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Preparatory Examination in Civil Procedure Law: Strategies for Swift and Efficient Justice

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Abstract

The rigidity of formal requirements in civil litigation in Indonesia has resulted in numerous cases being dismissed as "Gugatan Tidak Diterima" (Not Admissible), leading to a prolonged and wasteful judicial process. Many litigants spend considerable time and resources waiting, only to receive a verdict that denies access to substantive justice due to technicalities, undermining the principle of a speedy trial. Failure to meet formal requirements leads to many cases being dismissed as "Gugatan Tidak Diterima" (Not Admissible). With numerous cases being dismissed as such, a situation arises where the principle of a speedy trial is not upheld. This research focuses on implementing the principle of a speedy trial in terms of the judge's authority to examine formal requirements in civil procedure law. Based on the above background, three problem formulations are developed: (1) What is the essence of the preliminary examination applied in civil procedure law? (2) What are the formal requirements of a civil lawsuit as a manifestation of the principle of a speedy trial? This article employs a normative juridical research method with statutory, conceptual, and historical approaches. Legal materials include primary, secondary, and tertiary legal data, analysed using grammatical, systematic, historical, futuristic, and theological interpretation techniques. Based on the above problem formulations, the author concludes that the main purpose of implementing pretrial examination of formal requirements in Indonesia's civil legal system is to address the high case volumes leading to many courts rejecting lawsuits. This delay in justice stems from rigid court processes and outdated procedures. The pretrial examination helps minimise rejections and make the legal system more efficient. Therefore, clear rules are needed to ensure this examination is part of civil law procedures, either through Supreme Court regulations or legislation.

Keywords: Supreme Court, legislation; speedy trial; access to justice; dismissal procedure

Abstrak

Kekakuan persyaratan formal dalam litigasi perdata di Indonesia telah menyebabkan banyak kasus ditolak dengan putusan "Gugatan Tidak Diterima", yang mengakibatkan proses peradilan yang berkepanjangan dan sia-sia. Banyak pihak yang menghabiskan waktu dan sumber daya yang signifikan hanya untuk menerima putusan yang menolak akses terhadap keadilan substansial karena alasan teknis, yang

pada akhirnya merusak asas peradilan cepat. Kegagalan untuk memenuhi persyaratan formal menyebabkan banyak kasus ditolak karena "Tidak Dapat Diterima". Dengan banyaknya kasus yang dibatalkan, timbul situasi di mana prinsip persidangan yang cepat tidak ditegakkan. Penelitian ini berfokus pada penerapan asas speedy trial dalam kaitannya dengan kewenangan hakim untuk memeriksa syarat formil dalam hukum acara perdata. Berdasarkan latar belakang di atas, maka dikembangkan tiga rumusan masalah: (1) Apa hakikat pemeriksaan pendahuluan yang diterapkan dalam hukum acara perdata? (2) Apa saja syarat formal gugatan perdata sebagai perwujudan asas speedy trial? artikel ini menggunakan metode penelitian yuridis normatif dengan pendekatan legislasi, konseptual, dan historis. Bahan hukum yang digunakan meliputi bahan hukum primer, sekunder, dan tersier, yang akan dianalisis dengan menggunakan teknik penafsiran gramatikal, sistematis, historis, futuristik, dan teologis. Berdasarkan rumusan masalah di atas, penulis menyimpulkan bahwa tujuan utama dilaksanakannya pemeriksaan syarat formil praperadilan dalam sistem hukum perdata Indonesia adalah untuk mengatasi permasalahan tingginya volume perkara yang menyebabkan banyak pengadilan menolak gugatan. Keterlambatan dalam mendapatkan keadilan ini disebabkan oleh proses pengadilan yang kaku dan prosedur yang ketinggalan jaman. Pemeriksaan praperadilan membantu meminimalkan penolakan dan membuat sistem hukum lebih efisien. Oleh karena itu, diperlukan aturan yang jelas untuk memastikan pemeriksaan ini merupakan bagian dari acara hukum perdata, baik melalui peraturan Mahkamah Agung maupun peraturan perundang-undangan.

Keywords: Mahkamah Agung; peraturan perundang-undangan; uji coba cepat; akses terhadap keadilan; prosedur penghentian.

A. INTRODUCTION

Indonesia's civil procedure law is deeply rooted in the colonial legal framework inherited from Dutch rule. This legal system, particularly the *Herziene Indonesisch Reglement* (HIR), which applies to Java and Madura, and the *Rechts Reglement Buitengewesten* (RBg), for regions outside Java, has long been the foundation for civil procedures in Indonesia. This legal structure has remained largely unchanged, though established to maintain order under colonial governance.[1]

However, as Indonesia advances into the 21st century, the complexities of contemporary society demand more flexible, efficient, and accessible legal processes. With its intricate and often rigid formalities, civil procedure law frequently fails to meet these needs, as seen in cases where lawsuits are dismissed due to

[1] Ahmad Syafii Maarif, *Studi Tentang Percaturan Dalam Konstituante:Islam Dan Masalah Keagamaan Keagamaan.* (Jakarta: LP3ES, 1985).

technicalities rather than substantive justice.[2] This rigidity, stemming from outdated colonial norms, creates significant obstacles for justice seekers, particularly regarding time, cost, and procedural clarity.

There is a growing recognition that these colonial-era laws while providing a foundation, may no longer be sufficient to handle the increasing complexity and volume of cases. The need for reform is evident in the frequent challenges to accessing justice, leading to calls for procedural updates that reflect modern values of justice, transparency, and efficiency. The inclusion of concepts like preparatory examinations drawn from more contemporary systems might be one of the key innovations needed to ensure that civil procedure law evolves alongside societal needs.

Although this legacy is a critical part of Indonesia's legal history, it may now require significant revision to keep up with the rapid pace of socio-legal development and the demands for a justice system that is not only fair but also swift and adaptable.

Accessing justice in Indonesia's civil courts continues to pose numerous challenges for the public, especially due to the stringent rules and formalities of civil procedure law. Overly complicated legal procedures have proven frustrating for many individuals and their legal representatives, including lawyers. One persistent issue is the rigid application of civil procedure law, where plaintiffs often find their claims dismissed as inadmissible (*Niet Ontvankelijk Verklaard*) after going through several stages of litigation. These dismissals, based on Article 123 paragraph (1) of the HIR together with SEMA No. 4 of 1996, commonly arise due to various reasons: lack of legal basis, errors in identifying the parties involved (*error in persona)* in the lawsuit, defects or ambiguity in the lawsuit (*obscure liber*), or violations of absolute or relative jurisdiction (competence).

Article 123 paragraph (1) of the HIR, along with Supreme Court Regulation No. 4 of 1996, renders the substance of the lawsuit unenforceable.[3] This leaves plaintiffs with two options: appealing the decision (*Niet Ontvankelijk Verklaard*) or rectifying the lawsuit's substance to file a new lawsuit. The repeated issuance of such decisions (*Niet Ontvankelijk Verklaard*) has made the public perceive that seeking justice is tough. The Court's procedural mechanism remains cumbersome, with rigid processes that often halt cases before the substance can be addressed. These formal administrative requirements still hinder those attempting to file lawsuits in Indonesia, falling short of the legal ideal of providing easy access to justice.

The driving force behind this research lies in the principles of civil procedure law, especially the key principle of delivering justice in a simple, speedy, and

[2] Arief Hidayat, "Mkri Menjaga Ideologi Dan Dasar Negara Pancasila," Mahkamah Konstitusi Republik Indonesia, Accessed On February 28, 2023, Https://Www.Mkri.Id/Index.Php?Page=Web.Berita&Id=18065.
[3] Mahkamah Agung, "Surat Edaran Mahkamah Agung Nomor 4 Tahun 1996 Tentang Lambang/Tanda Jabatan Hakim," 1996.

affordable manner (speedy administration of justice).[4] Simplicity refers to clear, straightforward procedures that are easy to understand and free from unnecessary complexity.[5] The fewer formalities required in court proceedings, the more effective the process becomes. On the other hand, where too many formalities are open to various interpretations, it undermines legal certainty and discourages people from pursuing litigation, often making them hesitant or fearful of engaging with the court system.[6]

The article issued by Fahren entitled "Application of the Simple Evidence Principle in Bankruptcy Cases in Commercial Courts (A Special Characteristic in the Civil Procedure System)" emphasises the application of simple proof principles in bankruptcy cases, focusing on the efficient handling of such cases. Fahren finds that despite a clear rule set for simple proof, its application is inconsistent, leading to varied interpretations in court decisions. This research delves into a critical area of Indonesian civil procedure law, advocating for clear parameters that support fast, decisive outcomes.[7]

In comparison, this research similarly addresses a key problem in Indonesian civil litigation—time-consuming procedures due to the rigidity of formal requirements. Both works focus on streamlining legal processes, with Fahren concentrating on bankruptcy cases and the other literature discussing a broader context of civil procedure law. It can be inferred that both works seek to reform civil procedure, proposing mechanisms that ensure the realisation of the principle of a speedy trial through clear and practical rules.[8]

Fahren's work aligns with and extends ongoing discussions in the existing literature about reforming civil procedure law by further specifying the role of simple proof principles in bankruptcy cases, while this article provides a framework for this efficiency across general civil litigation.

