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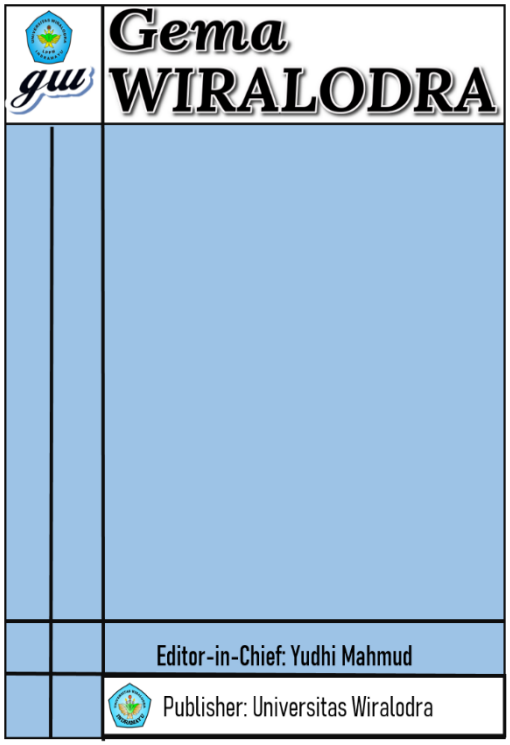

Legal Remedies for Default Against Default Decisions in Divorce Lawsuits (Case Study of Indramayu Religious Court Decision Class IA Number 731/Pdt.G2024/PA.IM)

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Legal Remedies for Default Against Default Decisions in Divorce Lawsuits (Case Study of Indramayu Religious Court Decision Class IA Number 731/Pdt.G2024/PA.IM)

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Abstract
Legal Efforts of Verzet (resistance) are a form of resistance to the Verzet decision that has been issued by the Panel of Judges at the first instance Court (Religious Court), which is filed by the Defendant . In Verzet cases , unwanted problems usually occur, so the party who feels aggrieved can file a Verzet resistance . The issuance of the Verzet decision is the impact of the Village official or third party who immediately does not submit a release of the Court's summons so that in the process of examining a divorce case at the Religious Court, Verzet Decisions often occur so that this situation becomes a problem that becomes a common enemy for both the party that issued the decision product, namely the Indramayu Religious Court and the community seeking justice. So it is not surprising that the three defendants made resistance efforts (verzet) and even criminal reporting efforts for perpetrators who removed and did not submit the release of the summons to the defendant and even to the plaintiff. The research method used in this study is normative legal research. Qualitative research such as using non-numerical data, such as interviews, observations, and text analysis, to understand the social and cultural phenomena that occur. With the problem of what is the legal basis for the default decision of the Indramayu Religious Court Number 731/Pdt.G/2024/PA.IM. to provide a sense of justice and what legal efforts are made in cases with default decisions against the defendant based on the decision of the religious court Number 731/Pdt.G/2024/PA.IM . This study examines two important aspects in Indonesian civil procedural law related to default decisions. First, a comprehensive review of the default decision process which is a decision that is issued without the presence of the defendant even though he has been properly summoned, including the procedure for a valid summons, examination of the completeness of the lawsuit, the judge's considerations, and the defendant's right to file a default legal remedy. Second, an analysis of the considerations of the Panel of Judges in deciding the case of objection to the default decision in the case of divorce lawsuit Number: 731/Pdt.G/2024/PA.IM, with an emphasis on formal and material aspects, including the validity of the summons procedure, the absence of the defendant, the validity of the submission of the default, and the substance of the objection filed by the defendant. This study aims to analyze the suitability between the theory of civil procedural law and judicial practice in the specific context of divorce lawsuit cases in the Religious Court.
Keywords: Verzet (Resistance), Default Decision, Civil Procedure Law

1. Introduction

In a state of law, all implementation in the process of resolving problems is based on applicable law, namely positive law, which is explained in Law Number 48 of 2009 concerning Judicial Power that all problems concerning the interests of parties who violate the law will be resolved based on the authority of the judicial body in the process of handling cases that violate positive law applicable in the civil realm, both general and regarding specifications based on the religious competence adopted based on Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) as material law will be resolved based on the absolute competence and relative competence of the court as a formal legal institution and in accordance with the formal procedural law applicable in the competence of the court resolving the case in question.

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As explained in Law Number 48 of 2009 concerning the Judicial Power above, the judicial power includes judicial institutions including the Supreme Court as the highest judicial institution that oversees general courts, military courts, religious courts and State Administrative Courts and the Constitutional Court which is equivalent to the Supreme Court. In this study, the author conducted a study on efforts to resist the default decision where the resistance is known as the verzet legal effort. The verzet legal effort in order to resist the default decision in civil cases, especially in the Indramayu Religious Court. Where this study is related to civil divorce cases within the competence of religious courts as judicial bodies authorized to handle cases according to the decision of the religious court Number 731 / Pdt.G / 2024 / PA.IM.

