

# Comparison of Criminal Evidence Between The Indonesian and United States' Legal Systems

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**Abstract.** This type of research is library research. Library research is research that is carried out through library data collection or research carried out to solve a problem which basically relies on a critical and in-depth study of relevant library materials. This research includes library research because data sources can be obtained from libraries or other documents in written form, both from journals, books and other literature. Indonesian criminal procedure law adheres to a negative statutory proof system in which proving the defendant's guilt must be based on valid evidence according to law accompanied by the conviction of the judge. The provisions of United States evidence law are regulated in the Federal Rule of Evidence. The Federal Rule of Evidence regulates general matters in the law of evidence that apply to all countries, while for more detailed matters of the law of evidence it is regulated by each state. The United States' system of evidence is conviction-in-time where the proof of guilt of the accused is only based on the judge's judgment. Indonesia adheres to a negative evidence system, while the United States adheres to a conviction-in-time system of evidence in terms of evidence that can be used in court.

**Keywords:** Comparison, Criminal Evidence

## 1. Introduction

Through valid evidence, the appointed official can decide on a choice by looking at the issues being tried in court. This is on the grounds that evidence is seen as fair, objective and provides data for judges to just decide. In the event that the evidence is not in accordance with the demands of the public prosecutor and material law, the suspect and the reported party cannot be disputed and must be submitted.

Every nation has tried to implement a strategy of criminal procedural law that is generally in accordance with its way of life. The cycle for deciding whether a person is truly guilty of the arguments of the lawbreakers charged against him will fluctuate starting with one whole legal set then on to the next. Strategy doesn't always make sense starting with one culture and then on to the next, but the exercises that have been carried out by different countries can be a useful illustration of our way of life in determining the best technique and game plan[1].

The law of proof between nations must be considered and mixed. It is hoped that the treatment of legal settlements that may occur between Indonesia and the United State of America (US) does not encounter obstacles. Practically speaking, evidence in Indonesia actually includes an abstract idea from the sole adjudicator who handles it. Dynamic adjudicators in viewing litigation and acknowledging presumptions are very important[2].

In US law, wrongdoing is seen as a debate between the state (addressed by investigators) and the suspect (addressed by legal authorization). The judge is not involved in the preliminary examination and opens the door for the investigator and suspect to collect evidence and their respective observers and after that both follow their situation under the supervision of the judge in the preliminary room[3,4].

The structure of evidence in criminal cases in the US adheres to the framework of jury justice. Where in executive law perceives a body called the jury. The jury are ordinary people named by the state and they are an impartial assembly and have no family ties to the litigants. The two players in the suit are free to meet and choose a judge of their choice. The judges are selected from the entire population, not from legal specialists or legal professionals. The discovery of this underlying perception aroused the desire of scientists to direct the investigation of the evidentiary frameworks of the two countries in these different sets of common law[5].

The US has 4 (four) legal springs, specifically protected law, managerial law, rules (official law written in a country), and precedent-based law (which incorporates case law). As it is recognized that the US and most Republics adhere to conventional customary law starting with the UK law chain as a whole, US law is one of a kind in some areas. This is on the grounds that US common laws are generally not tied to UK legislation as a whole due to the interference of freedoms in that country. The progress of the US made the country an autonomous state and separated itself from the laws of the British Federation as a whole.

The US as a British country previously fostered an alternative framework from the one in the UK, although it was still within the framework of the customary law framework. The US was a former British state. Nonetheless, during their lifetime, the US cultivated its own set of laws and legal substance. Nonetheless, most states are still within a precedent-based number law framework.

The US places a serious level of trust in Police stations, particularly the Environmental Police Administration and Sheriff's Specialties as the implementation of the law. In the meantime, state police are doing more to offer broader support. Government offices such as the Department of Examination Administration (FBI) and the U.S. Marshals Administration have more specialized duties. There are four laws that apply in the US, specifically protected law, regulatory law, resolution (formal law written in a country), and customary law (which incorporates case law). The four sources of law are valid and valid as definite laws and apply to all residents of the superpower country.

