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The existence of judge's authority norm in preliminary review as an embodiment of the principle of immediate procedures in civil procedure law

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■ **Abstract**. A significant issue in the Indonesian legal system is the accessibility to justice in civil proceedings. This problem primarily arises from the rigid and time-consuming formal requirements, which hinder many individuals from effectively resolving their cases. Failure to meet these formal prerequisites often leads to case dismissals, ultimately impeding the application of the principle of a fast court process. This study aims to explore the extent of judge's authority in assessing these formal requirements during the preliminary review in Indonesia. It adopts a normative juridical research approach, focusing on legislative and conceptual aspects. Primary, secondary, and tertiary legal sources are analysed using various interpretation techniques, including grammatical and systematic interpretations. The findings reveal two contrasting viewpoints: the principle of a passive judge, which views judges as mere court observers without active involvement, and the emerging perspective emphasizing the role of an active judge. The concept of an active judge allows judges to advise plaintiffs on improving their claims if they fail to meet formal requirements, preventing the dismissal of their cases. In administrative and constitutional court proceedings, some mechanisms exist for reviewing and completing claims during the preliminary phase. However, it is essential to note that judges

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in civil proceedings lack a specific legal basis for providing guidance and recommendations to plaintiffs, and such actions are considered optional rather than obligatory. This lack of concrete implementation of the principles of expediency and access to justice in civil proceedings results in a backlog of cases and numerous cases being dismissed. The results of the study can be used in further regulatory adjustments regarding judge's authority norm for ensuring preliminary review conduct

■ **Keywords**: active role of judges; speedy trial; access to justice; dismissal procedure; court

■ Introduction

The legal consequences of the Declared Inadmissible verdict, which have happened several times, made people think that seeking access to justice is very difficult, such as the mechanism for court proceedings which are still long-winded, meaning that the procedure mechanism for court proceedings can be considered as still too rigid because since the legal consequences of the Declared Inadmissible decisions emerged in the middle of the trial before discussing the subject of the case that wanted to be tried at the trial, every person who files a lawsuit in Indonesia is still constrained by rigid formal administrative requirements so that it can be said to be far from the objectives of justice of law. Based on Article 123 paragraph (1) of the Revised Inland Regulations (Herzien Inlandsch Reglement – HIR)[1] juncto Circular of Supreme Court Number 4 of 1996[2], it means that the contents of the lawsuit in the main case cannot be tried, so the next step that must be chosen is to appeal the decision "Niet ontvankelijke verklaard" (declared inadmissible) or correct the contents of the lawsuit to file a new lawsuit. Still, most plaintiffs through their legal representatives take the initiative to revise the lawsuit and submit it again to court. It turned out that even though it had been corrected, it was still declared unacceptable, so that in practice, particularly among the advocates as the plaintiff's legal representatives, many have complained about the issue in filing lawsuits which were often submitted. Still, after many several times of correction in the lawsuit, in the end they give up submitting the lawsuit.

Researcher M. Sarmah & S. Bohra (2023) discussed the importance of the right to a speedy trial and the effectiveness of expedited trial plans in the criminal justice system. It highlights the necessity of balancing expediency with the rights of the accused and the public need for just and equitable justice. The Speedy Trial Act is praised for establishing deadlines for courts to adhere to, potentially reducing delays. Additionally, the significance of habeas corpus in protecting personal freedom is emphasized, along with the potential for human rights organizations to utilize it to seek the release of individuals in prolonged detention. The research suggested a review of current laws and court regulations to ensure fairness in the trial process and judicial efficiency.

A.M.Q. Toqsanbaeva (2023) studies the active role of judges in civil proceedings within the context of modern legislation. It discusses the evolution of judicial roles from passive arbiters to more active participants in seeking truth and ensuring justice. Two procedural systems are examined: the adversarial procedure, where judges have limited intervention, and the inquisitorial procedure, where judges play a more active role in investigating and managing cases. The text highlights the importance of balancing private interests with the public interest in achieving fair and efficient justice. Various manifestations of the judge's active role are discussed, including case management, reconciliation of parties, and the application of procedural penalties. The importance of judicial mediation and alternative dispute resolution methods is also emphasized. Overall, the text underscores the significance of judges' proactive involvement in civil proceedings to ensure timely, fair, and effective resolution of disputes.

In the topic of civil procedure law, O. Fahren (2020) explores civil procedure law by researching bankruptcy cases. Bankruptcy in commercial courts is governed by the principle of simple proof, a unique aspect of civil procedural law. This principle streamlines complex financial matters, expediting proceedings by focusing on essential evidence. However, diverse interpretations of the rules can lead to inconsistent outcomes. Research focuses on understanding how this principle is applied in practice and its impact on bankruptcy petition requirements. By clarifying these aspects, O. Fahren aims to enhance understanding of how civil procedural law operates in bankruptcy cases within commercial courts.

S. Sultan's (2013) research delves into the concept of formal truth in resolving civil disputes from the perspective of Islamic legal philosophy. It questions the existence and application of the doctrine of formal truth within Islamic jurisprudence, emphasizing the importance of substantive-progressive truth that prioritizes human welfare and justice. It argues that the principle of formal truth in civil judgments

[1] Revised Inland Regulations. (1950, June). Retrieved from https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.

[2] Circular of Supreme Court of the Republic of Indonesia No. 4. (1996, August). Retrieved from https://jdih.mahkamahagung.go.id/legal-product/sema-no-4-tahun-1996/detail.

is not aligned with Islamic legal philosophy, which emphasizes the active involvement of judges in seeking and establishing truth based on thorough deliberation and conviction. The research highlights the divergence between formal truth and the principles of prioritization in Islamic legal philosophy, suggesting that true justice in civil judgments stems from a deeper understanding of human needs and the promotion of societal welfare.

S. Sunarto (2016) studied the principle of an active judge in civil cases entails the judge taking an engaged role throughout the pre-trial phase. Research highlights situations where judges are positioned to actively resolve civil cases. Findings emphasize that judges play an active role in informing both parties about their legal rights, including the right to pursue legal remedies and present evidence during hearings. This proactive stance ensures that all parties involved are fully aware of their rights and responsibilities, contributing to a fair and transparent legal process.

The implementation of civil justice must be carried out consistently based on the principle of fast justice to achieve justice and public order. So far, civil procedural law still does not recognize the concept of dismissal process or preliminary examination. This study will further analyse judge's authority to examine and conduct preliminary review in civil law framework. Ensuring the immediate process of trial principle is consequently implemented in the correlation of guaranteeing the access to justice is the purpose of this study.

