

# REFORM OF CIVIL PROCEDURAL LAW AT THE APPELLATE-LEVEL COURTS IN INDONESIA

**Moh. Amir Hamzah\***

Departemen Hukum Perdata Fakultas Hukum Universitas Trunonjoyo, Madura  
Jalan Raya Telang, 2 Bangkalan Madura, Jawa Timur, Po.Box 2

## ***Abstract***

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*The first court and the appellate-level court serve as the judex facti, but there are different regulations about procedural law in HIR, RBG, and Law No. 20 of 1947. It causes high filing of cassation appeals. As a result, the Supreme Court is impaired in fostering and developing the (civil) law due to it being hectic from examining cases. Through reform of civil procedure law of the appellate-level court (PT), the court will be placed in the appropriate position as the means of filtering proceedings, so that not all cases can be filed for a cassation appeal. It is also the time to revoke Law No. 20 of 1947.*

**Keywords:** procedural law, appellate-level court.

## ***Intisari***

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Pada dasarnya Pengadilan Negeri dan Pengadilan Tinggi diposisikan sebagai judex facti. Namun demikian, terdapat beberapa pengaturan mengenai hukum acara perdata mulai dari HIR, RBG hingga UU No.20 Tahun 1947 yang mengatur hal tersebut secara berbeda. Akibatnya, pengajuan kasasi meningkat sehingga mengganggu fokus Mahkamah Agung melaksanakan fungsi pembinaan hukum. Seharusnya pengadilan banding diposisikan sebagai penyaring sehingga tidak semua kasus dapat diajukan ke banding dan kasasi. Selain itu, melalui pembaharuan hukum ini juga UU Nomor 20 Tahun 1947.

**Kata Kunci:** hukum acara perdata, pengadilan banding.

## ***Pokok Muatan***

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\* Alamat korespondensi amhamz@gmail.com

## A. Pendahuluan

The authority of the high court as the appellate-level court is confirmed by Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura, and Part Three, Chapter IV of Rbg, consisting of Articles 199–205 for regions outside Java and Madura.<sup>1</sup> This authority is independent, rather than hierarchical<sup>2</sup>, in the exercise of its authority the appellate-level court cannot be intervened by the Supreme Court for it has different functions. The appellate-level court serves as the *judex facti*<sup>3</sup> since judges (*judex*) examine legal facts, namely actions, events or circumstances,<sup>4</sup> as the basis of the case and then match the legal facts against the laws constituting the juridical basis of filing a civil lawsuit.<sup>5</sup> The function of *judex facti* is carried out through the following stages: *first*, formulating the facts; *second*, finding the causal link; and *third*, deducing the probability.<sup>6</sup> Such stages represent the mechanism of examination of a case within the scope of *judex facti*. The functions of *judex facti* in the appellate-level court are not regulated in the *Het Herziene Indonesich Reglement* (HIR),<sup>7</sup> and *Reglement voor de buitengewesten* (RBg), as well as Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura.

Substantively, Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in

Java and Madura and RBg only regulate judicial administration, but not the procedure for civil proceedings, as confirmed by M. Yahya Harahap<sup>8</sup>, further affirming that the provisions regarding procedure for examination of a case at the appellate-level court are not regulated in Law No. 20 of 1947 and *Het Herziene Indonesich Reglement* or Revised Indonesian Regulation (HIR), and *Reglement op de buitengewesten* (RBg).<sup>9</sup> The legal facts indicate a fairly long vacancy of civil procedure law at the appellate-level court.

In practice,<sup>9</sup> examination of a case at the appellate-level court uses Article 357 of the *Reglement op de Burgerlijke Rechtsvordering* (Rv)<sup>10</sup>, which reads: “The case is subsequently decided by the appellate judge concerned without much process and only based on the documents, but prior to the delivery of the final decision, he is authorized to deliver a preparatory decision or a preliminary order”. Among the evidence for examination of a case by documents was the decision of the Supreme Court of the Republic of Indonesia No. 879 K/Sip/1974, which stipulated that:<sup>11</sup>

[...] The high court is to examine and decide an appeal based on the case file submitted by the district court to the high court; it does not mean the decision handed down without the presence of the litigant parties is not valid, since such a system is a regular procedure at

<sup>1</sup> Code of Procedure for Areas Outside Java and Madura (Reglement van het tot Regeling rechtswezen gewesten buiten in de Java en Madura, abbreviated as Reglement op de buitengewesten (RBg), S. 1927-227).

<sup>2</sup> *Ibid.*, p. 33.

<sup>3</sup> *Ibid.*, p. 106. See Henry Campbell, 1979, *Black's Law Dictionary definitions of the Terms and Phrases of American and English Jurisprudence*, Ancient and Modern, West Publishing Company, St. Paul Minn, p. 754, 532. *Judex* (latin): a judge (judge, to judge, assessor). *Facti* (*facto*): in fact; by an act (facts, events).

