

Research Article

Balancing Formalism and Justice: An Analysis of Indonesian Mahkamah Agung's *Obscuur Libel* Case Law in Light of ECtHR Standards

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ABSTRACT: Legal formalism plays a crucial role in ensuring consistency and predictability in judicial decision-making. However, excessive formalism can obstruct access to justice by prioritising procedural technicalities over substantive justice. Article 143(2) of the Indonesian Criminal Procedure Code provides that an indictment must be clear and complete in describing the alleged criminal act. Courts have dismissed cases on the grounds of *obscur libel* (obscure or vague claims) when this requirement is not met, potentially rendering the indictment null and void. The implementation of Article 143(2) of the Indonesian Criminal Procedure Code, a fundamental principle enshrined in international human rights law, raises concerns regarding the realization of access to justice, even though its strict application—particularly when courts dismiss cases at the preliminary stage due to minor technicalities—aims to ensure legal certainty and fairness in criminal proceedings. This paper examines the Indonesian Supreme Court's approach to *Obscuur Libel* cases where lawsuits may be dismissed due to failure to meet formal requirements, often without assessing the substantive merits of the case. By analysing these decisions in light of the European Court of Human Rights (ECtHR) standards, this study explores the tension between procedural rigour and substantive justice. The paper assesses whether Indonesian case law aligns with ECtHR principles on fair trial rights and access to justice and identifies instances where excessive formalism may hinder judicial fairness. It further proposes guidelines to balance legal certainty with substantive justice, ensuring procedural fairness without unduly restricting legal remedies. By offering suggestions for enhancing procedural justice in Indonesia's legal system, this study adds to the larger conversation on judicial formalism and access to justice.

KEYWORDS: Legal Formalism; Excessive Formalism; Access to Justice; *Obscuur Libel*; Fair Trial.

I. INTRODUCTION

Clear guidelines and rules are crucial as they lay the foundation for a fair and transparent society. They provide a stable environment in which individuals and institutions can exercise their rights and challenge decisions. This is the main aim of access to justice, a fundamental principle of the rule of law ensuring an impartial and non discriminatory administration of justice that is guaranteed by Article 6 European Convention on Human Rights (ECHR).

Access to justice ensures that all members of society have the ability to seek legal remedies and enforce their rights. In practice, the realisation of this ideal is influenced by the degree of formalism within legal systems. Formalism refers to the strict adherence

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to procedural rules and legal formalities in decision making processes. While formalism is essential for maintaining consistency in legal outcomes, excessive formalism can inadvertently create barriers to justice.

Excessive formalism refers to situations of ostentatious neglect of substance of a case in favour of rigid adherence to legal formalities that may manifest in overly complex procedures, stringent evidentiary requirements or rigid interpretations of the law that hinder individuals from effectively accessing legal remedies. When legal proceedings prioritise formalities over substantive justice, the core issues and merits of a case can be overshadowed or even ignored, severely impeding the application of access to justice. Cases involving vulnerable parties can be mishandled or dismissed on technical grounds rather than being adjudicated on their merits. In Indonesia, the concept of excessive formalism in legal proceedings is closely related in dealing with cases of *Obscuur Libel* where a lawsuit can be dismissed or declared void due to a failure to meet one or more of its formal requirements.

This paper will analyse the alignment of Indonesian case law with standards set by the European Court of Human Rights (ECtHR), focusing on procedural formalism. Specifically, this study seeks to examine how Indonesian legal practices compare with ECtHR standards regarding the balance between procedural rigour and substantive justice. By evaluating these comparisons, the paper aims to shed light on areas where Indonesian legal procedures may be overly formal and propose guidelines for navigating this delicate balance, thereby contributing to the enhancement of procedural fairness and safeguarding fair trial rights and access to justice.

II. METHOD RESEARCH

This paper primarily employs doctrinal legal research with a comparative analysis method. The study begins by analysing Indonesian legal provisions and case law on *Obscuur Libel*, drawing from statutory laws such as Article 197(2) and Article 143(3) of Law Number 8 Year 1981 on Criminal Code Procedure (KUHAP) as well as Article 362 of Law Number 1 Year 2023 on Criminal Code (KUHP), focusing on the formalistic criteria applied by the courts. Additionally, judicial precedents are examined to understand the

practical application of procedural formalism in Indonesia. The paper then evaluates the case law of the ECtHR in accordance with Article 6 ECHR, specifically with reference to the ban on overly formal procedural law to assess the Court's approach in balancing procedural requirements with substantive justice. Through a comparative legal analysis, the paper identifies similarities and differences between Indonesian case law and ECtHR standards, assessing the extent to which Indonesia aligns with international legal principles. By interpreting relevant judicial decisions and legal frameworks, the paper highlights areas where excessive formalism may obstruct fair trial rights and proposes recommendations for improving procedural fairness in Indonesia.

