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The Simple, Fast and Low Cost Principles of the Civil Verdict Related to the Exception of Obscuur Libels on Land Disputes

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Abstract
Exception in the context of civil procedure law means defiance or rebuttal submitted by the defendant against the subject matter of the plaintiff's suit. In the judicial practice of civil cases, there are 2 (two) types of exceptions, namely processual exeptie and processual exceptions out of competence. The provisions of article 136 HIR / 162 Rbg stating that the Exception submitted by the defendant, except for the Unauthorized Court , cannot be submitted and considered separately, but must be examined and decided together with the subject matter, and this decision is always issued by general justice judges in Indonesia regarding the existence of *obscuur libel* exceptions about land disputes. Legal renewal by replacing the provisions of article 136 HIR / 162 Rbg with new legal provisions authorize judges to impose final and binding interlocutory decisions and closed legal remedies for the parties except giving the plaintiff the opportunity to correct his suits concerning the dispute land and re-enter the lawsuit to the court, and besides that it needs an amandment of the provisions of article 153 HIR / 180 Rbg and SEMA No. 7 of 2001 concerning local inspection with new provisions that provide assertiveness about when the local inspection is ideally carried out after the answer process is completed before the verification process, in order to realize a simple, fast, low cost justuce and object of law, legal certainty and expediency for justice seekers.
Keywords: *Obscuur libel Exceptions,* Court Verdict, Local Inspection

1. Introduction

Every legal system is an order for community environments that are separated one another. The various legal systems are based on the legal value and legal concept that differ one another that further have different legal institutions and legal norms. Legal problems on Private cases (individual interest) that cannot be settled under the kinship manner, should not be handled by personal judgment (*eigenrichting*), but should be set by the court.
The authority of the court based on the amendment to the 1945 Constitution of the Unitary State of the Republic of Indonesia does not only explicitly mention the independent judicial authority. Article 24 Paragraph (1) Amendments to the Constitution of the Unitary State of the Republic of Indonesia 1945 affirm, "the judicial power is an independent power to conduct justice in order to uphold law and justice". Furthermore, Article 24 Paragraph (2) Amendments to the 1945 Constitution of the Unitary State of the Republic of Indonesia mandate that judicial power is not only carried out by the Supreme Court, but also by the Constitutional Court.

The judicial body does not only oversee law implementation and enforces the law, but as the formater of the law (law creator, *rechtschepper*). This latest development is more specifically aimed at the Judge as an official who implement judicial power and is known as "judge made law", or a judge who forms the law (*rechter als rechtsshepper*).[1] The main task and authority of the judicial body in the civil sector is to receive, examine, judge and settle disputes between litigant parties (*contentiosa* or contentions jurisdiction). This contention claim in the practice of justice is called a civil suit. Article 119 HIR or 143 RBg uses a civil suit term. In the settlement of a dispute / civil suit, it cannot be separated from the applicable procedural law. According to R. Subekti[2], the procedural law acts as the material law, so that automatically every development in the material law should always be followed by the procedure law adjustment.

The purpose of suing a civil suit to the court is to return the rights of the plaintiff that is taken by another party in accordance with the applicable provisions of the civil procedure law. Efforts to restore the rights considered by the plaintiff are related to the application of laws based on legal certainty and public justice. To obtain equality of both cases, the development of the Indonesian law and justice system, especially the civil procedure law, and the quality and professionalism of the apparatus must be carried out simultaneously.

Civil procedure law contained in the HIR and RBg does not mention the conditions that must be met by a lawsuit, but article 8 number 3 Rv states that the lawsuit basically contains the identity of the parties, the arguments about legal relations which are the basis of the suits. While the Supreme Court in its several verdicts

[1]Bagir Manan, *Hakim dan Prosfek Hukum*, Artikel, Varia Peradilan Tahun XIX Nomor. 343, Juni 2014, Halaman 7.
[2]R. Subekti, *Hukum Acara Perdata*, Penerbit Binacipta/BPHN, Cetakan I, Jakarta, 1982, Halaman 14.

issued fatwa on how the lawsuit drafted, it was related to several jurisprudences including[1] :

1. Verdict of the Supreme Court Number: 547K / Sip / 1972 March 15, 1970; People are free to compile and formulate a lawsuit that describes the material on which the suit is based.
2. Verdict of the Supreme Court Number 429K / Sip / 1970 November 21, 1970; the cases sued must be clearly stated.
3. Verdict of the Supreme Court Number 151K / Sip / 1975 dated May 13, 1975; The litigants must be clearly included.
4. Verdict of the Supreme Court Number 81K / Sip / 1975 dated 9 July 1975; lawsuits regarding land must clearly state the location, boundaries and size of the land.

If the requirements of the lawsuit are not in accordance with the jurisprudences, especially concerning land disputes, then the final decision will be an unacceptable suit (Niet Ontvankelijke Verklaard), even though the civil court proceedings have taken considerable time, moreover there are still legal remedies against the verdict. Thus, if the court decision (the judge's decision) only considers the lack or failure of the lawsuit conditions as referred to in the Supreme Court Jurisprudence above while the decision is still legal, then the settlement of cases does not reflect the principles of simple, fast, and low cost justice.

