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## COMPARISON OF THE SUPREME COURTS OF INDONESIA AND MALAYSIA REGARDING THEIR DUTIES AND AUTHORITIES

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### Abstract

*Indonesia and Malaysia adopt distinct legal system, Indonesia follows Civil Law, while Malaysia applies Common Law. These differences shape the structure and function of each country's judiciary, particularly the role and authority of their Supreme Courts. This journal explores the duties and influence of the Supreme Court of Indonesia within its legal framework, while also drawing comparisons with Malaysia's judicial system. The research employs a normative legal method, focusing on the analysis of applicable national norms and regulations. Additionally, the study utilizes the IRAC (Issue, Rule, Application, Conclusion) approach to systematically examine legal questions and interpretations. Through comparative analysis, the paper highlights how the Supreme Courts in both countries serve as pivotal institutions in maintaining legal order, delivering justice, and interpreting the law. The findings suggest that despite differing legal traditions, the Supreme Court in each country holds significant power and responsibility in shaping jurisprudence, ensuring the integrity of the judicial system, and influencing broader legal reforms and governance.*

**Keywords:** Supreme Court, Duties and Authorities, Judicial System.

### Abstrak

Indonesia dan Malaysia menganut sistem hukum yang berbeda – Indonesia menerapkan Civil Law, sementara Malaysia menggunakan Common Law. Perbedaan ini membentuk struktur dan fungsi sistem peradilan masing-masing negara, khususnya peran dan kewenangan Mahkamah Agung. Jurnal ini mengkaji tugas dan pengaruh Mahkamah Agung Indonesia dalam kerangka hukum nasionalnya, serta membandingkannya dengan sistem peradilan Malaysia. Penelitian ini menggunakan metode hukum normatif, dengan fokus pada analisis norma dan regulasi yang berlaku di masing-masing negara. Selain itu, studi ini menerapkan pendekatan IRAC (Issue, Rule, Application, Conclusion) untuk mengkaji pertanyaan dan interpretasi hukum secara sistematis. Melalui analisis komparatif, tulisan ini menyoroti bagaimana Mahkamah Agung di kedua negara berperan sebagai institusi kunci dalam menjaga ketertiban hukum, menegakkan keadilan, dan menafsirkan undang-undang. Temuan menunjukkan bahwa meskipun tradisi hukum berbeda, Mahkamah Agung di masing-masing negara memiliki kekuasaan dan tanggung jawab yang besar dalam membentuk yurisprudensi, menjaga integritas sistem peradilan, serta memengaruhi reformasi hukum dan tata kelola yang lebih luas.

**Kata Kunci:** Mahkamah Agung, Tugas dan Wewenang, Sistem Pradilan.

## INTRODUCTION

A state, as an organization that binds the government and the people through law, requires clear constitutional regulations, particularly regarding the highest judicial institution.<sup>1</sup> The Supreme Court, as the highest judicial institution, plays a strategic role in ensuring legal certainty and justice for all citizens. However, the Supreme Court's functions and authorities can vary between countries depending on the legal system adopted.<sup>2</sup> This study compares the Supreme Courts of Indonesia and Malaysia, two countries with fundamentally different legal systems. Indonesia adheres to the Civil Law system, a legacy of Dutch colonial rule, while Malaysia adopts the Common Law system from England.<sup>3</sup>

Comparative studies of the highest judicial institutions have attracted the attention of several researchers. Nabila explains that the Civil Law system emphasizes legal certainty through the codification of statutory regulations, where judges act as interpreters of the law, with the doctrine of *Res Judicata* limiting decisions to binding only the disputing parties.<sup>4</sup> Conversely, Tampubolon & Simbolon outline that in a Common Law system, judges have broader authority to create law through jurisprudence (judicial precedent), and court decisions serve as the primary source of law, in addition to evolving societal customs.<sup>5</sup> Nasution emphasized that constitutional law regulates state organizations in carrying out their duties and functions through state institutions, all of which are affirmed in the constitution.<sup>6</sup> However, the existing

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<sup>1</sup> Jimly Asshiddiqie, *Penguatan Sistem Pemerintahan Dan Peradilan* (Sinar Grafika, 2022).

<sup>2</sup> Mardona Siregar, "Kekuasaan Kehakiman: Hubungan Antara Mahkamah Agung, Mahkamah Konstitusi Dan Komisi Yudisial," *Jurnal Fakta Hukum* 2, no. 1 (2023): 24-35, <https://doi.org/https://doi.org/10.58819/jfh.v2i1.91>.

