



## **Reconstruction of *Niet Ontvankelijke Verklaard* Verdict In the Law of Civil Procedure as a Manifestation of Fast, Simple, Low Cost and Complete Principle of Justice**

**Samsiati**

echiqu27@yahoo.co.id

Yustisial Judge of Indonesian Supreme Court

### **Abstract**

Dispute resolution through court is more favorable because the binding decisions of judges can resolve cases. This study discusses *ratio legis* of *niet ontvankelijke verklaard* in the law of civil procedure and in the formulation of the delimitation of the judge in giving *niet ontvankelijke verklaard* in the fast, simple, low cost, and complete settlement of civil disputes. This study used legal research methods with legislation and conceptual approaches. The result of the study showed that The limitation of the judge in examining the lawsuit that does not meet the formal requirements and decides the lawsuit is inadmissible (*niet onvankelijk verklaard*), in the absence of fast, simple, low-cost, and complete civil disputes, as stated in the Draft Bill of the Law of Civil Procedure, which is essentially related to the types of exceptions that can become the basis for the judge in determining the lawsuit to be inadmissible (*niet onvankelijk verklaard*). Indonesia's current civil procedure laws, HIR and RBg, do not specifically outline the standards that a judge must employ to declare that a matter is inappropriate for filing (*niet onvankelijk verklaard*). Before making a ruling that is not admissible (*niet onvankelijk verklaard*) in the settlement, the judge must be aware of his or her restrictions in this situation. As stated in the Draft Bill of the Law of Civil Procedure, the judge is limited in examining lawsuits that do not meet the formal requirements and deciding that the lawsuit is inadmissible (*niet onvankelijk verklaard*), in the absence of quick, easy, inexpensive, and comprehensive civil disputes. This limitation is essentially related to the types of exceptions that can become the basis for the judge in determining that the lawsuit is inadmissible (*niet onvankelijk verklaard*).

**Keywords:** *Niet Ontvankelijke*; Civil Dispute; Simple Judicial Principle.

### **Introduction**

The dispute resolution process through a court that is considered slow, expensive, wasting energy, time, and money and does not reflect the principle of fast, simple, low cost, and complete justice as mandated in Article 2 Paragraph (4) of Law No. 48 of 2009 on Judicial Power (Law No. 48/2009) which regulates

that, “Justice is held simply, quickly and in low cost,” in the process of resolving the dispute, has established *alternative dispute resolution* emphasizing on the development of a cooperative and consensual method of dispute resolution (*mutual acceptable solution*) with “informal procedure” outside the court.<sup>1</sup>

One of the main considerations in dispute resolution through the court is the decision of the judge as the *amiable compositour*<sup>2</sup> which is binding and *enforceable* if it is not performed voluntarily by the defeated party so that the seekers of justice think and expect that the decision of the judge can resolve the case between them completely. However, the high interest in dispute resolution through court has factually been one of the causes of *case backlog* at the subordinate court, the court of appeal, and at the Supreme Court.<sup>3</sup> Given that, in contrast to the form of alternative dispute resolution that prioritizes settlement in *win-win solution*,<sup>4</sup> dispute resolution through the judiciary is considered to produce decisions that are *win-lose*,<sup>5</sup> so that there will always be parties who object and file legal remedies against the judge’s decision which ends in the case backlog at the appeal, cassation, and judicial review.

In addition, it is different from the form of alternative dispute resolution through arbitration which expressly has limited legal remedies for arbitral awards as confirmed in Article 60 of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (Law No. 30/1999) which in detail regulates, “*arbitral award is final and has permanent legal force and is binding on the parties*”, the decision of the first level institution or subordinate court can always be brought to the appeal, unless otherwise provided by law.<sup>6</sup> Likewise, the judgment at the court

---

<sup>1</sup> Mahkamah Agung Republik Indonesia, ‘Laporan Penelitian Alternative Despute Resolution (Penyelesaian Sengketa Alternatif) Dan Court Connected Dispute Resolution (Penyelesaian Sengketa Utang Terkait Dengan Pengadilan)’ (2000).[5].

<sup>2</sup> Amir Dumisc, ‘Advantages of Amicable International Arbitration: Characteristics and Scope of Arbitrator Powers’ (2009).[11].

<sup>3</sup> Mahkamah Agung Republik Indonesia, *Cetak Biru Pembaruan Peradilan 2010-2035* (Mahkamah Agung RI 2010).[8].

<sup>4</sup> *ibid.*[11].

<sup>5</sup> Made Oka Cahyadi Wiguna, ‘Peluang Penyelesaian Sengketa Perdata Tentang Tanah Melalui Alternative Dispute Resolution Dengan Asas-Asas Hukum Perjanjian Di Dalamnya’ (2018) 48 Jurnal Hukum & Pembangunan 506.

<sup>6</sup> Periksa Pasal 26 UU No. 48/2009.

of appeal can also always be filed as a cassation, unless otherwise provided by law.<sup>7</sup> Furthermore, decisions at the cassation level can also always be submitted for review in the event that certain circumstances stipulated in the law are met.<sup>8,9</sup> Likewise, the judgment at the appeal level can also always be filed as a cassation, unless otherwise provided by law.<sup>10</sup> Furthermore, decisions at the cassation level can also always be submitted for review in the event that certain circumstances stipulated in the law are met.<sup>11</sup> In addition, the filing of a new lawsuit at the same time as the legal remedy against the decision in the same case, can also lead to the emergence of a *niet ontvankelijke verklaard* for the second time against a new lawsuit due to an exception *litis pendentis*.<sup>12</sup> This situation causes the case settlement process to be prolonged and not in accordance with the principles of justice that is fast, simple, low cost, and complete.