Materials and Methods

During the study, a comprehensive analysis of papers addressing the issues was conducted. The research method in this journal article was a normative juridical research method. The author used this method to study and analyse existing regulations in preparing arguments regarding the urgency of legal regulations regarding preparatory examinations as an embodiment of the fast trial principle in the Civil Procedure Law. Then, the authors employed a statutory approach, where the author will study and further dissect the relevance of the civil procedural law system with the principles of justice faced with the issue of the high volume of civil cases resulting in the difficulty of seeking justice for the society. The conceptual approach was undertaken by understanding various perspectives and doctrines within the field of law, then from the results of this understanding, the researcher obtains a legal concept towards a norm that did not exist previously. Historical approach with the aim to seeking legal rules from their inception until the present, whether in written or unwritten form. Researchers use a historical approach to trace the origins of civil procedural law and civil procedural law philosophically, juridically, and sociologically, as well as how civil procedural law has changed in Indonesia. Through this exploration, researchers will obtain supporting bases for the application of preparatory examination processes to realize the principles of fast, light, and simple justice within the framework of civil procedural law, as well as the form of application of preparatory examination processes in civil procedural law. Lastly, the author uses a philosophical approach to help researchers to examine legal issues in this study fundamentally and comprehensively to obtain research results that reflect the characteristics of philosophy consisting of ontological teachings (essence), axiological teachings (values), and teleological teachings (goals). The application of the examination process of preparation for the realization of the principles of fast, light, and simple justice within the framework of civil procedural law, as well as the form of application of the examination process of preparation in civil procedural law.

The legal materials used were primary, secondary, and tertiary legal materials which were analysed using deductive analysis techniques. This research analysed the Revised Inland Regulations, Code of Civil Procedure, Law No. 14 of 1970 "On Basic Provisions on Judicial Authority", Law No. 48 of 2009 "On Concerning Judicial Authority", Supreme Court Decision No. 209 K/Sip/1970 and other materials that regulate the powers and duties of judges in Indonesia.

Results and Discussion

The administration of Indonesian justice is based on the principles of simple, fast and low costs (Law Concerning Judicial Power, No. 48 of 2009, Article 2, Paragraph 4)[1]. These principles, especially the principle of immediate justice, are universal principles adhered to by all judiciaries in the world. They were born inductively from public expectations for fast settlement of cases to immediately provide justice, legal certainty, and benefits. The principles of the civil procedural law system in Indonesia currently use the HIR[2] and the Civil Procedure Law (Rechtreglement voor de Buitengewesten – RBg)[3]. It focuses on formal requirements and the principle of passive judges which are applied absolutely in civil procedural law which causes the judiciary tend to be passive or not pursuing, even though the lawsuit submitted by the plaintiff

[1] Law of the Republic of Indonesia No. 48 "On Concerning Judicial Authority". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009.
[2] Revised Inland Regulations. (1950, June). Retrieved from https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.
[3] Provisions Governing the Administration of Justice in Regions Outside the Java and Madura. (1927). Retrieved from https://pta-jambi.go.id/attachments/article/1110/RBg.pdf.

does not yet meet the formal requirements of civil procedural law. The failure to fulfil these formal requirements is an opportunity for the defendant at the trial to file an exception to request that the plaintiff's lawsuit cannot be accepted, where the consequences of an unacceptable lawsuit are to be submitted as a new lawsuit with improvements. This causes losses in both effectiveness and efficiency of time, as well as wasted costs resulting in the failure to fulfil the principles of obtaining justice, the principle of openness, and the principles of simple, fast and low-cost justice.

Dismissal Process in State Administrative Courts and Preliminary Review in the trial in Constitutional Court is based on the principle of equality before the law between the public and authorized officials, all of whom are equal before the law in carrying out justice for citizens, because the concept in the State Administrative Court, the citizens often become opponent for the ruler of the state, namely the Officials of State Administrative.

If compared carefully, the combined volume of cases submitted to the Court of State Administrative and the Constitutional Court will not be comparable to the number of cases submitted in the civil law scope. District Courts are located in all regions in Indonesia in accordance with the high need for resolving cases in this domain, while the Court of State Administrative and the Constitutional Court are only located in several provinces and the Indonesian capital.

Judges have a greater responsibility to implement the principles of law and justice. They are required to decide cases based on applicable law because this is the main basis that regulates the judge's actions. This is necessary as a control against potential abuse of power by judges, so that decisions taken by judges can be considered accountable and must be respected by all parties involved in the judicial process (Merta & Junaidi, 2020). In carrying out their duties, judges adhere strictly to the principles and regulations contained in the civil procedural law. These rules are legal instruments that regulate how material law is implemented. In civil procedural law, there are several key principles, namely (Prasetya, 2020): principle of Judge must wait; principle of passive judge; principle of active judge; principle of judge must hear both side (*audi et alteram partem*); principle of simple, fast, and low-cost process in case trial.

The aforementioned principles of Civil Procedure Law must be implemented correctly by the judge as the subject who presides over the trial from the first hearing until the case is decided (Merta & Junaidi, 2020). In civil procedural law, there is a principle known as "Judges must wait". This principle stipulates that the initiative to file a lawsuit or case is given entirely to the interested parties or those involved in the case. This means that the judge will only start acting on his role when a lawsuit or case is officially submitted to him. In this context, the judge is considered to be the party who "waits" or is passive until an official application is submitted to the court. This principle is stated in articles 118 & 142 of RBg[1].

Judge's authority to examine and provide direction in the examination process of formal requirements at the civil trial stage before entering the examination of the main case is limited to the conservative principle of passive judge, which means the judge cannot take the initiative or interfere profoundly in the case being submitted. In fact, Article 119 of the HIR states: "The chief judge of the district court has the power to give advice and assistance to the plaintiff or his representative regarding the submission of the lawsuit"[2]. The article also explains that: "This regulation is beneficial for people in seeking access to justice, who usually have no knowledge of the law in general and are not familiar with the examination of civil cases in particular, and are also unable to afford the assistance of a legal advisor. This regulation is actually contrary to the general prohibition on judges in cases that have been submitted to their court, or which they can reasonably expect will be submitted to them, either directly or indirectly, to provide advice or assistance to the conflicting parties or their lawyers, but it turns out to be in accordance with the spirit of the Basic Law on Justice (Law No. 14 of 1970) Article 5 paragraph (2) which states that in case trials, the Court assists justice seekers and tries as hard as possible to overcome all obstacles to achieve justice in simple, fast and cost-efficient process"[3].

