or not. Therefore, the jury's involvement in Criminal cases will help judges build moral justice, or decisions full of values that live in a society that materializes prosperity and happiness in the community.

Indonesia is a country comprising various ethnicities and religions. According to the author, this will undoubtedly implement the jury system in Indonesia experience rejection from multiple circles. There are several challenges to the application of the jury system in Indonesia, namely:

1. The government considers that the application of the jury is not by the values of Pancasila,
2. Suppose Indonesia applies a jury system to criminal justice. In that case, it will cause a dispute between Indonesia, which comprises various ethnicities and religions. The jury in deliberation decides that the defendant is guilty or will not disagree because he defends a defendant who comes from his race or religion even though proved guilty.

Based on the descriptions above, the authors argue that these two things cannot be a potent reason for the Indonesian people to reject the application of the French jury system in Indonesia. On the contrary, it is because the application of the jury system in Indonesia does not violate Pancasila but fulfills the second principle Pancasila: "Just and civilized humanity" and the fifth principle of Pancasila: "Social justice for all Indonesian people." Fulfilling the second and fifth principles of Pancasila can be seen if the jury is involved in adjudicating a case based on the value of truth that they understand as the public. This truth can reach a civilized decision and fulfill the sense of justice in society.

There is a concern that disputes between ethnic groups and religions will not occur because if the jury cannot decide whether the defendant is guilty, then the jury will be assembled to determine this matter indefinite results. We should note that the Indonesian judicial system, which did not apply the jury system as it currently exists, was implemented by Indonesia in the customary court long before the Dutch came to colonize Indonesia. The customary court was a traditional court live in North Sumatra hundred years ago called *Batu Parsidangan* (Court made from stone). At this court, the King came from another village, the royal shaman, the executioner, the defendant, the victim's advisor, and the King's advisor occupied the seats. The parties' seats at trial are not much different from those in the Indonesian Criminal Court today. There is also a Victim Advisor with Indonesian criminal justice called Prosecutors, Defendant Advisors, or Lawyers in the Indonesian Court. The defendant, and the King as the judge.

In addition, a jury system involving community participation is necessary because Indonesia itself has implemented it in the customary courts in South Sumatra, where the trial was conducted by the village head as the leader of the prosecution (judge) then assisted by a jury from the village officials.

Based on the description above, the author argues that the application of the jury system in Indonesia is vital because considering that Indonesia is a democratic country, it must include public involvement in the judiciary, not only in elections.

5. Conclusion

The jury system is a criminal justice system adopted in a country that adheres to a civil law legal system. France is an example of a country in Europe with the same Criminal Justice legal system as Indonesia. Suppose it applied to the jury in the Indonesian criminal justice

system. In that case, it is possible to involve the public in examining the court as a jury, which is the obligation of a democratic country. Although the jury court system is not a system that only exists in Common Law, many countries besides France have used a jury system in criminal justice. For example, the jury system has several advantages, such as prioritizing community involvement as a sovereign social element, limiting the power and dependence of government exercised by judges and public prosecutors.

Many countries adhere to civil law but integrate jury justice into their justice systems. Therefore, it can adapt the jury system to legal or community conditions to trust the law more and avoid public prejudice against the judiciary that does not uphold justice and gives trust to law enforcers on the bench. Therefore, it is necessary to make a new criminal procedure law that is in line with the modern justice system where there are juries in the criminal justice system starting from the preliminary examination level at the police examination level to the judicial decision level. In addition, it is necessary to limit the authority of judges in deciding cases by dividing the power with the jury system to create a sense of justice in society.

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