

Legal Defect of Verstek Decision with Invalid and Proper Summons in the Context of Civil Procedure Law

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Abstract:

The summoning process delivered in the form of a summons to the parties involved is the initial stage of the trial which must be carried out legally and properly to ensure justice takes place. This research seeks to examine the new concept of procedural law related to the form as well as the validity and properness of a summons after the issuance of PERMA No. 7 of 2022 as well as the legal consequences of the decision of the panel of judges who have committed unprofessional conduct by deciding the *verstek* case Number 908/Pdt.G/2023/PA.Bkl even though the summons was not carried out valid and properly. This type of research is normative juridical using a case and legislative approach and primary legal material is taken from decisions and secondary legal material from literature and research journal articles. The results showed that cases filed electronically were summoned by registered letter through the intermediary of a courier service provider that could not only be received by the party concerned but could also be received by adults living in the same house, receptionists, and local security officers. If the registered letter is returned to the court with a statement that the address is not found, the next mechanism is carried out through a public summons. Therefore, Decision Number 908/Pdt.G/2023/PA.Bkl which was rendered by *verstek* is null and void due to a legal

defect in the summoning process which was not carried out in accordance with number 10 of SEMA Number 1 of 2023 and does not meet the requirements to be declared *verstek*. All rights of the defendant must be protected through a carefully issued decision because not all parties can understand the legal process, especially since this decision will only be canceled if it is submitted for annulment by the defendant because this case is in the civil realm.

Proses pemanggilan yang disampaikan dalam bentuk relaas panggilan kepada pihak-pihak yang terlibat merupakan tahap awal dari persidangan yang harus dilakukan secara sah dan patut untuk memastikan berlangsungnya keadilan. Penelitian ini berusaha mengkaji konsep baru hukum acara terkait bentuk maupun sah dan patutnya suatu pemanggilan pasca diterbitkannya PERMA No. 7 Tahun 2022 serta akibat hukum dari putusan majelis hakim yang telah melakukan *unprofessional conduct* dengan memutus *verstek* perkara Nomor 908/Pdt.G/2023/PA.Bkl padahal pemanggilannya tidak dilakukan secara sah dan patut. Jenis penelitian ini yakni yuridis normatif dengan menggunakan pendekatan kasus dan perundang-undangan serta bahan hukum primernya diambil dari putusan dan bahan hukum sekunder dari kepustakaan maupun artikel jurnal penelitian. Hasil penelitian menunjukkan bahwa perkara yang diajukan secara elektronik, pemanggilannya dilakukan dengan surat tercatat melalui perantara jasa penyedia layanan kurir yang tidak hanya dapat diterima oleh pihak bersangkutan namun juga dapat diterima oleh orang dewasa yang tinggal serumah, resepsionis, maupun petugas keamanan setempat. Apabila surat tercatat dikembalikan ke pengadilan dengan keterangan alamat tidak ditemukan maka mekanisme selanjutnya dilakukan melalui panggilan umum. Maka putusan Nomor 908/Pdt.G/2023/PA.Bkl yang dijatuhkan secara *verstek* batal demi hukum karena terjadi cacat hukum pada proses pemanggilan yang tidak dilakukan sesuai angka 10 SEMA Nomor 1 Tahun 2023 serta tidak memenuhi syarat untuk dinyatakan *verstek*. Seluruh hak tergugat harus dilindungi melalui putusan yang dikeluarkan secara berhati-hati karena tidak semua pihak dapat mengerti proses beracara terlebih putusan ini hanya akan batal bila diajukan pembatalan oleh pihak tergugat karena perkara ini masuk dalam ranah perdata.

Key words: *Summons; Registered Letter; Verstek.*

Introduction

In the judicial system, summoning the parties involved in a case is crucial in ensuring that justice takes place. The Supreme Court, as the apex institution, has a great responsibility to ensure that all parties involved in the legal process can be

reached and summoned legally and properly. Thus, the process of summoning and notification of decisions through registered mail was developed for parties registering their cases in *e-Court*. The implementation of *e-Court* first came with the issuance of PERMA No. 3 of 2018, which was later revoked through PERMA No. 1 of 2019 concerning Administrasi Perkara dan Persidangan di Pengadilan Secara Elektronik and then amended by PERMA No. 7 of 2022 concerning Perubahan atas Peraturan Mahkamah Agung No. 1 of 2019 concerning Administrasi Perkara dan Persidangan di Pengadilan Secara Elektronik.

