

THE ANALYSIS OF GENERAL SUMMON FOR THE DEFENDANTS IN CIVIL CASES AT THE STATE COURT

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ABSTRACT

Provisions for summons contained in Article 390 HIR paragraph (3) and Article 718 RBg constitute an extraordinary summons often referred to as a general summons. The provisions of the article only implicitly regulate making general summons to the defendant whose whereabouts are unknown, thus creating an ambiguity in the proceedings and the duration of the General Summon. By implicitly regulating the article regarding the General Summon, this article tries to analyze the provisions of the General Summons to the Defendants. It is because the provisions do not regulate the process and the period. It can cause legal consequences in society as well as in the application of the law. With a normative juridical method, the author reviews the regulations in national legislation and their application to 3 (three) courts, namely the Kepahiang District Court, Subang District Court and Nabire District Court, by comparing three legal theories, which are the rule of law theory, the theory of legal certainty and the theory of positivism. So that in the end, through the analysis, it can be found that the article contained in the general summons has a vague norm or lack of clarity regarding legal norms; while the rules regarding general summons are still unclear, it can be said that regarding general summons there is a legal vacuum in the rules regarding the explanation. Predictably, the condition of the vague norms and legal vacuum in the law can be abused by the law enforcers dealing with implementing general summons. For example, the misuse of legal conditions and actions contrary to temporary norms in justice-seeking communities can have social consequences where the rights of the parties seeking justice are not fulfilled.

Keywords: General Summons, Defendant, Legal Consequences

A. INTRODUCTION

1. Background of the Research

Organizers of government administration and law enforcement in Indonesia consist of the Executive Board, Legislative Institution and Judicial Institution.¹ The three institutions mentioned above certainly have their respective roles and functions in the process of government system maintenance in Indonesia. The Supreme Court (MA) can be defined as a Judicial Institution intended to carry out judicial power and oversee several courts. The General Court is part of one of these pillars, which the Supreme Court owns. In settling a civil case in Indonesia, the District Court, which is part of the General Court, is still guided by the RBg or HIR, a provision made during the Dutch colonial administration.²

Solution civilly, several procedures must be passed, including, in this case, the summon.

¹<https://www.indonesia-investments.com/id/kultur/politik/ikhtisar-ktur-politik/item385> accessed on Friday, February 25th, 2022, at 12:41 pm.

²Amran Suadi. *Hukum Acara Perdata Di Indonesia (Menangkar Beracara Di Pengadilan Secara Elektronik).* Kencana. Jakarta, p.38

According to Yahya Harahap, a convocation or convocatie is an order to attend a hearing on a specified day.³ The summons is made by an official appointed and authorized by the state to make summons called a bailiff or substitute bailiff. Summons made to the Defendant Party whose whereabouts are no longer known may use a third or a general summons.⁴

In the general summons process used to summon the defendant, it is no longer known where he resides or where he resides; based on the three examples of district court cases during general summons, it was found that the three district courts used general summons with different processes and durations. Hence, this is the background for writing a thesis that discusses civil cases at the District Court using the process of a general summons to the defendant. It is because both the legal basis and procedural uncertainty, as well as the grace

³Yahya Harahap. *Hukum Acara Perdayat*, Sinar Grafika, Jakarta, P.213

⁴Article 390, *Herzien Indonesis Reglement/Indonesian Regulation New*.

period from the general summons process, is not regulated in 390 paragraph 3 HIR so that it can cause uncertainty law in fulfilling the rights and obligations of the parties in the case as well as a fair decision.

2. Identification of problems

1. Does the general summons process to the Defendant in Civil Cases in the District Court provide legal certainty?
2. What are the legal consequences of the non-uniformity of the general summons process to the defendant carried out by the Panel of Judges in the District Court?

B. RESEARCH METHOD

This research used normative legal research or referred to as doctrinal legal research. Normative research is doctrinal research, also called library research or document study. It is called doctrinal legal research because it is conducted or aimed only at written regulations or other legal

materials. It is said to be a library study or document study because this research is mainly carried out by examining secondary data in the library.

C. RESULTS AND DISCUSSION

1. Analysis of Provisions in the General Summons Process for the Defendant in Civil Cases at the District Courts Associated with Legal Certainty.

Analysis of the provisions in the General Summons Process to the Defendants in Civil Cases at the District Court which is related to Legal Certainty; in analyzing this matter, it is necessary to apply the Legal Reasoning used to obtain legal certainty truth/thought process to find the truth by using reason (logical mind). Several experts mention the steps in legal reasoning. Kenneth J. Vandavelde, which of the above-mentioned legal reasoning steps to identify the rule of law, found many

circumstances of the rule of law, namely

- Legal vacuum (leemten in het recht),
- Conflicts between legal norms (legal antinomies), and
- The vague norm (vage normen) or the norm is not clear.