To reform the bureaucratic process of civil justice in Indonesia, new legal findings are needed to address issues related to administrative and formal requirements in filing lawsuits. One potential solution is the introduction of a preparatory examination mechanism. This mechanism could refine lawsuits not complying with formal civil provisions, streamlining the process and improving efficiency. Currently, mechanisms for preparatory examination are already in place in some jurisdictions. For example, the administrative court (PTUN) employs a

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[4] M luthfi Chakim, "Realizing Justice Through Legal Efforts for Judicial Review Post-Constitutional Court Decision," Constitutional Court Journal (n.d.): 343

[5] Melissa A. Crouch, "Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law," *A* 7 (2012), https://doi.org/10.1515/1932-0205.1391.

[6] Muarifal Abdi, "Lembaga-Lembaga Negara," *Ilmu Hukum*, no. 1 (2004): 1–13, https://www.researchgate.net/publication/336926262_Lembaga-lembaga_Negara.

[7] Fahren, "Penerapan Asas Pembuktian Sederhana Dalam Perkara Kepailitan Di Peradilan Niaga (Ciri Khusus Dalam Sistem Acara Perdata)," *Universitas Sumatera Utara* (Disertasi Doktor Universitas Sumatera Utara, 2020).

[8] *Ibid*.

dismissal mechanism, and the constitutional court utilises a preliminary examination process. These mechanisms ensure that only cases that meet formal requirements move forward. However, Indonesian civil procedure law continues to rely heavily on outdated regulations from the Dutch colonial era. The *Herziene Indonesisch Reglement* (HIR) and the Regulations of Indonesia applicable to the Subang region (*Rechts Reglement Buitengewesten*) remain in effect today, with the HIR (*Staatsblad* 1941:44) applying to Java and Madura and the *Reglement Voor de Buitengewesten* (*Staatsblad* 1927:227) covering areas outside these regions.[9]

Despite various transitions and changes, these colonial-era regulations still influence the current legal framework. The Supreme Court of Indonesia has yet to introduce new regulations incorporating a modern concept of preparatory examination in civil procedure law. This results in a rigid trial process that is often inefficient and outdated. To address these issues, the research should focus on developing a new concept for civil procedure law to modernise the system. This new concept could be integrated into Supreme Court Regulations or the Civil Procedure Law Bill, creating a more efficient and up-to-date legal framework.[10]

One of the key functions of the Supreme Court of the Republic of Indonesia is its administrative role, which involves ensuring the smooth operation of the judiciary. This includes addressing gaps in existing laws and creating regulations to supplement procedure law when necessary. For example, Perma Number 01 of 2016 outlines the mediation process in civil procedure law, aiming to enhance public access to justice while upholding the principles of simplicity, speed, and affordability. In line with this, the Supreme Court has been working to streamline civil trial proceedings by implementing faster processes, ensuring that each case is handled and decided within a maximum of six months from the registration date.[11]

The volume of civil cases is larger than in the Administrative Court and petitions in the Constitutional Court. This is evidenced by data from the Supreme Court directory in 2020, where district courts across Indonesia resolved 6,550 civil cases, many of which were dismissed with Unacceptable Decisions (*Niet Ontvankelijke Verklaard*).[12] In contrast, the number of Administrative Court cases dismissed with Unacceptable Decisions in 2020 was 624.[13] From August 10, 2019,

[9] Deny Noer Wahid, Tasyabilla Pandi Utami, and Febriansyah Ramadhan, "Constitutionality Of President's Authority Regarding Lockdown Policy During The State's Emergency," *The Indonesian Journal of International Clinical Legal Education* Vol 4 No 1, no. No 1 (2022): 41–60.
[10] Sudikno Mertokusumo, *Indonesian Civil Procedure Law* (Yogyakarta: Liberti, 2002).
[11] Circular of the Supreme Court number 6 of 1992 Settlement of Cases in High Courts and District Courts.
[12] Mahkamah Agung Republik Indonesia, "Supreme Court Directory, 'Supreme Court,' Last Modified in 2020" (Jakarta, 2020). Accessed on January 7, 2023,https://putusan3.mahkamahagung.go.id/search.html?q=Verklaard&jenis_doc=putusan&jd=Tidak_Dapat_Diterima&tp=0&t_put=2020.
[13] Supreme Court Directory, "Supreme Court," last modified in 2020, accessed on January 6, 2023, https://putusan3.mahkamahagung.go.id/search.html?q=Pengadilan%20tata%20usaha%20negara&je

to August 18, 2020, the Constitutional Court issued 75 judicial review decisions. Out of these, four were accepted, 27 were rejected, and 32 were deemed unacceptable (*Niet Ontvankelijk Verklaard*).[14]

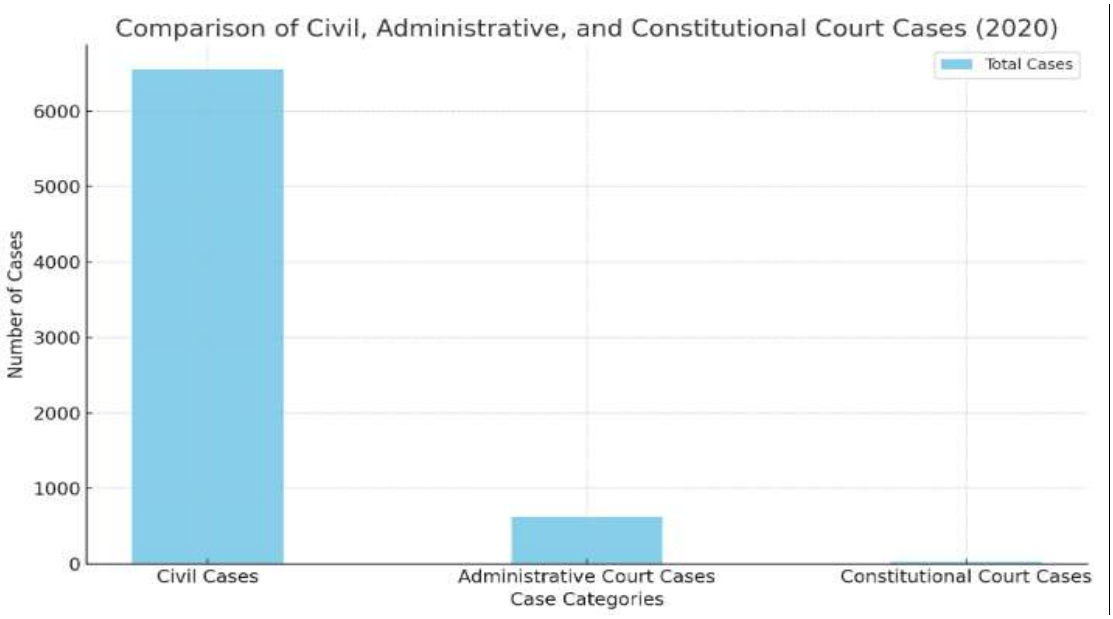

Figure 1. Inadmissible Verdict Number

Furthermore, this research uses at least two cases to analyse the problem of how damaging the Inadmissible Verdict is in attaining justice for members of society. The first case, Surabaya District Court Register Number 332/Pdt.G/2023/PN Sby, highlights the principle of relative competence. It examines a situation where a lawsuit was dismissed because it was filed in the wrong court despite a prior agreement specifying an alternative forum. This case underscores the necessity for strict adherence to jurisdictional clauses agreed upon in contracts, illustrating how failure to comply with these provisions can lead to the dismissal of claims and considerable delays in obtaining justice.[15]

The second case, Surabaya District Court Register Number 1038/Pdt.G/2019/PN Sby, addresses the concept of absolute competence. It involves a scenario where the Court lacked the authority to hear a case due to the subject matter falling outside its jurisdiction. This case underscores the importance of filing cases in the Court with inherent authority over the specific type of dispute, ensuring

nis_doc=putusan&cat=6ccf9ad6c4d6e9ab8fbc1f8b252cec81&jd=Tidak_Dapat_Diterima&tp=0&court=&t_put=2020&t_reg=&t_upl=&t_pr=..