III. THE CONCEPT OF *OBSCUUR LIBEL* IN INDONESIAN LAW

In the legal realm, importance is attached to clarity as without it, certain rights and procedural aspects may be violated, resulting in an unfair administration of justice. On that account, the legal process must have a fairly high degree of precision and conciseness.

Taking an indictment as an example, the issuance of an indictment marks the beginning of a legal claim, formally notifying the accused of the charges brought against them. This document must provide all parties involved with sufficient information by clearly informing the key details of the allegations. A well-defined indictment allows the defendant to fully comprehend the nature of the allegations, allowing them to prepare an adequate defence and ensuring their right to a fair trial. Conversely, where the details of accusation are overly vague and ambiguous, an individual accused of a serious crime may find themselves unable to mount an effective defence. Subsequently, as indictment letters serve as the basis for the judge to conduct an examination, clear and precise information must be provided to reach a fair legal outcome, especially in light that the judge will decide only within the limits of the indictment.¹ This scenario exemplifies the concept of *obscuur libel* in Indonesian law, where an indictment or lawsuit, and even judgements² can be nullified or deemed void because of unclear or vague charges or content formulation.

¹ Andi Hamzah, *Hukum Acara Pidana Indonesia* (Sinar Grafika 2008 Ed.2).

² Article 197(2) of Law Number 8 Year 1981 on Criminal Code Procedure ("KUHP").

Article 143(2) of the Indonesian Criminal Procedure Code stipulates that indictments must fulfil two requirements: formal and material requirements. The formal requirement is to clearly include the suspect's identity, which includes their full name, place of birth, age or date of birth, gender, nationality, residence, religion and occupation. Additionally, the public prosecutor must date and sign the indictment. In contrast, the material requirement calls for a detailed, clear and complete description of the alleged criminal act. Moreover, the indictment must meticulously and comprehensively specify the time (*Tempus Delicti*) and place (*Locus Delicti*) where the crime occurred. Failure to meet these requirements results in the indictment being null and void on the grounds of *obscuur libel*.³

In Supreme Court Decision (MA) No. 361.K/Pid.Sus/2008 involving a corruption charge. The initial trial, Maros District Court, found the accused guilty of corruption with the indictment being clear and detailed, meeting both formal and material requirements under Article 143(2) KUHAP. The accused appealed to the Makassar High Court which overturned the District Court's Decision where the indictment was declared invalid on the grounds of *obscuur libel*. However, the public prosecutor filed for cassation to the Supreme Court who then reviewed the case and determined that the Makassar High Court had misinterpreted the law and found that the indictment met all the necessary requirements. This decision emphasises the importance of having a clear and detailed indictment to ensure a fair trial and proper legal proceedings.

In another instance, the judge, upon encountering an indictment formulation that deviates from the results of investigations, may declare the indictment null or void because the content is inconsistent and does not clearly affirm the reality of the criminal act found during the investigation with what is described in the indictment which can be seen as a form of fraud or deception.⁴ Further, the nullification of an indictment is not inherently caused by lack of fulfilment of the formal requirement of an indictment from the public prosecutor. However, such an indictment can be annulled or declared null and void as seen in the decision of MA Number 41. Moreover, following the decision of the MA Number 1302, it is important to note that the public prosecutor still retains

³ Article 143(3) KUHAP.

⁴ Article 362 of Law Number 1 Year 2023 on Criminal Code ("KUHP").

the right to prosecute the criminal act because only the indictment itself is annulled, not the right to prosecute. Though, this can lead to delay in legal resolution where excessive procedural requirements can contribute to backlog of cases as well as increasing costs for all parties.

IV. ACCESS TO JUSTICE AND THE BAN ON EXCESSIVE FORMALISM IN ECTHR CASE LAW

In court proceedings, judicial system must facilitate individuals to be able to exercise their rights. Courts are therefore required to apply formal rules and uphold procedural values and the strict adherence to these rules is referred to as formalism. Where the courts start to excessively apply the rules, rights of individuals including the right to have a court decision of individuals may be hindered.⁵

The principle of access to justice, enshrined in Article 6 ECHR, ensures that individuals have the right to fair treatment by including the right to fair trial, the right to be heard and the right to obtain remedy. Obstacles such as excessive formalism that impede access to justice violate this principle. Consequently, there is a need for procedures that are fair and do not unduly hinder individuals from pursuing legitimate claims.