<sup>3</sup> Ariel Lois and Handar Subhandi Bakhtiar, "Perbandingan Hukum Perdata Di Negara-Negara Asean Kajian Terhadap Perbandingan Indonesia Dan Malaysia," *Jembatan Hukum: Kajian Ilmu Hukum, Sosial Dan Administrasi Negara* 2, no. 2 (2025): 389-99, <https://doi.org/https://doi.org/10.62383/jembatan.v2i2.1822>.

<sup>4</sup> Fitri Nabila et al., "Sejarah Peranan Hakim Dalam Sistem Hukum Civil Law," *Jurnal Media Akademik (JMA)* 3, no. 1 (2025): 1-15, <https://doi.org/https://doi.org/10.62281/v3i1.1514>.

<sup>5</sup> Manotar Tampubolon and Putu George Matthew Simbolon, "Perbandingan Sistem Hukum Inggris Dengan Jerman (Refleksi Terhadap Sumber Hukum Dan Penerapan Hukum Indonesia)," *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 5, no. 2 (2022): 141-62, <https://doi.org/https://doi.org/10.33474/yur.v5i2.11114>.

<sup>6</sup> Mirza Nasution, *Hukum Tata Negara Indonesia: Pengantar Dasar* (Prenada Media, 2024).

literature has not comprehensively analyzed how these differences in legal systems affect the authority and function of the Supreme Court, particularly in the context of judicial review and its role as a court of cassation.

The gap that emerges is the lack of comparative studies that specifically compare the roles, functions, and authorities of the Indonesian and Malaysian Supreme Courts within the framework of their different legal systems. Understanding these differences is crucial for evaluating the effectiveness of the implementation of the principle of Equality Before the Law and the accessibility of justice for citizens. Furthermore, there is controversy regarding the extent to which Supreme Courts in civil law countries can perform their judicial review function and whether this function overlaps with the authority of the Constitutional Court, as is the case in Indonesia.

Based on the above description, this study aims to: (1) analyze the differences in the authority and function of the Indonesian and Malaysian Supreme Courts based on their respective legal systems; (2) evaluate the implementation of the principle of Equality Before the Law in judicial practice in both countries; and (3) identifying the implications of differences in legal systems on the role of the Supreme Court in creating legal certainty and justice. The context of this study is a comparison of the highest judicial institutions in Indonesia and Malaysia, with the units of analysis being constitutional authority, the function of the cassation court, and the mechanism for testing statutory regulations.

## RESEARCH METHODOLOGY

This research uses a normative juridical method, namely this research is conducted by conducting a review of the laws and regulations in force in Indonesia and Malaysia to be applied to a legal problem.<sup>7</sup> With a descriptive analysis, research that provides problem data as clearly as possible about humans, conditions and symptoms.<sup>8</sup> The data collection technique in writing this journal uses the IRAC method, namely legal reasoning to formulate cases that focus on the main issues, application of law, applying and testing laws and

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<sup>7</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: PT. Raja Grafindo Persada, 2007).

<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada, 2010).

facts, and conclusions that can be drawn from these problems.<sup>9</sup> Data Analysis Techniques used are Data obtained from the results of the study will be analyzed using a qualitative normative analysis method, namely in the form of regular, logically coherent, non-overlapping and effective sentences, then a discussion is carried out. Based on the results of the discussion, conclusions are drawn inductively as answers to the problems studied.

## RESULT AND DISCUSSION

### The Form of Duties and Authorities of the Supreme Court of Indonesia and Malaysia

Comparative law is a term used in English as comparative law. It is also used in Dutch as *Rechtsvergelijking*, in French as *Droit Compare*, and in German as *Rechtsvergleichung*.<sup>10</sup> Several experts have defined comparative law. Ole Lando defines it as Comparative law is the national legal system and its comparison. Meanwhile, Gorge Winterton explains that comparative law is a method that compares legal systems and then produces data from the legal systems being compared. This data can be in the form of similarities or differences, as well as relationships between legal systems.<sup>11</sup>

As explained above, the essence of comparative law is to compare legal systems to identify similarities and differences between the countries being compared.<sup>12</sup> Before conducting a comparison, one must first understand the structure of the country in which the legal comparison will be conducted.<sup>13</sup>

There are generally two forms of government: a republic and a monarchy. Indonesia is a republic with a presidential system of government, a unitary state. This is affirmed in Article 1, paragraph 1 of the 1945 Constitution of the Republic of Indonesia, which states: "The State of Indonesia is a unitary state in the form of a republic."<sup>14</sup>

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<sup>9</sup> Ahmad Mudatsir, "Melacak Kerancuan Legal Reasoning Dalam Putusan MK 90/PUU-XXI/2023: Analisis Dengan Metode IRAC," *Peradaban Journal of Law and Society* 2, no. 2 (2023): 169-83, <https://doi.org/https://doi.org/10.59001/pjls.v2i2.132>.