According to Supreme Court jurisprudence, changes to claims or additional claims during a case trial in court can be permitted as long as these changes do not change the basis of the initial claim (*posita*) and do not harm the defendant's interest in his efforts to defend himself. This is in accordance with the opinion contained in the Supreme Court Decision No. 209 K/Sip/1970[4], dated March 6, 1971, which emphasized that "changes in claims must not conflict with the principles of civil procedural law, as long

[1] Provisions Governing the Administration of Justice in Regions Outside the Java and Madura. (1927). Retrieved from https://pta-jambi.go.id/attachments/article/1110/RBg.pdf.
[2] Revised Inland Regulations. (1950, June). Retrieved From https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.
[3] Law of the Republic of Indonesia No. 14 "On Basic Provisions on Judicial Authority". (1970, October). Retrieved from https://peraturan.bpk.go.id/Details/47929/uu-no-14-tahun-1970.
[4] Decision of the Supreme Court of the Republic of Indonesia No. 209 K/Sip/1970. (1970, March). Retrieved from https://putusan3.mahkamahagung.go.id/direktori/putusan/23202.html.

as they do not change or deviate from the material events that become the subject of the case, even though there are no subsidiary claims, in order to maintain the implementation of the principles of fair trial." The decision emphasizes the importance of ensuring that these changes will not affect the main issue of the case, so that the parties can maintain their rights and interests to undergo a fair trial process.

The principle of passive or active judges is still a matter of pros and cons among judges and legal practitioners today. M. Yahya Harahap stated that the principles adopted in the beginning was the passive principle, while the active principle was a novel principle that emerged as an effort to challenge the existing passive principle (Fikriyah, 2019). The Australian Federal Court abandoned the passive principle seventeen years ago. The judges do not just listen to the disputing parties at trial, but they actively control the trial so that the case can be resolved quickly (Weda *et al.*, 2021). The judge also actively encouraged the parties to end the dispute in a peaceful settlement.

Explicitly normative in the HIR[1], RBg[2] and the Code of Civil Procedure (Reglement op de Burgelijke Rechtsvordering – Rv)[3] do not mention the terms passive or active judge. In civil procedural law, the position of judges to be passive was only adhered to by Rv, which applies to the European group and is no longer valid but still used by judges in Indonesia. In this system, the judge only supervises the proceedings so that the parties act in accordance with procedural law. Empirically normatively, the principles of passive and active judges are equally used by judges in civil law trials. However, this does not mean that the relationship between the two is complementary. Both are fundamental and have their respective functions (Suadi & Hum, 2021). Many legal practitioners and academics agree that civil law is generally known for the principle of passive judges. This is understandable because private law focuses on regulating individual interests with clear boundaries. However, it is crucial to understand that the role of judges in the civil justice system is much more complex than simply applying existing laws. When a case is submitted to court, the judge has more responsibility to implement justice and ease of litigation in the process of resolving the case.

Article 5 paragraph (1) of Law No. 48 of 2009[4] concerning judicial power states: "Judges and constitutional judges are obliged to explore, follow and understand the legal values for society", which means that judges must be active in providing space for justice to people seeking access to justice, not only giving unacceptable decisions, so that the main case that should be tried, becomes invalidated due to the unacceptable decision. To realize the judge's obligation to explore and provide a sense of justice to society, changes are needed in the concept of civil procedural law in the future (Rijanto, 2019).

Judges' activeness is really needed, especially if justice seekers are not represented by advocates. As chairman of the trial, the judge does not play a passive role, but must actively overcome all handicaps and obstacles for the trial to proceed smoothly. Regarding the principle of passive judges, its application is limited to judges who cannot determine the extent of the case and the initiative to file or end the case is completely determined by the parties. After a civil case is officially submitted by the parties to court, the judge must begin to be active starting from the pre-trial stage. Article 4 paragraph (2) Law No. 48 of 2009[5] concerning Judicial Power is the juridical legitimacy of judges' activities. This provision emphasizes that the court helps justice seekers and tries to overcome all handicaps and obstacles to achieve justice in a simple, fast and low-cost process. Simple means that the examination and resolution of the case are carried out effectively and efficiently, while low cost means that the costs to settle the case can be afforded by the public. HIR[6] and RBg[7] had placed judges in an active position in the pre-trial, trial and post-trial (execution) stages (Afriana, 2022).

In addition, many members of the public lack knowledge of legal procedures and often feel confused or do not understand how to engage in court. This can negatively impact their efforts to file a lawsuit and their ability to defend themselves in the judicial process. One of the common problems that often occurs is a lack of understanding of the formal requirements that must be taken into account when preparing a

[1] Revised Inland Regulations. (1950, June). Retrieved from https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.
[2] Provisions Governing the Administration of Justice in Regions Outside the Java and Madura. (1927). Retrieved from https://pta-jambi.go.id/attachments/article/1110/RBg.pdf.
[3] Code of Civil Procedure. (1950, June). Retrieved from https://kepaniteraan.mahkamahagung.go.id/images/peraturan/undang-undang/rv_reglement%20op%20de%20rechtvordering.pdf.
[4] Law of the Republic of Indonesia No. 48 "On Concerning Judicial Authority". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009.
[5] Ibidem, 2009.
[6] Revised Inland Regulations. (1950, June). Retrieved from https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.
[7] Provisions Governing the Administration of Justice in Regions Outside the Java and Madura. (1927). Retrieved from https://pta-jambi.go.id/attachments/article/1110/RBg.pdf.

lawsuit in accordance with the formal civil law or applicable civil procedural law. Many parties ignore these guidelines and end up filing lawsuits that do not comply with legal requirements, which can ultimately make the lawsuit inadmissible by the court.

Sometimes, plaintiffs in their lawsuits may misclassify the basis of their lawsuit, by stating that the defendant has committed an unlawful act, even though in fact the legal relationship between the plaintiff and the defendant is based on an agreement (default). This is an example of ignorance of the law, which can result in confusion in the legal process (Putra, 2023). Therefore, judge's activeness in guiding the parties involved in the case, especially those who do not have legal experience, is very important. Judges must be able to provide directions, explain procedures, and help parties understand their rights and obligations in the judicial process. This will help create a more fair and more equitable justice system, where everyone has the same opportunity to access justice before the law.

In carrying out his role, a judge must always prioritize the principle of impartiality. This principle is the main foundation in ensuring that every party involved in the justice process has the same opportunity to access and obtain justice. Impartiality requires judges to act without bias or personal views influencing their legal decisions. In the context of Indonesian law, this principle has been mandated by Article 5 (1) of Law 4/2004[1] which expressly states that courts judge shall examine a case according to the law without discriminating between people.

Apart from that, Article 5 (2) of Law 4/2004[2] also emphasizes the role of the court in assisting justice seekers and trying to overcome all handicaps and obstacles that may arise in the judicial process. The aim of this provision is to ensure that justice can be served at a simple, fast and at an affordable cost for all parties involved. This is important because slow, complicated and expensive judicial processes can be a barrier to individuals seeking access to justice.