<sup>4</sup> Philip M. Hadjon and Tatiek Sri Djatmiati, 2005, *Legal Arguments (in Explanation of the Inductive Reasoning)*, Gadjah Mada University Press, Yogyakarta, p. 40.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, p. 33.

<sup>7</sup> Het Herziene Indonesich Reglement (HIR) or Revised Indonesian Regulation, Stb. 1848 No. 16 in conjunction with Stb. 1941 No. 44.

<sup>8</sup> M. Yahya Harahap, 2008, *The Authority of the High Court and the procedure of civil proceedings at the Appellate Court*, Sinar Grafika, Jakarta, p. 112.

<sup>9</sup> *Ibid.*

<sup>10</sup> Reglement op de Burgerlijke Rechtsvordering (Rv) or the Code of Civil Procedure for the European group, Stb. 1847 No. 52, in conjunction with Stb. 1849 No. 63, is the procedural law applies exclusively to European groups and for those equivalent for filing a civil lawsuit to the Raad van Justitie and Hooggerechtshof. With the abolition of The Raad van Justitie and Hooggerechtshof, Rv is not applicable. In today's judicial practice, the existence of provisions in Rv remain being used and maintained as set forth in the Guidelines for Implementation of Court Duties and Administration, Books I and II, the Supreme Court of the Republic of Indonesia, 2003/2004, p. 60 and p. 126 (hereinafter referred to as Rv).

<sup>11</sup> The Supreme Court of the Republic of Indonesia, 1982, *Collection of Commercial Law Jurisprudence in Indonesia*, Pradnya Paramita, Jakarta, p. 73.

the appellate level [...].

The Supreme Court was of the opinion that the procedure for examination of a case at the appellate level does not require the presence of the litigants, as with the procedure for examination of a case at first-instance courts.

Based on the above background, the legal basis of the procedure for civil proceedings at the appellate-level court constitutes the central issue of this paper.

## B. Analysis

The Problematic Substance of Law No. 20 of 1947 Concerning Appeal Court Regulation of Appeal Court in Java and Madura

### a. The Appellate Court as the Second *Judex Facti*

Article 6 of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura, states that:

Of the decisions of the District Courts in Java and Madura on civil cases, which are not stated, the claim value is a hundred rupiah or less, one of the parties (partijen) to the lawsuit may demand that the civil proceedings are to be repeated by the High Court in power in their respective jurisdictions.

This article contains two important points: first, the value of the claim decided by district courts is at least one hundred rupiah and, second, the civil proceedings are to be repeated. The first point contains the legal norm of restricting an appeal with a criterion of claim value; the second point contains the legal norm of repeating the civil proceedings. The legal norm of appeal restrictions does not apply to current judicial practice, and thus almost all the civil cases decided at the first-instance courts are filed for appeal.

The legal norm of an appeal at appellate-level court is equated with the concept of re-examination of the **case file**. Equating the concept of an appeal with *re-examination of the case file* is a fundamental mistake, as the opinion of the Supreme Court, through its decision No. 951 K/Sip/1973, which stipulated:<sup>12</sup>

[...]The method of civil proceedings at the appellate level does not only pay attention to the objections raised by the appellant; this is incorrect; at the appellate level the judge should re-examine the case in its entirety, both the facts and the application of laws [...]

In addition, the Supreme Court's decision No. 876/Sip/1973 stated that: “[...] the claimant's petition for appeal the must be examined in its entirety, both in the original complaint and counter-claim”.<sup>13</sup>

The issue is that the procedure for examining the facts and application of laws is not regulated in Law no. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura. Conceptually, the concept of appeal describes that the structure of the decision of the appellate-level court is similar to that of the first-instance court, namely the title, identity of the parties, considerations and verdict.<sup>14</sup> Legal considerations constitute the basis of the verdict, consisting of considerations of merits of case and considerations of laws; these considerations represent the implementation the *judex facti* function. The authority of the appellate-level court to re-perform civil proceedings derives from due to its function as the second *judex facti*.

Article 15 (1) of Law No. 20 of 1947 concerning Appeal Court Regulation of

<sup>12</sup> *Ibid.*, p. 8.

<sup>13</sup> *Ibid.*

<sup>14</sup> Sudikno Mertokusumo, 2002, *The Code of Civil Procedure of Indonesia*, Liberty, Yogyakarta, p. 220.