<sup>10</sup> Budi Pramono and S H Agung Pramono, *Perbandingan Sistem Hukum Dalam Konteks Global Civil Law, Common Law, Socialist Law, Islamic Law, Customary Law, Indonesian Law* (Scopindo Media Pustaka, 2023).

<sup>11</sup> Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*.

<sup>12</sup> Djoni S Gozali, "Pengantar Perbandingan Sistem Hukum," 2020.

<sup>13</sup> Ratno Lukito, "'Compare But Not to Compare': Kajian Perbandingan Hukum Di Indonesia," *Undang: Jurnal Hukum* 5, no. 2 (2022): 257-91, <https://doi.org/https://doi.org/10.22437/ujh.5.2.257-291>.

<sup>14</sup> Republic of Indonesia, "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Pasal 1 Ayat 1" (1945).

Indonesia consists of 38 provinces, each headed by a governor and deputy governor as representatives of the central government. Each province consists of regencies and cities, each headed by a regent/deputy regent, and/or mayor/deputy mayor. Currently, there are 416 regencies and 98 cities throughout Indonesia. Malaysia is a constitutional monarchy with a federal system. It comprises eleven states and two federal territories.<sup>15</sup> The eleven states are: Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Panang, Perak, Perlis, Selangor, and Terengganu. The two federal territories are Kuala Lumpur and Putrajaya. Sabah, Sarawak, and the Federal Territory of Labuan are located in the north-western part of the island of Borneo (East Malaysia).

The legal system applied in Indonesia is a legacy of Dutch law. This is because during the Dutch colonial period, they brought their own legal system, thus applying the principle of concordance. The principle of concordance is contained in Article 131 of the Indische Staatsregeling (Constitution governing the state and government of the Dutch East Indies) for Europeans and has been in effect since the beginning of Dutch rule in Indonesia.<sup>16</sup>

On October 1, 1838, a new law was enacted in the Netherlands. During that period, the king appointed a committee chaired by Mr. Scholten van Oud Haarlem to adapt the Dutch codification so that it could be applied to the Dutch East Indies at that time. There were seven (7) things planned by Mr. Scholten van Oud Haarlem to adjust the Dutch codification, namely<sup>17</sup>:

1. Reglement op de Rechterlijke Organisatie (Regulations on the Organization of the Courts)
2. Algemene Bepalingen voor de Wetgeving (General Provisions Concerning Legislation)
3. Burgerlijke Wetboek (Civil Code)
4. Wetboek van Koophandel (Commercial Code)
5. Faillissement (Bankruptcy)
6. Staat van kennelijk onvermogen (Regulations on the Inability of Merchant Books)
7. Surseance van Betaling (Suspension of Debt Payments)

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<sup>15</sup> Global Edge Team, "Malaysia: Introduction," globalEdge, 2023, <https://globaledge.msu.edu/countries/malaysia>.

<sup>16</sup> Mahlil Adriaman, Pengantar Berlakunya BW KUHPDT Di Indonesia (CV. Gita Lentera, 2024).

<sup>17</sup> Entol Zaenal Muttaqin and Ahmad Zaini, "Kebijakan Hukum Vrijwillige Orderwepping Dan Toepasselijk Verklaring Sebagai Unifikasi Pemerintah Hindia Belanda," Jurnal Hukum Ius Quia Iustum 28, no. 3 (2021): 657-76, <https://doi.org/https://doi.org/10.20885/iustum.vol28.iss3.art10>.

After the committee chaired by Mr. Scholten van Oud Haarlem was disbanded, in the Dutch East Indies, Mr. H. L. Wichers was instructed to assist the Governor-General in enacting the law codes, and Mr. H.L. Wichers planned several things, namely<sup>18</sup>:

- 1) Regulation of Criminal Procedure for Europeans (Reglement op de Strafvordering) for the Raad van Justitie in Java and the Hooggerechtshof (first instance court for criminal cases) in the Dutch East Indies.
- 2) Regulation of Civil Procedure for Europeans.
- 3) Regulation of the updated Procedural Law (Reglement op de Uitoefening van de Politie, de Burgerlijke Rechtspleging en de Strafvordering) to be applied in the Indlands Reglement (Indonesian courts).
- 4) Provisions to ensure that the new legislation was regularly enforced in areas outside Java and Madura.
- 5) Provisions concerning the entry into force and transition to the new legislation.