In practice, the wisdom and activeness of a judge is fundamental to achieve this goal. The judge must be able to conduct the trial efficiently, ensure that the parties to the proceedings understand the applicable procedures, and provide the necessary guidance to ensure that their rights are fulfilled. In situations where parties to a proceeding may have difficulty formulating their claims or understanding the proper legal basis, a judge can provide the necessary guidance so that the judicial process runs smoothly. Thus, the wisdom and activeness of judges in upholding the value of impartiality, assisting justice seekers, and overcoming obstacles in justice are key elements in creating an efficient, fair and equitable justice system. To achieve justice through the courts, judges have a critically vital role in ensuring that the rights and obligations of each party are respected, and that justice can truly be achieved.

Analysis of regulation on judicial authority in the implementation of preliminary examination. The principle of courts should be conducted in a simple, fast and at low-cost process has been crystallized in the Article 4 paragraph (2) of Law No. 48 of 2009[3]. This article has the meaning of sociological or juridical benefits to speed up access to justice and provide greater access to justice for the community. It is stated in Article 4 paragraph (2) of Law No. 48 of 2009 concerning Judicial Power which reads: "The court helps justice seekers and tries to overcome all handicaps and obstacles to achieve justice in a simple, fast and low-cost process"[4]. The word "simple" means: no exaggeration; there are not many additions and supplements. In the Elucidation to Article 2 paragraph (4) of Law 48/2009[5], it is stated that "What is meant by "simple" is that the examination and resolution of cases is carried out in an efficient and effective manner". The definition of efficient in examining and resolving cases is related to the used time, costs, and procedures or events, while the meaning of effective is related to the judge's decision. A decision is said to be effective if the decision has three elements, namely executable/implementable, providing legal certainty and fostering legal unity.

As stated above, the General Explanation No. 8 of Law 14/1970 also states: "The provision that justice is carried out in a simple, fast and at low-cost process must still be adhered to, which is reflected in the law on criminal procedural law and civil procedural law which contains regulations regarding a much simpler procedure for examination and proof"[6]. The manifestation of "simple" means that the examination and resolution of cases must be carried out efficiently and effectively as stipulated in Article 2 paragraph (4) of Law 48/2009[7] that justice is carried out in simple, fast and at low cost. Simple can also be interpreted as a process that is not convoluted, not complicated, clear, straightforward, non-interpretable, easy to understand,

[1] Law of the Republic of Indonesia No. 4 "On Concerning Judicial Power". (2004, April). Retrieved from https://peraturan.bpk.go.id/Details/40464/uu-no-4-tahun-2004.
[2] Ibidem, 2004.
[3] Law of the Republic of Indonesia No. 48 "On Concerning Judicial Authority". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009.
[4] Ibidem, 2009.
[5] Ibidem, 2009.
[6] Ibidem, 2009.
[7] Ibidem, 2009.

easy to carry out, easy to apply, systematic, as well as concrete, both from the perspective of justice seekers and law enforcers who have very diverse levels of qualifications, both in terms of educational potential, socio-economic conditions, culture and so on.

The word "fast" means: immediate; quick; movement, travel in a short time (Center for Language Guidance and Development, 1976). In the Explanation to Article 4 paragraph (2) of Law 14/1970[1], the meaning of the word fast is stated: "There is no need for complicated examinations and procedures that can take years to process…". The word "cost" means: money spent to do something; costs. Meanwhile, the word "low" means easy to carry out (regarding payment). So low-costs are defined as costs that can be paid. In the Elucidation to Article 2 paragraph (4) of Law 48/2009[2], it is stated that "What is meant by" low costs" refers to the costs for settling the case that can be afforded by the people".

Low costs imply that seeking justice through judicial institutions means that people do not just have hope for a guarantee of justice in it, but there must be a guarantee that justice is not expensive, justice cannot be materialized and justice is independent and free from prices that undermine the value of justice itself. Low costs are intended to be borne by the people. High costs of trial generally cause the concerning parties to be reluctant to submit rights claims to the court.

One model of simplifying the case process is the resolution of cases using a fast procedure oriented towards filing a lawsuit examination using a simple procedure at the general court of first instance (Rahman & Wicaksono, 2016). The Fast Trial Procedure is applied in the general court environment to make its implementation more effective so that cases with a certain value can be decided instantly at the first level. In the initial stage, the Fast Trial Procedure will be implemented in the District Court (not a special court). Still, it will be carried out in a certain room to show its specialization in procedural law and simple administration. The Fast Trial Procedure can also convene in locations where minor cases or people's daily cases have the potential to arise through "zitting Plaats". "Zitting Plaats" itself is an out-of-court hearing place located within the court's jurisdiction and functions as a permanent hearing forum for holding trials for all types of cases filed by justice seekers.

It must be admitted that dispute resolution at the District Court level is inefficient, the resolution period is long, the case costs are also high, and not to mention expensive attorney fees, even though civil disputes require fast and simple resolution, they still need binding legal force as is the case with a court decision (Hidayat, 2023). Therefore, with the birth of regulations regarding models for resolving civil disputes using simple procedures, it is hoped that this will be a step to reducing legal mechanisms and processes in resolving civil disputes, which will have an impact on increasing the trust of the justice-seeking people towards law enforcement in Indonesia.

On the other hand, in terms of implementing the low-cost principle, there are two types of legal assistance, the first is *prodeo* legal assistance and the second is *pro bono* legal assistance; regarding Guidelines for Providing Legal Services In Court for Underprivileged People. Meanwhile, *pro bono* legal assistance is legal assistance provided by advocates for free of charge, which is regulated in Article 22 paragraph (1) of Law No. 18 of 2003[3] concerning Advocates which strictly regulates, that advocates are obliged to provide free legal assistance to those seeking justice but unable to afford it (Many & Sofian, 2021). The word "mandatory" has made *pro bono* legal assistance a necessity for every Indonesian advocate.

In the civil trial process, in particular, no scheme or mechanism applies the fast principle. Many people are trapped by lengthy legal processes in seeking justice. The implementation of the fast principle contained in Article 4 paragraph (2) of the Judicial Power Law[4] should be reflected in the existence of regulations to create completeness and consistency in the application of the law in the entire scope of the judiciary. This lack of completeness creates a situation where people cannot access justice quickly and effectively (Sitorus, 2018). The main problem that often occurs is that many lawsuit cases are decided as inadmissible. With this decision, the plaintiff has to repeat the submission of the lawsuit to the court with uncertainty whether the lawsuit will be accepted. Based on this problem, laws, and regulations in Indonesia already have a fair fundamental basis which is contained in Article 4 Paragraph (2) of the Law on Judicial Power to further regulate the realization of the implementation of fast trial, especially in the scope of civil justice.