Electronic court proceedings do not replace the conventional system entirely, but *e-Court* is presented as a modernization effort to maximize the use of technology. Through legal instruments and advanced technology, the Supreme Court and other actors of judicial power are striving to build a modern judicial system by transforming from a conventional system to a digital system.¹ A modern judiciary is also considered as a representation of the implementation of the principles of *contante justity* or speedy trial because legal access that is integrated with information technology can increase efficiency, accessibility, and transparency in legal services. An efficient, transparent, and easily accessible judicial system ensures justice for all justice seekers. Thus, the *e-Court* service has increasingly shown its existence, including the development of the judicial system in the process of summoning or notifying the litigants through a registered mail summons/notification system. This step is a breakthrough as well as a renewal of procedural law introduced through PERMA No. 7 Year 2022 by introducing a new conception related to the validity and appropriateness of a summons or notification.

Although modern justice is an ideal, legal certainty is still the way to enforce the law. The role of judges in realizing legal certainty, justice, and benefit can be seen in the decisions handed down. Meanwhile, quality decisions are reflected in the expertise of judges who decide based on the correct legal procedures and positive legislative norms. This is known as legal certainty, where definite law is identified with the understanding of positivism based on what is written.² Judges' emphasis on the principle of legal certainty is more likely to maintain the written legal norms of existing positive law. Legislation is enforced for the sake of legal certainty. The obstacles faced by judges who tend to legal certainty experience a

¹ M. Guntur Hamzah, *PERADILAN MODERN Impelementasi ICT Di Mahkamah Konstitusi*, 1st ed. (Depok: Rajawali Pers, 2020), 1.

² Hasaziduhu Moho, "Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan," *Warta Dharmawangsa* 13, no. 1 (March 14, 2019): 8, <https://doi.org/10.46576/wdw.v0i59.349>.

deadlock when written provisions cannot answer existing problems. In such a situation, the judge must perform *ijtihad* to explore the law and find a solution. In contrast, outside of that, the judge remains in the provisions of written law that apply both material and formal.

However, something different was found in case 908/Pdt.G/2023/PA.Bkl, where the judge examining the case committed unprofessional conduct. Unprofessional conduct is the unprofessional behavior of judges who are careless in making decisions. This can be seen in the typing error of the decision, which is not by the minutes of the trial. The judge imposed a decision of *verstek* in case 908/Pdt.G/2023/PA.Bkl by stating that the Defendant had been legally and properly summoned based on the summons dated June 27, 2023, and the summons dated July 12, 2023, but the Defendant did not appear at the trial, and the Defendant's absence was not caused by a valid reason so that the Plaintiff was examined by *verstek*. In fact, the July 12, 2023 summons cannot be considered valid and proper because the summons did not reach the recipient. It was stated in the minutes of the hearing that the Village Head received the first summons, while the courier returned the next summons with a statement that the address not found. However, the case continued with the agenda of evidence and decision on July 18, 2023, without making another summons. Meanwhile, based on the mechanism stipulated in SEMA Number 1 of 2023, the procedure for summons/notification registered letter is delivered by courier service. As for the returned registered letter, based on SEMA Number 1 of 2023 point 10, if the summons/notification is returned to the court because the address is not found or the parties do not live at the address and their current whereabouts are no longer known either inside or outside the territory of the Republic of Indonesia, the summons and notification is then carried out through a public summons mechanism.³

Therefore, the researcher is interested in comprehensively examining Decision Number 908/Pdt.G/2023/PA.Bkl, which is considered procedurally flawed because it is not based on existing mechanisms, and to find out how the conception of a valid and proper summons/notice based on PERMA Number 7 of 2022 and SEMA Number 1 of 2023, whose previous summoning mechanism refers to the provisions of the HIR and RBg.

³ "Surat Edaran Nomor 1 Tahun 2023 Tentang Tata Cara Panggilan Dan Pemberitahuan Melalui Surat Tercatat," accessed October 25, 2023, <https://jdih.mahkamahagung.go.id/legal-product/sema-nomor-1-tahun-2023/detail>.

Method

This research is a normative juridical because researchers use court decisions as primary legal material and literature sources as secondary legal material.⁴ Library materials are sourced from books and journals and research results related to the object of research.⁵ Researchers used two approaches, including a case approach, by examining Decision Number 908/Pdt.G/2023/PA.Bkl and using a statutory approach related to legal issues. Researchers coherently analyze the existing legal materials to produce answers by formulating the problems that have been compiled. The expected result is comprehensive information regarding new concepts related to the validity and properness of a summons after PERMA No. 7 of 2022 and the legal consequences of the decision.