Appeal Court in Java and Madura states that: “The High Court in the re-hearing of a case shall examine and decide with three judges, *if deemed necessary*, by listening themselves to both parties or witnesses.” There are two important points in this article: *first*, the legal norm of the panel of judges in deciding the case and, *second*, the legal norm of listening themselves to description of both parties or witnesses. The first legal norm does not cause problems in civil procedure law; however, the second legal norm is conditional, as indicated by the phrase “... if deemed necessary”. With regard to the application of this chapter, the Supreme Court in its decision No. 3136 K/Sip/1983 stated that:<sup>15</sup>

[...] In accordance with Article 15 paragraph (1) of Law No. 20 of 1947, the high court is authorized to conduct their own supplementary hearing; in fact, this procedure is more effective since the high court is more aware of what items are going to be heard; however, if the high court wants to carry out their own supplementary hearing of the parties, it should indeed consider the cost factor that must be borne by the parties. Accordingly, supplementary hearing is not absolutely necessarily delegated to the district court by the high court.”

The Supreme Court’s decision contains a new concept of ‘supplementary hearing’, which is not known in Article 15 paragraph (1) of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura. In connection with this issue, R. Subekti asserted that:

[...] The interested parties can request that the examination of the case is to be ‘repeated’ by the High Court,

both regarding merits of case (facts) and the application of laws. In various provisions of laws, appellate proceedings are often referred to as the final-level proceedings in the sense it is the final *judex facti* examination.<sup>16</sup>

Guided by this opinion, the civil lawsuits in connection with the issue of *judex facti* are completed at the appellate-level court.

The issue is whether the implementation of the function of *judex facti* at the appellate-level court is similar to that of the first-instance court? *Judex facti* describe the judges’ competence of examining or hearing a case which refers to the role of judges to determine legal facts in the verdict. Civil proceedings consist of two aspects: first, the legal aspects; and second, the aspects of facts or events. Examination of a case for legal aspects does not need evidencing by the parties since it is the judge’s obligation to find the law and the judge is considered knowledgeable about the law (*ius curia novit*),<sup>17</sup> which includes substantive law and procedural law. Examination of a case for the aspects of facts or events requires evidence of facts or events expressed by all the parties in order to obtain the truth. The truth of the facts or events can only be obtained through evidence.

The judge is obliged to formulate facts or events, consisting of the usual facts and legal facts. Evidence of facts or events consist of ordinary fact evidence, which are the facts which constitute events or circumstances that will determine the legal facts, and legal facts which constitute evidence of events or circumstances whose existence depends on the application of a rule.<sup>18</sup> R. Subekti stated,

<sup>15</sup> The Supreme Court of the Republic of Indonesia, 1993, *Collection of Rules of Law of Decisions of the Supreme Court of the Republic of Indonesia 1969-1991*, The Supreme Court of the Republic of Indonesia, Jakarta, p. 46.

<sup>16</sup> R. Subekti, 1989, *The Code of Civil Procedure*, Binacipta, Bandung, p. 152.

<sup>17</sup> Sudikno Mertokusumo, *Op.cit.*, p. 131.

<sup>18</sup> Nunuk Nuswardani, 2007, *The Authority of the Constitutional Court as the Judex facti in Resolving Disputes of Election Results*, Dissertation, Graduate Program of Airlangga University, Surabaya, p. 22.

<sup>19</sup> R. Subekti, *Op.cit.*, p. 152.

“all aspects of a case examination (both facts and laws) are conducted by the District Court as the *judex facti*...”,<sup>19</sup> and the appellate-level court serves as the basis for decision making.

**b. Formal Requirements for Filing an Appeal**

**1) Minimum Claim Value of One Hundred Rupiah**

Under Article 6 of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura mentioned above, the phrase “which is not stated” means that the decision of the first-instance court the claim value of which is under one hundred rupiah cannot be filed an appeal. This constitutes a formal requirement for filing an appeal.<sup>20</sup> This means that Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura recognizes the concept of small-claims courts,<sup>21</sup> which are ones authorized to try small claims.

Jurisdiction of the small claims courts covers private disputes in which large amounts of money are not at stake, which constitute the maximum value of the object of claims in civil cases. To file a case to a small-claims court, the plaintiff must prove that the actual losses are within the jurisdiction of the small claims court. The procedural rules of the small-claims court in civil proceedings are a simple procedure of proceedings based on the legal principle that one should be able to carry out and represent themselves alone without a lawyer in court.

The first-instance courts can classify civil cases based on the value of the object of the claim, so that for a case with the small value of claim, the model of *small-claims courts* can be used in the proceedings,<sup>23</sup> whereas for a case with large value of claim, regular proceedings are used. For reference, the Supreme Court Rule No. 02 of 2012 on Adjustments to Limitation on Light Crime and the Amount of Fines in the Criminal Code states:

For since 1960, the value of rupiah declined by approximately 10,000 times compared to the price of gold at this time. For that reason, the entire amounts of rupiah in the Criminal Code, unless Articles 303 and 303 *bis*, need to be adjusted by multiplying it 10,000 times.