Likewise, in the case of an attempt to file a lawsuit that has only been made after an appeal, cassation and/or judicial review, a *deadlock* also causes the case to be more protracted and it does not reflect the principle of justice that is fast, simple, low cost and complete, especially when it comes to lawsuits. However, in its development, there is an expansion of meaning of the principle of active judges in the examination of civil cases which leads to negative decisions without the basis on the submission of objections or exceptions from the defendant. Judges actively examine the formal requirements of the lawsuit and take into account the formality requirements that are not met in the lawsuit *ex officio* manner, even in the absence of exceptions/objections submitted by the defendant.<sup>13</sup> This raises a question of whether the active actions of the Panel of Judges provide legal consideration in *ex officio* manner beyond what is requested by the parties are included in the category

---

<sup>7</sup> *ibid.*

<sup>8</sup> Putusan Nomor 34/PUU-XI/2013, dan Putusan Nomor 108/PUU-XIV/2016.

<sup>9</sup> Periksa Pasal 26 UU No. 48/2009.

<sup>10</sup> Periksa Pasal 23 UU No. 48/2009.

<sup>11</sup> Putusan Nomor 34/PUU-XI/2013, dan Putusan Nomor 108/PUU-XIV/2016.

<sup>12</sup> Lilik Mulyadi, *Hukum Acara Pidana Indonesia: Suatu Tinjauan Khusus Terhadap Surat Dakwaan, Eksepsi, dan Putusan Peradilan* (Citra Aditya Bakti 2012).

<sup>13</sup> *ibid.*

of *ultra petita* or it is the authority of the judge within the scope of the principle of active judge in examining and deciding civil cases.<sup>14</sup>

This doubt is a consequence of the absence of *rigid* rules in law of civil procedure which provides limits for judges in being active to in *ex officio* manner examine the formal requirements of the lawsuit and decide the civil case with the injunction stating that the plaintiff's lawsuit cannot be accepted (*niet ontvankelijke verklaard*), without the exception of the defendant. The Law of Civil Procedure also does not provide for the forms of exceptions that can become the basis for the judge in deciding that plaintiff's lawsuit cannot be accepted (*niet ontvankelijke verklaard*).

Regarding this, the judge's decision must reflect the image of the law as a whole, which is *gerechtigheid/equality*, *rechtszekerheit/certainty*, and purposiveness (*zweckmaes sigkeit*).<sup>15</sup> In order to realize the image of the law, judges are obliged to help the justice seekers and try to overcome all problems and obstacles to achieve justice that is simple, fast, low cost, and complete. Therefore, it is necessary to elaborate and conduct legal discovery related to the limitation of judges in giving decision with injunction, which declares that the plaintiff's lawsuit is inadmissible (*niet ontvankelijke verklaard*) so that the settlement process is not prolonged and taking a long time and greater cost.<sup>16</sup> It is in line with William E. Glade Stone that "*justice delayed is justice denied*" and<sup>17</sup> the classical law "*litis fini oportet*" which means "everything must have an end".<sup>18</sup>

This is to realize the vision of the Supreme Court in "*Judicial Reform Blueprint 2010-2032*", that is "The realization of the Indonesian Supreme Judiciary", with one of the missions of "providing fair legal services to justice seekers" through the simplification program of the procedural process which aims

<sup>14</sup> 1043 K/Sip/1971 1974.

<sup>15</sup> Josef M Monteiro, 'Putusan Hakim Dalam Penegakan Hukum Di Indonesia' (2007) 25 Jurnal Hukum Pro Justitia.[138].

<sup>16</sup> Sunarto Sunarto, 'Prinsip Hakim Aktif Dalam Perkara Perdata' (2016) 5 Jurnal Hukum dan Peradilan.[249].

<sup>17</sup> Sudi Yatmana, *Untaian 1000 Kata Bijak* (Yayasan Pustaka Nusatama 2007).[59].

<sup>18</sup> Seno Wibowo Gumbira, 'Problematika Peninjauan Kembali Dalam Sistem Peradilan Pidana Pasca Putusan Mahkamah Konstitusi Dan Pasca SEMA RI No. 7 Tahun 2014 (Suatu Analisa Yuridis Dan Asas-Asas Dalam Hukum Peradilan Pidana)' (2016) 46 Jurnal Hukum & Pembangunan. [106].

to accelerate the process of resolving cases and reducing the flow of cases to the cassation level. Therefore, it is necessary to regulate limitations on judges in giving injunction declaring that the plaintiff's lawsuit is inadmissible (*niet ontvankelijke verklaard*) so that the settlement process is not prolonged and does not take a long time and great cost.

However, in the Draft Bill on Law of civil procedure that has been submitted to the National Legislation Program (Prolegnas), the related arrangement that is the basis for the judge to give decision with injunction declaring that the lawsuit is (*niet onvankelijk verklaard*), is still identical in its principle, and does inadmissible not regulate in more detail than what has been stipulated in the HIR and RBg that is only the exception of absolute competence and relative competence can be the basis of a judge in giving decision with injunction declaring that the lawsuit is inadmissible (*niet onvankelijk verklaard*). This provision is as contained in Article 75, Article 76, Article 77, and Article 161 paragraph (2) letter a of the Draft Bill on Law of civil procedure as follows,

Therefore, it is necessary to make new arrangements which in detail regulate:

- a. The forms of exception that can be the basis for judge's in dropping lawsuits to be inadmissible (*niet onvankelijk verklaard*);
- b. The limitation of the judge in examining lawsuits that do not meet the formal requirements and dropping lawsuits to be inadmissible (*niet onvankelijk verklaard*), without the exception of the defendant; and
- c. The limitation of a legal remedy that can be taken against injunction declaring that the lawsuit is inadmissible (*niet onvankelijk verklaard*).