[14] Setara, "Performance Report of the Constitutional Court 2019-2020," last modified in 2020, accessed on January 5, 2023, https://setara-institute.org/laporan-kinerja-mahkamah-konstitusi-2019-2020/Setara, "Laporan Kinerja Mahkamah Konstitusi 2019-2020," 2020.

[15] Ahmad Siboy et al., "The Effectiveness of Administrative Efforts in Reducing State Administration Disputes," *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2022): 14–30, https://doi.org/10.53955/jhcls.v2i1.23.

that legal proceedings are conducted within the appropriate judicial framework.[16] By examining these cases, legal professionals and parties involved in disputes can gain a deeper understanding of the critical role of the formality aspect of the adjudication process.

Thus, this research highlights the need for a preparatory examination rule, especially in the civil procedure law system, to help reduce the backlog of cases resulting from Unacceptable Lawsuit Decisions. Legal reforms in case dismissal procedures in civil law are essential. By implementing such a mechanism, the principles of simple, speedy, and affordable justice would be upheld, and it would also make it easier for the public to achieve the core objectives of the law: justice, legal certainty, and legal utility.[17]

The Preparatory Examination Mechanism applied in civil procedure law will later become a new legal finding (*Rechtsvinding*) to fill the legal vacuum (*Vagu of norm*) regarding the preparatory examination of lawsuits that has never existed in Indonesia's civil procedure law mechanism. With new legal findings, this article aims to realise the principles of civil procedure law in general and specifically related to the principles of simple, speedy, and affordable justice. Focusing on the application of speedy, simple, and affordable principles, a simple lawsuit mechanism has been applied in civil procedure law in Indonesia. The existence of a preparatory examination in a civil case decision will provide more effective and efficient decisions based on the true nature of the law to achieve the legal objectives proposed by Gustav Radbruch:[18] justice, utility, and legal certainty.

B. METHOD

This scientific article analyses the normative juridical method, a type of research whose scope of research is conducting regulated legal studies which are always framed by legal doctrines which can consist of separate parts per the IMRAD structure.[19] The author can divide each section into several sections, especially the Research and Results sections. Each part or section of an article, including the Research and Results sections, must have a title. The research section, in particular, should be an overview of the research process and present the results obtained, along with new knowledge elements. Furthermore, this research employs statutory, conceptual and historical approaches. The legal materials used include primary, secondary and tertiary legal materials, which will be analyzed using grammatical, systematic, historical, futuristic and theological interpretation techniques.

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[16] Ilham Dwi Rafiqi, "Criticisms toward the Job Creation Bill and Ethical Reconstruction of Legislators Based on Prophetic Values," *Legality : Jurnal Ilmiah Hukum* 29, no. 1 (2021): 144–60, https://doi.org/10.22219/ljih.v29i1.14991.
[17] Ilham Dwi Rafiqi Deny Noer Wahid, "Manifestation of Eastern Cultural Values by Re-Arranging Normon Insulting the President and Vice President," *Hang Tuah Law Journal* 6, no. 1 (2022): 61–76.
[18] Satjipto Rahardjo, *Legal Studies* (Bandung: PT. Citra Aditya Bakti, 2006). P. 19
[19] Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia, 2007).

C. RESULTS AND DISCUSSIONS

1. Analysis of the urgency of examination preparation in Civil Justice

Civil litigation is one of the branches of the judiciary authorised to receive, examine, and decide civil cases for interested parties. In this regard, the researcher highlights the application of ease of access to justice in the civil litigation process.[20] Access to justice entails the realisation of principles such as speed, simplicity, and affordability. The realisation of these principles in achieving or accessing justice is not fully realised. Therefore, it is important to deeply examine the nature and impact of access to justice in civil litigation. Studies on access to justice in the scope of civil litigation include the nature of the application of these principles, the impact of their absence or application on society, and how the principle of access to justice has been applied in the judiciary's obligation to provide effective legal services.[21]

The issue faced by individuals seeking justice in court is the tendency of judges to rule cases inadmissible. Judges reject claims mainly due to errors or defects in the formal requirements that the plaintiff has to meet. A ruling of inadmissibility, often referred to as a ruling of the claim being not accepted, declares that the claim cannot be accepted due to formal defects. The formal requirements, as stipulated in civil procedure laws, provide grounds for the defendant to raise an objection that the plaintiff's formal requirements do not meet the criteria of civil procedure law, which may be declared inadmissible by the panel of judges.[22] Objections, in the context of procedural law, refer to challenges or objections raised by the defendant against the substance of the plaintiff's claim. According to their types, objections are categorised into procedural objections (related to the formal requirements of the claim) and material objections (objections based on substantive civil law).

The decision of *Niet Ontvankelijke Verklaard*, often referred to as the Unacceptable Lawsuit Decision, states that a lawsuit cannot be accepted due to its formal defects. The formal requirements, as determined in civil procedure law, provide grounds for the defendant to raise an objection that the formal requirements of the plaintiff do not meet the criteria of civil procedure law, which will be deemed unacceptable by the panel of judges.

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[20] Febriansyah Ramadhan, Deny Noer Wahid, and Nabil Nizam, "Hubungan Negara Dan Agama: Telaah Hukum Dan Putusan Pengadilan," *JAPHTN-HAN*, 2, no. 1 (2023), https://doi.org/https://doi.org/10.55292/japhtnhan.v2i1.58.

[21] Deny Noer Wahid, "Judicial Partner: Aktualisasi Nilai Pancasila Terhadap Pembentukan Badan Pembinaan Ideologi Pancasila," *Pancasila: Jurnal Keindonesiaan* 3, no. 1 (2023): 57–69, https://doi.org/10.52738/pjk.v3i1.148.

[22] R. Syariah, ""Keterkaitan Budaya Hukum Dengan Pembanguna.," *J. Equal.* 13, no. 1 (2008), https://scholar.google.com/scholar?hl=id&as_sdt=0%2C5&q=R.+Syariah%2C+"Keterkaitan+Budaya+Hukum+dengan+Pembangunan+Hukum+Nasional%2C"+J.+Equal.%2C+vol.+13%2C+no.+1%2C+2008&btnG=.

According to M. Yahya Harahap in his book[23], formal defects that might cause a lawsuit to be rejected include issues like an invalid power of attorney, lack of legal basis, errors in the parties involved (*error in persona*), or other formal flaws such as vague or imprecise claims (*obscure libel*), filing a lawsuit for the same matter twice (*ne bis in idem*), or jurisdictional violations. When facing a lawsuit with such formal defects, court's ruling must clearly state that the lawsuit is "not accepted" (NO).[24] The text further explains that a NO ruling means that the court does not proceed with examining or adjudicating the substance of the case due to these formal defects. Consequently, there is nothing to execute from such a decision, as the lawsuit was never evaluated on its merits.[25]

In contrast, when a civil case reaches a ruling that has gained legal force (*inkracht*), execution becomes possible. According to Article 195 of the HIR, the execution of civil rulings is handled by a court's clerk under the judge's order.[26] The party that wins the case is entitled to compel the losing party to comply with court's decision, ensuring that the justice system is effective. However, execution can only occur when all legal avenues to contest the decision have been exhausted unless the ruling is declared immediately enforceable.[27]

Objections, in the context of procedural law, mean the defence or objection raised by the Defendant against the substantive matter of the Plaintiff's lawsuit. According to their types, objections are divided into 2 (two), namely procedural objections (related to the formal requirements of the lawsuit) and material objections (objections based on material civil law).