Thus, the value of one hundred rupiah becomes one million rupiah. If this is taken as the reference, the limitation of an appeal lies in the minimum value of claims of one million rupiah.

Article 6 of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura authorizes the appellate court to conduct case re-examination. Philosophically, it protects human rights since protection of human rights can only be given by an institution which has the authority higher than those violating the substantive law and procedural law. Legal protection is not provided automatically, but

<sup>20</sup> Formal requirements are one relating to the procedure for filing an appeal.

<sup>21</sup> There are various names of the court in accordance with their jurisdiction, such as county or magistrate’s court. These courts are found in Australia, Brazil, Canada, England and Wales, Ireland, Israel, New Zealand, Scotland, South Africa, Hong Kong. See Wikipedia, “Small Claims Court”, [http://en.wikipedia.org/wiki/Small\\_claims\\_court](http://en.wikipedia.org/wiki/Small_claims_court), accessed on March 8, 2012.

<sup>22</sup> *Ibid.*

<sup>23</sup> See the Rules of the Supreme Court No. 2 of 2015 on Procedures for Simple Suit Resolution.

conditionally. The right to appeal can only be exercised against civil cases with the value of claim of one million or more. The question is whether or not this requirement is contrary to human rights. To address this question, the question of whether or not the freedom of the right to appeal is absolute should be answered first. Among the means to address this issue is to return to what are the benefits of the rules of the filing of an appeal. The issue of the benefits of rules of law constitutes the subject matter of the Utilitarianist. According to Jeremy Bentham,<sup>24</sup> the purpose of law is justice, the greatest happiness of the greatest number. Based on this purpose of law, Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura is to generate happiness for the people, for litigants, so that a law must fulfill four (4) purposes:<sup>25</sup> first, to provide subsistence; second, to provide abundance; third, to provide security; and fourth, to attain equity. Entitling the parties to file an appeal in cases with the value of the object of claim under one million does not constitute legal protection since it will not bring happiness, as suggested by Jeremy Bentham. In principle, all the decisions handed down by the first instance courts can be appealed, provided that it is within the grace period specified by laws,<sup>26</sup> except those not benefiting the parties.

Restriction on appeals is not expressly governed by Rbg. Restriction

of appeals can implicitly be found in Article 199 paragraph (1) of Rbg, which states:

In the event that civil proceeding at the appellate-level court is possible, the appellant who want to seize the opportunity shall file a petition for it which, when deemed necessary, is accompanied by an appeal brief and other documents useful for it or the petition can be filed by an agent as referred to in Article 147 paragraph (3) with a special power of attorney to the clerk of court within 14 days from the day the district court's decision is read out, while the grace period is fourteen days after the decision is notified under section 190 to the parties concerned, if they are not present at the time of the decision.

Restriction on appeals is implicitly found in the phrase "In the event that civil proceeding at the appellate-level court is possible". Implicitly, it connotes specific requirements for filing an appeal. This may be influenced by the historical fact of the appellate courts which turns out to having had the restriction on appeals. The difference in the rule of restrictions on appeals between Article 199 Paragraph (1) of Rbg and Article 6 of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura lies in the clarity of the formulation of the restriction on appeals. Article 6 of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court

<sup>24</sup> Teguh Prasetyo and Abdul Halim Barkatullah, 2007, *The Science of Law and Philosophy of Law: a Study of Legal Experts' Thoughts throughout the Ages*, Pustaka Fajar, Yogyakarta, p. 100.

<sup>25</sup> *Ibid.*

<sup>26</sup> Sudikno Mertokusumo, *Op.cit.*, p. 232.

in Java and Madura contains a clear and unequivocal rule of restriction on appeals, so that not all civil cases resolved by the first-instance court can be appealed. On the contrary, there is no explicit and clear restriction on appeals under Article 199 paragraph (1) of Rbg. This equivocal and unclear rule raises the issue of judicial practice, that all decisions of the first-instance courts can be appealed.

## 2) **Grace Period of an Appeal**

Article 7 (1) of Law No. 20 of 1947 concerning Appeal Court. Regulation of Appeal Court in Java and Madura states that:

A petition for an appeal must be submitted by letter or by spoken by the appellant or his representative who deliberately authorized to file the petition to the Clerk of the District Court, which ruled, within fourteen days from the next day of the *notice* of the decision to those concerned.

The important issues with regards to determination of the grace period for an appeal relate to determination of when a verdict has a permanent legal effect, when reversal of the verdict is already handed down by the first-instance courts, and the validity of an appeal. A verdict has permanent legal force (*in kracht van gewijsde*) if within a period of fourteen days from the next day the verdict is handed down or notified the losing party does not file an appeal. The rule of notification of the verdict to the losing party should be clearly defined

to prevent legal implications.