Therefore, this study is expected to provide a proposal and/or overview of the formulation of limitation for the judge in giving the decision of *niet ontvankelijke verklaard* in the settlement of civil disputes that is fast, simple, low cost, and complete. Thus, this study discusses *ratio legis* of giving of *niet ontvankelijke verklaard* verdict in the Law of civil procedure and in the formulation of the limitation of the judge in giving *niet ontvankelijke verklaard* verdict in the civil dispute resolution which is fast, simple, low cost, and complete.

This study used *the doctrinal research* method presenting legislation systematically, analyzing the relationships between these regulations, explaining the problems, and allowing for predicting development in the future.<sup>19</sup> *Doctrinal research* type aims to produce a systematic explanation of the legal rules governing the problem at hand. In this case, the research was carried out by analyzing the relationship between the rules of law with the problems.<sup>20</sup> This legal research was conducted to analyze the reconstruction of the *niet ontvankelijke verklaard* verdict in law of civil procedure as a manifestation of the principle of justice that is fast, simple, low cost, and complete.

This study also used *statute approach* to study the consistency and conformity between the law and other laws or between the law and the constitution or between regulation and law.<sup>21</sup> The legislation used was the regulation related to the reconstruction of the *niet ontvankelijke verklaard* verdict in the law of civil procedure as a manifestation of the principle of justice that is fast, simple, low cost, and complete, such as BW, HIR, Rv, Law no. 48/2009, etc. This study also used *conceptual approach* to start from the views and doctrines that develop in the science of law. The legal concepts used in this study were those related to the theory of legal reconstruction, the theory of *niet Ontvankelijke Verklaard*, Law of civil procedure, the principle of fast, simple, low cost and complete, The Theory of Tangent point, the Principle of Active Judges and the Principle of Passive Judges, as well as the Prohibition of Ultra Petita and The Theory of Justice based on Pancasila.

### ***Ratio Legis* of *Niet Ontvankelijke Verklaard* Verdict in the Law of Civil Procedure**

Court decision is the last process of examining the case performed by the panel of judges. It is a statement of the judge as the official of authorized judicial

---

<sup>19</sup> Christopher Roper, 'Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission' (1987) 5 J. Prof. Legal Educ.[201].

<sup>20</sup> Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (Citra Aditya Bakti 2004).

<sup>21</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana 2005).

power.<sup>22</sup> In Article 2 Paragraph (1) of Law 48/2009, it is regulated that Judiciary is carried out “For the Sake of Justice Based on Belief in the Almighty God”. Article 2 Paragraph (2) of Law 48/2009 states that the state court applies and upholds the law and justice based on Pancasila. Article 2 Paragraph (3) of Law 48/2009 basically describes that all judiciaries in the territory of the Republic of Indonesia are the state courts governed by Law. Article 2 Paragraph (4) of Law 48/2009 states that the judiciary is carried out simply, quickly, and at low cost. Article 5 Paragraph (1) of Law 48/2009 states that Judges and constitutional judges are obliged to dig, follow, and understand the legal values and the sense of justice that lives in society.<sup>23</sup>

The essence of the decision based on the sentence “For the Sake of Justice Based on Belief in the Almighty God” is the enforcement of the law for justice. In reality, a case is processed and judged according to legislation. It is rarely found that a case is accompanied by sociological and philosophical considerations or *moral justice*.<sup>24</sup> The judge’s decision is the “crown” and ”peak” that reflects the values of justice; the ultimate truth; human rights; legal knowledge or facts that are sound, quality, and factual and a reflection of the ethics, mentality, and morals of the judge. There are 4 (four) main principles of judge’s decision. These principles are first, it must contain a clear and detailed basis for reason. Second, it shall prosecute all parts of the lawsuit. Third, it should not give grant exceeding the claim. Fourth, it shall be spoken in public.<sup>25</sup>

Judges are judicial officials of the state who are authorized by law to adjudicate. A judge may not refuse to examine and adjudicate a case brought under the pretext that the law is not or less clear, but it shall examine and adjudicate the case. Therefore, it is essential for the judge to examine and adjudicate every case submitted to the court.<sup>26</sup> The duty and authority of the judge is to adjudicate a case

---

<sup>22</sup> I Dewa Gede Atmadja, ‘Asas-Asas Hukum Dalam Sistem Hukum’ (2018) 12 Kertha Wicaksana.[145].

<sup>23</sup> Bambang Waluyo, *Pidana dan Pemidanaan* (Sinar Grafika 2008).[91].

<sup>24</sup> *ibid.*[189].

<sup>25</sup> Yan Pramadya Puspa, *Kamus Hukum Edisi Lengkap* (Aneka Ilmu 1977).[889].