Some examples of cases ruled by the court with claims not being accepted include:

a. Decision Regarding Relative Competence at the Surabaya District Court Case Register Number 332/Pdt.G/2023/PN Sby: dated August 28, 2023

In the Legal Considerations, the Panel of Judges found that the Plaintiff's attitude in filing the *a quo* lawsuit to the Surabaya District Court was inappropriate and violated the agreed-upon agreement and legal options. As a result, the Surabaya District Court lacks relative authority to examine and adjudicate the case (Article 118, paragraph 4 HIR). Based on these considerations, defendant 1's objection, asserting that the Surabaya District Court is not authorised to adjudicate the case, is legally justified and, therefore, upheld. With the granting of Defendant 1's objection

[23] M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi Dan Peninjauan Kembali* (Jakarta: Sinar Grafika, 2002).
[24] *Ibid*.
[25] Winardi Sirajuddin, *Dasar-Dasar Hukum Tata Negara Indonesia* (Malang: Setara Press, 2015).
[26] Febriansyah Ramadhan, "Penataan Ulang Kedudukan Menteri Triumvirat Dan Majelis Permusyawaratan Rakyat Dalam Masa Pergantian Presiden Dan Wakil Presiden Bersamaan," *Jurnal Majelis* 2, no. 2 (2019): 108–26.
[27] Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi dan Peninjauan Kembali.

regarding the court's relative authority, the issues related to vague lawsuits, *error in persona,* formal defects in the lawsuit, misdirected claims by the plaintiff, and other related matters will not be addressed separately. The Panel of Judges concludes that Defendant 1's objection is legally sound, and as a result, the Surabaya District Court is not authorised to hear or decide on the case in question.[28]

The concept of relative competence addresses which court has the authority to handle a case based on agreed-upon jurisdictional provisions. In the case at hand, the plaintiff's suit was dismissed because it was filed in the Surabaya District Court despite a prior agreement specifying a different court as the proper forum. This situation underscores the significance of adhering to jurisdictional agreements stipulated in contracts.[29]

The dismissal of the case due to the wrong court being chosen highlights a critical aspect of legal disputes—compliance with pre-determined jurisdictional clauses. Such agreements are not mere formalities; they are legally binding and must be honoured to ensure that disputes are resolved in the agreed-upon forum.[30]

The key takeaway from this case is the necessity of careful attention to jurisdictional clauses in legal agreements. When parties to a contract stipulate a specific court for resolving disputes, it is imperative to file claims in the correct venue. Ignoring these clauses can lead to the dismissal of the case, resulting in wasted time and resources and potentially detrimental delays in justice.

This case serves as a reminder to legal professionals and parties involved to meticulously adhere to jurisdictional terms, as failing to do so can significantly impact the progression and outcome of a legal dispute.

b. Decision Regarding Absolute Competence at the Surabaya District Court Case Register Number 1038/Pdt.G/2019/PN Sby: dated September 3, 2020

In the legal considerations, the Court noted that absolute competence refers to the division of authority between different judicial bodies. According to Article 134 of the HIR, an exception based on absolute authority arises when a district court is not authorised to hear a case because the subject matter falls under the jurisdiction of a different court. Given that the exception based on absolute authority has been upheld, all other objections are deemed inadmissible. Since the Defendant's Absolute Competence Exception was granted, and the Surabaya District Court was deemed unauthorised to adjudicate the case, the Plaintiff's lawsuit is declared inadmissible

[28] "Decision of the Surabaya District Court 332/PDT.G/2023/PN SBY" (Surabaya, 2023).
[29] Ilham Dwi Rafiqi Febriansyah Ramadhan, "Menggali Asas-Asas Pengadilan Hak Asasi Manusia Dalam Pengujian Undang-Undang Pengadilan Hak Asasi Manusia," *Journal of Judicial Review* 24, no. 1 (2022): 35–58, https://doi.org/http://dx.doi.org/10.37253/jjr.v24i1.5376.
[30] Norfiadi, *Cara Pengadilan Agama Bukit Tinggi Menekan Angka Perceraian* (Bandung: Wedina Media Utama, 2023).

(*Niet Ontvankelijk Verklaard*). With the acceptance of Defendant 1's Exception, this decision concludes the case and any further examination between the parties.[31]

Absolute competence refers to a court's inherent authority to hear specific types of cases based on the nature of the legal dispute. In this instance, the Surabaya District Court found itself without the requisite authority to hear the case because the subject matter fell outside its jurisdiction. The case was dismissed as it should have been handled by a court with the appropriate authority, highlighting the fundamental principle of absolute competence.[32]

The case illustrates how courts are assigned jurisdiction based on the subject matter of the dispute, which can include administrative, religious, or general civil matters. Understanding which court holds absolute competence over a particular type of case is essential for ensuring that legal proceedings are conducted within the proper judicial framework.

The critical lesson from this case is the importance of aligning legal disputes with the appropriate court based on the nature of the dispute. Legal practitioners must be adept at determining which court possesses absolute competence over a case, as this can prevent the dismissal of claims and ensure that the case is heard by the correct judicial authority.

This case emphasises that legal disputes must be brought before the court that is empowered to adjudicate the specific issue at hand. Properly addressing the jurisdictional authority can prevent procedural errors and contribute to the efficient resolution of legal matters

A decision of *Niet Ontvankelijk Verklaard* (Not Accepted) means the lawsuit is rejected without addressing the substance of the case. Although a plaintiff may refile their claim following such a decision, it is not uncommon for *Not Accepted* rulings to be appealed.[33] As outlined above, these decisions typically arise when the case examination is halted due to formal defects, deficiencies in the plaintiff's filing, or issues with the court's competence. However, in practice, these formalities often create barriers for the public.[34] Judges frequently issue *Not Accepted* rulings, preventing cases from moving to the substantive trial stage. According to data from the Supreme Court directory in 2020, district courts across Indonesia ruled on 6,550 civil cases, many of which were dismissed as *Not Accepted*.[35] This data proves how

[31] "Decision of the Surabaya District Court Number 1038/Pdt.G/2019/PN" (Surabaya, 2019).
[32] Lidya Suryani Widyati, "Tindak Pidana Penghinaan Terhadap Presiden Atau Wakil Presiden: Perlukah Diatur Kembali Dalam Kuhp? (Defamation Against the President or Vice President: Should It Be Regulated in the Criminal Code?)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 8, no. 2 (2017): 215–34, https://doi.org/10.22212/jnh.v8i2.1067.
[33] Mertokusumo, *Indonesian Civil Procedure Law*.
[34] Imelda Hardi, "Tesis Penguasaan Tanah Sebagai Barang Milik Daerah Oleh Pemerintah Kota Padang" (Universitas Andalas, 2023).
[35] Direktori Mahkamah Agung, "Mahkamah Agung," terakhir diubah 2020, diakses January 7, 2023,https://putusan3.mahkamahagung.go.id/search.html?q=Verklaard&jenis_doc=putusan&jd=TIDAK_DAPAT_DITERIMA&tp=0&t_put=2020.

these procedural hurdles can significantly impede access to justice in the court system.

In general, the general public or those who do not have much experience in dealing with civil courts often have to sacrifice a considerable amount of time, energy, and financial resources to diligently file a lawsuit with the court. They do so to promptly obtain justice or wisdom from the judge's authority in resolving their legal issues. In situations like this, it is important to identify barriers that make access to justice difficult for the public.[36] Complex formal requirements and a slow legal system contribute to these difficulties. Concrete solutions must be sought to overcome these barriers so that access to justice becomes easier for all citizens. Justice is key to maintaining the stability and welfare of society, so resolving issues of access to justice is crucial. Significant and sustainable efforts are needed to ensure everyone has equal and effective access to the justice system.[37]

The civil justice system must provide faster and more efficient services in the context of a high volume of civil cases. Continuously receiving Decisions of *Not Accepted* Lawsuits can cause prolonged fatigue and frustration for individuals filing lawsuits. This creates a negative impression of the legal system in resolving conflicts between individuals in society. The high volume of civil cases indicates high conflict and dispute in society. However, if legal services cannot respond to these challenges quickly and efficiently, the impression created is the inability of the legal system to provide access to justice.[38] This harms society and can lead individuals to relinquish their legal efforts. Therefore, the civil legal system needs to have mechanisms for case preparation to ensure that individuals seeking justice feel facilitated and obtain justice quickly. To date, there have been no legal regulations in the civil procedure law system that can solve the high volume of civil cases. Difficulty in proceeding in court creates legal uncertainty for society. Hindered formal requirements for filing lawsuits result in many Decisions of Not Accepted lawsuits, forcing plaintiffs to refile lawsuits. This phenomenon indicates the need for changes in the civil procedure law system to address difficulties in accessing justice.[39]

The Table below presents a comparison regarding the arrangement of preparatory examination inspections in each scope of court:

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[36] Dian Agung Wicaksono et al., "Kompatibilitas Pengaturan Pendaftaran Tanah Terhadap Kompleksitas Keadaan Hukum Tanah Kasultanan Dan Tanah Kadipaten," *Jurnal Agraria Dan Pertanahan* 6, no. 2 (2020): 172–87.