Discussion

The Concept of Lawful and Proper Summons Based on HIR and SEMA Number 1 of 2023

The Supreme Court 2022 issued PERMA No. 7 of 2022 to accommodate a new system of summons and notices, which is a continuation of the *e-Court* system as a response to the application of information technology in the Court. One newly implemented summons and notification method is the summons and notification system through registered mail. The Supreme Court cooperates with the service provider, in this case, PT Pos Indonesia, to deliver registered letters through courier service, which is considered effective and efficient because it can minimize the cost of summoning, which previously the summoning mechanism referred to the provisions contained in the HIR and RBg. The new regulation on the procedure for summons/notification is regulated in the Surat Edaran Mahkamah Agung Number 1 of 2023, which was just issued on July 5, 2023, concerning Tata Cara Panggilan dan Pemberitahuan Melalui Surat Tercatat. The update to one of the procedural laws has brought a significant transformation in the Indonesian judiciary. By bringing efficiency, accessibility, and transparency, *e-Court* opens new opportunities to create a fairer, simpler, and more competitive court to realize the simple, fast, and low-cost justice principle.

⁴“Understanding Legal Research,” January 1, 2022, <http://repository.uin-malang.ac.id/12884/>.

⁵Hasbuddin Khalid, “Absolute and Relative Competence in Religious Jurisdiction in Indonesia,” *Al-Bayyinah* 7, no. 1 (September 23, 2023): 131, <https://doi.org/10.30863/al-bayyinah.v7i1.5263>.

As a new breakthrough, of course, the summons and notification system through registered mail has just been implemented by the Bangkalan Religious Court. However, the e-Court process has long been implemented since the enactment of PERMA Number 3 of 2018, which then underwent several changes such as electronic trials that can be conducted without the consent of the defendant, the expansion of case types, electronic domicile, service users, and summoning the defendant by registered letter.⁶ The system of summons and notification by registered letter is only carried out in cases filed by *e-Court* where the defendant whose electronic address is not listed or the electronic address listed is not verified, the summons and notification system is applied. If the case is not registered electronically, the technical summons/notification is carried out as in general, namely manually, through the bailiff.

Based on the Indonesian legal context, summons and notifications are the initial stages of the trial before entering into the trial examination stage, delivered to the parties involved in a case to ensure that all have an equal opportunity before the law. In Dutch, a summons or convocation and a call or convocatie is an official and proper delivery to a litigant in court to obey and carry out instructions ordered by the panel of judges.⁷ After the summons is made, the bailiff then submits the minutes of the summons to the panel of judges as evidence that the defendant has been summoned because the validity of this summons will be part of determining the outcome of the trial examination.⁸ There are many provisions that must be met so that the summons and notification are categorized as valid and proper, namely that they must be based on the procedures determined by the applicable regulations, including the party authorized to carry out the summons is the bailiff, referring to the provisions of Article 388 jo Article 390 section 1 HIR, and Article 1 Rv, calls that must be made in written form in the form of a call relaas which also experienced an expansion of its reach in the form of telegrams and registered letters by referring to the provisions of Article 390 section 1 HIR and Article 2 section 3 Rv, the content of the summons which includes the name of the person summoned, the time of the hearing, the order to bring witnesses and the letter to be used, the affirmation related to the lawsuit can be answered by letter, then the

⁶ Dyah Ayu Syarifah, "Efektivitas Perma Nomor 7 Tahun 2022 Tentang Administrasi Perkara Dan Persidangan Di Pengadilan Secara Elektronik (Studi Pada Pengadilan Agama Ngawi Dan Pengadilan Agama Ponorogo)" (masters, IAIN Ponorogo, 2023), 59–64, <http://etheses.iainponorogo.ac.id/24035/>.

⁷ M. Yahya Harahap, *Hukum Acara Perdata*, 2nd ed. (Jakarta: Sinar Grafika, 2019), 265.

⁸ Maswandi, "Putusan Verstek Dalam Hukum Acara Perdata," *Mercatoria* 10, no. 2 (2017): 166.

attachment of the relaas in the form of a copy of the lawsuit which is considered the original with reference to Article 121 sections 1 and 2 HIR and Article 1 Rv.⁹ The procedure for a valid summons is classified based on whether or not the residence of the summoned person is known through the following description:

- a. If the defendant's address is known, according to Article 390 section 1 HIR, the summons must be delivered in person to the party concerned at the address where he lives, and if he is not there, the summons is forwarded to the Village Head.¹⁰ However, based on Article 3 Rv, delivery in person is not only for the defendant but also includes his family, who can receive the release.
- b. If the defendant's address is unknown, per Article 390 section 3 HIR, the summons or notification is forwarded to the Regent in accordance with the jurisdiction of the plaintiff to then make a public summons by posting it on the door of the courtroom.¹¹

Meanwhile, what is meant by a proper summons is when the time interval between the receipt of the summons and the day of the trial is at least three days, according to Article 122 HIR.¹² Therefore, the summons must fulfill the lawful and proper elements in order to guarantee the rights of the litigants, especially the judge must uphold the principle of *audi et alteram partem* by listening to both parties.