Carrying out legal research is relatively necessary to concentrate on the whole set of laws in Indonesia and different countries. Understanding the full range of laws of different countries is invaluable in supporting the agreement and improvement of public law, besides it can broaden the understanding of the basics of the regions and their own way of life and bring the basic mentality towards their own common set. law.

Based on the description above, a review can be developed that looks at the evidence of criminal cases that apply in Indonesia and the United States. Seeing evidence of criminal cases that apply in various countries is a positive effort to compare them and prove criminal cases that apply in Indonesia. If indeed the confirmation of criminal cases in various countries is better, it is inconceivable that Indonesia will involve it as a kind of perspective for improvement. The formulation of the research problem is how is the arrangement of proving criminal cases in Indonesia and the United States? and how is the comparison of proof of criminal cases between the Indonesian and United States legal systems.

## **2. Method**

This type of research is library research. Library research is research that is carried out through library data collection or research carried out to solve a problem which basically relies on a critical and in-depth study of relevant library materials. This research includes library research because data sources can be obtained from libraries or other documents in written form, both from journals, books and other literature[6].

### **3. Result & Discussion**

#### **3.1 Criminal Justice System**

For this situation, the main thing to analyze is the Indonesian and US criminal justice arrangements. The US is also called the country of customary law (where we know that customary law originated in the UK). However, it is not finished to say that British pilgrims brought this customary law to the US. They did guarantee that they had the same rights as the British, but they felt English law was an instrument of concealment that made them flee. In view of these reasons the settlers from the upper east (New Britain), prevented the limiting power from obtaining customary-based laws. countless settlements consider this standard, but to be honest they have a code of law that is in some cases so complete and organized in its entirety that customary law only functions as an integral law, only three states have officially considered this English law during its existence. provincial period.

In an atmosphere of complete autonomy from Britain for more than two centuries, the US has gone through different legal advancements, during the nineteenth and twentieth centuries. This is due to several elements, including the existence of a structured constitution, both at the government and state levels. part, even as a result of increased legal surveys, meaning the most common way to test state and government laws against these different constitutions, it has power and states have their own laws. In certain states and surprisingly certain parts of the law depend on codification.

The general body of US law is essentially fifty or so whole sets of laws that are closely related, but all of them by no means indistinguishable in form or form. The United States of America is turning into an alliance of states with an autonomous set of common laws with any powers not delegated by the government's constitution to administrative organs. Assuming there are several fields that have similarities between the state government and the central government, then at that time bureaucratic law was seen as more important than state law. So from the clarification above, we turn to the applicable law of evidence in the US. State and state legislatures have their own evidentiary laws.

The US court framework is complex. Each state directs its own judicial framework independently, no two state frameworks are exactly alike. Court design complexities can be highly specialized and surprisingly confusing for legitimate guidelines. Significantly more confusing is the dual court framework in the US. There is a series of general (government) courts that are above (or near) each district court. There is something like one government court in every state, from Alabama to Wyoming. Most bustling states have more than one government court. Therefore, a person residing in Philadelphia falls under two completely different courts, the Pennsylvania neighborhood court and the nearest government court and can sue or be sued in both of these courts, largely but not entirely, depending on the case. .

The US Constitution also regulates the legal part of the central government and determines the powers of bureaucratic courts. Government courts limit certain types of cases. State courts have strict legal control over the vast majority of cases.

Meetings for a question provide options for the jury to try in each single criminal case and the general case as a whole. A jury generally consists of a board that hears statements and applies laws, promulgated by the jury, with the ultimate goal of reaching a common choice based on the evidence presented at the time the jury confirms it by looking at the statement. in the court. However, legal questions in the US can usually be resolved through a lawful motion or remedy, not through a court hearing.

Within the draft government court framework is the US constitution that establishes the US Supreme Court and empowers Congress to establish administrative courts. Congress has established two levels of government courts below the high court, specifically the US district courts and a series of US courts of inquiry. US local courts will be the first court of opportunity within a government framework. All states in the US have one high court, most of which are called the State Superior Courts, which function on a par with the high courts. Many states in the US also have moderate local courts, also called courts of appeal, whose job it is to hear requests from court procedures, in which defendants mostly make some rights to memory.