<sup>26</sup> Bambang Sugeng Ariadi Subagyo, Johan Wahyudi and Razky Akbar, ‘Kajian Penerapan Asas Ultra Petita Pada Petitum Ex Aequo Et Bono’ (2014) 29 Yuridika.

and give final decision. a final case. The basis for the consideration of judges in deciding criminal cases is to consider the juridical truth (law) with philosophical truth (justice). A judge must make a fair and wise decision by taking into account the implications of the law and the impacts in the society.<sup>27</sup>

Indonesia adheres to the principle of judicial independence which is fully guaranteed in the Judiciary Law No. 48 of 2009, hereinafter referred to as the Judiciary Law, which states that the judiciary institution is the power of an independent state to conduct justice in order to enforce law and justice.<sup>28</sup> The principle of judicial independence includes the freedom of judges to formulate legal reasoning, which is carried out by a judge in deciding a case. Judges are civil servants who exercise judicial power in accordance with the law. Regarding the judge, it is mentioned in Article 1 number 5, number 6, number 7, and number 9 of the Law of Judicial Power.<sup>29</sup>

In accordance with the Law of Judicial Power, a judge's consideration is the thoughts or opinions of the judge in giving a decision by observing matters that can relieve or incriminate the perpetrator. Each judge must submit a written consideration or opinion on the case being examined and as an integral part of the decision. John Rawls suggests: "Justice arises when it is based on the role of legal institutions in processing formal justice (*institutions and formal justice*), each person is to have an equal rights to the most extensive base liberty compatible with a similar liberty of others, and fair equality of opportunity and pure procedural justice".<sup>30</sup>

Article 14 of Law No. 48 of 2009 states: "The decision is taken based on a confidential judge deliberation meeting". The judge's decision must be based on the results of the assembly's deliberation. This deliberation is carried out by the judge to draw conclusions on the dispute for further elaboration in the decision. In this

---

<sup>27</sup> Darmoko Yuti Witanto dan Arya Putra Negara Kutawaringin, *Diskresi Hakim: Sebuah Instrumen Menegakkan Keadilan Substantif Dalam Perkara-Perkara Pidana* (Alfabeta 2013).[16].

<sup>28</sup> Sherly Nanda Ade Yoan Sagita, 'Dasar Pertimbangan Hakim Dalam Menjatuhkan Putusan Pidana Terhadap Penebangan Pohon Secara Tidak Sah' (2015) Kumpulan Jurnal Mahasiswa Universitas Brawijaya.[14].

<sup>29</sup> Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Liberty 1993).[108].

<sup>30</sup> John Rawls, *A Theory of Justice, Ethics* (Routledge 2004) ; John Rawls, *Justice as Fairness: A Restatement* (Harvard University Press 2001).



case, the judge is allowed to submit a different opinion (*dissenting opinion*) as long as it is based on a strong and rational argument.<sup>31</sup>

The principle of court decision is on the basis of clear and detailed reasons. According to this principle, the decision must be made based on clear and sufficient consideration. Decisions that do not meet the provisions are categorized as *onvoldoende gemotiveerd* or *insufficient judgment*. Legal reasons for the consideration refer to the provisions of:

1. Certain articles of laws
2. Customary law;
3. Jurisprudence;
4. Legal doctrine.

Article 50 Paragraph 1 of Law 48/2009 affirms that the court Decision, in addition to containing the reason and basis for the decision, also containing certain articles of the relevant laws and regulations or unwritten legal sources that are used as the basis for adjudicating. Whereas according to Article 178 paragraph (1) of HIR, due to judge's position or *ex officio*, the judge is obligatory to satisfy all legal reasons not stated by the litigants.<sup>32</sup>

Article 5 Paragraph 1 of Law 48/2009 requires judges and constitutional judges to explore, follow and understand the values of law and the sense of justice in the society. The explanation of the provisions in this article aims to allow the decisions of judges and constitutional judges in accordance with the law and the sense of Justice of the society so that the decisions of judges do not bring the order of life in the society into chaos.<sup>33</sup> This is also confirmed in Article 23 of Law No.14 of 1970, as amended by Law No. 35 of 1999 in Article 25 paragraph (1) of Law No. 4 of 2004, which asserts that all court decisions must contain certain reasons for legislation related to cases that are decided or based on Written law or jurisprudence or legal doctrine.

---

<sup>31</sup> Diah Ratna Sari Hariyanto and Dewa Gede Pradnya Yustiawan, 'Paradigma Keadilan Restoratif Dalam Putusan Hakim' (2020) 42 Kertha Patrika.[180].

<sup>32</sup> Oemar Seno Adji, *Peradilan Bebas Negara Hukum* (Erlangga 1980).[46].

<sup>33</sup> *ibid.*[47].

Moreover, according to Article 178 paragraph (1) HIR, due to judge's position or *ex officio*, the judge shall provide all means of legal reasons that are not put forward by the litigants. In order to fulfill these obligations, Article 27 paragraph (1) of Law No.14 of 1970, as amended by Law No. 35 of 1999, now is in Article 28 paragraph (1) of Law No. 4 of 2004 command the judge in his position as law enforcement and justice to explore, follow, and understand the legal values in the society. According to the explanation of this article, judges play a role and act as formulators and diggers of legal values that live in the society.

The principle of judicial power is regulated in the 1945 Constitution Chapter IX Article 24 and Article 25 and in Law No. 48 of 2009. The 1945 Constitution guarantees the existence of freedom of judicial power. This is expressly stated in Article 24, especially in elucidation of Article 24 paragraph 1 and elucidation of Article 1 Paragraph (1) of Law No. 48 of 2009 that the judicial power is the power of an independent state to organize the judiciary in order to enforce the law and justice based on Pancasila and the 1945 Constitution for the implementation of the constitutional state of the Republic of Indonesia.<sup>34</sup> Judicial power is an independent authority. In this provision, it implies that the judicial power is free from any interference by the extra-judicial power, except for matters as referred to in The 1945 Constitution. Furthermore, Article 24 paragraph (2) confirms that the judicial power is exercised by the Supreme Court and judicial bodies under it in the environment of public justice, religious justice, military justice, administrative justice, and by a Constitutional Court. The judicial independence also shall be emphasized on *impartial judge* as stated in Article 5 Paragraph (1) of Law Number 48 of 2009.<sup>35</sup>

The judge shall not reject a case with reason that the law is not or less clear. It is because judge is considered as understand the law (*curialus novit*). If the law

---

<sup>34</sup> Hariyanto and Yustiawan (n 32).[198].