Due to the rapid development of technology, the Supreme Court adopted a digital system that can be used as a legal instrument in supporting the judicial process in realizing the principles of simplicity, speed, and low cost as mandated in Article 2 section 4 of Law Number 48 of 2009 which eventually gave birth to a separate mechanism for cases filed electronically. Not much different from summons and notifications through bailiffs, summons, and notifications through registered letters must also be valid and proper with an expansion of the concept.

The lawful and proper aspect of a summons and notification through a registered letter in SEMA Number 1 of 2023 no longer depends on the authorized officials such as bailiffs or substitute bailiffs but on the order giver, namely the panel of judges. The executor of the judge's order to summon related parties or provide Court documents is PT Pos Indonesia, which the Supreme Court has appointed through a registered mechanism based on the Letter of the Secretary of the Supreme Court of the Republic of Indonesia Number

⁹ Harahap, *Hukum Acara Perdata*, 2019, 271-75.

¹⁰ R Soesilo, *RIB/HIR Dengan Penjelasan* (Bogor: Politeia, 1995), 259.

¹¹ Soesilo, 259.

¹² Soesilo, 259.

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1056/SEK/HM.01.1/5/2023, dated May 30, 2023, Regarding Panggilan/Pemberitahuan Surat Tercatat. After the issuance of technical rules for the implementation of summons and notifications by registered letter, there was an expansion regarding the parties who could receive the registered letter. Numbers 3, 5, and 6 of SEMA Number 1 of 2023 allow the recipient to be an adult who lives with the party concerned, but if the person concerned lives in a location with limited access, such as an apartment, the summons or notification can be delivered to the receptionist or security guard at the residence as long as they are not an opposing party in the case and are willing to take photographic evidence and identity cards.¹³ In addition, delivery of the summons or notice to the Village Head or Lurah is only done if the litigant cannot be personally met and no adult is willing to be photographed and submit their identity card. Meanwhile, the summons must be delivered to the defendant's address no later than 6 (six) days before the day of the hearing and received at the defendant's address based on the delivery tracker.¹⁴

Analysis of *Verstek* Decision in Case Number 908/Pdt.G/2023/PA.Bkl, which is Legally Defective

In Case Number 908/Pdt.G/2023/PA.Bkl, the summons to the parties was made through electronic summons and registered letters. The electronic summons was addressed to the Plaintiff because the case was filed by e-Court while the defendant was summoned by registered letter in accordance with Article 17 point 2 of PERMA Number 7 of 2022. This shows that the defendant does not have an electronic domicile that can be listed during case registration. The respondent's summons No. 908/Pdt.G/2023/PA.Bkl, dated June 27, 2023, to attend the first hearing was received legally and properly by the Village Head, but the defendant did not attend the hearing. Therefore, the procedural process at the first hearing was limited to the panel of judges verifying the original document with the electronic document uploaded by the Plaintiff's attorney in the *e-Court* application, and the hearing was adjourned by ordering the substitute bailiff through a postal courier to recall the defendant at the address listed. Based on Article 4 point 1 of PERMA Number 1 of 2016, all civil disputes submitted for adjudication through

¹³Surat Edaran Nomor 1 Tahun 2023 Tentang Tata Cara Panggilan dan Pemberitahuan Melalui Surat Tercatat.

¹⁴Muhammad Syarifuddin, "Keputusan Ketua Mahkamah Agung Republik Indonesia Nomor 363 /KMA/SK/XII/2022 Tentang Petunjuk Teknis Administrasi Dan Persidangan Perkara Perdata, Perdata Agama, Dan Tata Usaha Negara Di Pengadilan Secara Elektronik" (2022), <https://jdih.mahkamahagung.go.id/legal-product/sk-kma-nomor-363-kmaskxii2022/detail>.

the litigation process must first be made amicable efforts. Still, this effort is excluded for disputes whose examination is carried out in the absence of the defendant who has been properly summoned.¹⁵ Therefore, the absence of the defendant at the first hearing resulted in the absence of the mediation process, and the judge adjourned the trial by ordering the bailiff to summon the defendant again so that the panel of judges could not enter into the examination of the subject matter of the case.