The ECtHR has set a prohibition on excessive formalism to guarantee access to justice, as seen in ECtHR cases.⁶ Excessive formalism includes circumstances in which cases are declared inadmissible because of an insignificant formal mistake resulting in the court disregarding the whole substance of the case.⁷ Thus, the Court set out that the rights enshrined in Article 6 ECHR can only be guaranteed if they inherently include the right of access to court or justice.⁸ This right does not mean entitlement to specific procedures like cassation or appeal, however, if such procedures exist, Article 6 fully applies. Further, while Article 6 allows for restrictions on court access, these must not

⁵ Fernhout F, 'Formal Rules in Civil Procedure and Access to Justice: Striking a Balance between Excessive Formalism and 'Anything Goes'', *Civil Justice between Efficiency and Quality: From Ius Commune to the CEPEJ* (Intersentia 2008).

⁶ Zvolský and Zvolská v. the Czech Republic (2002) ECHR No. 46129/99; Pérez de Rada Cavanilles v. Spain (1998) ECHR No. 28090/95.

⁷ Běleš and Others v. the Czech Republic (2002) ECHR No. 47273/99.

⁸ Golder v. United Kingdom (1975) ECHR No. 4451/70.

impair the essence of the right to justice, must pursue reasonable objectives, and be proportionate.

Excessive formalism is not a definite concept as it involves weighing the interest of the formal rule objective and the consequence of applying them, rule of thumbs derived from case laws are needed to determine whether there is excessive formalism.⁹ Firstly, in cases where inadmissibility is due to faults or mistakes of state organs, litigant parties should not bear the consequence of having their claim inadmissible.¹⁰ In the case of *Savvides v. Cyprus*, the Court ruled that there is an unfair hindrance to access to justice on the account that the Family Court of Appeal had been excessively formalistic in their refusal to examine the appeal on its merits due to a minor irregularity in the title of the notice of appeal which the Court found disproportionate as the irregularity did not impact the identification of the appeal.¹¹ Another rule of thumb is where a domestic law allows for correction of mistakes, it should be implemented in a manner that promotes fairness to prevent excessive formalism.¹² An example is the case of *PECA v. Greece (No.2)* where the Court found that the applicant's access to the Court of Cassation was disproportionately limited because his appeal was dismissed on procedural grounds and his request for legal assistance was denied.¹³ Further, no procedural rules should be used to deny a party the protections guaranteed by Article 6 ECHR. In *L'Erablière A.S.B.L. v. Belgium*, the Conseil d'État initially declared the applicant association's request inadmissible due to a procedural fault in the statement of facts in their application for review of planning permission. However, the ECHR intervened, emphasising that the association had provided adequate information in the annexed decision, demonstrating how excessive formalism may contravene Article 6 ECHR protections. This also exemplifies an instance of an excessively formalistic interpretation of procedural requirements.

⁹ Fernhout F, 'Formal Rules in Civil Procedure and Access to Justice: Striking a Balance between Excessive Formalism and 'Anything Goes'', *Civil Justice between Efficiency and Quality: From Ius Commune to the CEPEJ* (Intersentia 2008).

¹⁰ *Sotiris and Nikos Koutras Atte v. Greece* (2000) ECHR No. 39442/98.

¹¹ *Savvides v. Cyprus* (2021) ECHR No. 14195/15.

¹² *Kadlec v. Czech Republic* (2004) ECHR No. 49478/99.

¹³ *PECA v. Greece (No.2)* (2010) ECHR No. 33067/08.

V. COMPARATIVE ANALYSIS

Both Indonesia and the ECtHR address the issue of vagueness in legal claims. Indonesian courts use the concept of *obscuur libel* to dismiss cases with insufficient specificity and clarity. Similarly, the ECtHR has dealt with cases where appeals were dismissed because of their vague nature. In both jurisdictions, dismissing a case due to lack of clarity affects the applicant's right to access the court. However, as national authorities are given a certain margin of appreciation in imposing restrictions on access to court, there are instances where insufficient response to excessive formalism is given, failing to adequately safeguard the right of access to justice.¹⁴

The ECtHR has taken a proactive stance in condemning excessive formalism through actively working on balancing formal requirements with the substantive rights of access to justice. In the cases *Liakopoulou and Alvanos and Others* which involves the principle concerning the “vague character” of grounds of appeal, the ECtHR found that the Greek Court of Cassation's formalistic approach restricts applicant's right of access to court and Greek law was adjusted where the assessment of the overall admissibility of cassation appeals are more fair and implemented in a lenient manner. On the other hand, Indonesian case law reflects a strict application of the *obscuur libel* doctrine where cases are dismissed without substantive examination. Instances of excessive formalism in Indonesian decisions can be seen in several cases. In a decision of MA Number 2225, the Court annulled the decision concerned on the grounds of *obscuur libel* on several reasons including vague allegations, insufficient details in the claims and incomplete description of legal obligations.¹⁵