Analysis of Articles 119 and 132 HIR in the frame of preparatory examination. The formulation of the claim letter prepared and submitted by

[1] Law of the Republic of Indonesia No. 14 "On Basic Provisions on Judicial Authority". (1970, October). Retrieved from https://peraturan.bpk.go.id/Details/47929/uu-no-14-tahun-1970.
[2] Law of the Republic of Indonesia No. 48 "On Concerning Judicial Authority". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009.
[3] Law of the Republic of Indonesia No. 18 "On Advocates". (2003, April). Retrieved from https://peraturan.bpk.go.id/Details/43018/uu-no-18-tahun-2003.
[4] Law of the Republic of Indonesia No. 48 "On Concerning Judicial Authority". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009.

the plaintiff is the basis of the lawsuit and becomes a reference in the examination and trial of the case decision in court. If the lawsuit does not meet the formal requirements for a lawsuit, the legal consequence is that the lawsuit will be declared as inadmissible. Requirements regarding the content of the lawsuit are contained in Article 8 of the Rv[1] which requires that the claim in the lawsuit contains the identity of the parties, and concrete arguments regarding the existence of a legal event which is the basis and reasons for the claim or better known as *fundamentum petendi* or *posita*, and the demands or *petitum*.

In pre-trial, namely the examination of the formal requirements, the formulation of the lawsuit letter is required to meet the formal requirements according to the applicable legal provisions and statutory regulations. The formal requirements, as regulated in Article 118 and Article 120 of HIR[2], are:

1) Submitted (addressed) to District Court in accordance with Relative Competency;
2) Given date;
3) Signed by plaintiff of its lawyer;
4) Identity of the parties;
5) Fundamentum Petendi (basis of claim);
6) *Petitum* / demand (plaintiff's main demands);
7) Formulation of Accesoir claim.

For the lawsuit submitted to court by the plaintiff to be in accordance with the formulation of the lawsuit or the lawsuit is not vague, it is the authority of the chief judge of the court to provide advice to the plaintiff as regulated in Article 119 of HIR[3]. Law No. 48 of 2009[4] concerning Judicial Power also states in Article 4 paragraph (2) "The court assists justice seekers and tries to overcome all handicaps and obstacles to achieve simple, fast and low-cost justice"[5]. The manifestation of the active judge principle in the process of submitting a lawsuit in the district court can be in the form of explaining the form of the lawsuit (Makalew *et al.*, 2023), offering changes in the contents of the lawsuit if it turns out there are mistakes, so that the *posita* (the arguments for the lawsuit) and the *petitum* (the main points of the plaintiff's claim) can be clear and sound as it should be.

Judge's authority to examine and provide direction in the formal requirements examination process at the civil trial stage before entering the main case examination is limited by the conservative principle of passive judge, which means the judge does not take the initiative or interfere more deeply in the case being submitted. In fact, Article 119 of HIR reads: "The Chief Judge of the district court has the power to provide advice and assistance to the plaintiff or his representative regarding the submission of a lawsuit"[6]. The text of the explanation of the article is: "This regulation is beneficial for people seeking justice, who usually have no knowledge of the law in general and are not familiar with the examination of civil cases in particular, and cannot afford the help of a legal advisor. This regulation is actually contrary to the general prohibition on judges in cases that have been submitted to their court, or which they can reasonably expect will be submitted to them, either directly or indirectly, to provide advice or assistance to the conflicting parties or their lawyers, but it turns out to be in accordance with the law. with the spirit of the Basic Law on Justice (Law No. 14/1970) Article 5 paragraph (2) which states that in cases, the Court assists justice seekers and gives its best aid to overcome all obstacles to achieve justice in a simple, fast and low-cost process"[7].

This article authorizes the Chief Judge of the Court to provide aid and assistance to the plaintiff in completing the formal requirements. This article is intended for people who lack knowledge about legal and court procedures and provisions. Thus, it can be said that in the HIR system, the role of judges is not as passive as in the Rv system. If Article 119 of HIR[8] is genuinely implemented, then the possibility of the lawsuit being declared inadmissible because it was incomplete will certainly not occur, unless the incompleteness or imperfection is only discovered during the trial.

According to Supreme Court jurisprudence, changes to claims or additional claims in a case submitted to court can be permitted as long as these changes do not change the basis of the initial claim (*posita*) and do not harm the interests of the defendant in his efforts to defend himself. This is in accordance

[1] Code of Civil Procedure. (1950, June). Retrieved from https://kepaniteraan.mahkamahagung.go.id/images/peraturan/undang-undang/rv_reglement%20op%20de%20rechtvordering.pdf.
[2] Ibidem, 1950.
[3] Revised Inland Regulations. (1950, June). Retrieved From https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.
[4] Law of the Republic of Indonesia No. 48 "On Concerning Judicial Authority". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009.
[5] Ibidem, 2009.
[6] Code of Civil Procedure. (1950, June). Retrieved from https://kepaniteraan.mahkamahagung.go.id/images/peraturan/undang-undang/rv_reglement%20op%20de%20rechtvordering.pdf.
[7] Law of the Republic of Indonesia No. 14 "On Basic Provisions on Judicial Authority". (1970, October). Retrieved from https://peraturan.bpk.go.id/Details/47929/uu-no-14-tahun-1970.
[8] Code of Civil Procedure. (1950, June). Retrieved from https://kepaniteraan.mahkamahagung.go.id/images/peraturan/undang-undang/rv_reglement%20op%20de%20rechtvordering.pdf.

with the opinion contained in the Supreme Court Decision No. 209 K/Sip/1970[1], dated March 6, 1971, which emphasized that "changes in claims must not conflict with the principles of civil procedural law, as long as they do not change or deviate from the occurring material events". become the subject of the case, even though there are no subsidiary claims, to maintain the implementation of the principles of fair trial". In other words, the Supreme Court recognizes the need for flexibility in submitting changes or additions to claims so that the legal process can run more fairly, without compromising the basic principles of civil procedural law. Meanwhile, judges' activeness is also contained in Article 132 of HIR, which reads: "The Chief Judge has the right, when examining, to provide information to both parties and will indicate that the law and information they can use if he deems necessary, so that the case proceeds well and in an orderly manner"[2].

This regulation, similar in nature to the regulation in Article 119 of HIR[3], is essentially contrary to the principle that a judge in settling a case submitted to the court, or which he can reasonably suspect will be brought before him, is directly or indirectly prohibited from giving advice or assistance to the conflicting parties or their lawyer, however, it is very useful for the smooth running of the court in general and for the interests of both parties in particular, and this is also in accordance with the spirit of the Basic Law on Justice (Law No. 14/1970) Article 5 paragraph (2) which determines that in civil cases, the Court assists those seeking justice and tries as hard as possible to overcome all obstacles to achieve simple, fast and low-cost justice[4].

