

## THE IMPORTANCE OF THE PRESENCE OF THE PRINCIPAL OR PLAINTIFF IN THE EVIDENCE PROCESS OF CIVIL PROCEDURAL LAW

**Moody Rizqy syailendra, Adam Tanzio Manggal**

Universitas Tarumanagara, Indonesia

Email: moodys@fh.untar.ac.id, adam.205230200@stu.untar.ac.id

Correspondence: moodys@fh.untar.ac.id

KEYWORDS	ABSTRACT
Judiciary, Lawsuit, Dignity	The <i>civil court</i> process possesses distinct characteristics that differentiate it from <i>criminal</i> , <i>administrative</i> , <i>military</i> , and <i>international</i> court proceedings. Its unique nature is reflected in the judge's passive role ( <i>iudex passive</i> ) and the allocation of the burden of proof ( <i>onus probandi</i> ) entirely to the litigating parties. This research addresses the critical issue of arbitrary <i>withdrawal of claims</i> ( <i>pencabutan gugatan</i> ) by plaintiffs during ongoing trials, which undermines judicial dignity and infringes upon defendants' procedural rights. Employing normative juridical methods, this study examines relevant provisions in the <i>Herzien Indonesisch Reglement</i> (HIR, applicable in Java and Madura) and <i>Rechtsreglement voor de Buitengewesten</i> (RBg, for regions outside Java and Madura), with particular attention to procedural rules governing <i>withdrawal of claims</i> . The findings indicate that, while civil procedural law permits the withdrawal of claims, unilateral withdrawals after the <i>answer stage</i> ( <i>jawaban</i> ) require the defendant's consent to prevent procedural abuse and ensure procedural fairness. The study concludes by emphasizing the necessity for strict adherence to civil procedural rules to maintain the authority of the court, protect the procedural rights of the parties, and uphold legal certainty within Indonesia's justice system.

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### Introduction

Civil Law is one of the significant legal sciences in which it regulates legal relations between people and legal entities in the civil context (Rasyid & Herinawati, 2015; Sutatio & Oeripkartawinata, 2009). In today's modern era, it is important to have a concrete common perception of matters if they are principally due to the nature of civil law which tends to adjust and is certainly complex, where its role itself is increasingly taken into account in the settlement of disputes between the parties concerned. Case (Bagenda & Rizkia, 2023).

The presence of witnesses in the evidentiary process in the civil procedure law court is certainly a very crucial thing, where based on the Civil Code (KUHper) Article 1866 the evidence consists of:

- 1) "Evidence in writing"
- 2) "Evidence with witnesses"
- 3) "Evidence with suspicion"
- 4) "Evidence by confession and"
- 5) "Proof by oath"

Evidence has a very, very significant impact on the process of seeking truth and justice for parties who have conflicts, it should be noted that evidence is also intended to fight for the rights and needs of the parties in an effort to prevent parties whose rights are not fulfilled or who feel aggrieved by the results of court decisions (Rasyid & Herinawati, 2015; Sutiyoso, 2022; Zia & Agusta, 2020). Evidence is also very influential in the decision-making process by the judge, why evidence as described above must be really considered so that in this case the judge can give a verdict that is as fair as possible for the parties (Witanto, 2013).

"Article 163 of the Criminal Code":

This is in the adage "Actori Incumbit Onus Probandi" who postulates an event, then he must also prove his postulate.

In the book by M. Yahya Harahap "Civil Procedure Law on lawsuits, trials, confiscation, proof, and court decisions". It is explained that there are 2 requirements for evidence, one of which is witness testimony, it is necessary to know that this is cumulative: there are formal and material requirements

Formal:

- a. "A capable person becomes a witness".
- b. "The information was submitted in the courtroom".
- c. "Affirmation of resigning as a witness".
- d. "Taking an oath" (Harahap, 2018).

Materially:

- a. a." The testimony of one witness is invalid as evidence".
- b. "Explanation based on reasons and sources of knowledge".
- c. "Invalid things become evidence of evidence" (Sukardi, 2022).

As an example of the case that will be raised in this article is in Case No.80/PDT.G/2020/PN.PLg where it was started by the Principal/Plaintiff who filed a lawsuit with the Defendant but after passing the session of giving a response between the plaintiff and the defendant, the Plaintiff had submitted a Replica and it was responded to with a duplicate but when the schedule for proof was arranged, the Plaintiff wanted to withdraw his lawsuit which was very unfortunate until the reading of the verdict by The Panel of Plaintiff Judges also did not attend the trial.