However, recent Indonesian case laws suggest a shift away from excessive formalism. In a decision of MA Number 142, the defendants raised multiple formal objections against the plaintiff involving lack of legal standing, procedural defects and errors in party identification. The Court ultimately rejected many of these formal objections and decided that the plaintiff's claim met the necessary procedural requirements and should be heard

¹⁴ Garcia Manibardo v. Spain (2000) ECHR No. 38695/97.

¹⁵ PT. Pertamina v. Ir. Baihaki Hakim Number 2225 K/Pdt/2006, Supreme Court, 16 May 2007.

substantively.¹⁶ Another instance can be seen in the decision of MA Number 2452 regarding a civil dispute centering around ownership and historical transactions of land assets that are claimed to be ancestral properties. Here, the defendants raised objections that the plaintiff's claims were not clearly articulated, making it difficult to understand the exact nature of the dispute or the relief sought. In contrast, the plaintiff claimed that lower court decisions were overly focused on procedural aspects rather than addressing substantive issues such as rightful ownership and historical agreements regarding the lands. The Supreme Court ruled that the lower courts had erred by focusing too much on procedural formalities and not adequately addressing the substance of the plaintiff's claims or the customary context of the dispute. The court also addressed the issue of *obscuur libel*, but determined that despite the lack of clarity in the allegations, the substantive merits of the case needed to be considered in light of historical and familial ownership practices.

From the cases mentioned, Indonesian case law exhibits a stringent application of formalistic criteria, particularly through the doctrine of *obscuur libel*, which often leads to the dismissal of cases without substantive examination. Even where recent case laws show a movement away from excessive formalism, lower courts still tend to implement stricter adherence to formal requirements which generally leads to dismissal of lawsuits. This approach differs from the ECtHR's position, which seeks to ensure access to justice by condemning excessive formalism.

VI. DRAWING THE LINE: ACCEPTABLE V EXCESSIVE FORMALISM

In assessing the boundaries between acceptable and excessive formalism, it is essential to distinguish between procedural requirements that uphold judicial efficiency and those that obstruct substantive justice. The ECtHR provides guidance to assess the presence of excessive formalism by balancing of interests as can be seen in the case of *ITA v. Succi and Others* whereby the Italian Court of Cassation's initial rejection of an appeal based on overly strict drafting criteria was deemed excessively formalistic.¹⁷

¹⁶ H. Jamalul v. Kamar, Despilna and Others Number 2452 K/Pdt/2009, Supreme Court, 28 October 2010.

¹⁷ *Succi and Others v. Italy* (2022) ECHR No. 55064/11.

In response, the court revised its interpretation of procedural rules to ensure that such formalism did not undermine the substantive rights at issue. All the aforementioned ECtHR cases demonstrate the fine line between necessary procedural rigour and undue obstruction of justice, emphasising the importance of balancing formal requirements with equitable dispute resolution. In the final analysis, it is crucial that rights protected under Article 6 ECHR must not be restricted by national procedural laws, especially in cases where there are minor formal mistakes that do not significantly impact the substance of the case.

VII. CONCLUSION

In conclusion, excessive formalism plays a crucial role in ensuring compliance of Article 6 ECHR by preventing strict application of formal procedural rules from denying access to justice. Although the concept of excessive formalism lacks a precise definition, the rule of thumbs contribute in guiding courts to ensure that there is no instance of an overly rigid interpretation of procedural requirements where the prevailing notion is that Article 6 ECHR must take precedence to ensure that rights are safeguarded and their exercise is not disproportionately restricted by domestic procedural laws. The ECtHR further emphasises that, while formalism is necessary, it should not be to the point that it jeopardises the right to a fair hearing and access to a court.

Indonesian case law demonstrates a stricter adherence to formalistic criteria, with minimal adjustments to ensure that such criteria do not obstruct access to justice excessively. This stricter approach indicates a need for improvement to align with international standards as advocated by the ECtHR which consistently pushes for a balance between procedural requirements and substantive rights as access to justice depends not only on the presence of these guidelines, but also on how effectively individuals can navigate and utilise them. Therefore, while procedural rigour is essential, it must be balanced against the need to provide fair and substantive justice, a principle that Indonesian courts must embrace to meet international standards.

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