The presence of the parties in the trial is very important for the panel of judges in determining the verdict whether the judge will decide based on the examination carried out or decide based on the presence of the parties and of course the court's decision is based on the judge's consideration of the defendant's absence in fulfilling a valid court summons through the religious court bailiff in the context of a summons to carry out an examination of the case being carried out.

Factor presence for party determine form verdict . There is three type decision in terms of This . The first is decision lawsuit fall , which is dropped If party plaintiff or his representative No present on day the trial that has been determined by court and has called in a way reasonable . Second , the decision version , which was made without presence defendant or his representative . Third , the decision contradictory , which is made with presence second split party or not . In type last , second split party has attend process trial . (Muh . Aidil Akbar Matodang , 2024).

Product Decision court as form certainty law Of course have influence to a justice Where There is an adage that states for the sake of For reach certainty law so will sacrifice a justice for those affected to certainty that , so that the judge in check And to cut off a case must with astuteness And caution for the sake of give justice to for disputing parties will but when in inspection the There is party the defendant who after done summons by court No fulfil calling the in a way legitimate for 3 (three) times then consequence the will covered by the party that does not present Because court will to cut off case with decision default .

Will but in decision forfeit the There is disability law among them calls made by party bailiff court the No until on party defendant because of calling the delivered through village And lebe Village so that party defendant the No know calling hearing court And result in gap to defendant with No presence in inspection trial so that considered No Want to present although has in call in a way worthy by interpreter confiscation court or party third such as PT. Pos in calling with summons online . Sometimes effort an individual who is not independent involved in effort to win matter . Existence role individuals who intentionally make gap the until become product the law that is considered disabled And harm party defendant as the party who feels harmed . Will but There is sometimes absence obedience party defendant in fulfil the call that was made by party court For attend hearing court , so that for the sake of smoothness the way process inspection court judge hearing still continue with do calling repeat for 3 (three) calls .

Decision forfeit of course often happen on case divorce in religious court so that problem This very worrying by for seeker justice especially party the defendant is a lay person to law applicable events . Incident This Of course give impact negative to credibility s i stem justice That Alone Where justice is as representative Lord in give decision to for seeker justice especially on religious courts . Justice is form the expected hope all human being man Good man That in case and also No dama case Because in fact justice That is the embodiment of the Almighty creator For fulfil request people man as protected creature from form injustice .

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Institution justice considered as institution can to finish all the thing that happened in public who knows That based on applicable law or Not yet set up in law positive , will but obligation institution justice as authorized institution to judge all existing problems in in public so that public entrust as mediator problem the so that resolved , where the judge has obligation in dig law in a way deep with use interpretation law as form give certainty law And justice , as based on Article 125 paragraph (1) and Article 126 HIR, the Judge may to fall decision forfeit If defendant No present with valid reason during three calls .

Law program arrange existence effort law normal and also effort law outside normal to dissatisfaction to decision court Good That decision court First about decision verstek , verdict court that has not been solid and also decision the court that has inkrcaht with effort law outside normal that is with The dervish Verzet (resistance) or review back (PK). Based on Article 129 Paragraph (3) and Article (5) HIR, mechanism submission turn off must fulfil provisions that have been set . Decision forfeit Alone happen when defendant No present in trial without valid reason although has called in a way official And appropriate . Wrong One example case turn off happen in Religious courts .

Based on description in background behind writer to do identification to a number of the problem that occurred in world justice especially in religious courts in case divorce with the exit decision Religious Court Number : 731/Pdt.G/2024/PA.IM where the defendant did not feel that he had received a summons . The default decision by the Panel of Judges of the Indramayu Religious Court so that the question arises what is the legal basis for the default decision of the Indramayu Religious Court Number 731/Pdt.G/2024/PA.IM. to provide a sense of justice and what legal efforts are made in cases with default decisions against the defendant based on the decision of the religious court Number 731/Pdt.G/2024/PA.IM .

The purpose of this study is to find out what the legal basis is for the default decision of the Indramayu Religious Court based on the decision of the Indramayu Religious Court Number: 731/Pdt.G/2024/PA.IM . and to find out what legal efforts are made in cases with default decisions against the defendant based on the decision of the Religious Court Number 731/Pdt.G/2024/PA.IM.