Indonesia's legal framework relies on the Dutch framework, criminal law is important to public law. Indonesian criminal law is currently divided into two parts, namely special material criminal law and formal criminal law. Material criminal law regulates the certainty of criminal demonstrations, perpetrators of violations and criminal demonstrations (sanctions). The material criminal law guidelines in Indonesia are directed at the Criminal Code and further from laws outside the Criminal Code which are remembered for unique violations. Formal criminal law control system to implement material criminal law regulations. In Indonesia, a formal criminal law plan has been affirmed by the Criminal Code as well as several arrangements outside the Criminal Code that are regulated by law which are extraordinary violations.

The application or implementation of accessible criminal law is carried out by instruments approved by law to exercise separate powers and controls and must be carried out in an efficient work to achieve its objectives. This efficient deployment of energy is carried out by utilizing each of the components associated with it as a bound and interconnected relationship, and generally influencing each other. These efforts must be recognized within the framework entrusted to carry out the ratification of criminal law, in particular the framework of criminal justice, which is basically a regulation of the ability to enforce criminal law.

Therefore, every mechanical assembly of the criminal justice framework must consistently follow the development of each given regulation on the grounds that the device in the criminal justice framework depends on the summons of criminal law with the ultimate goal of expecting violations to occur. This criminal justice framework is recognized or implemented in four sub-frameworks, in particular:

- a. Strength of examination by analytical organizations.
- b. The power of indictment by the office of the general examiner.
- c. The ability to finalize and pass a choice by the legal executive.
- d. The ability to make a choice/deception by executives/executors of the office or mechanical assembly.

### **3.2 Evidence System**

Regarding evidence, in Indonesia, according to the evidentiary framework adopted in this country, to be more specific about the evidentiary framework in a negative legal perspective, we can resolve it from Article 183 of the Criminal Code. From Article 183 of the Criminal

Code, of course, evidence must be based on law (KUHAP), in particular valid evidence according to law as referred to in Article 184 of the Criminal Code, namely:

1. Witness statement.
2. Expert Witness
3. Letters.
4. Hints.
5. Statement of the Defendant.

In addition to the evidence referred to in the Criminal Code, there is also the development of other evidence referred to in the extraordinary criminal law. One illustration of the unique corruption law is the Law of the Republic of Indonesia Number 31 of 1999 jo. Law of the Republic of Indonesia Number 20 of 2001 concerning the Destruction of Criminal Acts of Violation of Values In the stipulation of Article 26A of this Law, evidence is extended, the extent of evidence is not only examined from witness statements, letters and articulations of respondents as referred to in Article 188 Paragraph (2) KUHAP however can be revoked from other evidence because:

- a) Data spoken, obtained, transmitted or stored electronically by optical or comparable means.
- b) Records, in particular any recorded information or data that should be viewable, readable, or potentially audible which may be provided with or without the aid of a method, regardless of whether compiled on paper, any actual articles other than paper, or recorded electronically, via a composition, sound, image, map, floor plan, photograph, letter, sign, number, or hole that has meaning.

Apart from the limited evidence as explained above, there must be confidence from the appointed official obtained from the evidence. This framework or hypothesis of evidence that relies on the law, on the other hand, relies on a lot of evidence, especially on the law and on the convictions of the appointed ruler and as indicated by the law, the reasons for the conviction of judges depend on legal guidelines. The evidence plan in the US is in accordance with the evidentiary framework adopted by the country, in particular the setting of conviction in the confirmation time that decides whether the respondent is not entirely determined by the jury's assessment of the conviction. The jury's conviction decides the responsibility of the respondent. We can resolve this from the Government Rules of Proof, Rule 105 which states that assuming the court sees admissible evidence against one party or one reason, but not against the other party or for any other reason, court must be within the specified time limit. proof. at a reasonable level of evidence and at jury guidelines. Thus, whether the evidence can be used in the introduction or not is up to the jury.