In the provisions of the General Summons Process to the Defendant in Civil Cases at the District Court, Legal reasoning is used to analyze the provisions in Article 390 HIR (Herzien *Indonesis Reglement*) or Article 718 RBg (Rechtsreglement Buitengewesten) paragraph (3) which mention that:

“For the people who are unknown where they stay, and for the unknown people, then the summons will be carried out to the head of the local government from the place of residence plaintiff. Head government will give the order that the summons announced by attaching it to the main

door of the courtroom in question.”⁵

The article above which is connected with the state of identification of the rule of law. It can be said that the provisions of Article 390 HIR (Herzien *Indonesis Reglement*) or Article 718 RBg (Rechtsreglement Buitengewesten) paragraph (3) do not clearly explain both the process of implementing the general summons and the period of general summons. As a result, there will be no uniformity in the process and period of general summons in the District Court as follows:

- Civil Case Number. 4/Pdt.G/2021/PN Kph at the Kepahiang District Court, the general summons is made by attaching the summons to the regent's office, and the summons period is 30 (thirty) days.
- Civil Case Number. 18/Pdt.G/2020/PN Sng at the

⁵Soeroso R, *Hukum acara perdata Lengkap & Praktis HIR, RBG dan Yurisprudensi*, Sinar Grafika, 2019, Jakarta, P. 250

Subang District Court, a general summons made by placing a summons at the regent's office, which is then broadcast on the radio for 14 days.

- Civil Case Number. 59/Pdt.G/2021/PN Nab at the Nabire District Court, a general summons made by attaching the process to the regent's office for 1 (one) week.

The non-uniformity based on the results of legal reasoning can be said to be vague norms (*vage normen*) or norms that are not clear and are void of derivatives from the basic rules in article 390 HIR (*Herzien Indonesis Reglement*) or Article 718 RBg (*Rechtsreglement Buitengewesten*) paragraph (3). This condition happens because, in essence, a vague norm (*vage normen*) is defined as a norm that does not have a clear meaning. Vague itself means a statement that is unclear or does not have a precise meaning in the system of norms that does

not set limits to the authority responsible for implementing norms or resolving disputes and is part of the value of the norm system.⁶

Meanwhile, the legal vacuum can be interpreted as an empty state or absence of legislation (law) that regulates (particular) order in society so that a legal vacuum can cause consequences. Legal uncertainty can occur (*rechtsonzekerheid*) on the things or conditions that are not or have not been regulated, and the uncertainty of laws and regulations in society will result in legal chaos (*rechtsverwarring*). It means that as long as it is not regulated, it is permissible; as long as there is no straightforward and regulated procedure, it is not impossible.

Therefore, it can be said that the non-uniformity of the process and the duration of the general summons to the defendant that occurred in the

⁶<https://www.merriam-webster.com/dictionary/vague> accessed. (Accessed on May 16th, 2022).

example of the three District Courts, which are Kepahiang District Court, Subang District Court and Nabire District Court, caused a vague norm or ambiguity to the legal norms and the existence of derivative legal vacancies. Moreover, general summon terms on Article 390 HIR (Herzien Indonesia Reglement), or Article 718 RBg (Rechtsreglement Buitengewesten) paragraph (3) results in a norm that does not set limits on the authorities responsible for implementing norms or resolving disputes in its implementation. Furthermore, it is because the provisions of Article 390 HIR (Herzien Indonesia Reglement) or Article 718 RBg (Rechtsreglement Buitengewesten) paragraph (3) do not explain clearly or instead implicitly in the implementation of the general summons.

Then it can be said that there is a legal vacuum in elaborating the implementation of the basic rules of the provisions of the article. The

reason is that this condition will impact the emergence of legal uncertainty, which is interpreted as long as it is not regulated, it means it is allowed, and as long as there is no straightforward and regulated procedure, it is not impossible. So it concludes that the vague legal norms and vacuum will impact the emergence of legal consequences in implementing the general summons.

2. Analysis of the Legal Consequences of the Non-Uniformity of the General Summons Process for the Defendants Who Conducted By the Panel of Judges at the District Court.

1) The Social Consequences of the Non-Uniformity of the General Summons Process for the Defendants Who Conducted By the Panel of Judges at the District Court.

The social consequences that arise from these social phenomena are then associated with the non-uniformity of the General

Summons Process for the Defendant Conducted By the Panel of Judges at the District Court. Based on the provisions in Article 390 HIR paragraph 3 in conjunction with Article 718 Rbg, a norm that is vague or unclear about the legal norm and the existence of a derivative legal vacuum, thus causing something infinite against the authorities responsible for implementing norms or resolving disputes which in this case concerns the general summons to the defendant, then from this the social consequences which arise are:

1. The non-fulfilment of the rights and obligations of the parties in litigation in the District Court in civil cases, especially the rights of the defendant;
2. With the emergence of public thinking about the possibility that the

settlement of cases in court becomes a gap for legal smuggling or fraudulent legislation (Latin), it is an act that a person carries out to obtain specific legal consequences (rights) based on foreign law which, if based on national law, the legal consequences will be impossible to happen.⁷

3. Allows the appearance of negative public views against a court where the public will compare the process and duration of the different general summons carried out by the judge in the application of the general summons to summon the defendant, such as the Kepahiang District Court, Subang District Court and Nabire District Court,

⁷Prasetyo Ade Witoko. *Jurnal Penyelundupan Hukum perkawinan beda agama di Indonesia*. Surakarta. Sebelas Maret University

resulting in a motion of disbelief to the court.