[37] Syahriza Alkohir Anggoro, "Politik Hukum: Mencari Sejumlah Penjelasan," *Jurnal Cakrawala Hukum* 10, no. 1 (2019): 77–86, https://doi.org/10.26905/idjch.v10i1.2871.

[38] Siboy et al., "The Effectiveness of Administrative Efforts in Reducing State Administration Disputes."

[39] I Gusti Agung Ketut Bagus Wira Adi Putra, Ida Ayu Putu Widiati, and Ni Made Puspasutari Uj, "Gugatan Tidak Dapat Diterima (Niet Ontvankelijke Verklaard) Dalam Gugatan Cerai Gugat Di Pengadilan Agama Badung," *Jurnal Konstruksi Hukum* 1, no. 2 (2020): 305–9, https://doi.org/10.22225/jkh.2.1.2565.305-309.

NO	Type of Judicial System & Examination	Legislation	Court Authority
1	Administrative Court – *Dismissal process*	Law No. 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Court Circular Letter of the Supreme Court No. 2 of 1991	Article 63 of the Administrative Court Law states: Before the main dispute examination begins, the judge must conduct a preparatory examination to supplement an unclear lawsuit. In the preparatory examination, as referred to in paragraph (1), the judge must advise the plaintiff to improve the lawsuit and complete it with necessary data within thirty days and may request clarification from the relevant State Administrative Body or Official.
2	Constitutional Court – Preliminary Review	Law Number 24 of 2003 Constitutional Court	Article 39: Before commencing the examination of the substance of the case, the Constitutional Court examines the completeness and clarity of the application. In the examination referred to in paragraph (1), the Constitutional Court shall advise the applicant to complete and/or rectify the

			application within 14 (fourteen) days.
3	Civil Court – Preliminary Examination	Law No. 48 of 2009 concerning Judicial power HIR & R.Bg	Article 4 (2) Law of Judicial Power: The judiciary is conducted in a simple, affordable, and speedy manner. Article 119 HIR: The district court's chief judge is authorised to provide advice and assistance to the plaintiff or their representative regarding the submission of their complaint. Article 132 HIR: During an examination, the chairman has the right to provide explanations to both parties and will indicate the laws and evidence they may use if deemed necessary to ensure that the case proceeds smoothly and orderly.

Table 1. Preparatory Examination Comparison

This comparison reviews how civil procedure law responds to the needs and issues currently occurring in society. The absence of the principle of expediency in civil litigation is a major issue concerning the community's ease of access to justice. Based on the Table above, the implementation of preparatory examination has been present in the dismissal process of the Administrative Court (PTUN) and the Preliminary Examination of the Constitutional Court. Meanwhile, the preparatory examination procedure in civil litigation remains as abstract norms without clear status regarding the bindingness of the court or judges in implementing those norms.[40]

[40] Galih Orlando, "Hukum Sebagai Kontrol Sosial Dan Social Enggineering," *Tarbiyah Bil Qalam : Jurnal Pendidikan Agama Dan Sains* 7, no. 1 (2023): 31–48, https://doi.org/10.58822/tbq.v7i1.111.

Based on the data from the Supreme Court directory in 2020, the number of civil cases filed in district courts across Indonesia and already adjudicated amounted to a total of 91,262 judgments, 6,550 of which were among civil cases adjudicated with the *Not Accepted* (*Niet Ontvankelijke Verklaard*). Meanwhile, the number of judgments in PTUN cases in 2020 was 8356. [41] On the other hand, from August 10, 2019, to August 18, 2020, the Constitutional Court issued 75 decisions on law testing. Among them, four decisions were accepted, 27 were rejected, 32 were not accepted/NO (*Niet Ontvankelijk Verklaard*), ten legal products took the form of decrees, and two were dismissed.[42]

The above data indicates that in terms of quantity, civil cases experience the most frequent rejected lawsuits compared to cases in PTUN or Constitutional Court (MK).[43] However, regulatory bodies have not identified this as an urgent issue to be resolved. The legal vacuum in examining preparations to check the formal requirements of civil lawsuits significantly contributes to the high accumulation of civil case volumes. This issue becomes ironic because, in the scope of PTUN and MK judiciary, which have lower data volumes of case submissions, there are regulations to prevent rejected lawsuits from occurring, normatively stipulated in Article 63 of the State Court Administrative Law & Article 39 of the Constitutional Court Law.

From the table above, the comparison is not limited to normative scope or positive regulations. Still, discussions regarding the principles and philosophical foundations of preparatory examination within the scope of PTUN and MK must be further examined and elaborated. Researchers find the principle of equality before the law in the preliminary examination of the Constitutional Court and the State Court Administrative's dismissal procedure. The theory and concept of equality before the law, as embraced by Article 27 paragraph (1) of the 1945 Constitution, serve as the basis for protecting citizens to be treated equally before the law and government. This means that everyone is treated equally under the law.[44] Equality before the law, in its simplest sense, means that everyone is equal before the law. This principle is one of the cornerstones of the Rule of Law doctrine and is also prevalent in developing countries like Indonesia.[45] Thus, inherent elements carry the meaning of equal protection before the law.

The principle of equality before the law becomes relevant in the implementation of the Constitutional Court and Administrative Court judiciary

[41] Supreme Court Directory, Loc. Cit.
[42] Setara, Loc. Cit. Setara, "Laporan Kinerja Mahkamah Konstitusi 2019-2020."
[43] Mahkamah KOnstitusi.
[44] Erma Denniagi, "Analisis Ke-Ekonomian Pemidanaan Tindak Pidana Pencucian Uang Dalam Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang," *Jurnal Lex Renaissance* 6, no. 2 (2021): 246–64, https://doi.org/10.20885/jlr.vol6.iss2.art3.
[45] Lilik Mulyadi, *Criminal Procedure Law* (Jakarta: Citra Aditya Bakti, 2007).

because petitioners as ordinary citizens are confronted with officials or representatives of the state that may potentially cause disparities in treatment during its implementation. Thus, this principle is strictly enforced to safeguard the rights of citizens in the judicial and legal processes.[46] One manifestation of the principle of equality before the law in the scope of the Administrative Court and Constitutional Court is through the existence of formal requirements examination procedures (dismissal procedure & preliminary review of the Constitutional Court), wherein plaintiffs in their claims can be guided and advised by judges to fulfil the formal requirements of their lawsuit or application. Thus, legal discrimination can be minimised effectively, ensuring that the rights of citizens are upheld and fulfilled.[47]

On the other hand, applying preparatory examinations to the civil procedure law system may seem unnecessary if we base it on the principle of equality before the law. This principle is relevant when there are potential differences in status and authority between parties in a legal dispute. However, in civil matters, where such disparities are generally not a concern, preparatory examinations should focus on upholding the principles of simplicity, speed, and cost-effectiveness. The priority should be improving and streamlining the civil judicial process, ensuring it works efficiently for all parties involved.[48]

The concretisation of Article 4 paragraph (2) of the Judiciary Law; Articles 119 & 132 of the Civil Code consistently can address issues of access delay to justice in judicial institutions—especially civil ones—for the public. In facing the high volume of civil cases, it is essential for judges to have a substantial role in identifying the actual needs of society in achieving justice and ensuring legal accountability.[49] This includes the application of proactive judge attitudes and expediting the judicial process. Judge involvement in the examination of formal requirements should not be considered as exceeding judicial authority, as judges do not aim to expand or limit the scope of cases. Instead, judges actively participate in evaluating formal requirements submitted by plaintiffs as an essential step in facilitating the judicial process. This ensures that justice can be upheld efficiently and effectively in the face of challenges posed by high volumes of civil cases.[50]

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[46] Scott Mainwaring, "Presidentialism, Multipartism, and Democracy: The Difficult Combination," *Comparative Political Studies* 26, no. 2 (1993): 198–228, https://doi.org/10.1177/0010414093026002003.

[47] Faiz Rahman and Agung Wicaksono, "Eksistensi Dan Karakteristik Putusan Bersyarat Mahkamah Konstitusi Existence and Characteristics of of The Constitutional Court," *Jurnal Konstitusi* 13, no. 2 (2016): 348–78.

[48] Mizaj Iskandar & Lisa Agustina, "Application of the Simple, Fast, and Low-Cost Justice Principle in Cumulative Divorce Lawsuits and Joint Property at the Banda Aceh Sharia Court," Journal of Family and Islamic Law 3, No. 1 (2019): p. 247.

[49] Shirin Shonazarova, "The Determinants of Early Marriage and Under-Five Child Mortality in Afghanistan The Determinants of Early Marriage and under-Five Child Mortality in Afghanistan," *MPRA Paper*, no. 107684 (2021): 1–29.