There are judicial verdicts of civil matters concerning lands, in Indonesia, that do not reflect simple, fast and low cost judicial principles, although it has been clearly stated in Article 2 paragraph (4) of the Act Number 48 of 2009 concerning Judicial Power that the court should realize simple, fast, and low cost justice. In the civil court on lands in Indonesia, many decisions that cannot be executed due to the unclear location and boundaries of land, which is not in accordance with the dictum of the decision and many cases in which the decision cannot be accepted (Niet Ontvankelijk Verklaard) to the cassation level because the land dispute object is not clear (*Obscuur libel*), so that the Supreme Court with its authority issued a Circular Letter of the Supreme Court (SEMA) Number: 7 of 2001 concerning Local Inspection. Part of the content is that based on the Observation of the Supreme Court, civil cases that have permanent legal force cannot be executed (non-executable) because the object of the case for immovable property (for example: rice fields, yard land and so on) is not in accordance with the dictum of the decision, those are regarding the location, area, boundaries or the situation at the time the execution will be carried out, beforehand there has never been a Local Inspection of the Case Object. So that with the issuance of SEMA No. 07 of 2001, in settling such land disputes, the Panel of Judges handling the case is obliged to conduct local inspection on the object of the cases.

Regarding the Local Inspection (Descente), Article 153 the HIR has explained that a local investigation is an examination of a case by a judge carried out outside the court, so that the he can obtain a certainty or description of events that become a dispute. Based on Article 211 Rv, a local inspection can be held based on a decision, either at the request of the parties or due to his position. The local inspection is not included in the evidence based on Article 164 HIR, but because the purpose of the local inspection is to obtain certainty about the event that is in dispute, then the local inspection function is essentially an evidence[2] though its value depends on the judgment of the Judge.

Regarding the existence of SEMA Number 7 of 2001 which obliged the Panel of Judges to conduct a local inspection of the object of the land dispute, but the SEMA did not explain when the local inspection should be conducted. In practice, the local inspection is carried out by the Panel of Judges in 2 (two) versions, which is carried out at after the question and answer session and time after the verification is completed.

The emergence of two versions of the local investigation of the object of the dispute was due to the absence of strict provisions by the Supreme Court of the Republic of Indonesia regarding when the local inspection had to be carried out. To realize the principle of justice that is simple, fast, and low cost, the provision of local inspection on land disputes should explicitly regulate the most appropriate time to conduct the investigation that is after the question and answer process and before the verification process.

After the local inspection process is carried out by the Panel of Judges, in the first version, and the Judge finds that the location and the boundary of the dispute object is unclear, then the decision must be declared unacceptable (*Niet On Vankelijke Verklaard*). But ironically, the judge, in deciding the existence of an *obscuur libel* exception about unclear land disputes object is unable to make a decision with final and binding interlocutory decision that must be decided in the final decision along with the subject matter, as stipulated in article 136 HIR / 162 RBg, even though the judge knows the decision will be an unacceptable suit, but the judge is still obliged to continue the court session by receiving evidence from the parties before the verdict is handed down. Thus, it enchains the freedom of judges in realizing simple, fast and low-cost judicial principles according to the mandate of Article 2 paragraph (4) of the Act Number 48 of 2009 concerning Judicial Power which states that justice should be simple, fast, and low cost.

Regarding the issue of local inspection concerning land disputes carried out after an exception submitted by

[1]Zainuddin, *Eksekusi Putusan Serta Merta dalam teori dan pratek peradilan di Indonesia*, Varia Peradilan No. 135 Februari 2012, Halaman 55

[2]Hoge Raad tgl 24 Januari 1873, W.3554.

the Defendant through the answer, then it needs to understand what the exception is. In the context of procedural law, exception means defiance or denial. It could also mean the defendant's defense of the plaintiff's lawsuit.[1] It is usually submitted by the opponent of the plaintiff, namely the defendant, arguing that the location and the boundary of the dispute land is not clear, and there is another party who is not involved controlling the object, thus the judge needs to carry out the local examination as mandated by the SEMA Number 7 of 2001. The main purpose of submitting an exception is that the court is expected to end the inspection process without further examining the subject matter of the case. The termination requested through the exception aims to cause the court to hand down negative verdict, stating that the claim is unacceptable, and based on the negative decision, the case examination is terminated without mentioning the completion of the subject matter.[2]

In the practice, if there is an exception out of the authority to adjudicate (Absolute or Relative) in which the settlement does not taken the subject matter, the Judge should hand down the verdict along with the subject matter in the final decision, as stipulated in Article 136 HIR / 162 RBg that exception submitted by the defendant cannot be submitted and considered separately, or should be examined and decided together with the subject matter. This is strengthened by the existence of Book II of the Administrative Technics and Technical Guidelines for Special Public and Civil Courts of the 2007 Supreme Court of 2008. In practice, the Judges in Civil Courts are shackled by these rules, thus the Judges in civil courts are passively different from criminal courts that demand judges to be active in seeking material truth.

Therefore, if the civil procedure law, especially article 136 HIR / 162 RBg and book II concerning Administrative Technics and Technical Guidelines for Public Civil and Special Civil Courts are not amended or renewed with the new civil procedure law that requires judges to be active and allow judges to impose interlocutory final and binding decision and closed legal remedies for the parties, except correcting their lawsuit related to the land object of the dispute and re-entering the court, then the principle of simple, fast and low cost justice will not be achieved. The role of judge is passive means that the judge is only limited at accepting and checking the matters submitted by the plaintiff and the defendant. Therefore, the function and role of the judge in the civil litigation process are only limited at finding and discovering formal truth, the truth of which is realized in accordance with the basis of the reasons and facts submitted by the parties during the court sessions. For example, if there exists an *obscuur libel* exception about disputed land in which the boundaries and the locatuion of the object is unclear, or if after the panel of judges conducts a local inspection after the answer process before verification of the land object whose boundary and location is unknown, then they cannot hand down an interlocutory final and binding decisions, but must be decided together with the subject to the cassation level. It can be seen in the following jurisprudence decisions of the Supreme Court:

1. The Supreme Court Verdict Number 81K / Sip / 1973 July 9, 1975; stated that after the local inspection held by the state court on the order of the Supreme Court, the land controlled by the defendant has different boundaries and area from what is stated in the lawsuit, so that the claim was declared unacceptable.[3]
2. The Supreme Court Verdict Number: 1149K / Sip / 1975, April 17, 1979; stated that the lawsuit does not clearly mentioned the location / boundaries of the dispute, the claim was declared unacceptable.[4]
3. The Supreme Court Verdict Number: 1391K / Sip / 1975 dated 26 April 1979; stated that the Plaintiff's claim contains unclear boundaries of the disputed land, and only mentioned (marked II), the claim was declared unacceptable.