<sup>35</sup> NPM Erwantoni, 'Kewenangan Hakim Dalam Menetapkan Saksi Dan Pihak Lainnya Menjadi Tersangka Dihubungkan Dengan Kebebasan Dan Tanggung Jawab Hakim Dalam Menegakkan Keadilan' (UNPAS 2017).[14].

is not clear, the judge shall make explanation.<sup>36</sup> A judge shall adjudicate all parts of the lawsuit and/or claim. It has been ordained in the provisions of Article 178 paragraph (2) of HIR, Article 189 paragraph (2) of RBG, and Article 50 of Rv.<sup>37</sup>

As regulated in Article 178 paragraph (3) of HIR, Article 189 paragraph (3) of RBG, and Article 50 of RV. The decision may neither grant nor exceed the claims put forward in the lawsuit. If it is heeded, then it is categorized in *ultra petitem partium* decision, i.e, decisions that exceed the claim filed. A judge who grants a case exceeds the posita or petitem as sued or petitioned is considered to have exceeded the limits of authority or *ultra vires*, i.e. acting *beyond the powers of his authority*.<sup>38</sup> To adjudicate by granting more than what is being sued, can be equated with an illegal act even though it is done in good faith.

*Judex facti* decision based on the sub-request of *ex aequo et bono* can be justified as long as it is made within the framework according to the core of the main petition. Further decisions even exist. In the Supreme Court decision No. 556 K/Sip/1971, the application can be granted beyond the requested, as long as it is in accordance with the material facts. However, keep in mind that this implementation is very casuistic.<sup>39</sup>

### **Formulation of Limitation of Legal Remedies Against Court's Decision that is Inadmissible (*Niet Onvankelijke Verklaard*)**

In resolving a civil case, one of the duties of the judge is to investigate whether the legal relationship on which the lawsuit is based actually exists or not. To understand this matter, a judge must know the truth of the correspond event objectively through the evidentiary process. The evidentiary process is intended to

---

<sup>36</sup> Eldo Pranoto Putra and Muhamad Iqbal, 'Implementasi Konsep Keadilan Dengan Sistem Negatif Wettelijk Dan Asas Kebebasan Hakim Dalam Memutus Suatu Perkara Pidana Ditinjau Dari Pasal 1 Undang-Undang No 4 Tahun 2004 Tentang Kekuasaan Kehakiman (Analisa Putusan No. 1054/Pid. B/2018/PN. Jkt. Sel)' (2020) 3 Rechtsregel: Jurnal Ilmu Hukum.[40].

<sup>37</sup> Muhamad Iqbal, Susanto Susanto and Moh Sutoro, 'Efektifitas Sistem Administrasi E-Court Dalam Upaya Mendukung Proses Administrasi Cepat, Sederhana Dan Biaya Ringan Di Pengadilan' (2019) 8 Jurnal Ilmu Hukum.[302].

<sup>38</sup> Subagyono, Wahyudi and Akbar (n 26).[106].

<sup>39</sup> Yahya Harahap, *Hukum Acara Perdata* (Sinar Grafika 2005).[801].

obtain the truth of an event and aims to establish the legal relationship between the two parties and establish a verdict based on the results of the evidentiary process.<sup>40</sup> In addition, in the implementation of the evidentiary process, the judge is in charge of dividing the burden of proof, assessing whether evidence is acceptable or not, and assessing the strength of evidence, where in carrying out these duties, the judge is bound to valid evidence based on legislation, submitted by the parties to the dispute before the court.<sup>41</sup>

Based on this matter, in the examination of civil cases, the judge's conviction is not essential in determining the truth of a civil event. This is different from the settlement and examination of criminal cases which underlines that, in addition to being based on valid evidence in accordance with laws and regulations, the judge's conviction is absolutely necessary to determine whether the defendant is guilty and can be held criminally liable or not.<sup>42</sup> In the *Anglo-Saxon* legal tradition such as in the United Kingdom, the difference in the examination of civil and criminal cases is terminologically interpreted with different terms, which are *preponderance of evidence* and *beyond reasonable doubt*, or by experts in Indonesia is commonly contrasted with the value of truth obtained from the examination process of civil procedure and criminal procedure, where the truth according to the criminal procedure process is "material truth" while the truth in the civil procedure process is "formal truth".<sup>43</sup>

In classical legal theory, as proposed by L.J. van Aperdoorn, "*civil judges must accept formal truth, while criminal judges must seek material truth*".<sup>44</sup> The formal truth referred to in the Law of civil procedure arises as a consequence of which it is the litigants who bear the *burden of proof* regarding the complete truth to be

---

<sup>40</sup> Tata Wijayanta, et.al, 'Penerapan Prinsip Hakim Pasif dan Aktif Serta Relevansinya Terhadap Konsep Kebenaran Formal' (2010) 22 Jurnal Mimbar Hukum Fakultas Hukum Universitas Gadjah Mada.[572].

<sup>41</sup> *ibid.*

<sup>42</sup> *ibid.*

<sup>43</sup> Sri Wardah and Bambang Sutiyoso, *Hukum Acara Perdata dan Perkembangannya di Indonesia* (Gama Media 2007).