The Supreme Court's ruling No. 391 K/Sip/1969 dated 25-10-1969 stipulated that "A petition for an appeal filed beyond the grace period under the law cannot be accepted and the documents submitted for evidence in the examination of the appeal cannot be considered".<sup>27</sup>

According to Reglement op de Buitengewesten (Rbg), the grace period of filing an appeal is fourteen days from the verdict is handed down, or since the notification of the verdict if the appellant is not present when the verdict is handed down. The time from which a verdict becomes enforceable is calculated based on two criteria; from the verdict is handed down, or from the verdict is notified, as provided for in Article 199 paragraph (1) of Rbg, which states:

In the event that civil proceeding at the appellate-level court is possible, the appellant who want to seize the opportunity shall file a petition for it which, when deemed necessary, is accompanied by an appeal brief and other documents useful for it or the petition can be filed by an agent as referred to in Article 147 Paragraph (3) with a special power of attorney to the clerk of court within 14 days from the day the district court's decision is read out, while the grace period is fourteen days after the decision is notified under section 190<sup>28</sup> to the parties concerned, if they are not present at the time of the decision.<sup>29</sup>

This article contains two

<sup>27</sup> *Ibid.*

<sup>28</sup> Article 190 of RBG in question is Article 190 paragraph (2) of Rbg which states that: "If the parties or one of them is not present at the time of the pronouncement, then the chief shall order an authorized employee to deliver the contents of the verdict to those not present.

<sup>29</sup> Article 199 of RBG.

points regarding the determination of the grace period for an appeal: first, a grace period of fourteen days from the verdict is handed down; the second, a grace period of fourteen days after the verdict is notified. There are two different criteria, from the verdict is read out and after the verdict is notified. ‘From the verdict is read out’ becomes the criterion for calculating the commencement of the appeal grace period if the parties are present when the verdict is read out. If, at the time the verdict is handed down, the losing party is not present, the appeal grace period commences from notification of the verdict to him. Rbg *does not* regulate the time limit of when the court shall notify the verdict to the losing party who is not present at the reading out of the verdict. This situation provides opportunities for abuse by the losing party to extend the time of the case.

In judicial practice, an appeal not meeting the formal requirements must be declared unacceptable (*niet ontvankelijk verklaard*)<sup>30</sup> as confirmed by the Supreme Court’s ruling No. 2766 K/Pdt/1983 dated January 14, 1985,<sup>31</sup> further affirming when the appeal has exceeded the 14 days provided in Article 199 paragraph (1) of Rbg, the petition is contrary to law and must be declared unacceptable. Similarly, the Supreme Court’s ruling No. 391 K/Sip/1969,<sup>32</sup> stated that appeals filed beyond the grace period prescribed by law cannot be accepted, thereby the documents submitted for evidence in

the appeals cannot be considered.

Article 199 paragraph (2) of Rbg constitutes a conditional rule, stating that “the district courts are authorized to extend the grace period according to the situations as mentioned in the above paragraph up to a maximum of six weeks.” This article deals with the appellant’s residence that is located outside the jurisdiction of the court that handed down the verdict.<sup>33</sup>

A formal rule is also found in Article 199 paragraph (5) of Rbg, which states that:

A statement of appeal will not be accepted after the grace period as mentioned in the previous paragraphs, and withal, if the statement is not accompanied by payment of advance money to the clerk—the amount of which is estimated temporarily by the chief of the district court, considering the need for costs of clerkship, summons and notice to parties concerned and the necessary seals.

This article explicitly regulates the formal requirements for filing an appeal with an implication that an appeal is not accepted if it does not meet the formal requirements. This chapter is a further elucidation of the legal principles contained in Article 199 paragraph (1) of Rbg.

### **3) Court’s Costs of Appeals as a Legality Requirement for an Appeal**

Article 7 paragraph (4) of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court

<sup>30</sup> M. Yahya Harahap, *Op.cit.*, p. 43.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*, p. 44.

in Java and Madura states that: “The petition for the above hearing has passed, likewise, if at the time of filing the petition the advance money has not been paid, which is required by the legal regulations, the cost of which shall be estimated by the Clerk of District Court”. If the court’s cost of an appeal has been paid, a statement of appeal shall be issued by the clerk of first-instance court, and thus since then the verdict does not have any binding legal force (*in kracht van gewijsde*). Sudikno Mertokusumo asserted that:

By the time of the appellant files a petition for an appeal, the formal requirement to pay the court costs is attached to the petition. It is coercive or imperative in nature. It cannot be tolerated. As long as the costs are not paid, the appeal is considered never existed [...] Legality shall only be attached to the petition from the date of payment of court costs.<sup>34</sup>

According to the Reglement op de Buitengewesten (RBg), provisions of legality of an appeal are provided in Article 199 paragraph (5) of RBg, which reads:

A statement of appeal will not be accepted after the grace period as mentioned in the previous paragraphs, and also if the statement is not accompanied by payment of advance money to the clerk the amount of which is estimated temporarily by the chief of the district court, considering the need for costs of clerkship, summons and notice to parties concerned and the

necessary seals.