With the example of *Obscuur libel* in which the location, width, and boundaries of the dispute land are handed down together with the subject matter to the cassation level, and since the legal rules for civil cases, especially article 136 HIR / 162 Rbg or the technical guidelines for settling civil cases from the Supreme Court of the Republic of Indonesia have not been amended by a regulation that gives judges the authority to impose interlocutory decisions that are final and binding and legal efforts are closed for parties except opportunity for the plaintiff's to correct his claim in relation to the dispute and re-enter the lawsuit to the court, then it will make the cases settlements take longer time and are contrary to the principles of simple, fast, low cost justice. Furthermore, this study will examine the ideal judicial process that can indicate the issuance of new policies in the field of civil law, especially on the exception of *obscuur libel* on land which is expected to provide justice, legal certainty and expediency and legal protection for the parties in the dispute, and can establish the Judicial Principle of Simple, Fast, and Low Cost.

Based on the above background and legal issues, several legal problems were found as follows:

1. What is the nature of the verdict on the *obscuur libel* exception regarding land in a civil case?
2. Does the *obscuur libel* exception regarding land decided along with the principal of the case in the final decision fulfill the Judicial Principle of Simple, Fast, and Low Cost?

[1]M. Yahya Harahap I, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, Sinar Grafika, Jakarta, Cet. Kelima, 2007, halaman. 418.
[2] Ibid, Halaman 418-419.
[3]Mahkamah Agung RI , Op. cit, Ibid, Halaman 451.
[4]Ibid, Halaman 451.

3. How ideally should the renewal of the future civil procedure law (Ius Consituendum) concerning the civil decision on the *obscuur libel* exception regarding land to establish principle of simple, fast, low cost and legal objective of justice, legal certainty and expediency?

2.Research Methods

This study is a normative and doctrinal legal research. Normative is used because of the distinctive character of law science that lies in the method of research that is normative, jurisprudence.[1] Doctrinal research is used to analyze the principles of law (civil procedure law), legal literature, expert opinion (doctrine).[2]

This study uses a *statute approach*, *conceptual approach*, and *history approach*. The *statute approach* carried by reviewing all the rules and regulations which is related to legal issues of verstek verdict such as HIR, RBg, Rv (*ius constitutum*), as well as the draft of Statute of Civil Law as the *ius constituendum*. This approach is consistent with the view of law as a norm, theorem, and rules that apply in society in accordance with the principles of law.[3] The method analysis of legal materials is covering legal concepts, legal norms, technical law concepts, law institutions, law figures, law functions and legal sources.[4]

3.Results and Discussion

These results and discussions will analyze some of the problems described above, so to be coherent this discussion will describe one by one the issue with the following results:

3.1 The Nature of Decisions Against the Exception of *Obscuur libel* in Civil Cases About Land in the Principles of Justice Simple, Fast, and Low Cost

I. Philosophy of Judges' Decisions of the Civil Cases

All cases that contain elements of dispute and submitted to the court will be ended by reading a verdict by the judge, and the purpose of settling the dispute of the parties before the court is to obtain a judge's verdict which has permanent legal force and the decision can be handed down. If it is viewed from the vision of the judge who decides the case, the judge's decision is a climax and closing deed of reflecting the values of justice, truth, mastery of law and facts, ethics and morals of the judge concerned.[5]

The verdict for the judge is a barometer of whether the court in examining and adjudicating cases submitted to him, has applied the applicable legal provisions, and whether the decision is in accordance with the sense of justice of the justice seekers. A good and quality decision must be taken through the process of the preparation/ post court sessions, the examination phase at the trial / verification stage and the post-trial phase. The examining process of examining these stages if taken in accordance with the applicable provisions will produce an accurate conclusion and from this accurate conclusion a decision will be made that can fulfill a sense of justice which includes procedural justice and substantive justice.[6]

Starting from the provisions of Article 184 HIR, Article 195 RBG, Article 30 RO, and Article 13, 14, and 50 of Law Number 48 of 2009 concerning Judicial Power, then no understanding of the judge's decision is found, therefore for can explain the definition of the judge's decision can be drawn from some opinions of legal experts. In the opinion of I Rubini and Chadiri Ali put it: "Decision as a form of the closing deed of a case process and the judge's decision is also referred to as vonnis which is the final conclusions about the law from the judge and also contains the consequences.[7]"

In addition, Sudikno Mertokusumo stated that the decision is a statement of the judge as an authorized state official, pronounced at the court session and aims to settle cases between the parties.[8] There are several process done by the judge before making decision to complete a case handled, namely: [9]