The judge's effort to order the substitute bailiff through a postal courier to make a second summons is an application of Article 126 HIR. Article 126 HIR gives leeway to the panel of judges to not necessarily apply Article 125 HIR by deciding *verstek* at the first hearing because the article is not imperative.¹⁶ Based on the summons letter (release) Number 908/Pdt.G/2023/PA.Bkl dated July 12, 2023, the defendant was summoned again, but the *release* was returned to the court by the service provider, in this case, the postal courier provided information that the defendant's address was not found, but the panel of judges continued the trial on July 18, 2023, with the agenda of the plaintiff's evidence without considering the July 12, 2023 summons that had been returned. Finally, case number 908/Pdt.G/2023/PA.Bkl, which was examined on July 18, 2023, was then decided by the panel of judges by granting the plaintiff's claim by *verstek* with the consideration that the defendant was never present during the trial. This was despite the fact that the registered letter delivered by the postal service provider to the defendant's address was not valid and proper because the defendant did not receive it. A registered letter that is returned to the court on the grounds that the address is not found should be in accordance with SEMA No. 1 of 2023 point 9 the next mechanism is carried out through a public summons. Public summons can be delivered through the court website and court notice board, can be announced on the local government notice board, or through both mass and electronic media, but the judge did not apply this mechanism but instead immediately applied the *verstek* procedure.

Verstek, whose mechanism is regulated in Articles 125-129 HIR and Articles 149- 153 RBg, is a decision given by the Panel of Judges without the presence of the defendant who does not also send his representative at the trial and his absence

¹⁵"Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan" (2016), <https://jdih.mahkamahagung.go.id/legal-product/perma-nomor-1-tahun-2016/detail>.

¹⁶Kondios Mei Darlin Pasaribu, "Penerapan Hukum Terhadap Ketidakhadiran Tergugat Hubungannya Dengan Undang-Undang Perkawinan (Putusan No. 21/Pdt.G/2020/PN.Tbt)," *Law Jurnal* 2, no. 1 (August 31, 2021): 82.

without a valid reason even though he has been legally and properly summoned.¹⁷ The *verstek* examination is a practice in procedural law where efforts to examine and resolve cases are not absolutely dependent on the presence of the defendant in court so that through this *verstek* system, case settlement can avoid unwanted things such as the possibility of bad faith from the defendant who is deliberately absent from hindering the trial.¹⁸ Therefore, to prevent any potential negative impacts that may arise due to the dependence of the case examination process on the presence of the defendant, the regulations have anticipated it through examination by *verstek* or outside the presence of the defendant. To determine whether or not a case will be decided by *verstek*, referring to Article 125 section HIR or Article 78 Rv, the following conditions must be met:

1. The Defendant has been Legally and Properly Summoned

The party who has the authority to make a summons has been discussed previously. Still, it is reaffirmed according to Article 388 jo Article 390 section 1 HIR and Article 1 Rv that the party is the bailiff. The authorized party was further expanded after the issuance of regulations governing electronic court procedures. Based on Article 17 section 2 of PERMA Number 7 of 2022, the defendant whose electronic domicile is not stated, the bailiff makes a summons by a registered letter based on the Letter of the Secretary of the Supreme Court of the Republic of Indonesia Number 1056/SEK/HM.01.1/5/2023 pos courier delivers the registered letter to the defendant.

The summons is made in written form by delivering a summons release. For *e-Court* cases, the summons is sent directly to the electronic domicile listed and can also be in the form of a registered letter. Summons can also be made through print or mass media based on Article 27 of Peraturan Pemerintah Number 9 of 1975 and it is not allowed in oral form because it is difficult to prove the truth judicially.¹⁹

The procedure for summoning must be legal by referring to Article 390, sections 1 and 3 HIR, and Articles 6-7 Rv. The summons must be made in person or delivered directly to the defendant, including the family, but can be forwarded to the Village Head if the person concerned is not found in the place. For summonses by registered letter, it must be delivered directly to the defendant or can also be received by an adult who lives with the defendant, receptionist, or security guard as

¹⁷Erfaniah Zuhriah, *Peradilan Agama Indonesia Sejarah, Konsep Dan Praktik Di Pengadilan Agama* (Malang: Setara Press, 2016), 165.

¹⁸Endang Hadrian and Lukman Hakim, *Hukum Acara Perdata Di Indonesia: Permasalahan Eksekusi Dan Mediasi* (Sleman: Deepublish, 2020), 29.

¹⁹Harahap, *Hukum Acara Perdata*, 2019, 445.

long as they are not the opposing party. Meanwhile, if the address is not found, it is carried out through a public summoning mechanism. The appropriateness of a summons in urgent circumstances should be at least three days, according to Article 122 HIR.