This article deals with the legality of an appeal, which is dependent on two points: *first*, an appeal shall be legal if it is filed within the appeal grace period; and *second*, an appeal shall be legal if the court costs for the appeal is paid. These two (2) requirements are imperative-cumulative, meaning that these two requirements must be met. Thus, the legal principle that can be drawn from this article is that a civil case is subject to court costs.

**c. *Inzage* Does Not Constitute a Formal Requirement**

*Inzage* does not constitute a formal requirement for an appeal, pursuant to Article 11 (1) of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura, which states that: “In no later than fourteen days after the petition for an appeal is received, the clerk of court shall make known to both parties the fact that they can see the documents related to their case in the office of the District Court for fourteen days.” *Inzage* is to see or examine the case files.<sup>35</sup> Seeing the relevant documents means seeing the minutes of proceedings, evidence and verdict. In this context, seeing is examining and studying the entire case files.<sup>36</sup> There are two (2) aspects made by the parties at the time of *inzage*: first, examining whether all the things and events that occurred during the course of the proceedings have been actually included in the case file; second, examining whether all the evidence have been included in the minutes. M. Yahya Harahap stated there are three (3) things done by the parties at the time of *inzage*:

Examining whether all things and

<sup>34</sup> *Ibid.*, p. 50.

<sup>35</sup> *Ibid.*, p. 80.

<sup>36</sup> *Ibid.*, p. 81.

events occurred during the course of the proceedings have been actually included in the case file objectively as it should be, whether all the evidence and statements of witnesses or experts and local examination (if any) have been included appropriately and correctly in both the minutes and considerations of the verdict, and whether the law has been applied in accordance with the merits of case at issue.

The third aspect is not necessarily done at the time of *inzage* since it takes considerable time and can be carried out outside *inzage* by examining the copy of the verdict. *Inzage* is not only for the appellee upon receipt of the notice of appeal and memorandum of appeal brief, but also for the appellant, despite the drawn up memorandum of appeal. There are no legal consequences for the parties not performing *inzage*.

A close look at the rule of law of *inzage* shall indicate that it has no clear objective and purpose. Performing it prior to drawing up a memorandum of appeal would be clearly beneficial for the appellant since it would be included in the memorandum of appeal. Similarly, it would be very helpful for the appellee to carry out *inzage* upon receipt of an appeal to which he would draw up a contra-memorandum of appeal. If *inzage* only aims to determine the completeness of the case file, it is the responsibility of the court, rather than the litigants. According to M. Yahya Harahap, the purpose of *inzage* is to draw up a memorandum of appeal or counter-memorandum of appeal.<sup>37</sup> The appellant can state things he considers lacking or incorrect in the verdict, based on the results of *inzage*.

This article confers the legal right, rather than obligation, to parties to perform *inzage* and, thus, the legal principle is that the

litigants have the right to examine the case files. On this legal principle, the court should give an opportunity to the parties to carry out *inzage*, and then it is up to the parties to exercise their right. The opportunity given to the parties is limited to fourteen days from the date of petition for an appeal is received and recorded in the register. If the court's notification of *inzage* is beyond the grace period, the parties would lose the right to *inzage*. A mistake is made by the court but it is the parties who lose their right; the application of such a rule would be unjust. M. Yahya Harahap stated that the rule of notification of *inzage* is no later than fourteen days from the date of receipt and the register of petition for an appeal does not contain a final deadline (*fatale termijn*), so despite the past period of fourteen day, the court shall notify the parties to exercise their right to *inzage*.<sup>38</sup>

The grace period of *inzage* is fourteen days from the date of *inzage* notification is received by the parties. The grace period of *inzage* is imperative since *inzage* is a legal right, rather than a legal obligation. If the parties do not perform *inzage* within the grace period of fourteen days, the parties shall lose their right, as stipulated in Article 11 (2) of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura: "Then the copy of verdict, the letter of hearing and other relevant documents must be sent to the Clerk of the High Court concerned, not later than one month upon receipt of the petition for an appeal".