On December 3, 1847, the Governor-General of the Dutch East Indies issued Staatsblad No. 57 came into effect on May 1, 1848.<sup>19</sup> Broadly speaking, the legal system applicable to each group is as follows:

1. Law applicable to Europeans
2. Law applicable to Foreign Orientals
3. Law applicable to indigenous people

Only after independence did the Indonesian legal system undergo changes, whereby the legal system was no longer based on class. However, Indonesia continued to implement the legal system inherited from the Dutch. One of the main reasons for Indonesia to continue using the law inherited from the Dutch East Indies government was to avoid a legal vacuum.<sup>20</sup>

If there is a legal vacuum, the potential for horizontal conflict between various groups and political forces increases.<sup>21</sup> This is further exacerbated if

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<sup>18</sup> Marhaeni Ria Siombo and Henny Wiludjeng, *Hukum Adat Dalam Perkembangannya* (Penerbit Universitas katolik Indonesia Atma Jaya, 2020).

<sup>19</sup> Zuhri Arif, "Perkembangan Hukum Perdata Di Indonesia Tinjauan Historis Dan Kontekstual," *Islamic Bussiness Law Review* 6, no. 1 (2024): 1-13, <https://doi.org/http://dx.doi.org/10.30821/iblr.v6i1.21354>.

<sup>20</sup> Marleen Natania and Jordanno Lesmana, "Analisis Sistem Pewarisan Di Indonesia Dalam Prespektif Hukum Perdata," *Jurnal Kewarganegaraan* 8, no. 1 (2024): 990-99, <https://doi.org/https://doi.org/10.31316/jk.v8i1.6451>.

<sup>21</sup> Prayoga Teguh Karisma and Yunita Putri Anggellina, "Konflik Antara Hak Asasi Manusia Dan Kepentingan Publik Dalam Penegakan Hukum Pidana: Studi Kasus Eksekusi: *Journal Of Law*, Vol. 7 No. 2 Desember 2025

these groups already have alternative legal frameworks. Therefore, Article II of the Transitional Provisions of the 1945 Constitution states, "All existing state bodies and regulations remain in force until new ones are enacted in accordance with this Constitution."

The legal system applied in Malaysia is Common Law, and this system remains in place to this day. This British legal system was introduced in 1878. Criminal Law, Civil Law, Contract Law, including Criminal and Civil Procedure Law, were imported by the British from India, in this case codified Common Law.

The influence of British colonial rule extends not only to the legal system but also to the legal principles practiced in Malaysia, which generally follow British administrative law developed in Malaysian courts. Therefore, every decision made by administrators and courts must fall within the scope of their assigned jurisdiction. One exception to the rule of law is the constitutional immunity granted to rulers, preventing them from being prosecuted in either criminal or civil courts. Although this immunity was eventually abolished, requiring that proceedings against kings or rulers be conducted through a special court and with the approval of the Attorney General.<sup>22</sup>

The Indonesian Supreme Court's duties and authorities include the highest level of oversight of judicial bodies, including general courts, religious courts, military courts, and state administrative courts. However, the Supreme Court is not the sole institution exercising oversight, as external oversight is provided by the Judicial Commission. In addition to the matters mentioned above, the duties of the Supreme Court, as stipulated in Law No. 3 of 2009 concerning the Supreme Court, are:

1. Examine and decide on appeals for cassation.
2. Examine and decide on appeals for judicial review of decisions that have become final and binding.
3. Examine and decide on disputes regarding court authority.
4. Test laws and regulations under the law against the law.
5. Request information on matters related to judicial technicalities from all lower courts.
6. Provide guidance, reprimands, or warnings to courts in all lower courts.

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Kontemporer," AL-MANHAIJ: Jurnal Hukum Dan Pranata Sosial Islam 5, no. 2 SE-Articles (December 14, 2023): 2297-2306, <https://doi.org/10.37680/almanhaj.v5i2.3857>.

<sup>22</sup> M. S. Y. Lubis and F. Riza, *Buku Ajar Hukum Perdata Internasional* (Medan: Umsu Press, 2021).

7. Provide information, considerations, and advice on legal matters to state institutions and government agencies upon request.
8. Provide legal considerations on requests for clemency and rehabilitation.
9. Provide supreme oversight of the administration of justice in all lower courts in exercising judicial power.
10. Conduct internal oversight of the conduct of judges.
11. Supervise the implementation of administrative and financial duties.

The form of the duties and authority of the Supreme Court of Malaysia in carrying out judicial administration. in accordance with the powers granted in legislation, which in this case can be seen in the Courts of Judicature Act 1964 or Act 91, and to protect the independence of the judiciary in interpreting legislation passed by the legislature.

## CONCLUSION

The Indonesian Supreme Court's duties and authority include the highest level of oversight of judicial bodies, including general courts, religious courts, military courts, and state administrative courts. However, the Supreme Court is not the sole oversight body, as external oversight is provided by the Judicial Commission. Meanwhile, the Malaysian Supreme Court comprises several courts, including the Federal Court, the Appellate Court, and the High Court, as outlined in the Courts of Judicature Act 1964 (Act 91).

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