Judge activeness according to the HIR and RBg systems is based on the provisions in Article 132 of HIR[5] and Article 156 of RBg[6] which give freedom to Judges to provide appropriate information to both conflicting parties and provide explanations to the conflicting parties regarding the existence of the right to take legal action and the right to present evidence at trial. This is intended so that the examination of the case can run well and in an orderly manner. The forms of information referred to include, among other things, the form of the lawsuit, regarding changes to the lawsuit, including if there are mistakes in the lawsuit so that the *posita* and *petitum* can be more clear and more meaningful as they should be, but any changes in the lawsuit must not exceed/contradict the limits of the material events that form the basis of the plaintiff's claim (*petitum*) and changes to the claim cannot be made by the defendant.

When examining civil cases, judges actively lead the trial, run the proceedings, and assist both parties in the case in finding the truth (Sunarto, 2016). However, when examining civil cases, the judge must follow through and the judge is bound to the events presented by the parties (*secundum allegata iudicare*). In order to implement the principle of "fast", civil judges must begin to be active in trials, namely the process of examining the plaintiff's formal requirements and the plaintiff's abilities. The judge must be active in studying the case file after the case file has been handed over to him, which is one of the most important initial stages in the judicial process. This stage involves analysis and in-depth understanding of legal documents related to the case. In this context, the judge must ensure that all necessary information is available, including evidence, testimony and legal arguments from both parties. The judge must consider various factors, such as the availability of the parties, witnesses, and experts who will testify at the trial. Apart from that, the judge must also pay attention to the location of the residence of the conflicting parties. This is important so that the parties can prepare themselves well to attend the trial. Next, the judge must order the bailiff to summon the parties to the lawsuit. The validity of the summons is vital, because this will directly impact on the validity of the trial as a whole. If there is a mistake in the summons process, then the trial may be deemed invalid. Therefore, judges must ensure that all legal procedures have been followed correctly, that the rights of the parties have been safeguarded, and that any decisions taken are based on evidence and applicable law. In this way, a judicial process based on the principle of fast, simple, and low cost can be realized. All of these steps are interrelated and contribute to the final outcome of a legal case.

Judge's authority in formal examination in the scope of State Administrative Court and Constitutional Court. The formal requirements as stipulated in the civil procedural law provide a reason for the defendant to submit an exception against the

[1] Decision of the Supreme Court of the Republic of Indonesia No. 209 K/Sip/1970. (1970, March). Retrieved from https://putusan3.mahkamahagung.go.id/direktori/putusan/23202.html.
[2] Code of Civil Procedure. (1950, June). Retrieved from https://kepaniteraan.mahkamahagung.go.id/images/peraturan/undang-undang/rv_reglement%20op%20de%20rechtvordering.pdf.
[3] Ibidem, 1950.
[4] Law of the Republic of Indonesia No. 14 "On Basic Provisions on Judicial Authority". (1970, October). Retrieved from https://peraturan.bpk.go.id/Details/47929/uu-no-14-tahun-1970.
[5] Revised Inland Regulations. (1950, June). Retrieved from https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.
[6] Provisions Governing the Administration of Justice in Regions Outside the Java and Madura. (1927). Retrieved from https://pta-jambi.go.id/attachments/article/1110/RBg.pdf.

lawsuit submitted by the plaintiff to be declared inadmissible by the panel of judges (Putra *et al.*, 2020). It is necessary to find new laws to reform the civil justice bureaucracy in Indonesia. Matters relating to administration and formal requirements for filing a lawsuit can be done in a preliminary examination mechanism to improve a lawsuit that has not meet the requirements in formal civil provisions, where the preliminary examination hearing mechanism has been established and implemented in other general court jurisdictions, namely in the state procedural law of the administrative court which is known as the dismissal procedure mechanism/preparatory examination, and the procedural law of the constitutional court known as the preliminary review.

Deliberative meeting, which commonly also known as the Dismissal Process, or screening stage, is regulated in Article 62 of Law No. 5 of 1986 concerning the State Administrative Court (PTUN)[1]. In this deliberative meeting, the chief of the court examines the submitted lawsuit, whether the lawsuit meets the requirements as regulated in the State Administrative Court Law and whether it is within the authority of the State Administrative Court to try it. This provision was made considering that the State Administrative Court is a new agency in Indonesia, so many people still do not fully understand the functions, duties, and authority of the State Administrative Court, as well as the procedural law that applies to it. This means that if all lawsuits go straight to the Trial Examination, it is feared that it will only be a waste of time, not only for the Plaintiff but also for the Court and the Defendant, even though the Defendant here is a State Administrative Official who generally has quite busy executive duties (Zurahmah, 2014).

A conclusion can be drawn that the consideration for doing the dismissal procedure is to create efficiency in the procedural process in PTUN trials. Based on the argument above, submitting all lawsuits without a filter will waste time and material for the defendant officials carrying out a mandate/functional public interest. This kind of proceeding should also be carried out in civil trials, which have a higher urgency regarding the private interests of each individual. However, to date there is no process similar to the dismissal procedure in the PTUN, where in practice, many declared inadmissible decisions occur due to defects in the formal requirements in civil trials. This really hinders the realization of the principle of fast, simple and low-cost justice because the plaintiff has to repeatedly file a lawsuit just because of a formal error without any guidance or direction from the Panel of Judges.

The process or stage of examining formal requirements before examining a case in court can be found in the procedural law of the Constitutional Court, which is called preliminary examination. Clarity of petition's material is one of the areas of preliminary examination, so the issue requested for trial can be formulated and understood clearly, both by the applicant and by the constitutional judge. This is certainly necessary so that the trial examination can be carried out effectively and focus on the requested issues. In this preliminary examination, the constitutional judge is obliged to provide advice to the applicant on completing and/or revising the application. The provisions of Article 39 paragraph (2) of the Constitutional Court Law[2] provide a time limit for applicants to complete or revise their application of no later than 14 (fourteen) days.

In terms of determining the extent of the case, and the initiative to file or end the case is determined entirely by the parties involved in the case, where in that case the judge must be passive. However, after a civil case is officially submitted by the litigant to the Court, the Judge must show an active attitude. However, in practice, procedural law actually becomes an obstacle in achieving the material truth of a case or even becomes an obstacle in accessing justice. This is reflected in the number of lawsuits declared as Not Accepted (NO), where the court decided not to investigate further regarding the subject of the case being filed. If examine it more deeply, civil matters are the highest volume of problems in society. Thus, this correlates with the effectiveness and efficiency of the court in implementing procedural law or the trial process. The court decided that the NO Decision contributed to the obstruction of law enforcement and access to material justice needed by the community.