In practice,<sup>39</sup> the court's omission to notify *inzage* is often used as an excuse for a cassation in order for the Supreme Court to revoke the verdict of the appellate court for violating the procedure for an appeal as

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, p. 83

<sup>39</sup> *Ibid.*, p. 85.

provided for in Article 11 (1) of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura. On the issue, the Supreme Court is of the opinion that in absence of both *inzage* notification and *inzage* itself the validity of the verdict handed down by the appellate court is not reduced, as set forth in the Supreme Court's ruling No. 1070K/Pdt/1984, dated 23-9-1985, which states that:<sup>40</sup>

The PN's omission of not notifying *inzage* to the parties, in this case to the appellant, indeed violates the order of proceedings; however, the violation can be tolerated since, in absence of a memorandum of appeal, a case in the appellate level shall still be re-heard as a whole, while the purpose of an *inzage* or a study of the case file is to submit a memorandum of appeal.

In fact, in ruling No. 3135 K/Sep/1983 dated 28-11-1985,<sup>41</sup> The Supreme Court is of the opinion that:

Notification of the study of the case file or *inzage* is not imperative, since the provisions of Article 11 (1) and Article 202 of RBg are basically not coercive; additionally, a memorandum of appeal does not constitute a formal requirement for the legality of an appeal; thus, in absence of a memorandum of appeal or a contra-memorandum of appeal, the case shall still be re-heard in its entirety.

Article 11 (2) of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura states that: "Then the copy of verdict, the letter of hearing and other relevant documents must be sent to the Clerk of the High Court concerned, no later than one month upon receipt of the petition for an appeal". This

article contains a rule of law that an appeal case file must be sent no later than one month after the filing of the petition for an appeal. The rule of law constitutes a rule of order; the content of which is clear, but it has not yet been followed by a penalty for delay in the grace period specified.

The grace period for submitting a case file is based on the date of the petition for an appeal filed. This rule of law is clear and unequivocal, giving rise to legal certainty, and even the application is straightforward and unambiguous, and does not contain multiple interpretations.<sup>42</sup> According to the *Reglement op de Buitengewesten* (Rbg), *Inzage* is not regulated in the RBg, but in the judicial practice outside Java and Madura, application of *inzage* constitutes an integral part of appeal proceedings.<sup>43</sup>

#### **d. Memorandum of Appeal Does Not Constitute a Formal Requirement**

A memorandum of appeal does not constitute a formal requirement for an appeal, as stipulated in Article 11 (3) of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura:

Both parties are allowed to submit certificates and evidence to the Clerk of the District Court or the Registrar of the High Court shall decide, provided that the copy of the letters is to be given to the party in opposition through an employee of the District Court appointed by the Chief of the District Court.

This article deals with memorandum of appeal and the evidence that may be submitted to the district court or the high court. This rule of law is correct since it is in accordance with the legal principle of two-level court, but it needs to be adapted to the

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*, p. 86.

<sup>42</sup> *Ibid.*, p. 88.

<sup>43</sup> *Ibid.*, p. 80.

legal principle of simple, fast, and low-cost court, which is by specifying the grace period of submission. A specified grace period provides legal certainty to the opposing party to respond and the judge.

A memorandum of appeal constitutes an objection to overall considerations and partial considerations of the judge.<sup>44</sup> A memorandum of appeal and counter-memorandum appeal is the right of the appellant and appellee; thus, they are not part of formal requirements for the legality of petition for an appeal. It can be seen in the Supreme Court's ruling No. 663 K/Sip/1971,<sup>45</sup> which states that a memorandum of appeal does not constitute a formal requirement for a petition for an appeal, so it is not imperative. Similarly, the Supreme Court's ruling No. 3135 K/Pdt/1983<sup>46</sup> states that in absence of a memorandum of appeal, the petition for an appeal remains valid and unacceptable and does not constitute a formal requirement for legality of the appeal. Based on the same rule, the appellee has the right to submit a counter-memorandum of appeal, which contains rebuttal to the contents of the memorandum of appeal filed by the appellant. A memorandum of appeal is not a necessity, as the rule of law contained in the Supreme Court's ruling No. 663 K/Sip/1971 dated August 6, 1973, in the case of Soeparman alias Slamet versus Notodiwinjo alias Ngatman and R. Soetamo Hadisoemarto, which states that "The law does not require the appellant to submit a memorandum of the appeal. If desired, the reasons for the appeal may be included in the memorandum of the appeal".<sup>47</sup>

Not notifying the memorandum

of appeal to the appellee does not lead to revocation of the decision of the appellate court. This rule of law is found in the case of Tan Sang Kok and Tan Sang Kim versus Mrs. Oey Eng Nio, which states that:

He was never notified of the petition for an appeal filed by the appellee in cassation, so he cannot exercise his right to draw up a counter-memorandum of appeal in order to complete his evidence in the High Court; this cannot be justified since it does not lead to revocation of the ruling of the High Court because the High Court is to hear and decide a case on appeal in its entirety.<sup>48</sup>