### **3.3. Burden of Proof**

With regard to the weight of evidence, both Indonesia and the US adhere to two verification frameworks, namely:

- a. Regular weight of proof frame

The weight of conventional evidence (weight of proof at the general examiner) in Indonesia is regulated in the criminal methodology law. Suspects or litigants do not have a problem with the inauguration commitment (Article 66 of the Criminal Code). However, the commitment to proof is borne by the public examiner considering that all Indonesian laws have complied with the assumption of blamelessness and guidelines for not accusing oneself (non self implication). The weight of proof like this can be set as standard or ordinary proof weight.

In the framework of the standard weight of evidence, the technique of using evidence refers to the basic needs of evidence in Article 183 of the Criminal Code. In essence, the evidence that can be used in the same evidentiary framework is as stated in Article 184 of the Criminal Code.

In the US the constitution (The Bill of Freedoms) grants special rights to those who are blamed during the preliminaries. There are two important perspectives in the US criminal justice framework, namely the standard of assumption of innocence and the weight of the charges to demonstrate definitive responsibility. Because the US adheres to the standard assumption of honesty (and that implies that the suspect is found not guilty until the final court selection declares the suspect responsible), the weight of confirmation rests with the public investigator.

b. Flip confirmation framework

Due to the seriousness of the specificity, the weight of the inauguration has not yet been placed on the general examiner, but on the respondent. Verification weights are distributed based on the 3Ps, namely specific approach, ownership of evidence, and probability. Accommodation is now and again added as a fourth variable. Ownership of evidence (authority of evidence) refers to the more prominent access of one party to the data. This idea is outlined by agreed safeguards such as self-protection and insanity. In these two situations, the respondent is in a better situation to approach with evidence given that their access is better than evidence, for example the authority of proof.

In (formal) criminal law, both the Mainland European framework and the Somewhat English Saxon framework (for this situation Indonesia and the US), look at evidence while still imposing its commitments on public examiners. However, in certain cases or extraordinary violations, it is permissible to apply differential instruments, especially the procedure for transferring the weight of evidence or what is known as the weight of evidence transfer (omkering van bewijslast). Indeed, even that is not fully done, but it has basic limitations that do not eliminate guarantees and respect for basic freedoms, especially the freedom of suspects or litigants.

### **3.4 Plea Guilty and Defendant's Statement**

As far as the affirmation strength of the respondent's statement is in Indonesia, the guideline is that the plaintiff's statement is only evidence against himself. The setting that governs this guideline is contained in Article 189 paragraph (3) of the Criminal Code. If for a certain situation there are few litigants, then every statement from each respondent is only evidence that limits himself, then the statement of Respondent A cannot be used against Respondent B.

This rule is regulated in Article 189 Paragraph (4) of the Criminal Code whose guidelines are the insistence of the basic standard of confirmation in Article 183 of the Criminal Code, in particular judges choose by considering at least two pieces of evidence. The idea of the power of proof is free, the judge is not limited by the value of the strength contained in the evidence of the respondent's statement. He was allowed to judge the reality contained within. The jury can admit or discard it as evidence by stating the reasons.

Instead of guidelines in Indonesia, plans in the US regarding the admission of plaintiffs are governed by a different arrangement, more specifically the concept of bartering applications. In the event that the respondent pleads guilty, he does not need to enter into legal interaction and enters the request barter stage where the general examiner offers some concessions to the plaintiff in return for the recognition of responsibility given by the respondent.

The barter petition is now remembered for the Draft Criminal Code with a unique line name. The regulation regarding this extraordinary course is regulated in Article 199 of the Draft Criminal Code. specifically as follows:

1. When the public investigator examines the indictment, the respondent admits to each of the alleged protests and pleads guilty to committing a criminal act of corruption which is punishable by a 7 (seven) year imprisonment, the public examiner may assign the case to the introduction for a brief assessment.
2. The confession of the accused shall be stated in the official report which is legalized by the respondent and the general examiner.
3. Judges must:
  - a) Inform the respondent of the special rights that have been handed over by giving the acknowledgment as mentioned in paragraph (2).
  - b) Inform the respondent of the length of the sentence that may be imposed.
  - c) Knowing whether the recognition as referred to in paragraph
  - d) (2) is given intentionally.
4. The appointed official may refuse the confession as referred to in paragraph (2) with the assumption that the judge questions the truth of the confession in a litigation.
5. Excepted from Article 198 Paragraph (5), the criminal penalty for the respondent as referred to in paragraph (1) may not exceed 2/3 of the most severe punishment charged.