1. Inventory stage.
2. Determining the legal system that applies in the case at handled.
3. Selection.
4. Application.

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[1]Peter Mahmud Marzuki, *Penelitian Hukum*, Yuridika, Vol. 16, Nomor 1, Maret-April 2001, hlm. 103. (selanjutnya disingkat Peter Mahmud Marzuki I).
[2]*Ibid.*
[3]Soetandyo Wignjosoebroto, *Masalah Metodelogi Dalam Penelitian Hukum Sehubungan Dengan Masalah Keragaman Pendekatan Konseptualnya*, Makalah pada Metodelogi Penelitian, FH Undip, 1993, hlm. 30.
[4]Philipus M. Hadjon, *Pengkajian Ilmu Hukum Dogmatik (Normatif),* Makalah, Fakultas Hukum Unair, Surabaya, 1994, hlm. 3-4. (selanjutnya disebut Philipus M. Hadjon II).
[5]Lilik Mulyadi, *Seraut Wajah Putusan Hakim Dalam Hukum Acara Perdata Indonesia Prespektif, Teoritis, Praktik, Teknik Pembuatan dan Permasalahannya*, PT. Cintra Aditya Bakti, Bandung, 2015, Halaman 125.
[6]Sunarto, *Peran Aktif Hakim dalam Perkara Perdata,* Prenadamedia Group, Jakarta, 2014, Halaman 191.
[7]I Rubini dan Chadiri Ali, *Pengantar Hukum Acara Perdata,* Alumni, Bandung, 1974, Halaman 105.
[8]Sunarto, op.cit, Halaman 192.
[9]Elyanah Tansah, *Cara Penyelesaian-Penyelesaian Perkara Perdata Dengan Sistem Putusan Sela,* Mahkamah Agung, Jakarta, 1998, Halaman 10-11.

5. Determining/ making decision, and
6. Editorial stage: [1]

At the inventory stage, the judge seeks to obtain a dispute sued by the parties which includes: the plaintiff's petitum and the matters that have been submitted by the plaintiff to support the basis of his claim, on the other hand, the judge seeks answers from the defendant related anything that becomes the basis of defendant's rebuttal, while at the stage of determination of civil law system that applies to the parties, the judge will examine whether or not there are applicable provisions governing the matter.

The selection process is when the judge examine whether the violations of norms issued by the parties are included in the legal regulatory system, whether there is one or more legal rules in the national legal system for events that are raised by parties who expect a certain law. At the selection stage, the judge will examine whether the violation committed by the defendant has caused legal consequences as referred to by the plaintiff in the lawsuit and is a violation of the rule of law. After selecting one or more legal rules, the judge will apply these legal regulations to a collection of events that have been stated by the parties, meaning that the judge will examine whether the elements mentioned in the legal regulations, legal consequences of the regulation has also been clearly stated by those concerned.

Then in the next stage the judges will try to obtain clarity on the subject of the dispute that still have to be decided by classifying the disputed subject in sequence. Judges are obliged to compile editorial edicts which include legal considerations used as the basis for the decisions and edicts of decisions prepared in a coherently that will provide legal reasons / considerations, so that the disputing parties or other parties who read the decision can obtain a clear depiction of the decision making process and reasons that are the basis for making the decision. The decision prepared coherently by the judge provides description to the disputing parties on the following points:

1. The points of dispute (probabilities) that must be decided, and
2. The process of settlement and the basic reasons used by the judges.

Article 2 paragraph (2) of the Act Number 48 of 2009 concerning Judicial Power regulates the functions of state courts, namely "implementing and enforcing law and justice based on Pancasila". So that the Judge as an official of the judicial authority has the function to implement and enforce the law and justice based on the Pancasila.[2]

II. A Judge Shall Uphold the Law

The judiciary is basically the implementation of law that demands the occurrence of disputes or violations whose functions are carried out by an independent body and are free from any other influence by giving a binding decision and aims to prevent *eigenrichting*. The freedom of the judge in examining and deciding a case as well as the absence of partisanship is a guarantee of a fair decision and the judge in deciding the case is obliged to refer to and apply legislation and other legal sources because each court decision is based on a rule.

The freedom of the judge or the independence of the judiciary cannot be interpreted further that it allows the judge to make his own rules in settling the disputes handled or is allowed to make decisions arbitrarily, but the judge is obliged to interpret a rule. Deciding, according to the law, is the first and last duty of a judge. Law is the entrance and exit gate of every judge's decision. According to Wiarda Koopsman, there is a link between the law and legal objectives, so that there are three functions of judges in applying law (*rechtstepepping*), namely: merely applying the law, finding law (*rechtsvinding*) and creating law..[3]

The function of the judge in applying the law (*rechtstoepassing*) means the judge solely attaching or giving a place to a legal event with the existing provisions. Judges are like tailors who merely attach stitches to patterns that have been cut off with their respective places, if a mismatch between legal events and the provisions, a judge is not justified in carrying out changes.[4] The function of judges as legal inventors meaning that judges act as translator or defining a legal rule or a legal understanding in order that it can be actual in accordance with the concrete legal events that occur and to avoid misuse, the legal discovery can be done by interpretation methods, analogies, legal refinement (*rechtsvefijning*), legal construction and *arhumentum a contratio*.[5] According to Bagir Manan, the judge's obligation to find the law was affected by several factors, including:[6]

1. Almost all concrete legal events are not correctly depicted in a law or statutory regulation,
2. The unclear statutory provisions are unclear or contrary to other provisions that require choices so that they can be applied appropriately, correctly and fairly,
3. As a result of community dynamics, there have been several new legal events which are not written in the

[1] Elyanah Tansah, *Cara Penyelesaian-Penyelesaian Perkara Perdata Dengan Sistem Putusan Sela,* Mahkamah Agung, Jakarta, 1998, Halaman 10-11.
[2] Sunarto, op.cit, Halaman 61.
[3] Mahkamah Agung Republik Indonesia, *Hakim Sebagai Pembaharuan Hukum, Himpunan Makalah, Artikel dan Rubrik Yang berhubungan dengan masalah hukum dan keadilan Dalam Varia Peradilan*, IKAHI Mahkamah Agung Republik Indonesia, Mahkamah Agung RI, 2011, Halaman 309.
[4] Ibid
[5] Ibid
[6] Ibid, Halaman 310-311.