4. The increased conflict leads to violence in the community because there is no balance of rights between the party filing the lawsuit and the opposing party.

2) Legal Consequences of the Non-Uniformity of the General Summons Process for the Defendants Who Conducted By the Panel of Judges at the District Court.

The legal consequences, when connected with inconsistency in the General Summons Process for the Defendants Who Conducted By the Panel of Judges at the District Court at the Kepahiang District Court, Subang District Court and Nabire District Court, can be explained that the legal consequences that arise are:

- 1) With the absence of uniformity, the process and period of general summons used by the

District Courts in Indonesia can be interpreted as a result of the ambiguity of norms and legal vacuums, giving rise to a different legal situation in each region, especially the application of the general summons.

- 2) The emergence of an unlawful act that can be carried out by law enforcers, primarily, in this case, judges with vague norms and legal vacuums, can certainly provide opportunities for judges by using the principle of Article 390 paragraph 3 HIR jo 718 Rbg. Judges can find the rule of law, the emergence of an act of abusing authority by making irrelevant rules so that this can be seen in the general call itself which the process type and duration are various.

- 3) In Indonesia, a country which adheres to positivism, the law states that the legal rules determine people's behaviour (primary rules) and the conditions for applying these primary rules. Consequently, non-uniformity will happen in the process and period of the general summons to the defendant at the District Court. This condition does not reflect positivism law because in the general call itself, different views arise regarding the process and period, so there are no requirements for applying primary rules as guidelines.
- 4) The emergence of a legal ineffectiveness can be interpreted as the inability of the law to create or create conditions or situations as desired or expected

by law because, basically, Article 390 paragraph 3 HIR jo 718 Rbg has a vague norm and legal vacuum that is derived from the basic rules.

- 5) The ambiguity of the general summons process and the various time frames applied by the judge in the general summons are not following the principles of administering judicial power, namely a simple, fast, and low-cost trial. This principle is stated in Article 2 paragraph (4) Law No. 48 Year 2009 regarding Judicial Power.⁸

Therefore, it can conclude that the legal consequences of the general summons to the defendant at the District Court using the provisions in Article 390 paragraph 3 HIR jo 718

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<https://www.hukumonline.com/berita/a/peradilan-yang-sederhana--cepat--dan-biaya-ringan-lt5a7682eb7e074> accessed on May 21st 2022, at 01:57 pm.

RBg do not provide clarity, so the judge, through his authority, creates separate rules for this matter. This condition tends to lead to many loopholes in the abuse of authority, the use of legal conditions and legal actions contrary to applicable norms. This perspective is based on social consequences that create non-fulfilment of the parties' rights and are supported by a lack of public knowledge regarding vague or unclear norms and legal vacuums ruling the subject matter of the rules for implementing the General Summons to the defendant.

D. CLOSING

1. Conclusion

Based on several explanations of the problems above, it can be concluded that:

- a. The provision for a general summons to a defendant whose residence is unknown in a civil case at the District Court has not provided legal certainty. Lack of rules and

vague or unclear norms about the legal norms and the existence of a derivative legal vacuum can cause multiple interpretations for each Panel of Judges at the District Court handling cases using the General Summons so that its implementation creates non-uniformity. This argument in line with the provision, Article 390 HIR (Herzien Indonesis Reglement) or Article 718 RBg (Rechtsreglement Buitengewesten) paragraph (3).

- b. Legal Consequences of the Non-Uniformity of the General Summons Process for the Defendants Who Conducted By the Panel of Judges in the District Court can create opportunities for abuse of authority, the use of legal conditions, and legal actions that are contrary to applicable norms. This condition happens because of the different processes and time

frames in the general summons administered by the Panel of Judges. Also, in the community, it can cause social consequences that create non-fulfilment of the parties' rights due to the non-uniformity.

2. Suggestion

1. The Supreme Court, a state institution mandated by Law Number 12 of 2011 concerning procedures for forming legislation, is one of the institutions that can form a regulation. According to Law Number 3 of 2009, which amended Article 79 of Law Number 14 of 1985 regarding the supreme Court. The Supreme Court has the authority to issue regulations with filling in deficiencies or vacancies for uniformity in the procedure of the General Summons, both in terms of implementation and duration, by establishing

Supreme Court Regulations or Supreme Court Circulars.

2. The government must immediately form a regulation regarding the Civil Procedure Code, which currently still uses HIR and Rbg, so that there is a unification of the rule of law so that there is uniformity in the application of civil procedure law in Indonesia.

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