This research has a high urgency because the legal process of civil proceedings is very important to ensure justice and legal certainty. However, unilateral withdrawal of the lawsuit by

the plaintiff in the middle of the trial can damage the dignity of the judiciary and the rights of the defendant. This kind of behavior has the potential to cause abuse of power, inefficiency in the trial process, and reduce public trust in the legal system. Therefore, it is important to address this issue in order to uphold the principles of justice, legal certainty, and respect for the judicial process.

Previous studies have reviewed various aspects of civil procedure law, such as the burden of proof, the role of witnesses, and the consequences of the parties' absence at trial. For example, M. Yahya Harahap (2018) discusses the formal and material requirements of evidence in civil cases, while D.Y. Witanto (2013) analyzes the legal implications of the absence of the parties. However, these studies have not in-depth addressed the issue of unilateral lawsuit withdrawal in the middle of a trial and its impact on the dignity of the judiciary and the rights of defendants.

There are several research gaps that need to be filled, including a lack of focus on the legal and ethical consequences of unilateral lawsuit withdrawals, its impact on judicial dignity, and an analysis of judges' responses to such actions within the applicable legal framework. This research is here to make a new contribution by raising the ethical and legal dilemmas of unilateral lawsuit withdrawals, analyzing specific cases (No. 80/Pdt.G/2020/PN.PLg), and proposing measures to prevent the abuse of procedural rights.

The purpose of this study is to examine the legal provisions that govern the withdrawal of lawsuits, assess the judicial response to such unilateral actions, and evaluate its impact on the dignity of the judiciary and the rights of the defendant. The benefits of this research include providing clarity for legal practitioners in handling lawsuit withdrawals, input for the judiciary to maintain the integrity of the legal process, considerations for the legislature in reforming the civil procedure law, and contribution to the academic world in enriching the discourse on judicial ethics. Thus, this research is expected to strengthen the legal framework of civil procedure and encourage a fairer and more efficient judicial system.

## Materials and Methods

The *juridical normative* research method with a *qualitative approach* was employed in this study. This method centers on the analysis of *primary* and *secondary legal materials*, including *laws and regulations*, *court decisions*, and *academic literature* pertinent to *civil procedural law*. The selection of *normative research* aligns with the objective of examining formal legal aspects related to *unilateral withdrawal of lawsuits* in judicial proceedings, particularly through an analysis of the provisions in *Herzien Indonesisch Reglement (HIR)*, *Reglement op de Burgerlijke Rechtsvordering (Rv)*, and relevant *court decisions* as primary references.

In the context of *normative research*, the concepts of *population* and *sample* differ from empirical research. Here, they do not refer to human respondents but to relevant *legal materials*. The *study population* encompasses all legal materials associated with the withdrawal of lawsuits under civil procedure law. Meanwhile, the *sample* was selected purposively to support the depth of analysis. The sample includes *Court Decision No. 80/Pdt.G/2020/PN.PLg* as the principal case study, along with key articles such as *Article 124 of the HIR* and *Article 271 of the Criminal Code*

(*Kitab Undang-Undang Hukum Pidana*), which regulate the legal consequences of party absence and lawsuit withdrawal.

This approach was chosen for its capacity to provide a comprehensive understanding of how *positive law* addresses the issue of unilateral lawsuit withdrawals, as well as to evaluate the impact on *legal certainty* and *judicial dignity*. By analyzing representative legal materials, the study aims to offer relevant recommendations for judicial practice and the ongoing development of *civil procedural law* in Indonesia.

## Results and Discussions

The definition of Civil Law civil law can also be said to be private law because it regulates the relationship between people and people, legal entities that can be said to be the subject of civil law, and there is such a thing as the Plaintiff and the Defendant in civil matters (Dr. Muhaimin S.H., 2020).

The doctrine of common law existed as early as the 19th century in Western Europe. The object of legal doctrine study in general is about:

- 1) Asas Hukum *Pacta Sunt Servanda*, *actori incumbit onus probandi*, *In Dubio Pro Reo*, dst
- 2) Legal Definitions (Criminal, Civil, State Administration, International, etc.)
- 3) Customization-More specific legal requirements (property rights, sanctions, orders, independence, etc.)

In Theoretical Studies, it is usually interpreted as understanding, ideas, scientific findings, where Kerlinger defines theory as a set of ideas, buildings or variables, definitions and propositions at a given time provide a structured description of events or events by determining between variables (Salim, 2012).