Law or legislation,

4. The obligation to find the law arises because there are legal provisions or principles that prohibit the Judge from refusing to decide on a case that the provisions are unclear or that the Law is not regulating.

The function of a judge as a law maker is constructed as an attempt by a judge to decide, but there is no available legal rule that can be used as a basis. The dutyvof creating the law is needed in case there is a legal vacuum (*rechtsvancuu*).

III. A Judge Upholds Justice

The judge's decision should contain 3 (three) components of the legal objectives and an ideal judge's decision. Meanwhile, according to Gustav Radbruch, each decision must contain elements of *gerechtigkeit* (justice), *zweckmassigkeit* (expediency), and *rechtssicherheit* (legal certainty) proportionally.[1] Justice is a necessary condition for the existence and survival of any society. As a rule for human social relations, justice is a prerequisite that must exist for the existence of society. Justice is the pillar that supports the entire community. If it is removed, the magnificent community buildings will surely fall apart. Therefore the community cannot stand among those who are loyal when they are ready to hurt and harm one another.[2] In settling a case, every judge should consider and upholds the general principles of justice. The general principles of good justice include:[3]

1. Right to a decision
2. Everyone has the right to sue a case as long as it has an interest (*no interest, no action*),
3. Prohibition of refusing to try unless specified by the law,
4. Decisions must be carried out in a reasonable time,
5. The principle of impartiality,
6. The principle of opportunity for self-defense (*audi et alteram partem*),
7. Principle of objectivity (no bias), there is individuals or other parties interest,
8. Upholding the principle of "*nemo yudex in rex sua*", namely a judge may not adjudicate cases where he is involved in the a quo case,
9. Clear legal reasoning in the contents of the decision,
10. Accountability (Justifiable)
11. Transparency
12. Legal certainty and consistency, and
13. Upholding human rights.

The law can be enforced, and justice can be felt if the examination process in the trial by the judge is carried out with great care and thoroughness so that it is expected to produce a decision that can be accounted for the law, society, and God.

IV. Types, Strength and Function of Judge's Decision

The HIR and RBg as the civil procedure law applicable in Indonesia expressly do not recognize the various court decisions other than the final decision. However, if it is examined further, at the contents of Article 185 HIR Jo Article 196 RBg, the HIR actually knows the types of judges' decisions, including Interlocutory Verdicts and decisions that can be implemented in advanced.

a. Interlocutory Verdicts

Interlocutory Verdicts are decisions taken by the judge in the middle of the trial process. There are several types of Interlocutory Verdicts, namely: (a) preparatory, (b) interlocutory and (c) provisional decisions.[4]

(a) Preparatory verdicts are decisions taken by the judge with the aim of combining the claim setting a trial period if necessary.
(b) Interlocutory verdicts are decisions used to determine local verification and verification questions as well as witnesses.
(c) Provisional verdicts is a decision taken by a court over a case that precedes a final decision.
Interlocutory Decision

b. Final Verdict (*Eindvonnis*)[5]

The final verdict is a decision given by the court that gives the final settlement of the case examined (Article 185 HIR and 195 RBg) while the form of a final decision is stipulated in Article 184 HIR

V. Strength contained in the Decision

The HIR / RBG which is a civil procedure law inherited by the Dutch East Indies colonial government does not contain any provisions regarding the power of the judge's decision, except in article 180 HIR / 191 Rbg only mentions the existence of a verdict which has fixed power. In articles 1917 and 1918 the Civil Code also

[1]Ibid. Halaman 77.
[2]Ibid. Halaman 78-79.
[3]Mahkamah Agung RI. *Pedoman Pelaksanaan Tugas dan Administrasi Pengadilan dalam Empat Lingkungan Peradilan,* Buku II Edisi 2007, Mahkamah Agung RI, 2009, Halaman 860-861.
[4]Danggur Konradus, op.cit, Halaman 223-224
[5]Ibid, Halaman 225-226

mentions the power of a judge's decision that has gained absolute power. Article 21 of Act No. 14 of 1970 mentioned a court verdict which had obtained permanent legal force. Every court decision contains the power of law. There are three kinds of strengths of decisions which are related to each other and are inseparable from the verdict, namely:[1] Strength contained in the Decision

The HIR / RBG which is a civil procedure law inheriting the Dutch East Indies colonial government does not contain any provisions regarding the power of the judge's decision, except in article 180 HIR / 191 Rbg only mentions the existence of a verdict which has fixed power. In articles 1917 and 1918 the Civil Code also mentions the power of a judge's decision that has gained absolute power. Mentioned in Article 21 of Law No. 14 of 1970 there was mentioned a court ruling which had obtained permanent legal force. In each court decision contains the power of law. There are three kinds of strengths of decisions which are related to each other and are inseparable from the verdict, namely:

1. Binding Force (*bindende krach*)

The binding force has a definite or absolute legal force, so that the decision has no legal remedies that can be taken seriously by both the plaintiff and the defendant. Decisions must be written and stated verbally in the public session. The principle of openness to the public is imperative. This is regulated in Article 13 of the Act Number 48 of 2009 concerning judicial power as follows:

a. All court hearings are open to the public, unless the law stipulates specific rules,
b. Court decisions are only valid and have legal force if they are stated in a court session open to the public,
c. The absence of provisions fulfilment as meant in paragraphs (1) and (2) results in the decision being null and void.