<sup>44</sup> Achmad Ali and Wiwie Haryani, *Sosiologi Hukum: Kajian Empiris Terhadap Pengadilan* (Kencana 2014).

presented before the court. Furthermore, after the judge accommodates and accepts all the truths proposed by the litigants, it becomes the duty of the judge to establish the truth based on the evidentiary process that has been carried out in accordance with the applicable legal rules, both in the narrow sense and in the broad sense, as well as the awareness and mind of the law adopted by the judge.<sup>45</sup> Therefore, the notion of formal truth cannot be interpreted as a half-truth or unreal truth.

In its development, the contrast separation of related to formal truth and material truth in the examination of law of civil procedure is no longer relevant, where in practice there is a public demand to seek formal truth and material truth simultaneously in the examination of a civil case.<sup>46</sup> At first, the jurisprudence of the Supreme Court affirmed that the Civil Court adheres to a formal system of proof as affirmed in the legal rules of the jurisprudence of the Supreme Court number 583 K/Sip/1970 dated February 10, 1971. However, in its development, the rule of law has changed so there is no prohibition for civil judges to find the ultimate truth (material truth). However, if the ultimate truth (material truth) cannot be found in the court process, the law still justifies if the judge finds and makes a decision based on the formal truth.<sup>47</sup> This is as stated in the jurisprudence of the Supreme Court Number 3136 K/Pdt/1983 dated March 6, 1985.<sup>48 49</sup>

The jurisprudence rules further emphasize that there has been a shift in the meaning of the principle of passive judges who originally only required civil judges to seek formal truth in a civil case, but currently, judges can also actively seek material truth in a civil case, as long as the material truth is also supported by valid evidence according to the Law of civil procedure, as described in the previous sub-chapter.<sup>50</sup> Furthermore, with regard to the limitation of judges in actively seeking material truth in the civil case settlement process, it is basically the rules of law of

---

<sup>45</sup> Yahya Harahap (n 40).[71].

<sup>46</sup> H Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama* (Kencana Prenada Media Group 2005).[228].

<sup>47</sup> Wijayanta and others (n 41).

<sup>48</sup> Menguatkan putusan Pengadilan Tinggi Semarang Nomor 100/1981 1982.

<sup>49</sup> Putusan Pengadilan Negeri Semarang Nomor 173/1978.

<sup>50</sup> Mahkamah Agung Nomor 09 K/AG/1994 tanggal 25 November 1994.

civil procedure that apply, which are coercive and must be obeyed, as long as the law of civil procedure has not shifted the meaning of the principle of passive judges through the rules of jurisprudence, from the process of preparing the lawsuit until implementing the judge's decision.

As described in the previous sub-chapter, based on the provisions of Article 119 HIR, the judge should be active in assisting the plaintiff in drafting and completing his lawsuit, even though the provisions of Article 119 HIR regulate it as the authority of the chairman of the court.

Furthermore, in the evidentiary process, the judge can actively provide advice, present legal remedies, and provide information to both parties to the litigant for the sake of regularity and goodness of the course of the examination of the case to be able to resolve the case that occurred between the parties to the litigant in a fast, simple, low cost and complete manners in accordance with the provisions of Article 132 HIR. In its development, through jurisprudence, the judge is now entitled to assess the evidence including the recognition of one of the litigants, and use his conviction as a basis for giving a decision.

Based on the jurisprudence of the Supreme Court number 1043 K/Sip/1971 dated December 3, 1974 in which legal rules state that, "*In accordance with the provisions of Article 178 of HIR, the judge is obliged to refine, the legal reasons that the plaintiff did not mention as the basis/ legal ,reason for his lawsuit, so as not to make the lawsuit inadmissible*" further reinforcing the active role of judges in the case settlement process by providing the authority for judges to actively assist the parties in resolving cases between the litigants as mandated in Article 4 paragraph (2) of Law No. 48/2009.

Based on the above explanation, it can be understood that, in order to obtain material truth in a civil case, the judge is authorized and even obliged to play an active role in every case settlement process, which begins from the preparation of the lawsuit to the implementation of the decision, within the corridor of the provisions of the law of civil procedure that (*ex aequo et bono*) for litigants based on a sense of justice of the judge and the society.

In 2020, the burden of Supreme Court cases actually had increased to 20,761 cases which were the most cases in the history of the Supreme Court, or an increase of 6.07% compared to 2019 which amounted to 20,275 cases. Even when the cases were summed up, the overall burden of cases of the Supreme Court and the judicial bodies under it in 2020 reached 3,955,963 cases consisting of the remaining cases in 2019 and incoming cases in 2020.<sup>51</sup> In order to overcome the case backlog problem, the Supreme Court limits legal remedies, including the obligation for the litigants to carry out mediation in court before the subject matter is examined and decided by the panel of judges, as stipulated in Article 130 HIR.<sup>52</sup>

In the case of the limitation of injunction, which declares that the lawsuit is inadmissible (*niet onvankelijke verklaard*) and also the limitation of legal remedies against a decision with injunction declaring that the lawsuit is inadmissible (*niet onvankelijke verklaard*), as has been described in the previous sub-chapter that, judicially, the provisions of HIR and RBg have essentially set preventive measures that can be a limitation for judges in deciding cases with the verdict declaring that the lawsuit is inadmissible (*niet onvankelijke verklaard*). However, most of these provisions are never taken into account by the judges in Indonesia while other provisions are tried to be distorted by the judges. These provisions include:

- a. Article 119 of HIR which regulates that, “*The Chief of the District Court has the power to give advice and assistance to the plaintiff or to his representative regarding the filing of lawsuits;*”
- b. Article 132 of aHIR states that, “*The Chief has the right, at the time of examining, to provide information to both parties and will show legal remedies and information that they can use if deemed necessary, so that the case goes well and orderly;*” and
- c. Article 178 paragraph (1) HIR which states that “*The judge, due to his position*

---

<sup>51</sup> Mahkamah Agung Republik Indonesia, ‘Optimalisasi Peradilan Modern Berkelanjutan, Laporan Tahunan 2020 Dalam Suasana Covid-19’ (2020).[13].<<https://www.mahkamahagung.go.id/cms/media/8832>>.