Civil Law Litigation or Civil Proceedings is positioned as a formal law which regulates the procedures for behaving, facing, and the way of convening before and during trial. This is one of the purposes of the law, namely certainty (Tanya & others, 2019).

There are 5 conditions of legal certainty:

1. The existence or availability of positive regulations that accommodate the interests of all groups, not only certain groups.
2. The existence of a clean, accountable, and consequential government system
3. The Impartial Principle of the Judicial System which must apply to the Panel of Judges
4. There is Public Trust in the applicable regulations and in the government, especially law enforcers
5. The decisions given by the Panel of Judges must be carried out and respected (Julyano & Sulistyawan, 2019).

The principle of legal certainty is a crucial part of the positivist reasoning contained in the law. Positivist in the sense of realizing objective laws realizes laws that are accountable, implementable and trustworthy, it is hoped that this belief can make the people live prosperously, prosperously and orderly (Halilah & Fakhurrahman, 2021).

Case No.80/PDT.G/2020/PN.PLg when viewed in the existing positive regulations, the Legal Consequences if the Principal or Plaintiff is not present in the civil trial is that the lawsuit filed will be dismissed, this is explicitly regulated in Article 124 of the Criminal Code: "If the plaintiff does not appear before the District Court on the specified day, even though he is duly summoned, or does not order another person to appear on his behalf, then the lawsuit is considered null and void and the plaintiff is punished with the costs of the case; However, the plaintiff has the right to file his lawsuit again, after first paying the costs of the aforementioned case."

Before the agenda of refuting each other during the mediation agenda, Defendant 1 had conveyed to the Principal to withdraw the lawsuit because in the land case A quo Defendant 1 no longer had the right to the land being sued because the land had been replaced by Defendant 2 but still the Principal was still stubborn so that the lawsuit continued, When the Agenda provided a Replica, Duplicates from both parties, the Plaintiff had no wind no rain wanted to withdraw his lawsuit but Defendants 1 and 2 objected to the unilateral decision taken by the principal and then the Principal was no longer present at the next hearing. From the entire Chronology of the above case, the Panel of Judges still considered continuing the trial until the Proof, Conclusion and Decision hearing (Dewata & Achmad, 2015).

The Legal Considerations of the Panel of Judges in the Decision of Case 80 / Pdt.G / 2020 / PN.Plg dated November 18, 2020, on page 25 to Page 26 are written, namely:

"Considering that the answers of Defendants 1 and 2, the Principal had submitted a Replica on August 14, 2020, and in the Principal's Replica, Defendant 1 had replied with a Duplicate on August 21, just as Defendant 2 had submitted it on September 12, 2020, as written in this file. Considering the trial, the Principal withdrew his lawsuit based on the revocation of the case on August 25, 2020, but Defendants 1 and 2 expressed objections to the revocation of the lawsuit by the principal. Considering that if referring to Article 271 Rv which states that after there is an answer, the revocation of the case can be possible if there is approval from the Defendant, but because Defendants 1 and 2 object, then based on the civil procedure law the trial will continue with the evidentiary event. Considering, then the Principal again did not come to the trial for valid reasons nor was there any notification to the Panel of Judges, based on the provisions of the Civil Procedure Law, the trial continued without the presence of the Principal (Kusumawardana, 2023)."

The verdict refers to the 2nd line of Article 271 Rv where: after there is an answer, the revocation of the lawsuit can occur if there is agreement of the opposing party. This needs to exist in order to protect the rights of the Defendant. If the Withdrawal of the Lawsuit is not regulated in such a way, what is worried is that there will be arbitrariness and behavior that seems to reduce the dignity of the judiciary itself (Oktavia, 2024).

## Conclusion

Article 124 of the *Herzien Indonesisch Reglement (HIR)* stipulates that if a plaintiff fails to appear at the designated court session without valid reason, the lawsuit is declared null and void,

yet the plaintiff retains the right to refile the same lawsuit after paying the required case fee. While this provision allows for the re-submission of claims, it does not legitimize arbitrary withdrawals by plaintiffs during court proceedings, especially after the trial has reached the *answer-and-answer* (*jawaban*) stage, where withdrawal requires the defendant's consent to prevent procedural abuse and protect judicial dignity. The panel of judges may choose to proceed with the trial if there are concerns that repeated withdrawals could be exploited by plaintiffs, risking the integrity and authority of the civil judiciary. For future research, it is recommended to examine the practical impact of these procedural safeguards on the consistency of judicial decisions and to explore mechanisms that further prevent abuse of lawsuit withdrawals in Indonesian civil courts.

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