2. Has the Inherent Nature of the Verdict

Absolute or definite verdict means that the problem has been settled and cannot be changed anymore by any level of court agency, as long as it concerns the lawsuit brought to the attention of the parties, thus the case that has legal force remains sued, then the claim must be rejected and declared unacceptable as long as the object and its parties are still the same or if the parties are still the heirs of the original party as stated in the verdict which has absolute legal force.

Therefore, the provision applies to the principle of *ne bis in idem*, meaning that the case terminated cannot be examined for the second time in the same case. If the plaintiff file a lawsuit against a case that is stated *ne in idem* then the judge's decision in the court is not to reject the plaintiff's claim but the plaintiff's claim cannot be accepted. Whereas a defendant may reject the lawsuit sued on him on the basis of the absolute decisions with the exception of *Van Gewijsde Zaak*, rejecting the claim by arguing that the case filed by the plaintiff has been terminated.

3. The Strength of Verdicts (*bewijzende kracht*)[2]

A verdict is said to have a power because it is an authentic deed, and is made in written form by a judge who is authorized by the Law to decide a case. The decision can be used as evidence by the litigant as far as concerning the events established in concreto law.

VI. The Function of Verdict

According to Sunaryati Hartono, the judge's decision has several functions, including:

a. Judge's decision as an embodiment of efforts to prevent and settle conflicts. The judge's decision is emphasized on the function of the integration mechanism by preventing conflict and resolve it peacefully and orderly.
b. Decision as an embodiment of legal discovery efforts, in this case the judge's decision is emphasized on the relationship of the functions and duties of the judge with the existing law. The importance of this view lies in the relationship between the implementation of the duties of judges and laws that are not always complete and clear, because they are left by the rapid development of society.
c. Judge's decision as an embodiment of law as a tool of social engineering. In this case, the judge's decision is emphasized on the function of restructuring society based on certain order and values addressed to the new community.

VII. Exception Scope on the Civil Cases

Exceptie (Dutch) means exceptions. However, in the context of procedural law the exception means objection. It could also mean a plea [3] submitted by the defendant against the lawsuit of the plaintiff's claim. But the defiance or rebuttal sued in the form of exception:[4]

a. Aimed at matters relating to the requirements of the claim, i.e., if the claim filed contains a defect or formal violation which results in an invalid claim, therefore the claim cannot be accepted

[1]Ibid, Halaman 226-228
[2]Ibid, Halaman 229-230
[3]Marianne Termorshuizen, *Kamus Hukum Belanda Indonesia*, Djambatan, Jakarta, 1999, hlm.121.
[4]M. Yahya Harahap II, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, Sinar Grafika, Jakarta, Cet. Kelima, 2007, hlm. 418.

b. Thus the objection submitted in the form of an exception is not intended and does not address the objection to the lawsuit (*verwee ten principale*). Denial or defiance of the lawsuit of the case is submitted as a separate part following the exception.

The main purpose of filing an exception is to end the inspection process without further examining the lawsuit. The termination requested through the exception aims to make the court:

a. Imposing a negative verdict, stating that the claim is unacceptable;
b. Based on the negative verdict, the case hearing was terminated without mentioning the completion of the lawsuit.

Regarding the use, the term exception that has been generally accepted in writing and judicial practice. The term has given a special understanding and its purpose is understood

1) Type of Exception

Article 125 paragraph (2) explains, article 132 and article 133 HIR only introduce absolute and relative competence exceptions, but article 136 HIR indicates the existence of several types of exceptions. Most of them come from the provisions of certain statutory provisions. The exception theoretical approach can be classified in 2 types of exceptions, namely:

a. Processule Exeptie)
   Processule Exeptic is devided into two parts:
   a) Exceptions which is not authorized to try in an absolute term
   b) Exception to not prosecute relatively
b. Prosessual Exception outside competence exception

Prosessual Exception outside competence exception has several types, namely:

1. Exception of Invalid Special Power of Attorney
2. Error In Persona Exception
3. *Exceptio Res Judicata* atau *Ne Bis In Idem.no*
4. *Obscuur libel* Exception
5. And other Exceptions

VIII. Exceptions Submission and Its Settlement

The exception procedure is stipulated in several articles consisting of article 125 paragraph (2), Article 133, Article 134, and Article 136 HIR. Based on these Articles there are differences regarding the submission of exception associated with the type of exception. It can be submitted at any time before the judge decides, and if the exception is accepted, the decision is in the form of an interlocutory decision and the decision end the settlement of the case and its legal appeal, and if the exception is rejected, the process of settling the case continues until the final decision of the principal case, and legal remedies against the interlocutory decision will be sent together with the lawsuit, while the exception is not authorized to adjudicate relatively with the defendant's answer and the verdict in the form of interlocutory decision. If the exception is granted or accepted, the legal remedy is an appeal and the decision ends the settlement of the case, and if the exception is not accepted, the legal remedy is an appeal along with the principal decision of the case.

In the Practice of Processual Execution outside of competence, specifically the *Obscuur libel* Exception about land decided in the final decision along with the case in accordance with article 136 Rbg / 162 HIR, it can hinder the realization of simple, fast, low cost principles and legal purposes, namely justice, legal certainty, and expediency.