Based on the concept of validity and appropriateness of the summons that has been described, decision Number 908/Pdt.G/2023/PA.Bkl does not fulfill the elements of validity and appropriateness because the summons Number 908/Pdt.G/2023/PA.Bkl, dated July 12, 2023, was not delivered to the defendant and was returned to the Court with a statement that the address was not found. The substitute bailiff through the postal courier also did not deliver the registered letter to the *bek* or its equivalent, while many parties could receive the registered letter. Likewise, the panel of judges also should have taken the public summoning mechanism as mandated in SEMA Number 1 of 2023, point 10. Thus, the judge was not justified in imposing a decision of *verstek* because the defendant's absence from the trial was due to an invitation that was not valid and proper. The *verstek*, in this case, was considered legally flawed, as confirmed in Supreme Court Decision Number 838K/Pdt/1975. It was not appropriate for the case to be decided by way of *verstek* because it turned out that the summons to the defendant was not perfect based on the following facts:

- a. On July 18, 1970, the summons was served on the respondent's wife because the respondent was not present.
- b. On July 19, 1970, the respondent's wife submitted a written notification to the District Court stating that the respondent was on duty in Bandung and requested that the hearing on July 21, 1970, be rescheduled.
- c. There was also a letter from Kodam II B stating that the respondent was on duty in Bandung.²⁰

Based on the above information, the trial should have been adjourned because there were reasonable and objectively acceptable reasons. Still, this fact was ignored by the panel of judges, who immediately handed down a decision of *verstek*, which resulted in an invalid decision. If analogous to Decision No. 838K/Pdt/1975, then Decision No. 908/Pdt.G/2023/PA.Bkl is also legally flawed because the fact that the registered letter was returned to the court with the information that the address was not found was ignored by the panel of judges even though the return of the registered letter caused the summons to become invalid.

²⁰ Hari Sasangka and Ahmad Rifai, *Perbandingan HIR Dengan RBG* (Bandung: Mandar Maju, 2005), 53.

2. Absent Without Valid Reason

The meaning of the absence of the defendant in fulfilling the trial is emphasized in Article 125 section 1 HIR by looking at several things, including if the defendant does not come when the case is examined at the specified time, the defendant does not appoint a power of attorney that can represent him and does not obey the summons without valid reasons even though he has been legally and properly summoned. In this situation, the judge has the authority to impose a decision outside the presence of the defendant or *verstek*. The valid reason used as an indicator for not issuing a decision by *verstek* actually stems from the principle of propriety associated with *fair trial* by considering it unfair to impose *verstek* on the defendant if an objectively acceptable and reasonable reason accompanies the absence.²¹ Starting from this reason, judicial practice enlarges the application of the defendant's absence by linking it to the legitimate reason factor so that *verstek* is not justified to be applied to the defendant if it is based on acceptable reasons.

There are a number of reasons that can generally be considered valid, such as illness as evidenced by a doctor's certificate, being out of town or abroad accompanied by a certificate from a party authorized to do so, or the reason that the defendant is on duty carrying out superior orders that cannot be abandoned.²² For these reasons, the plaintiff may argue that the reasons submitted by the defendant are not valid and may request the panel of judges to examine the case by way of a decision. Still, the authority is returned to the panel of judges to assess and consider the reasons submitted by the defendant based on objectivity and reasonableness in relation to the principle of fair trial, namely the implementation of a fair judicial process from start to finish.

The application of valid reasons is not regulated in Article 125, section 1 of the HIR but stems from the approach of propriety and fair trial. Thus, valid reasons will only be born if the summoning process has been carried out properly. In this condition, the return of the second summons is in the form of a registered letter in case Number 908/Pdt.G/2023/PA.Bkl closed the opportunity for the defendant to provide an excuse for not appearing at the trial because the defendant did not receive the release. Still, the panel of judges ignored the fact that the second summons was returned by imposing a decision of *verstek* where the summons was procedurally defective. If the fact that the Village Head received the first summons

²¹ M. Yahya Harahap, *Hukum Acara Perdata* (Jakarta: Sinar Grafika, 2005), 386.