2. Method

This type of research uses a normative legal research method, using primary data such as reviewing laws and regulations, court decisions, and other legal documents and secondary data such as legal textbooks, legal articles, legal journals and previous legal reports. In this study, a qualitative approach is used, such as using non-numerical data, such as interviews, observations, and text analysis, to understand the social and cultural phenomena that occur. In the normative system in question, the principles, norms, rules of laws and regulations and court decisions. This approach is carried out by reviewing cases that occur related to the court decisions that the author is studying.

3. Results and Discussion

3.1. Legal Basis for Default Decision by Indramayu Religious Court

A default decision is a decision made by a judge without the defendant being present at the trial, even though he has been legally and properly summoned. The term default comes from Dutch, meaning "not present" or "not coming" (Mertokusumo, 2013).

The legal basis for default decisions in the Indonesian civil procedure law system is regulated in several provisions as follows:

1. Article 125 paragraph (1) HIR (Het Herziene Indonesisch Reglement) which applies to the Java and Madura regions.

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2. Article 149 of the RBg (Rechtsreglement Buitengewesten) which applies to areas outside Java and Madura.
3. Article 78 Rv (Reglement op de Burgerlijke Rechtsvordering) as an additional provision.

According to Yahya Harahap (2016), a default decision is an exception to the principle of audi et alteram partem in civil procedure law which requires the judge to hear both parties before making a decision.

To issue a default decision, several conditions must be met as explained by Sudikno Mertokusumo (2013) and Retnowulan Sutantio (2009):

1) The defendant has been legally and properly summoned

The first requirement is that the defendant has been summoned legally and properly in accordance with the provisions of Article 390 in conjunction with Article 389 HIR. The summons is considered valid if it is carried out by a court bailiff, while the summons is considered proper if it meets the following requirements:

- Done at least 3 working days before the trial day
- Delivered to the defendant at his residence or place of residence
- If you do not meet the defendant, it is submitted through the local village head/sub-district head
- If the address is unknown, it is announced through the mass media or court notice boards.

Subekti (2007: 56) emphasized that the validity of the summons is an absolute requirement for issuing a default decision, because it is related to fulfilling the principle of a fair trial.

2) The defendant did not attend the scheduled hearing and did not send a representative/power of attorney.

The second condition is that the defendant is not present at the scheduled hearing and does not send a representative or authorized attorney. This absence must be without a valid reason, as explained by Lilik Mulyadi (2015: 135). If the defendant's absence is accompanied by a valid reason submitted to the court, the judge cannot issue a default verdict.

3) The defendant did not file an exception or objection regarding the court's authority.

The third condition is that the defendant does not file an exception or objection regarding the court's authority, either absolute authority or relative authority. Mochammad Dja'is and RMJ Koosmargono (2008: 72) explain that if the defendant has filed an exception of competence before being absent, then the judge must first examine and decide on the exception before issuing a default decision.

4) The plaintiff was present at the hearing and asked for a verdict

The fourth condition is that the plaintiff is present at the trial and requests the judge to issue a verdict. Setiawan (2007: 23) explains that without a request from the plaintiff, the judge cannot ex officio issue a default verdict.

5) The lawsuit is justified and not against the law

The fifth condition is that the plaintiff's lawsuit is justified and not against the law. In accordance with the provisions of Article 125 paragraph (1) HIR, the judge can only grant a lawsuit with a default decision if the lawsuit "is not against the rights or is justified". Yahya Harahap (2016: 389) emphasized that the judge must still examine the truth of the arguments of the lawsuit before issuing a default decision.

According to M. Yahya Harahap (2016), these conditions are cumulative, meaning that all conditions must be met in order to issue a default decision.

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The Default Decision Process consists of several stages, namely:

1. Calling Stage

Based on Article 390 in conjunction with Article 389 HIR, the summons of the defendant must be carried out legally and properly. The summons is carried out by the court bailiff by delivering a summons letter (relaas) containing:

- Identity of the party being called
- Time and place of the trial
- Purpose of summons
- Basis for the lawsuit

According to Subekti (2007), a summons is considered appropriate if it is made at least 3 (three) working days before the trial day. A summons can be made in several ways:

- Delivered directly to the defendant at his residence
- Through the village head/sub-district head if the defendant cannot be found
- Through announcements in the mass media or on court notice boards if the defendant's address is unknown.

2. Call Release Check

According to Abdulkadir Muhammad (2012), before issuing a default decision, the judge must check the validity of the release of the summons to ensure that the defendant has been summoned legally and properly. This is part of the principle of due process of law in the courts.