3.2 Implementation of Ius Constituendum in the Decision of the *Obscuur libel* Exception of Land in the Principles of Justice Simple, Fast and Low Cost

I. Civil Code Renewal To Fill Legal Lack Regarding *Obscuur libel* Exception of Land

In the interlocutory decision system, especially on civil matters on land, the Judge, after receiving the Defendant's duplicate and knowing the existence of an *obscuur libel* exception about the dispute land, and also after conducting the first version of local examination done after the answer process and before verification, and the results of the local examination finds the object of the lawsuit about the land is unclear (*obscuur libel*), the judge should postpone the hearing for the reading of the verdict. The verdict that will be handed down can be in the form of an interlocutory decision which is final and binding with the decision to accept the Defendant's Exception and declare "the plaintiff's claim cannot be accepted (*niet ont vankelijk verklaard*), since *obscuur libel* land object is known after the first version of the local inspection which is done after the answer process and before verification, that the object is not clear (*Obscuur libel*), but the trial process must be continued to meet the conclusion, then followed final decision as determined in the provisions of Article 136 HIR / 162 Rbg. Thus, it proves that the trial and settlement of civil matter is excesively long and trivial, and do not reflect the principle of simple, fast, low-cost and tend to lead to heretical justice, because from the results of the first version of local inspection that was carried out after the answer process and before verification, it has been known that the object of the dispute land is not clear (*Obscuur libel*), moreover the decision has been predicted that the decision will

later declare the Plaintiff's claim is unacceptable, which means there is no significance to continue the court process. In short, it is clearly far from the ideals of judicial principle that is Simple, Fast and Low Cost.

Thus, for the sake of establishing a Simple, Fast, and Low Cost judicial principle and for the renewal of the Civil Procedure Law, the provisions of Article 136 HIR / 162 Rb which state that "exceptions that will be submitted by the defendant, except on the unauthorized court, cannot be submitted and considered separetely, but it must be examined and decided along with the lawsuit" must be amended by provisions that permit or give authority to the judge to hand down final and binding Interlocutory Verdicts for *obscuur libel* exception regarding land" accepting Defendant's Exception and stated that the plaintiff's claim in unacceptable (*Niet ont vankelijk Verklaard*) and the legal efforts for the plaintiff was only to correct his claim and re-submit to the district court, and closed the legal efforts for the Defendant, since the decision had not considered and tried the case.

To establish the Simple, Fast, and Low Cost Judicial principles, in addition to amending the provisions of Article 136 HIR / 162 Rbg, it is necessary that the Government, together with legislators and the Supreme Court of the Republic of Indonesia, immediately amend the provisions of Article 153 HIR / 180 Rbg and Circular Letter of the Supreme Court Number 7 of 2001 concerning Local Investigation which does not determine the appropriate time or when the local inspection must be carried out. According to the author, to realize the principle of simple justice, fast, and low cost related to the settlement of the land settlement, the time for local inspection must be determined, i.e., after the answer process and before verification, on the basis of these ideas, the author expect that it will be responded positively and quickly by the government and stakeholders of Law makers and the Supreme Court of the Republic of Indonesia for the realization of a Simple, Fast, and Low-Cost judicial principle and legal purpose related to the settlement of civil cases, especially in the presence of the *Obscuur libel* Exception about land.

II. The *Obscuur libel* exception about land can be decided in a final and binding interlocutory decision.

Rising from the author's concern about the large number of civil court decisions regarding land, especially in the presence of an *obscuur libel* exception on land dispute object, the verdict finally states:

In the Exception:

- Receiving Defendant's Exception

In the Lawsuit:

- Declare the Plaintiff's Claim which is not acceptable (*niet onvankelijk Verklaard*)
- Sentencing the Plaintiff to pay the court fees

In the practice, many of these verdicts were handed down by the first level judges and the decision only considered the *Obscuur libel* Exception (obscurity) of the object of the dispute and had not considered the lawsuit at all and the evidence presented by both parties. So that in this case the legal relationship between the Plaintiff and the Defendant has not received a definite verdict, and the legal relationship between the parties and the object of the dispute has note been determined precisely, because the judge has not tried the lawsuit.

This type of decision is negative, meaning that the decision has incurred amounts of money, wasting time, and spending energy, moreover the absence of restrictions on legal remedies for The defendant, and that the decision means nothing because the decision does not adjudicated the lawsuit and does not give any definite verdict on the disputed object. With respect to the negative verdicts, improvements can still be made to the wrong claim and can be returned to the Court of Justice and legal efforts for the defendant because the decision has not adjudicated the case. Therefore, if the practice of handling the case still exemplified above Civil matters, the the land dispute settlement does not meet the principle of simple, fast, and low costs and the legal objectives will not be realized. Provision of Article 136 HIR / 162 Rbg which requires the Judge to pass a decision on procedural exceptions other than the exception of competence specifically towards the *obscuur libel* exception concerning the dispute land in the final decision together with the principal matter, the legal provisions impede the freedom of the judge to make final and binding Interlocutory Verdicts to establish simple, fast, low cost and legal objectives, legal certainty, and expediency.

The decision on the *obscuur libel* exception regarding land which was decided in the final and binding interlocutory decision and closed legal efforts for the parties except to give the Plaintiff an opportunity to correct his claim concerning the existence of the dispute land and re-submit the lawsuit to the court, it can realize the judicial principle of simple, fast, low-cost and legal objectives, namely justice, legal certainty and expediency.