<sup>52</sup> R Soepomo, *Hukum Acara Perdata Pengadilan Negeri* (Pradnya Paramita 2002).[16].

*during the deliberations, is obliged to fulfill all legal reasons; which are not stated by both parties.”*

With the implementation of the provisions of Article 119 of HIR, the imposition of a verdict declaring that the lawsuit inadmissible (*niet onvankelijke verklaard*) certainly can be avoided due to formal defects such as: 1) the power of attorney is invalid; 2) the lawsuit filed by the party with no interest; 3) *error in persona*; 4) lawsuit outside the competence; 5) *obscure libel*, either because the argument of the lawsuit does not have a clear legal basis and event; unclear object of dispute; the presence of contradiction between *posita* and *petitum*; *peritum* is not detailed; or *nebis in idem*; 6) the lawsuit is premature lawsuit; and 7) the lawsuit is expired, as before the lawsuit is filed or at the time of drafting the lawsuit, the judge can give advice to improve the lawsuit so as to not contain formal defect, or in the case of a formal defect with respect to a lawsuit outside the competence, the lawsuit is premature, the *nebis in idem* or lawsuit expiration, the filing and examination of the case can be prevented without having to go through the court process. This may help the court in overcoming the problem of case backlog.

In addition, with the implementation of the provisions of Article 132 of HIR, either through the implementation of local examination or through evidence requested by the judge from the parties, it can be found that there are other parties interested in the settlement of the case but not sued in the case, then the judge can provide guidance to the parties to attract the third party as a party to the case. If the provisions of Article 132 of this HIR are applied by a judge, it can reduce the potential for a lawsuit to be declared inadmissible due to the lack of parties sued (*plurium litis consortium*), considering that under the provisions of Article 280 of Rv, an application for intervention may be submitted on the designated day of the hearing, before or at the time the final conclusions are drawn for the ongoing case. Therefore, as long as there has not been reading and/or submission of conclusions from the litigants, a third party may request an intervention.

Similarly, if the provisions of Article 178 paragraph (1) HIR are applied, then even if the plaintiff's lawsuit does not mention the legal basis of his lawsuit,



or has mentioned the wrong legal basis, the judge can refine the legal basis of the lawsuit in his decision. This is as stated in the explanation of Article 178 paragraph (1) of HIR.

### **Conclusion**

As for *ratio legis* in the case of a verdict declaring that the lawsuit is inadmissible (*niet onvankelijke verklaard*), it is intended that civil lawsuits that do not meet the formal requirements of a lawsuit can be resolved at the beginning of the case settlement process, without first checking the subject matter of the case. This aims to settle the case briefly, simply, at low cost, and complete, so that with the *niet onvankelijke verklaard*, the plaintiff does not need to spend a large sum of money and spend a lot of time to defend the arguments of his lawsuit that do not meet the formal requirements, until it is decided together with the subject matter in the final decision.

HIR and RBg as the current law of civil procedure in Indonesia have not set out in detail the basis for a judge to give decision with injunction declaring that the lawsuit is inadmissible (*niet onvankelijk verklaard*). This is still largely derived from the jurisprudence of the Supreme Court which, in fact, overrides the provisions of the Law of civil procedure itself, even very often the judge rendering the lawsuit inadmissible (*niet onvankelijk verklaard*). In this case, it is necessary to determine the formulation of the judge's limitation in rendering a decision that is inadmissible (*niet onvankelijk verklaard*) in the settlement.

In civil disputes that are fast, simple, low cost, and complete, as stated in the Draft Bill of the Law of Civil Procedure, which is essentially related to the forms of exceptions that can become the basis for the judge in deciding the lawsuit to be inadmissible (*niet onvankelijk verklaard*), the limitation of the judge in examining the lawsuit that does not meet the formal requirements and decides the lawsuit to be is inadmissible (*niet onvankelijk verklaard*), in the absence of the exception of the defendant, as well as the limitation of the legal remedies that can be made against the decision with injunction declaring the lawsuit inadmissible (*niet onvankelijk verklaard*).

**Bibliography**

Achmad Ali and Haryani W, *Sosiologi Hukum: Kajian Empiris Terhadap Pengadilan* (Kencana 2014).

Adji OS, *Peradilan Bebas Negara Hukum* (Erlangga 1980).

Atmadja IDG, 'Asas-Asas Hukum Dalam Sistem Hukum' (2018) 12 *Kertha Wicaksana*.

Darmoko Yuti Witanto dan Arya Putra Negara Kutawaringin, *Diskresi Hakim: Sebuah Instrumen Menegakkan Keadilan Substantif Dalam Perkara-Perkara Pidana* (Alfabeta 2013).

Dumisc A, 'Advantages of Amicable International Arbitration: Characteristics and Scope of Arbitrator Powers' (2009).

Erwantoni NPM, 'Kewenangan Hakim Dalam Menetapkan Saksi Dan Pihak Lainnya Menjadi Tersangka Dihubungkan Dengan Kebebasan Dan Tanggung Jawab Hakim Dalam Menegakkan Keadilan' (UNPAS 2017).