Normatively, the existence of judges does not mean that judges are obliged to provide direction or guidance regarding the examination of formal requirements in a separate process, and judges also have no attachment or obligation to provide direction or guidance to litigants regarding the completion of formal requirements properly and in accordance with the rules. Judges play an important role in accelerating access to justice for anyone who needs it (Ramadhan & Rafiqi, 2021). However, in practice judges can rely on the principles of civil procedural law, one of which is the principle of active judge. In practice in Indonesia, judges are trapped in the paradigm of passive judges, which is misunderstood to mean that judges cannot interfere at all in a civil trial. In fact, passive judges in the civil justice process

[1] Law of the Republic of Indonesia No. 5 "On Administrative Court". (1986, November). Retrieved from https://peraturan.bpk.go.id/Details/46914/uu-no-5-tahun-1986.
[2] Law of the Republic of Indonesia No. 24 "On Constitutional Court". (2003, February). Retrieved from https://peraturan.bpk.go.id/Details/44069/uu-no-24-tahun-2003.

are limited to not interfere in determining the extent of the case. So, the judge has the authority to provide guidance and direction to the plaintiffs to guide them in improving all their formal requirements.

If viewed from the perspective of legal benefits, according to John Stuart Mill, legal benefits are seen from the elements of enjoyment, prosperity, and happiness as well as minimizing suffering in the implementation of the law in society (Septiansyah & Ghalib, 2018). The judge's actions or initiatives based on the principle of an active judge to provide direction and input to the parties in completing and improving their formal requirements will facilitate access to justice in society and reduce the number of cases being decided by NO Decision. The principle of utility must be prioritized in an effort to carry out prosperity and order between individuals in society (Pratiwi, 2022). With many cases being decided with a NO Decision, it will cause the community suffering because they have to go through a long and drawn-out trial or legal process.

In practice, civil procedural law sometimes becomes an obstacle in achieving material truth in a case or accessing justice. Many "Lawsuit is Unacceptable" decisions limit people's access to justice. Civil judges should be able to provide direction to litigants to ensure formal requirements are met. This will make it easier for the public to access justice and reduce the "Lawsuit is Unacceptable" decisions.

Judges being active in providing direction, is in accordance with the principle of active judges, helping to achieve legal benefits and justice in society. Judges do not have a normative obligation to provide guidance on formal requirements, but as a practical matter, they can do so to ensure the process runs smoothly. The judge may not interfere with the extent of the subject of the case, which is determined by the litigants. In the context of the dynamics of the civil trial process, with the large number of "Lawsuit is Unacceptable" decisions, judges should provide direction and wisdom to litigants regarding improving formal requirements. Society needs this guidance for better access to justice.

S. Sunarto (2016) highlighted the implementation of the active principle, whether the preliminary review had been conducted or not. He stated that judge has the power to be proactive on resolving trials. Scientist concluded that judge has the right to inform and educate the parties involved in the trial about the procedure and formal requirements for conducting a trial. The research delves into the long-standing debate surrounding the involvement of civil law judges in Indonesia, specifically focusing on the principle of passive judgeship versus active judgeship. Drawing from legal traditions within the Indonesian justice system, this research analyzed for a passive role of judges. According to this perspective, judges are expected to adhere strictly to established procedural laws, such as the HIR, which dictates that they refrain from making decisions on matters not explicitly raised by the plaintiff. This view emphasizes judges' responsibilities to oversee proceedings without actively interfering in the judicial process, thereby upholding the principle of passive judgeship.

On the other hand, S. Sunarto's study contends that judges should adopt an active role throughout the civil litigation process. This proactive approach entails judges actively engaging with parties involved in legal proceedings, providing guidance, and explaining legal rights and procedures. S. Sunarto's research underscores the importance of judges intervening to address formalities and streamline the legal process, particularly to minimize the occurrence of unfavourable decisions, such as cases being dismissed due to technicalities.

In comparing the results of the two research studies, several similarities and differences emerge. Firstly, both studies acknowledge the traditional view of passive judgeship as prevalent within the Indonesian legal system. However, while the first research maintains the importance of adhering strictly to this passive role, S. Sunarto's research emphasizes a shift towards a more active judgeship model. Regarding support or disagreement with conclusions, the first research may support its findings by emphasizing the importance of upholding established legal norms and traditions. It might be argued that maintaining a passive judgeship role ensures adherence to procedural fairness and consistency within the legal system. Conversely, S. Sunarto's research may argue that the active judgeship model is necessary to address shortcomings within the legal process, such as delays and inefficiencies, and to ensure access to justice for all parties involved.

While this research may prioritize upholding legal traditions and minimizing disruptions to established practices, S. Sunarto's research may prioritize innovation and adaptation to address contemporary challenges within the legal system. Through a comparative analysis of both research perspectives, the study seeks to provide a comprehensive understanding of the debate surrounding judges' roles in civil cases in Indonesia. By examining the implications of passive versus active judgeship principles at different stages of civil litigation, the research aims to contribute valuable insights to ongoing discussions on judicial reform and the administration of justice within the Indonesian legal system.

Conclusions

In the debate regarding the role of civil law judges in Indonesia, there are two conflicting views. Long-standing traditions in the Indonesian justice system recommend that judges act passively, in line with the principle of passive judges regulated in

legislation, such as the Civil Procedure Law (HIR). This principle states that judges are not permitted to give decisions on matters that the plaintiff does not request. This traditional view also emphasizes that the judge's job is only to supervise the proceedings in accordance with the applicable stages and procedures, without actively interfering in the judicial process.

Meanwhile, within the scope of the PTUN and Constitutional Court, it is known that there is a form of implementation of the active judge principle, namely by establishing a mechanism of preparatory examination or the Dismissal Process as well as a Preliminary Examination which aims to perfect the lawsuit submitted to the court. In this process, the judge is required to provide advice to the plaintiff or applicant regarding formal matters that can potentially complicate and prolong a trial process of the case in the court of law.

The presence of judges in civil preparatory examinations has no legal basis. Still, it is only limited to basic principles or in the form of an appeal for judges to take active initiatives in the trial process. Until now, there has been no manifestation of the "fast" principle or the principle of access to justice within the scope of civil justice which can answer the problem of the accumulation of cases filed in the court as well as many cases being decided with the Lawsuit is Unacceptable decision. The existence of the judge's authority to provide advice or direction regarding procedures for completing or improving administrative and formal matters in a lawsuit is only an optional initiative, not an obligation that the judge must carry out.

Future research in this area could investigate the effectiveness and impact of different models of judicial behaviour in civil proceedings in Indonesia.

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None.

■ References

[1] Afriana, A. (2022). Basic principles of passive and active judge in civil court. *Journal of Bina Mulia Law*, 7(1), 142-154. doi: 10.23920/Jbmh.V7i1.1078.

[2] Fahren, O. (2020). *The application of the principle of simple proof in bankruptcy cases in commercial courts (a special characteristic in the civil procedural law system)*. (PhD thesis, University of North Sumatra, Medan, Indonesia).