[50] Anita Afriana, "Limits of Passive and Active Judge Principles in Civil Procedure," Bina Mulia Hukum Journal Vol. 7, No (2022).

2. Embodiment of Examination Preparation Based on the Speed Principle

The examination of preparation within the scope of civil justice must be examined from the perspective of positive law, which includes Article 4 paragraph (2) of Law No. 48 of 2009 concerning Judicial Power and Article 119 & 132 HIR grounded on the principles of active judges and the principle of expeditious justice. The examination of preparation in its application within the civil justice scope functions to resolve the issue of the multitude of cases being decided with a rejected lawsuit (*Niet Ontvankelijke Verklaard*), where the basis of the decision is the presence of errors or incompleteness of formal requirements in the plaintiff's lawsuit submission.[51] This issue contributes negatively to the accumulation of cases in civil courts. The legal basis in the application of preparation examination based on the principle of expeditiousness is as follows:

a. Article 4 Paragraph (2) concerning the Judicial Power Law: The court assists seekers of justice and endeavours to overcome all obstacles and hindrances to achieve a simple, speedy, and affordable justice system.
b. Article 119 HIR:
   The district court's chief judge is empowered to give advice and assistance to the plaintiff or their representative regarding the submission of their lawsuit.
c. Article 132 HIR:
   During an examination, the chairman has the right to provide explanations to both parties and will indicate the laws and evidence they may use if deemed necessary for the case to proceed smoothly and orderly.[52]

These three articles highlight the judge's role in guiding the parties involved in litigation, ensuring that justice is delivered in an orderly manner, with a focus on simplicity, speed, and cost-effectiveness. When viewed from John Stuart Mill's theory of legal utility, the third article has fulfilled the elements of pleasure, welfare, and happiness, emphasising that the law should be utilitarian. The purpose of the law extends beyond just ensuring legal certainty and justice; it is also meant to bring tangible benefits to society. The true value of the law can be measured by the extent of its impact on human welfare,[53] especially by assisting the community through judicial initiatives in the form of advice and guidance in pursuing justice.[54]

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[51] Ni'matul Huda, *Perkembangan Hukum Tata Negara Perdebatan Dan Gagasan Penyempurnaan.* (Yogyakarta: FH UII Press, 2014).
[52] Untung Prasetya, "Analysis of the Audi Et Alteram Partem Principle in Civil Case Proceedings (Case No. 20/Pdt.G/2019/PN Pwr)," Amnesti: Law Journal Vol. 2, No (2020).
[53] Besar, "Utilitarianism and the Purpose of Multimedia Law Development in Indonesia," Last Modified 2016, Https://Business-Law.Binus.Ac.Id/2016/06/30/Utilitarianisme-Dan-Tujuan-Perkembangan-Hukum-Multimedia-Di-Indonesia/.
[54] S M Mostafa Kamal, "Geographical Variations and Contextual Effect on Child Marriage in Bangladesh.," *Pakistan Journal of Women's Studies* 17, no. 2 (2010): 37–57.

On the other hand, the Preparatory Examination aligns with the principle of active judgeship. That is, judges actively assist the parties in court proceedings. Although the Indonesian Civil Code supports the idea of active judges in resolving civil cases, it lacks a clear definition of what this active role entails. Therefore, developing a more precise and applicable understanding of a judge's active involvement is essential.[55] This principle complements the broader notion of justice, requiring judges to deliver fair decisions regarding the claims brought before them. While the judges must avoid interfering with the scope of the dispute, their active role should involve offering guidance and clarification to the parties involved. Judges are not only tasked with upholding the law but are also expected to uphold justice. In doing so, they must contemplate the essence of justice, which Michael J. Sandel suggests is inseparable from considering the best way to live. By reflecting on justice, judges deeply reflect on the values that shape a meaningful and just life.

In the Dutch system, the *Wetboek van Burgerlijke Rechtsvordering regulates the preparatory examination*. The document highlights several key articles:

a. Article 19: Judges allow parties to present and explain their positions. Judges cannot base decisions on documents or information the parties have not sufficiently discussed.
b. Article 22: Judges can ask the parties to clarify their statements or submit specific documents at any stage.
c. Article 87: Judges may order oral hearings and provide opportunities for settlement or procedural instructions.
d. Article 88: Judges can question the parties during hearings, and parties may ask each other questions, subject to the court's discretion.
e. Article 91: Judges determine the procedural steps that must be taken in subsequent hearings.

These provisions emphasise the proactive role of judges in the Dutch system. The system operates on the principles of quick and efficient trials and the active involvement of judges in facilitating the process. Dutch civil law, like other civil law systems, follows an inquisitorial model where judges have significant control over fact-finding and procedural direction to ensure justice and avoid procedural flaws early in the process.[56]

The document contrasts this with the Indonesian system, which still follows outdated procedures from its colonial past. Despite inheriting its legal framework from the Netherlands, Indonesia has not significantly reformed its preparatory examination processes. The result is a system where judges are less active in guiding the process, often leading to delays and inefficiencies in resolving civil cases.

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[55] Deny Noer Wahid dan Catur Wido Haruni, "Konstruksi Ideal Sistem Parlementary Threshold Dalam Perspektif Demokrasi," *Jurnal Hukum Kenegaraan* 1, no. (1) (2023).
[56] Tata Wijayanta, "Application of Passive and Active Judge Principles and Their Relevance to the Concept of Formal Truth," Mimbar Hukum 22, No. 3 (2010): p. 573.

In conclusion, the Dutch system represents a more modern and efficient approach to civil procedure, particularly through the active role of judges in the preparatory stages. Meanwhile, Indonesia's system remains rigid and less adaptive, lacking the flexibility and proactive judicial involvement in the Dutch legal framework. The document calls for reform in Indonesia's civil procedure laws to better reflect contemporary needs for access to justice and procedural efficiency.[57]

The Federal Court of Australia also abandoned the passive judge principle seventeen years ago. FCA judges are no longer silent while listening to the parties in dispute during trials; instead, they actively control the proceedings to resolve cases quickly. Judges also actively encourage the parties to end the dispute peacefully.[58]

Explicitly, the HIR, RBG, and RV do not mention the terms "passive judge" or "active judge." In civil procedure law, the passive role of judges is only followed under the RV, which applies to the European group and is no longer in effect but is still used by judges in Indonesia. In this system, the judge only supervises the trial to ensure that the parties act in accordance with procedural law. Empirically, the passive and active judge principles are used in civil trials. However, this does not mean that the two are complementary. They are fundamentally distinct, each with its own functions.[59]

Lawrence M. Friedman stated that the effectiveness and success of law enforcement depend on three elements of the legal system: structure, substance, and culture. In the context of pretrial examinations, there is no clear regulation regarding its implementation. Thus, the formation of legal substance is the initial step in realising the principle of expedition.[60] The application of pretrial examinations in civil procedure law focuses heavily on the completeness of the formal requirements of the plaintiff. The emphasis of the issue in this study is the rigidity of the law found in the process of civil trial proceedings, which hinders society from obtaining justice. Dismissal of the Lawsuit, among others, is caused by:

a. Invalid Power of Attorney
b. Lawsuit beyond the absolute and relative jurisdiction of the court
c. *Obscure libel* lawsuit
d. *Error in persona* lawsuit
e. *Ne Bis In Idem*

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[57] *Wetboek van Burgerlijke Rechtsvordering* (Civil Procedure Code), accessed on April 17, 2024, https://wetten.overheid.nl/BWBR0001827/2024-01-01#BoekEerste_TiteldeelTweede_AfdelingEerste

[58] Asep Nursobah, "Paradigm Shift of Civil Judges in FCA: From Passive to Active Judges," Last Modified 2014, accessed on October 8, 2023

[59] Abdul Manan, Application of Civil Procedure Law in Religious Courts, 4th ed. (Jakarta: Kencana Prenada Media Group, 2005).

[60] Khadija Shahbaz, "Child Marriages in Pakistan: Causes, Consequences and a Way Forward," *Pakistan Languages and Humanities Review* 5, no. II (2021): 92–107, https://doi.org/10.47205/plhr.2021(5-ii)2.8.