Gumbira SW, 'Problematika Peninjauan Kembali Dalam Sistem Peradilan Pidana Pasca Putusan Mahkamah Konstitusi Dan Pasca SEMA RI No. 7 Tahun 2014 (Suatu Analisa Yuridis Dan Asas-Asas Dalam Hukum Peradilan Pidana)' (2016) 46 *Jurnal Hukum & Pembangunan*.

Hariyanto DRS and Yustiawan DGP, 'Paradigma Keadilan Restoratif Dalam Putusan Hakim' (2020) 42 *Kertha Patrika*.

Iqbal M, Susanto S and Sutoro M, 'Efektifitas Sistem Administrasi E-Court Dalam Upaya Mendukung Proses Administrasi Cepat, Sederhana Dan Biaya Ringan Di Pengadilan' (2019) 8 *Jurnal Ilmu Hukum*.

Mahkamah Agung Republik Indonesia, 'Laporan Penelitian Alternative Dispute Resolution (Penyelesaian Sengketa Alternatif) Dan Court Connected Dispute Resolution (Penyelesaian Sengketa Utang Terkait Dengan Pengadilan)' (2000).

——, *Cetak Biru Pembaruan Peradilan 2010-2035* (Mahkamah Agung RI 2010).

——, 'Optimalisasi Peradilan Modern Berkelanjutan, Laporan Tahunan 2020 Dalam Suasana Covid-19' (2020) <<https://www.mahkamahagung.go.id/cms/media/8832>>.

Manan HA, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama* (Kencana Prenada Media Group 2005).

- Marzuki PM, *Penelitian Hukum* (Kencana 2005).
- Mertokusumo S, *Hukum Acara Perdata Indonesia* (Liberty 1993).
- Monteiro JM, 'Putusan Hakim Dalam Penegakan Hukum Di Indonesia' (2007) 25 *Jurnal Hukum Pro Justitia*.
- Muhammad A, *Hukum Dan Penelitian Hukum* (Citra Aditya Bakti 2004).
- Mulyadi L, *Hukum Acara Pidana Indonesia: Suatu Tinjauan Khusus Terhadap Surat Dakwaan, Eksepsi, Dan Putusan Peradilan* (Citra Aditya Bakti 2012).
- Puspa YP, 'Kamus Hukum Edisi Lengkap' (Aneka Ilmu 1977).
- Putra EP and Iqbal M, 'Implementasi Konsep Keadilan Dengan Sistem Negatif Wettelijk Dan Asas Kebebasan Hakim Dalam Memutus Suatu Perkara Pidana Ditinjau Dari Pasal 1 Undang-Undang No 4 Tahun 2004 Tentang Kekuasaan Kehakiman (Analisa Putusan No. 1054/Pid. B/2018/PN. Jkt. Sel)' (2020) 3 *Rechtsregel: Jurnal Ilmu Hukum*.
- Rawls J, *Justice as Fairness: A Restatement* (Harvard University Press 2001).
- , 'A Theory of Justice', *Ethics* (Routledge 2004).
- Roper C, 'Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission' (1987) 5 *J. Prof. Legal Educ.*
- Sagita SNAY, 'Dasar Pertimbangan Hakim Dalam Menjatuhkan Putusan Pidana Terhadap Penebangan Pohon Secara Tidak Sah' (2015) *Kumpulan Jurnal Mahasiswa Universitas Brawijaya*.
- Soepomo R, *Hukum Acara Perdata Pengadilan Negeri* (Pradnya Paramita 2002).
- Subagyono BSA, Wahyudi J and Akbar R, 'Kajian Penerapan Asas Ultra Petita Pada Petitum Ex Aequo Et Bono' (2014) 29 *Yuridika*.
- Sunarto S, 'Prinsip Hakim Aktif Dalam Perkara Perdata' (2016) 5 *Jurnal Hukum dan Peradilan*.
- Waluyo B, *Pidana Dan Pemidanaan* (Sinar Grafika 2008).
- Wardah S and Sutiyoso B, *Hukum Acara Perdata Dan Perkembangannya Di Indonesia* (Gama Media 2007).
- Wiguna MOC, 'Peluang Penyelesaian Sengketa Perdata Tentang Tanah Melalui

Alternative Dispute Resolution Dengan Asas-Asas Hukum Perjanjian Di Dalamnya' (2018) 48 Jurnal Hukum & Pembangunan.

Wijayanta T and others, 'Penerapan Prinsip Hakim Pasif Dan Aktif Serta Relevansinya Terhadap Konsep Kebenaran Formal' (2010) 22 Jurnal Mimbar Hukum Fakultas Hukum Universitas Gadjah Mada.

Yahya Harahap, *Hukum Acara Perdata* (Sinar Grafika 2005).

Yatmana S, *Untaian 1000 Kata Bijak* (Yayasan Pustaka Nusatama 2007).

Mahkamah Agung Nomor 09 K/AG/1994 tanggal 25 November 1994.

Putusan Pengadilan Tinggi Semarang Nomor 100/1981 1982.

Periksa Pasal 23 UU No. 48/2009.

Periksa Pasal 26 UU No. 48/2009.

Putusan Nomor 108/PUU-XIV/2016..

Putusan Nomor 34/PUU-XI/2013.

Putusan Pengadilan Negeri Semarang Nomor 173/1978.

**HOW TO CITE:** Samsiati, 'Reconstruction of *Niet Ontvankelijke Verklaard* Verdict in the Law of Civil Procedure as a Manifestation of Fast, Simple, Low Cost and Complete Principle of Justice' (2022) 37 Yuridika.