III. The Local Examination (*gerechtelijke plaatsopneming*) Period Should Be Strictly Regulated

Considering the importance of Local Examination on the settlement of the land disputes in order to realize simple, Fast and Low Cost judicial principles related to the existence of the *Obscuur libel* Exception about land and its settlement, while in practice the Judge in the Indonesian Judiciary only refers to Article 136 HIR / 162 Rbg and Circular Letter of the Supreme Court of the Republic of Indonesia Number 7 of 2001 concerning Local Examination which only requires to conduct a local inspection of land cases without determining when to implement them, while in practice, local Examinations are carried out in 2 (two) versions, including:

1. Being Performed after the answer process and d before the verification Process

The local Investigation is carried out after the answer process and before the Verification process, and the panel of judges handling the case will be able to know that the problem of the disputed land object was questioned by the opposing party, i.e., Defendant. Whether concerning location, boundaries, and area, and parties in the dispute lands. On the other hand, the first local examination version argued that the local examination carried out before the verification, and intended that at the verification process, especially during the examination of evidence, witnesses, the panel of judges would know more about the object of the dispute. So if there are witnesses who provide other information about the state of the object of the dispute, the Panel of Judges has been able to understand in advance about the state of the dispute object.

2. Performed after the Verification Process and after submitting conclusions by the parties

The reason of second version of the local investigation, the Panel of Judges argued that if there was a debate at the time of the local investigation then the evidence that had been submitted by the parties could resolve the debate by confronting the evidence submitted by the parties, and another reason was to be able to facilitate the Panel of Judges in carrying out the local inspection because with the evidence submitted by the parties, the Panel of Judges would be easier to understand the land of the object of the dispute. Related to the implementation of the local examination of the object of disputed land as required by the Panel of Judges who handled the case regarding land, as ordered by the Supreme Court of the Republic of Indonesia through the Circular Letter of the Republic of Indonesia Supreme Court Number 7 of 2001 concerning local inspection.

However, It is important to be examined and implemented in judicial practice in Indonesia regarding the land disputes settlement that have *obscuur libel* exceptions that the most appropriate time to conduct local inspection is after the answer process, before verification, which is based on the first version, to realize simple, fast, and low cost justice principles, because it will enable the judge in resolving the case quickly. So that the amendment to article 153 HIR / 180 Rbg and the Supreme Court circular letter no. 7 of 2001 concerning local inspection assert the local inspection should ideally be carried out after the answer process has answered, then settling civil cases on land disputes that contain *obscuur libel* exceptions will be able to realize a simple, fast, low cost justice and legal objectives, legal certainty and expediency. Thus, based on the discussion above, regarding the opinions of legal experts about the formation of new law, the author agrees with the Meuwissen's opinion on the theory of legal discovery which is Practical and Theoretical legal development (*Rechts Boefening*). It is necessary to add or develop the purpose of forming a new law, namely to provide justice for public order, and give justice and happiness for society, but the formation of the new should aim to strengthen the function of the judiciary to realize the principles of justice that are simple, fast, low costs and legal objectives. Therefore, the theory of legal renewal or the formation of a new law that the author created is essentially to improve or replace legislation that is considered to have weaknesses and does not fulfill the sense of justice, and to strengthen the function of the judiciary in order to realize principle of a simple, fast, low costs and legal objectives.

4.Conclusion

Based on the result of the research, it can be concluded as follows:

1. Provision of Article 136 HIR / 162 Rbg which requires the Judge to impose a decision on procedural exceptions other than the exception of competence specifically towards the obscuur libel exception regarding the dispute land in the final decision together with the subject matter, enchains the judge to make final interlocutory decisions and binding in order to realize a simple, fast, low-cost justice, legal objectives, legal certainty, and expediency
2. The verdict on the *obscuur libel* exception on lands was decided in the interlocutory decision which was final and binding and closed legal remedies for the parties except giving the Plaintiff an opportunity to correct his suits concerning the existence of the dispute land and re-submit the lawsuit to the court. Thus, it can realize simple, fast, low-cost justice and legal objectives, legal certainty and expediency
3. Legal renewal by revising or replacing the legal provisions of article 136 HIR / 162 Rbg concerning the passing of verdicts on procedural exceptions except competency exceptions, especially the obscuur libel exception on land, and Article 153 HIR / 180 Rbg and Circular of the Supreme Court No. 7 of 2001 concerning Local Investigation with the new legal provisions that gave the judge the authority to hand down interlocutory decisions that were final and binding and closed legal remedies for the parties except to give the Plaintiff the opportunity to correct his claim specifically regarding the existence of the disputed land and submit the suits to the court, and besides that regarding the local inspection, the time certainty of the local inspection should be carried out must be determined, which is ideally after the answer process is completed before the verification process (first version), then the settlement of the land that has an obscuur libel exception will realize simple, fast, low cost justice and legal objectives, legal certainty, and expediency

5.Suggestion

Based on the above conclusions, there are still weaknesses normatively related to the implications of the verdict and its legal efforts, therefore the author suggests several things, as follows:

1. The civil procedure law, especially the provision of article 136 HIR / 162 Rbg governing the Civil Verdict of the Exception other than the exception of competency specifically concerning the *Obscuur libel* Exception concerning land must be replaced and immediately updated in order to allow the judge to make a final and binding decision to meet legal justice, certainty and legal expediency for justice seekers, and to realize the principle of simple, fast and low cost justice.
2. Provisions of Article 153 HIR / 180 Rbg and Circular of the Supreme Court of the Republic of Indonesia No. 7 of 2001 concerning Local Investigation should be immediately amended and replaced with a new legal regulation that regulates explicitly when the local inspection must be carried out, and that the most appropriate time is after the answering process before verification, because it is important for Judge's material consideration to make final and binding interlocutory decisions, to realize simple, fast and low cost judicial principles and to fulfill legal objectives.

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