According to Ahmad Mujahidin, judges are obliged to assist the parties in the smooth process of the trial as long as it concerns the following formal issues:[61]

a. Assisting in making lawsuits/petitions for those who have limitations in understanding procedures physically
b. Providing pro bono services in procedural procedures
c. Providing advice on the validity of power of attorney. A power of attorney must:
d. Suggesting improvements to the lawsuit/petition letter. Usually, it concerns the ambiguity of the lawsuit (*obscure libel*) or the defendant being incorrectly identified (*error in persona*).
e. Providing explanations about valid evidence from formal and material perspectives
f. Providing explanations on how to file objections and answers,
g. Assisting in officially summoning witnesses by the court.

In forming an appropriate conception of pretrial examination, it is important to clearly define and limit the scope of the material to be reviewed. Drawing from the substance of pretrial examination in the PTUN dismissal process, Preliminary Examination of the Constitutional Court, and referring to Articles in Law no. 48 of 2009 concerning Judicial Authority, the Indonesian Civil Code, R. Bg, and Supreme Court's Circular Letter (SEMA) No. 1 1971, the pretrial examination in civil cases should be designed with the principle of access to justice in mind. It should also reflect the principle of expediency and would encompass the following aspects:

a. The authority of the judge in conducting Pretrial Examination
b. The Judge in the Pretrial Examination has an obligation to provide advice regarding the completion of the formal requirements of the plaintiff, including examining the validity of the power of attorney and the formal competency of the submitted lawsuit.
c. Procedures and provisions for the implementation of the Pretrial Examination mechanism

In the Preparatory Examination, the judge is obliged to actively provide advice to the plaintiffs to complete the completeness of specific formal requirements regarding repairs: Plaintiff's Power of Attorney and Court Competency material. It is hoped that the Preparatory Examination will provide a solution to the problem of many cases being decided against by the judge. In this way, people who seek justice can focus on fighting for their rights in the main trial of the case without having to struggle and beat around the bush in fulfilling formal requirements.[62] In the Pretrial

[61] Sunarto, "The Principle of Active Judge in Civil Cases," Journal of Law and Judiciary 5, No. 2 (2016): pp. 254-255.
[62] Amiruddin Andi Wawo, "Corporte Social Responsibility Dalam Perspektif Etika Bisnis Dan Hukum Islam," *Jurnal Mirai Management* 5, no. 2 (2020): 583–607.

Examination, Judges are obliged to actively provide advice to the plaintiffs to perfect the completeness of formal requirements, especially regarding the improvement of the plaintiff's Power of Attorney and the Competence of the Court material. It is hoped that with the Pretrial Examination, a resolving regulation will be made to the problem of the number of cases decided by the Judge's Dismissal of Lawsuits. Thus, society seeking justice can focus on fighting for their rights in the main trial without struggling to fulfil formal requirements.[63]

The sociological basis in the Academic Manuscript of the Draft Civil Procedure Law states that justice seekers have long desired the courts to be able to resolve disputes quickly and non-formally. This is in accordance with Law No.48 of 2009 concerning Judicial Authority, which states that the procedural process is conducted simply, quickly, and at low cost. In 1993, the Supreme Court issued a policy in the form of SEMA Number 6 of 1993 jo Decision of the Chief Justice of the Supreme Court Number MA/007/SK/IV/1994, which essentially expects that the court, within a maximum period of 6 (six) months, has resolved each civil case. Procedural civil law in Indonesia still uses the provisions inherited from the colonial era of the Netherlands, namely HIR and RBg, which are no longer in line with the nation's philosophy that prioritises issues of independence and self-reliance.[64] The aspiration to have Civil Procedure Law based on national legal needs and in accordance with the noble values of the nation has long existed, and efforts towards realising these aspirations have been repeatedly made through various activities, including the drafting of a new Civil Procedure Law Bill by the Government to replace the colonial legacy of Civil Procedure Law.[65]

Based on sociological grounds, with its formalistic rigidity, the current Civil Procedure Law often results in inflexibility in courtroom practices, making the legal process difficult and ineffective for justice seekers. Moreover, this law still follows outdated colonial-era rules that no longer align with the *Pancasila* philosophy or reality of Indonesian society.[66] Despite Indonesia's long history and development of the legal system, there are compelling arguments that the existing civil procedure law fails to reflect the country's evolving values and social norms. As a country adhering to the civil law system, Indonesia should base its laws on the principles and norms

[63] Nia Sari Sihotang, "Application of the Simple, Fast, and Low-Cost Principle at the Pekanbaru District Court Based on Law No. 48 of 2009 on Judicial Power," Jom Law Faculty Vol. 3, No. 2 (2016): 10.
[64] Rebecca Ingber, "Bureaucratic Resistance and the National Security State," *Iowa Law Review* 104, no. 139 (2018): 139–221.
[65] Dachran Busthami, "Judicial Power in the Perspective of the Rule of Law in Indonesia," Legal Issues Journal Vol. 46, N (2017).
[66] Erna Dewi, "The Role of Judges in the Enforcement of Criminal Law in Indonesia," Legal Pranata Vol. 5, No. 2 (2010): 1.

of its people. However, a noticeable gap remains between civil procedure law and the philosophy of communal values central to Indonesian life.[67]

This creates a mismatch between what is expected from the legal system and what happens in civil litigation practice. Philosophical foundations also emphasise the importance of realising speed, simplicity, and affordability principles in the civil litigation system. However, we continue to face significant challenges in achieving these goals, particularly in civil litigation. This process is often slow, overly complicated, and expensive for those involved. This highlights the urgent need to reform civil procedure law in Indonesia to bring it more in line with its fundamental philosophical foundations. Serious efforts are needed to ensure that civil procedure law not only reflects the values and social norms of the society but also fulfils principles such as speed, simplicity, and affordability.[68]

According to researchers, the embodiment of the principle of speed through Preparatory Examination must be enshrined in the Draft Civil Procedure Law. Similar to the preparatory examination in the dismissal process of the Administrative Court (PTUN) regulated in the PTUN Law and the Preliminary Examination of the Constitutional Court (MK) regulated in the MK Law, the mechanism of Preparatory Examination should be embodied in the form of a Law. Researchers argue that legal regulation, especially in civil procedure law, which currently still refers to the legacy of colonial governance, has surpassed its relevance. The current civil procedural regulations still reflect the dualistic framework applied by the Dutch East Indies Government, which divided procedural regulations for the Courts in Java-Madura and the courts outside these regions, as regulated in documents such as the *Het Herziene Indonesisch Reglement* and *Rechtsreglement Buitengewest*. However, this paradigm is no longer relevant to Indonesia's current reality.[69]

[67] Deny Noer Wahid, Isdian Anggraeny, and Samira Echaib, "The Urgency of Returning the People's Consultative Assembly Authority in Determining the Outlines of the Nation's Direction," *Yuridika* 38, no. 3 (2023): 539–64, https://doi.org/10.20473/ydk.v38i3.36885.
[68] Satjipto Rahardjo, Op. Cit., p. 36-37
[69] Ministry of Law and Human Rights, "Academic Draft of the Civil Procedure Law Bill," 2015. Page 3