²² Hilmi Maula, "Izin Poligami Yang Diputus Tanpa Kehadiran Termohon (Studi Kasus Putusan Pengadilan Agama Kudus Nomor 0748/Pdt. G/2018/Pa. Kds)" (Thesis, Institut Agama Islam Negeri Kudus, 2022), 23, <http://repository.iainkudus.ac.id/id/eprint/8280>.

is a reference for the panel of judges to decide *verstek* because it has fulfilled the legal and proper elements, then this is not appropriate because the panel of judges has made two summons. This is in line with Fakhriah in his book *Kapita Selektta Hukum Acara Perdata Indonesia* that the second summons can be applied if it is feared that the first summons was not received directly by the person concerned, for example, in the case of a summons given through the Village Office, District Office, Municipality, and so on.²³

Likewise, judges based on Article 126 HIR can also still summon the defendant for the third time as a form of fair trial where the application is intended to provide a reasonable opportunity for the defendant to defend his right. If the tolerance limit for postponement of the hearing has been reached three times, but the defendant still does not appear at the hearing without being accompanied by a valid reason, the nature outlined in Article 125 section 1 jo Article 126 HIR, which was originally facultative turns into imperative so that the panel of judges must decide the case by *verstek*.²⁴ Thus, it was not appropriate for the judge to impose a decision of *verstek* on the defendant because there was a legal defect in the second summons process, while the first summons and second summons that had been made must be considered as one unit and cannot be separated.

3. The defendant did not File a Competency Exception

In accordance with Article 125 section (2) jo Article 121 HIR, the defendant is given the right in procedural law to file an exception, both the exception of absolute competence as regulated in Article 134 HIR and the exception of relative competence as regulated in Article 133 HIR. If the absence of the defendant is not due to legitimate reasons, then the defendant does not also exercise his right to submit a challenge to competence, the judge is authorized to immediately use the *verstek* procedure in resolving the case.²⁵ Conversely, if the defendant exercises his right by filing an answer accompanied by an exception of competence by stating that the court does not have the authority to examine the case either absolutely or relatively even though at the specified time the defendant is not present, the judge is not allowed to directly apply the *verstek* procedure because the exception is the

²³ Efa Laela Fakhriah, *Kapita Selektta Hukum Acara Perdata Indonesia* (Bandung: CV. Mandar Maju, 2019), 171.

²⁴ Harahap, *Hukum Acara Perdata*, 2019, 452.

²⁵ M. Nursalim Yahya, "Kedudukan Kesepakatan Damai Setelah Putusan Verstek dalam Perkara Cerai Gugat Menurut Hukum Acara Perdata (Studi Analisis Perkara Nomor 213/Pdt.G/2018/PA.Slk)" (undergraduate, Institut Agama Islam Negeri Batusangkar, 2022), 34, <http://repo.iainbatusangkar.ac.id/xmlui/handle/123456789/25399>.

reason for the defendant's absence so that the defendant's absence does not need to be questioned.

In the event that the defendant files an exception, then according to Article 125 section 2 HIR, the judge must examine according to the following procedure:

a. Judge Must Rule on Exception First

If the defendant files a competency exception and the defendant does not attend the hearing on the exception, the judge may not immediately apply the *verstek* procedure by imposing a *verstek* decision, but first, the judge hears the plaintiff's response regarding the defense submitted by the defendant and then together with the response from the plaintiff the judge also examines and decides on the proposed exception.²⁶

b. Exception Granted, Examination Stopped

If the plaintiff files a case in the Religious Court, then the defendant's exception is granted, the granting of the exception has the consequence of the Religious Court declaring itself not authorized to examine the case submitted. Upon the granting of the exception, in accordance with Article 9 section 2 of Law Number 20 of 1947, the panel of judges does not impose an interlocutory decision but directly a final decision.²⁷ The dictum of the final decision is that the court declares itself not authorized to hear and declares that the plaintiff's claim cannot be accepted, so that the examination of the subject matter must be stopped and terminated by the judge. Therefore, an appeal can be filed against a final judgment that grants the defendant's exception.

c. Exception Rejected, Proceed with Verstek

Event In the event that the defendant's exception is rejected, the court still has the authority to examine and decide the case in the form of an interlocutory decision. The dictum of the interlocutory decision states that the defendant's exception is rejected, and the court has the authority to hear the case. Along with this rejection, in accordance with Article 125, paragraph 2 HIR, the judge will proceed to the examination of the subject matter of the

²⁶Risdalina Risdalina and Abdul Hakim, "Upaya Hukum Putusan Verstek Perkara Perceraian Di Pengadilan Agama Rantauprapat," *CIVITAS (JURNAL PEMBELAJARAN DAN ILMU CIVIC)* 8, no. 2 (September 7, 2022): 11–12, <https://doi.org/10.36987/civitas.v8i2.3502>.

²⁷"Undang-Undang Nomor 20 Tahun 1947 Tentang Peraturan Peradilan Ulangan Di Jawa Dan Madura" (1947), <https://jdih.mahkamahagung.go.id/legal-product/uu-nomor-20-tahun-1947/detail>.