[3] Fikriyah, U. (2019). The active role of judges in examining witness testimonies in trials: Towards professional judges in the era of information technology advancement. *Al-Adalah*, 22(2), article number 145. doi: 10.35719/Aladalah.V22i2.19.

[4] Hidayat, D. (2023). Implementation and obstacles in civil dispute resolution. *Indonesian Legal Development Journal*, 5(1), 47-69. doi: 10.14710/jphi.v5i1.47-69.

[5] Makalew, J.M., Korah, R., & Gerungan, C.A. (2023). Juridical analysis of the *Niet ontvankelijke verklaard* (no) lawsuit in land disputes in civil procedure law. *Lex Administratum*, 11(2).

[6] Many, N., & Sofian, A. (2021). Free legal assistance (*pro bono*) as realization of access to justice for the poor in Indonesia. *Media Information of Social Welfare Research*, 44(3), 269-278.

[7] Marzuki, P.M. (2019). *Legal research: Revised edition*. Jakarta: Kencana Prenada Media Group.

[8] Merta, M.M., & Junaidi, J. (2020). Passive judge principles in Reglement Op De Rechtsvordering (R.V) and active judge principles in Herziene Indonesisch Reglement (HIR) in the Resolution of civil cases in court. *Journal of Legal Science*, 13(1), 60-77. doi: 10.31942/jqi.v13i1.3426.

[9] Prasetya, U. (2020). Analysis of the *Audi et alteram partem* principle in civil case trial process (Case No. 20/Pdt.G/2019/PN Pwr). *Amnesty: Law Journal*, 2(2), 57-75. doi: 10.37729/amnesti.v2i2.657.

[10] Pratiwi, E. (2022). Jeremy Bentham's utilitarianism theory: Purpose of law or legal product testing method? *Constitutional Journal*, 19(2), 268-293. doi: 10.31078/jk1922.

[11] Putra, I.G.A.K.B.W.A., Widiati, I.A.P., & Ujianti, N.M.P. (2020). Non-receivable lawsuit (Niet Ontvankelijke Verklaard) in plaintiff divorce lawsuits in badung religious court. *Legal Construction Journal*, 1(2), 305-309. doi: 10.22225/jkh.2.1.2565.305-309.

[12] Putra, R.H.M.H. (2023). Analysis of the basis of judges' consideration and legal consequences in rejecting divorce lawsuits that cannot be accepted (Niet Ontvankelijke Verklaard) in court from the perspective of civil procedure law. *Unes Law Review*, 6(2), 4843-4856. doi: 10.31933/unesrev.v6i2.1298.

[13] Rahman, F., & Wicaksono, D.A. (2016). Existence and characteristics of conditional decisions of the constitutional court. *Constitutional Journal*, 13(2), 348-378. doi: 10.31078/jk1326.

[14] Ramadhan, F., & Dwi Rafiqi, I. (2021). Study of constitutional court decisions cancelling all norms in the law. *Legality: Jurnal Ilmiah Hukum*, 29(2), 286-308. doi: 10.22219/ljih.v29i2.15434.

[15] Rijanto, B. (2019). *Module entitled history, sources, and principles of civil procedure law*. Tangerang Selatan: Universitas Terbuka.

[16] Sarmah, M., & Bohra, S. (2023). Right to speedy trial: Access to justice. *Law Journal*, 11(6), 965-983.
[17] Septiansyah, Z.B., & Ghalib, M. (2018). Utilitarianism concept in legal philosophy and its implementation in Indonesia. *Journal of Islamic Law and Social Institutions*, 34(1), 27-34.
[18] Sitorus, S. (2018). Legal efforts in civil cases (objection, appeal, cassation, judicial review and third-party objection). *Hikmah Journal*, 15(1), 63-71.
[19] Suadi, H.A., & Hum, S.M. (2021). *Renewal of civil procedure law in Indonesia*. Jakarta: Prenadamedia Group.
[20] Sultan, S. (2013). *The value of justice in the principle of formal truth in civil cases: A perspective from islamic legal philosophy*. (Doctoral dissertation, Islamic University of Alauddin Makassar, Makassar, Indonesia).
[21] Sunarto, S. (2016). Principle of active judge in civil cases. *Law and Justice Journal*, 5(2), 249-276. doi: 10.25216/jhp.5.2.2016.249-276.
[22] Toqsanbaeva, A.M.Q. (2023). The active role of the judge in the civil procedure in the context of the modern legislation. *Science and Innovation*, 1(8), 467-473. doi: 10.5281/zenodo.7443296.
[23] Weda, N.K.D.N.I., Arjaya, I.M., & Seputra, I.P.G. (2021). Application of the active judge principle (*dominus litis*) in hearings at the state administrative court (Case study Decision No.1/G/2017/PTUN. DPS.). *Journal of Legal Preferences*, 2(1), 27-32. doi: 10.22225/jph.2.1.3048.27-32.

Норма про наявність повноважень судді в попередньому розгляді справи як втілення принципу невідкладного провадження в цивільному процесуальному праві

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■ **Анотація.** Суттєвою проблемою індонезійської правової системи є доступність правосуддя в цивільному процесі. Ця проблема пов'язана насамперед із жорсткими й трудомісткими формальними вимогами, які перешкоджають ефективно вирішувати справи. Недотримання цих формальних передумов часто призводить до закриття справ, що стоїть на заваді застосування принципу невідкладного судового процесу. Ця публікація має на меті дослідити ступінь повноважень судді в оцінюванні цих формальних вимог під час попереднього розгляду справи в Індонезії. Для цього застосовано нормативно-правовий підхід до дослідження з акцентом на законодавчих і концептуальних аспектах. Первинні, вторинні та третинні правові джерела проаналізовано з використанням різних методів аналізу, зокрема граматичний та систематичний. Висновки виявляють дві протилежні позиції: принцип пасивного судді, згідно з яким судді є спостерігачами судового процесу без активної участі, і нову перспективу, що визначає роль активного судді. Концепція активного судді дає змогу суддям консультувати позивачів щодо вдосконалення їхніх позовних вимог, якщо вони не відповідають формальним вимогам, запобігаючи закриттю їхніх справ. В адміністративному та конституційному судочинстві передбачено певні механізми для перегляду та доопрацювання позовів на попередньому етапі. Однак важливо зазначити, що в цивільному судочинстві судді не мають конкретної правової бази для надання порад та рекомендацій позивачам, тож такі дії вважають факультативними. Відсутність конкретної реалізації принципів оперативності й доступності правосуддя в цивільному судочинстві призводить до накопичення нерозглянутих справ і численних відмов у відкритті провадження у справах. Результати дослідження може бути використано для подальшого нормативного регулювання норми про повноваження судді щодо забезпечення проведення попереднього судового розгляду

■ **Ключові слова:** активна роль судді; невідкладний судовий розгляд; доступ до правосуддя; процедура відводу; суд