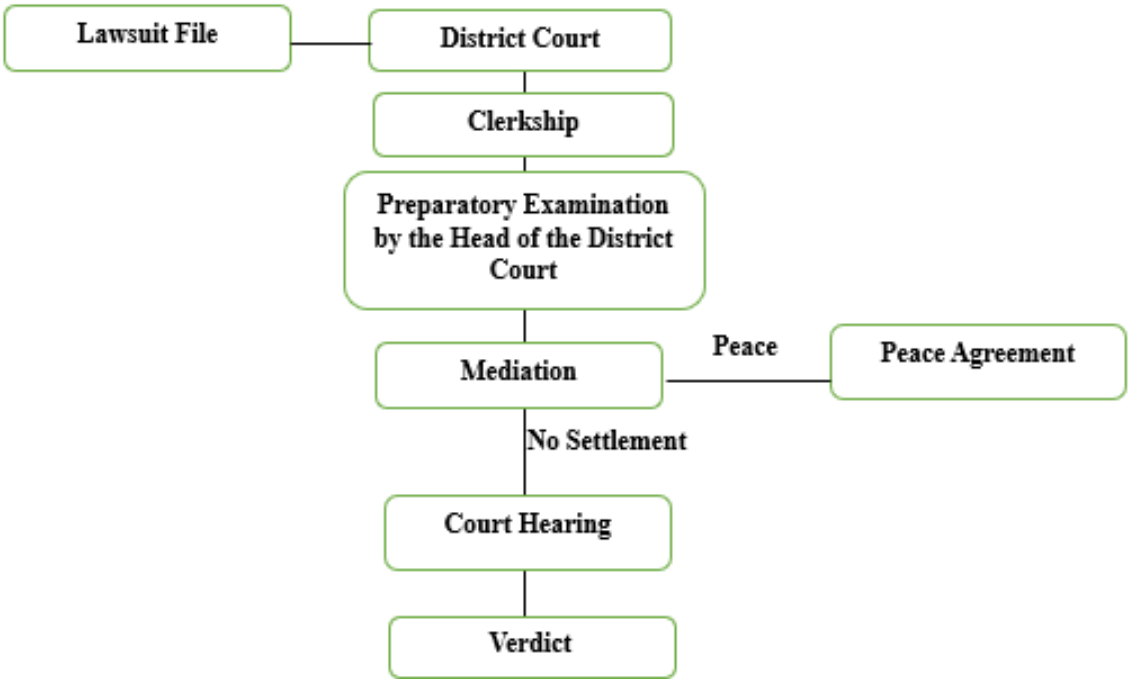

Diagram 1. Preparatory Examination Illustration Process

The formation of regulations regarding preparatory examinations will realise an ideal court not based on legal rigidity and procedural processes that seem formalistic and verbose without prioritising the welfare and benefits generated or desired in the trial process. The Decision of Rejected Lawsuit becomes the main obstacle for justice seekers in pursuing their civil rights. Therefore, preparatory examination procedures based on the principle of speed and access to justice can provide ease for justice seekers in litigation and trial processes. According to Maria Farida Indrati's perspective, legislation can only be formed by institutions with legislative authority (*wetgevingsbevoegheid*), which is the power to enact laws or *rechtsvorming*.[70] Legally, legislation is defined as written regulations containing legally binding norms formed or established by state institutions or authorised officials through procedures stipulated in legislation.[71]

At the core of these issues lies the rigid formalism that pervades civil procedure law. The law places a disproportionate emphasis on meeting formal requirements—everything from the structure of a lawsuit to the exact wording of documents. This stringent adherence to formality frequently leads to cases being dismissed on technical grounds, with courts ruling "*Niet Ontvankelijk Verklaard*" (No Case), meaning the case is not even considered due to procedural defects. These defects

[70] Maria Farida Indrati Soeprapto. Legislation Science: Basics of Formation. Yogyakarta: Kanisius, 1998, p. 54

[71] Article 1 number 2 of Law Number 12 of 2011 concerning the Formation of Legislation, State Gazette of the Republic of Indonesia 2011/No. 82, Additional State Gazette of the Republic of Indonesia No. 5234

often include incomplete documentation, errors in identifying parties, or jurisdictional mistakes. Rather than addressing the case's merits and providing justice to those seeking resolution, the courts are bogged down by these technicalities. As a result, litigants, particularly those without sophisticated legal representation, are left frustrated and disillusioned by a system that seems more concerned with bureaucracy than justice.

Modern judicial systems in Indonesia and globally have moved towards more flexible, proactive frameworks. For instance, the State Administrative Court and the Constitutional Court in Indonesia incorporate mechanisms such as preliminary examinations or dismissal processes to ensure that cases meet procedural sufficiency before moving forward. This enables courts to allow litigants to correct minor procedural errors early in the process, ensuring that overly technical barriers do not block access to justice. This approach aligns with the principle of access to justice, a fundamental tenet of any fair legal system, ensuring that all individuals, regardless of their legal expertise or resources, can present their case and receive a fair hearing.[72]

The rigidity and procedural formalism embedded in Indonesian civil procedure law, combined with the passivity of judges, have rendered the system inefficient and inaccessible to many. Ordinary citizens, particularly those with limited resources, are caught in a cycle of litigation where their cases are continually dismissed on formal grounds, forcing them to refile and restart the entire process. This wastes time and money and undermines public confidence in the judicial system.[73]

As for it, the Supreme Court is a state institution empowered by law to enact legislation. Legislation formed by the Supreme Court is recognised and has a legally binding force as long as it is commanded by higher legislation or formed based on authority.[74] As for what is meant by based on authority, it is the implementation of specific government affairs in accordance with the provisions of the legislation.[75] The phrase' legal binding force' above, according to Yuliandri, is in accordance with the hierarchy of legislation, namely the hierarchy of each type of legislation based on the principle that lower legislation must not contradict higher legislation. Yuliandri argues that other types of regulations (in this context, regulations issued by the Supreme Court) should also adhere to the principle of hierarchy.[76]

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[72]Zurahmah, "Implementation of the Dismissal Process in Land Dispute Resolution (Case Study at the Makassar Administrative Court)," Journal of Legal Thought, Research, Law, Pancasila Education, and Citizenship Volume 1 (2014).

[73] Fajri, "Barriers to Public Accessibility to Civil Justice," Legal Science Journal (2011): p. 176. M Martindo Merta Junaidi Junaidi, "The Principle of Passive Judge in the *Reglement Op De Rechtsvordering* (R.V) and the Active Judge Principle in the HIR in Civil Case Resolution at the Court," Legal Science Journal Vol. 13, N (2020).

[74] Ibid., Article 8 paragraph (2)

[75] Ibid., Explanation of Article 8

[76] Yuliandri, Principles of Good Legislation Formation: Ideas for Sustainable Legislation Formation (Jakarta: Raja Grafindo Persada, 2010).

SEMA are issued by the Supreme Court to all levels of the judiciary, containing guidance on the administration of justice, which are more administrative. SEMA is classified as policy regulations (*beleidsregel*). According to Bagir Manan, policy regulations are made not based on legislation, delegation, or mandate, but based on the discretion inherent in state administration to achieve a legitimate legal goal. For example, circulars, guidelines, and operational directives.[77] Policy regulations are part of the operational implementation of government tasks, so they cannot amend or deviate from legislation. Policy regulations are like shadow laws of legislation; hence, they are called pseudo-legislation. So, what is the legal force of a policy regulation like SEMA? According to Bagir Manan, policy regulations do not directly bind legally but have legal relevance. Policy regulations are aimed at the state administration itself, so state bodies or officials are the first to implement them. Thus, policy regulations cannot affect the general public. Similarly, according to Indroharto, policy regulations indirectly bind the public. Nevertheless, Jimly Asshiddiqie criticises the form of circulars whose substance is regulatory, suggesting that their legal form should be regulations.[78]

Based on the above description, it is appropriate to place regulations regarding the authority of judges and the stages of preparatory examination as an integral part of the Draft Civil Procedure Law. A specific legal instrument, such as Supreme Court Circular Letters, is also necessary to ensure consistency in interpretation and provide clear guidelines for judges. In general, the implications of implementing preparatory examinations in Civil Procedure Law in the future are inherent in two parties, namely the government authorities and the justice seekers. The implication of preparatory examinations, especially on the judiciary and judges, is that judges must consistently and continuously guide plaintiffs and justice seekers regarding formal requirements, including the completeness of the lawsuit and others. Towards the community, the realisation of preparatory examinations will restore trust and confidence in the judiciary that justice can be accessed efficiently. Thus, there will no longer be a backlog of civil cases, and the court must provide legal guidance to prevent a case from being dismissed with a Judgment of Unaccepted Lawsuit.

D. CONCLUSION

Indonesian civil procedure law, inherited from colonial rule, presents numerous deficiencies that hinder access to justice. These colonial regulations focus on rigid formalities, dismissing many lawsuits through Unacceptable Decisions (*Niet Ontvankelijke Verklaard*) without proper examination of the substantive issues. This rigidity, compounded by the passive role of judges, leads to delays and inefficiencies

[77] Ridwan, Discretion & Government Responsibility (Yogyakarta: FH UII Press, 2014). Page 114

[78] Ridwan HR. State Administrative Law. Revised Edition. Jakarta: Rajawali Press, 2011, pp. 175-182.

in the judicial process, imposing undue burdens on litigants. The implementation of pretrial examinations of formal requirements in civil cases is essential to address these challenges. This mechanism would help minimise procedural dismissals, embody the principle of expeditiousness, and ensure a more effective and efficient judiciary. The judiciary must shift from relying on outdated procedures to a system that actively facilitates justice, allowing judges to guide litigants and resolve cases faster and more fairly.

Thus, it is necessary to incorporate regulations on pretrial examinations of formal requirements into the Supreme Court Regulation or as part of the Draft Law concerning Civil Procedure Law. Reforming this colonial legacy is crucial to creating a civil procedural system that reflects modern judicial principles—simplicity, speed, and affordability—and improves access to justice for all Indonesian citizens. This reform is essential to ensure that justice is not delayed or denied and that Indonesia's legal system evolves to meet the needs of its people

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