From the article above, there are differences between the unique pathways regulated in the Draft Criminal Code and bartering requests in the US, one of the fundamental differences is that the bargaining framework in the US can be applied to all criminal demonstrations, ranging from misdemeanors to serious offences. Meanwhile, in the Draft Criminal Code, extraordinary pathways must be taken for criminal demonstrations whose punishment is not more than 7 years in prison. Another difference is that there is a very stark difference between the requests recorded by the public examiner if the accused admits responsibility or not. One of the models is for an act that violates the law, the general investigator will only charge a person with a sentence of 5 years in prison if he confesses, even if the accused does not want to take responsibility and decides to be tried. preliminary examination, the general examiner may ask for life imprisonment.

Article 199 Paragraph 3 letter c stipulates that the appointed official is obliged to know whether the acknowledgment was given intentionally or not. Furthermore, Paragraph (4) states that the appointed official may reject the plaintiff's confession on the assumption that the judge questions the reality of the respondent's confession. Assuming one pays attention to the arrangements stipulated in Article 199 Paragraph (3) and Paragraph (4), it can be seen that the appointed authority can still do so to acknowledge the respondent's confession even though the plaintiff says that the confession is invalid. not given on purpose. This opportunity arises because of the unclear standard regarding the commitment of the appointed official to refuse the plaintiff's confession if the respondent says his confession was not given intentionally.

In addition, the unique method section in the Draft Criminal Code does not clearly define the duties of legal counsel in assisting people who are suspected of claiming responsibility. The existence of legal guidance is one of the elements that best protects the suspect or respondent from all forms of torture or cruelty from the experts. When compared to the proposed demand transaction framework in the US, it tends to appear that a lack of legal direction or in any case, followed but not ideally provided could indicate the non-acceptance of a speculator's confession. Two brief descriptions of the duties of judges and legal advisors

in setting specific paths in the Draft Criminal Code illustrate that the appointed officials and legal consultants are not yet in a situation to protect litigants from possible confessions obtained from torture.

#### **4. Conclusion**

Indonesian criminal procedure law adheres to a negative statutory proof system in which proving the defendant's guilt must be based on valid evidence according to law accompanied by the conviction of the judge. The provisions of United States evidence law are regulated in the Federal Rule of Evidence. The Federal Rule of Evidence regulates general matters in the law of evidence that apply to all countries, while for more detailed matters of the law of evidence it is regulated by each state. The United States' system of evidence is conviction-in-time where the proof of guilt of the accused is only based on the judge's judgment. Indonesia adheres to a negative evidence system, while the United States adheres to a conviction-in-time system of evidence in terms of evidence that can be used in court. In general, the two countries, both Indonesia and the United States, adhere to the ordinary burden of proof. Indonesian law stipulates that the defendant's statement alone is not sufficient to prove his guilt, while in the United States, the defendant's confession of guilt is sufficient to convict him and there is no need to enter the judicial process

#### **References**

- [1] Hamzah A. Hukum Pidana dan Acara Pidana. Jakarta: Ghalia Indonesia; n.d.
- [2] Marzuki S. Pelecehan Seksual, Fakultas Hukum UII, Yogyakarta n.d.
- [3] Ramli AM. Cyber Law and Intellectual Property Rights in the Indonesian Legal System. Bandung: Refika Aditama; 2006.
- [4] Budiono H. Collection of Civil Law Writings in the Notary Field. Bandung: Citra Aditya Bakti; 2007.
- [5] Ilyas A. Asas-Asas Hukum Pidana-Memahami Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan. Yogyakarta: Rangkang Education Yogyakarta & PuKAP-Indonesia; n.d.
- [6] Bagong S. Metode Penelitian Sosial. Jakarta: Kencana Prenada Media Group; n.d.