

# Inquisitorial indonesia



The way in which a trial is conducted can have an enormous effect on the outcome of a case. The two major systems of trial operating around the world are the Adversarial system and the Inquisitorial system. The fundamental differences between these two systems can be found in the role of the judge, role of the legal representatives, rules of evidence and the procedure of trial. These differences affect the way in which the facts of the case are decided and hence alter the outcome of the case.

The Adversarial system operates in common law countries such as Britain and Australia and it is based on the contest between two parties with an impartial adjudicator. The theory is that as both parties have equal opportunity to argue their case, they will present relevant evidence and the truth will be revealed. The Inquisitorial system however, which is used in civil law countries such as Germany and Indonesia, requires a judge or group of judges to actively investigate the case before them while the advocates merely offer assistance. The theory in this system is that the judge will use his/her skill and knowledge of the law to determine the truth. Indonesia's inquisitorial system and Australia's adversarial system can be contrasted to reveal the many differences between these systems of trial and why they exist.

#### Role of the Judge:

The role of the judge is what differs most between Indonesia's and Australia's systems. An Indonesian trial usually consists of 3 judges, one Chair judge and two other less superior judges. These three judges have an active role in investigating the case before them both prior to and during the trial in order

to discover the truth. Their role in the trial procedure is significant as they collect and assess evidence, examine witnesses and produce a final judgment called a Putusan. The judges in an Indonesian trial have the power to both call and decline to hear witnesses and can ask questions of anyone. There is no jury in an Indonesian trial, therefore the responsibility of deciding whether the defendant is guilty or not lies solely on the judges. As the judge in an Indonesian trial has such an important role, the outcome of the case can be said to be based largely on the skill of the judge in determining the truth.

The role of the judge in Australia however, is far less significant. There is usually one single judge who acts as an impartial adjudicator and in some cases a jury of between 6 and 12 members of the public. The judge in an Australian trial enforces rules of evidence and procedure, decides questions of law, answers questions of the jury and in cases where there is no jury; produces a judgment. They do not actively participate in the trial as they do in Indonesia and the outcome of the case is based not on their skill to determine the truth, but on their ability to interpret and apply the law to the case at hand.

#### Role of the Legal Representatives/Parties

The role of the Legal representatives in Indonesia and Australia are also very different. The legal representative in any system of trial aims to represent the interests of their client however the extent to which the legal representative participates varies between the two systems. In Indonesia's inquisitorial system the legal representatives merely assist the judge and

their role is fairly minimal. They can argue points of law on behalf of their client focusing mainly on litigation and providing general legal advice. In some instances they can ask questions of the judge and the judge can ask questions of them but they have virtually no role in the investigation of the case. The adversarial system on the other hand, places much more responsibility into the hands of the legal representative in regards to preparing and presenting their case, determining the issues to be contested, collecting evidence and examining witnesses. The outcome of the case and Australia can therefore rely largely on the skill of the lawyer to present a strong case.

#### Rules of Evidence/Witnesses

Rules of evidence are the rules regarding the type of evidence that is admissible in the court and the rigidity of these rules differs between the two systems. In Indonesia there are no set rules of evidence, it is merely assumed that judges are competent to evaluate hearsay evidence and assess its reliability. Relevance is the sole criterion for determining the admissibility of evidence and judges tend to allow most material evidence and decide on its merit at a later point. The accused is required to give evidence and therefore does not have the right to remain silent. Alternatively, in Australia there are strict rules of evidence including relevance, privilege, hearsay, similar fact and corroboration. The accused does not have to give evidence and are entitled to the right to remain silent. The degree of rigidity of these rules displays what each system feels is most important, with Indonesia's inquisitorial system focusing on attaining the most evidence from

the most sources and Australia's adversarial system focusing on attaining the best evidence from the most reliable sources.

### Particulars of Trial

There are a number of other aspects of the trial procedure which vary according to the system of trial. In Indonesia the pre-trial stage is the most important as it is at this point that the judge collects evidence and examines witnesses. There is a strong reliance on material evidence and the number of cases that proceed to a formal trial is greatly reduced as the judge will often determine questions of guilt or innocence before the trial proceeds. If the trial does go ahead it may be stopped at any time for the judge to further investigate and issue or piece of evidence. This is different from Australia's adversarial system where there is a stronger reliance on oral evidence and the trial is heard as a single continuous event.

### Conclusion

The Adversarial and Inquisitorial systems of trial are vastly different and these differences arise from their contrasting theories. The adversarial system being based on the theory that both parties will present relevant evidence to reveal the truth, and the inquisitorial system on the theory that the judge will use his/her skill and knowledge to determine the truth. The role of the judge, role of the legal representatives, rules of evidence and the procedure of trial reflect these theories and by examining Indonesia's inquisitorial system and Australia's Adversarial system their fundamental differences in these areas are evident.