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case.²⁸ The examination was then conducted by *verstek* by handing down a decision of *verstek*.

In addition to these three requirements, a lawsuit that is granted by *verstek* must also ensure that the plaintiff's claim is not against the right and the *petitum* is reasonable. All requirements must be examined carefully. If all of the conditions are met, only then can a *verstek* decision be issued, and vice versa, if there are conditions that are not met, then a *verstek* decision cannot be imposed on the defendant. If a decision of *verstek* is handed down based on the judge's belief in the first hearing that the summons was valid and proper, it is not appropriate because, at that time, the judge did not immediately decide the case by *verstek*. In fact, according to the Supreme Court's view, a *verstek* decision should not be issued at the first hearing.²⁹ This is consistent between Supreme Court Circular Letter Number 9/1964 and Article 126 HIR, which authorizes the judge to reschedule the trial by recalling the defendant. If a decision of *verstek* is rendered based on the absence of the defendant even though it has been summoned for the second time, it is also inappropriate because the summons is returned to the court. Thus, decision Number 908/Pdt.G/2023/PA.Bkl, rendered by *verstek*, is null and void due to legal defects in the summoning process, which was not carried out by number 10 of SEMA Number 1 of 2023 and did not meet the requirements to be declared *verstek*. As for the consequences of null and void, the decision has no legal force and is not binding on the plaintiff or the defendant.³⁰ All rights of the defendant must be protected through a carefully issued decision. Moreover, the fundamental question of private law concerns the extent to which courts can legitimately invoke state interests as grounds for shaping the rights and duties.³¹ Therefore, judges must issue quality decisions that reflect a sense of justice by taking into account the rights of each party because not all parties can understand the legal process, especially since this decision will only be canceled if it is

²⁸ Soesilo, *RIB/HIR Dengan Penjelasan*, 83.

²⁹ Abd Basir and St Fatimah, "Analisis Yuridis Perlawanan Pihak Ketiga (Derden Verzet) Terhadap Putusan Verstek Sengketa Hak Milik Atas Tanah," *Pledoi Law Jurnal* 1, no. 1 (January 16, 2023): 5.

³⁰ Umi Supraptiningsih and Nurul Anisah, "Keadilan Bagi Istri Akibat Putusan Batal Demi Hukum," *ADHKI: JOURNAL OF ISLAMIC FAMILY LAW* 1, no. 1 (November 21, 2019): 121, <https://doi.org/10.37876/adhki.v1i1.1>.

³¹ John C. P. Goldberg, "Introduction: Pragmatism and Private Law" 125, no. 7 (May 18, 2012): 1659, <https://harvardlawreview.org/print/vol-125/introduction-pragmatism-and-private-law/>.

submitted for annulment by the defendant because this case falls into the civil realm.

Conclusion

Summoning the parties involved is the initial stage of the trial, which must be carried out legally and properly. Conventional court summoning procedures refer to the provisions of the HIR and RBg, which are delivered by bailiffs in the form of a summons. With the development of information technology, the Supreme Court built a judicial system by transforming from a conventional system to a digital system, which eventually gave birth to the *e-Court* service. For cases filed through *e-Court*, the procedure for summoning the parties involved is carried out electronically and by registered letter based on PERMA Number 7 of 2022, which is delivered through postal courier intermediaries and further regulated in SEMA Number 1 of 2023. Thus, there is an expansion of the concept of the validity and appropriateness of a summons such as a party authorized to make a summons is not only the bailiff, but the summons can be delivered by pos courier, the registered letter can be received by an adult who lives in the same house, receptionist, or security guard at the defendant's residence, and the summons is delivered no later than 6 days before the hearing based on calendar days.

Case Number 908/Pdt.G/2023/PA.Bkl was delivered by registered letter, but the defendant did not receive the registered letter because it was returned to the court with the information that the address was not found. The panel of judges also did not apply the public summoning mechanism but instead immediately decided by *verstek* even though the summoning process did not fulfill the legal and proper elements where legal and proper are the main elements that must be examined carefully in making a *verstek* decision. There are three elements of a *verstek* decision, namely that the defendant has been summoned legally and properly, does not appear without a valid reason, and the defendant does not file a competency exception. Summoning that is not valid and proper closes the opportunity for the defendant to submit a valid reason. If any of these conditions are not met, the decision taken is invalid. Therefore, decision Number 908/Pdt.G/2023/PA.Bkl is declared null and void due to legal defects in procedural law. The result of null and void is that the legal force becomes void so that it is not binding on the parties, has no value, and is considered that there is no divorce.

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