3. Examination of Lawsuit

Retnowulan Sutantio (2009) explains that even if the defendant is not present, the judge is still required to examine the lawsuit. This examination includes:

a. Court competence (absolute and relative competence)
   The judge must examine whether the court has the authority to examine the case, both in terms of absolute competence and relative competence.
b. Legal standing of the plaintiff
   The judge must ensure that the plaintiff has a legal interest (legal standing) to file a lawsuit.
c. Legal basis for the lawsuit
   The judge must examine whether the lawsuit has a clear legal basis and does not conflict with statutory regulations.
d. Posita and petitum
   The judge must check whether there is a logical relationship between the posita (basis for the lawsuit) and the petitum (claim).

Article 125 paragraph (1) HIR emphasizes that a lawsuit can be granted "unless the lawsuit is against the rights or is unfounded".

4. Decision Making

After examining the lawsuit, the judge can take one of three possible decisions as explained by Lilik Mulyadi (2015):

a. Grant the lawsuit in whole or in part
   The judge will grant the lawsuit in whole or in part if the lawsuit is deemed reasonable and based on law.
b. Rejecting the lawsuit even though the defendant was not present
   The judge will reject the lawsuit even if the defendant is not present, if the lawsuit is deemed to be unfounded or unlawful.
c. Declaring the lawsuit unacceptable (niet ontvankelijke verklaard)

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The judge declares the lawsuit inadmissible (niet ontvankelijke verklaard/NO) if there are formal defects in the lawsuit.

5. Notification of Decision

Article 125 paragraph (3) HIR requires notification of the default decision to the defendant. According to Yahya Harahap (2016), this notification is important because it relates to the defendant's right to file an objection (verzet) and determine the start date of the validity period for submitting a verzet.

3.2. Legal Basis for Legal Efforts to Challenge (Verzet) in the Decision of the Indramayu Religious Court

Effort law resistance (resistance) is effort law to the verdict that was handed down Religious Court / First Instance Court Because Defendant No present on hearing First And No send his representative For facing in trial , although Already called with worthy And without reason which is legitimate . More carry on in in Article 125 paragraph (1) HIR/ Article 149 paragraph (1) RBg state if on the day that has been determined , defendant No present and also he No to order others to present as his representative , even though He has called with worthy so lawsuit That accepted with decision not present (*verstek*), except if it turns out for court country that lawsuit the oppose law or No reasonable . (Piere Louis Karinda , 2020, 114)

Against a default decision, the defendant can file a legal remedy of verzet (resistance). According to Supomo (2005), verzet is a special legal remedy that only applies to default decisions and is not an appeal.

Abdulkadir Muhammad (2012) explains the process of verification as follows:

1. The implementation of the default decision is suspended
2. The case is re-examined with both parties present
3. A default decision can confirm, change or cancel a default decision.

If the defendant does not file a denial within the specified time period, the denial decision becomes legally binding (inkracht van gewijsde).

For defendants who are defeated by default and do not accept the decision based on procedural law, the defendant is allowed to file an objection (verzet) against the default decision handed down by the court. Where the opportunity given in procedural law is that the time period for filing an objection (verzet) is 14 days from the time the defendant receives the decision directly from the court or is sent online from the relevant religious court decision directory. Decisions that are decided by default according to Article 128 paragraph (1) HIR / Article 152 RBg, cannot be implemented after 14 days have passed after notification as referred to in Article 125 HIR. However, in very urgent circumstances in paragraph (2) determines that this implementation can be carried out before the deadline, which is carried out by the defendant. (Piere Louis Karinda , 2020, 145)

Based on the provisions governing appeals in Article 8 of Law Number 20 of 1947, it states:

1) From the court decision that was made outside the presence of the defendant, the defendant may not request a repeat/re-examination unless there is an effort that has been regulated, the defendant can make a resistance or use the right to resist in the first level court examination, however if the plaintiff requests a repeat examination, the defendant cannot use the right to resist in the first level examination.

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2) If for any reason the defendant is unable or unable to exercise the right to object in the first level examination, the defendant may request a repeat examination.

In Civil Procedure Law, there is also a term called partij verzet or interpreted as resistance by the litigant. partij verzet is associated with the legal effort of resistance of the executed against the execution seizure. Resistance to execution seizure (partij verzet) is regulated in Article 207 HIR and Article 225 RBg. concerning resistance of the executed against execution seizure.

In Article 195 paragraph (6) HIR regulates the authority to try the court according to its jurisdiction. In full, the provisions of Article 195 paragraph (6) HIR read: "resistance (verzet) against the implementation of the decision or from a third party based on evidence regarding the existence of interests in property rights is the same as an attempt to resist by the defendant as dissatisfaction with the default decision."

As a consideration based on the Supreme Court decision No. 938/Pdt/1986, it states that the decision of denial only considers the problem of the absence of the defendant/opponent in fulfilling the court summons. Why do defendants rarely fight denial because it is their right to file a lawsuit properly so that the examination is as usual in civil procedure law.

3.3. Procedures for Summons Based on Perma Number 7 of 2022

Referring to the Supreme Court Regulation (Perma) Number 1 of 2019 concerning Electronic Administration of Cases and Trials in Courts, the registration and trial process in civil cases in Courts, especially civil cases both in general courts and religious courts, is carried out electronically. This is to provide efficiency and to make the integrity of the courts clean from extortion. In the Perma, everything is regulated in electronic form where the scope of court trial registration and providing services that can be reached from across the court area.

The issuance of Supreme Court Regulation (Perma) Number 7 of 2022 as an amendment to Perma Number 1 of 2019 which applies the principle of litigating electronically. The scope of electronic registration is to facilitate and provide inexpensive costs and be transparent about the costs of litigation incurred by the parties to the litigation. as explained in Article 15 and Article 17 of Perma Number 7 of 2022 concerning amendments to Perma Number 1 of 2019 where case administration is carried out online with the following procedures:

a. the defendant is summoned electronically if his electronic domicile address has been included in the lawsuit
b. If the defendant does not have an electronic domicile, the summons/summons is delivered by registered mail
c. Parties who are abroad are summoned electronically if their electronic domicile is known.
d. Parties located abroad whose electronic domicile is unknown are summoned using the applicable procedures.

The Supreme Court electronic summons is in collaboration with a third party, namely PT. Pos Indonesia, so that all online court summons, both online and written submissions, are made through PT. Pos Indonesia.

3.4. Obstacles That Occur to Online Call Relas via Email or via PT. Pos

The existence of a third party in providing services carried out by the court is a form of impartiality in delivering the summons to the parties so that independence in delivering the summons can be maintained from certain individuals who take advantage of the bias towards one of the parties in the case. However, the obstacles that occur are not in accordance with what is expected from the system carried out by the court. In this situation, there are still possibilities

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that will occur against this goal with obstacles and obstacles with limiting conditions and efforts to prevent the achievement of these goals to the intended target, so that it is an obstacle faced in the examination process at the court hearing later so that the results of the product are not optimal against what is decided by the judge in the court hearing, of course it will have an impact on injustice to the party who is harmed by the actions of these individuals.

Where these obstacles can occur, namely: (Anin Pancaristi Tugapae, 2025)

1. Wrong Address to the Litigant Party
2. Home Address Unknown or Fake
3. Address of vacant land or empty house
4. In the KIBANA application there are no images of the recipient's capture results

3.5. Responsibilities of the Parties in Delivering Calls.

The occurrence of the incident of the fall of the default decision that occurred in the court decision Number 731 / Pdt.G / 2024 / PA.IM. as a result of the actions of individuals who side with one of the parties in the case where this action often occurs in the Village or Sub-district where both parties live where the involvement of these individuals is a form of destroying the honest, fair and trustworthy justice system. Therefore, there needs to be government improvement in the performance of village / sub-district officials, especially those related to marriage / and divorce of their citizens.

4. Conclusion

Based on a review of civil procedural law, the default decision process is a legal mechanism regulated in Article 125 HIR and Article 149 RBg as a solution when the defendant is not present at the trial even though he has been legally and properly summoned. This process includes the stages of valid summons, examination of the release of the summons, examination of the lawsuit, decision-making, and notification of the decision to the defendant. A default decision can be imposed with cumulative conditions including the defendant has been properly summoned, is absent without a valid reason, does not send a representative, the lawsuit is justified, and the plaintiff is present to request a decision. This mechanism is present to balance the efficiency of the trial with the protection of the defendant's rights, where the defendant still has the opportunity to file an objection (verzet) within a certain period of time. Philosophically, the default decision reflects efforts to realize legal certainty without ignoring justice for the parties in the Indonesian civil justice system.

The legal considerations of the judge of the Indramayu Religious Court in decision number 731/Pdt.G/2024/PA.IM in issuing a Verstek decision were initially because the defendant never came and did not give power of attorney to another party to represent him, even though the court had officially and properly summoned him and the Indramayu Religious Court in its summons 4 times exceeded the 3 times stipulated by law, so the panel of judges is of the opinion that the defendant has waived his right to reply and is considered to have acknowledged all the arguments of the plaintiff's lawsuit. The Panel of Judges of the Indramayu Religious Court before deciding the Verstek case first considered by listening to statements from the witnesses so that the decision issued had strong legal considerations.

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