According to the Reglement op de Buitengewesten (Rbg), a memorandum of appeal is tentative (voluntary) in nature. The tentative nature of memorandum of appeal is found in the phrase "when deemed necessary, is accompanied by appeal brief and other documents useful for it". A memorandum of appeal is tentative since the nature of proceedings in appellate court is a retrial, as stated in Article 199 paragraph (1) of Rbg:

In the event that civil proceeding at the appellate-level court is possible, the appellant who want to seize the opportunity shall file a petition for it which, when deemed necessary, is accompanied by an appeal brief and other documents useful for it or the petition can be filed by an agent as referred to in Article 147 paragraph (3) with a special power of attorney to the clerk of court within 14 days from the day the district court's decision is read out, while the grace period is fourteen days after the decision is notified under section 190 to the parties concerned, if they are not present at the time of the decision.

<sup>44</sup> *Ibid.*, p. 72.

<sup>45</sup> *Ibid.*, p. 73.

<sup>46</sup> The Supreme Court's ruling No. 3135 K/Pdt/1983 dated 28-11-1985.

<sup>47</sup> M. Yahya Harahap, *Ibid.*

<sup>48</sup> Tan Sang Kok and Tan Sang Kim versus Mrs. Oey Eng Nio, The Supreme Court of the Republic of Indonesia, No. 881 K/Sip/1973, dated 3-12-1973.

A memorandum of appeal does not a formal requirement for an appeal, as stated in Article 202 paragraph (2) of Rbg, which reads: “the clerk of court as soon as possible, through the competent officials, inform the parties in opposition on a petition for an appeal, accompanied by the copy of the appellant’s appeal brief or other documents.” This article contains a rule of law that a memorandum of appeal is to be notified as soon as possible along with the memorandum of the appeal. This rule of law is clear and indicates the necessity of a memorandum of appeal at the time a petition for an appeal is notified. In connection with the legal principle of two-level court, in which appeal proceedings are re-hearing not requiring a memorandum of appeal, this rule of law is inappropriate.

Judicial practice raises novel rule of law, which stipulates that a memorandum of appeal may be filed as long as the case has not been decided by the High Court. The law does not specify the time limit to it.<sup>49</sup> A memorandum of appeal filed should be examined by appellate judges but, apparently, this is not the case, since as commonly interpreted appellate judges are not required to review everything stated in the memorandum of appeal.<sup>50</sup>

Notification of a memorandum of appeal to the party in opposition is an absolute imperative since, if not done, the court’s verdict is revocable.<sup>51</sup>

**e. Procedures for Civil Proceedings is of Repetition in Nature**

The provisions relating to the procedures for proceedings at appellate court are found in Article 15 paragraph

(1) of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura, that: “The High Court in the re-hearing of a case shall examine and decide with three judges, if deemed necessary, by listening themselves to both parties or witnesses”. This article contains two points: first, re-hearing of a case; and, *second*, listening themselves to both parties or witnesses. These two points illustrates the two different situations of proceedings. In the first situation, civil proceedings are carried out by a panel of three judges, as practiced at first-instance courts. In the second situation, the civil proceedings are carried in a different way to that at the first-instance courts.

This article contains an ambiguous legal concept. Re-hearing implies the proceedings are conducted by hearing the statements of both parties and the witnesses. Re-hearing without hearing both parties and the witnesses does not constitute civil proceedings, but examination of case files. Civil proceedings and examination of case files is two different things. Civil proceedings are conducted in order to find the truth in a case, while examination of case files aims to determine the completeness of the case file as a requirement to carry out civil proceedings. The phrase ‘if deemed necessary’ should not be raised in the formulation of the article since it reduces the meaning of ‘appeal’.

An appeal is to examine a civil case for the second time (repeated) by the appellate court concerning facts or events and the laws. ‘Repeated’ connotes hearing a civil case with the same procedure, as in the first-instance court. The procedure for civil proceedings conducted in the first-instance court is

<sup>49</sup> Kirno Sembiring versus Lamat Sembiring, the Supreme Court of the Republic of Indonesia, No. 39 K/Sip/1973, dated 11-9-1975.

<sup>50</sup> R. Abdulhambar versus Trade Company Tiedemam & Van Kerchen, the Supreme Court of the Republic of Indonesia, No. 143 K/Sip/1956, dated 14-8-1957.

<sup>51</sup> M. Soleh Uding bin Haji Abdulah versus Herman Uzir bin Arsyat, The Supreme Court of the Republic of Indonesia, No. 74 K/Sip/1955, dated 11-9-1957.

repeated in the appellate court.

With regard to civil proceedings, Article 15 of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura only deals with the concept of case re-examination and case examination through hearing by themselves, while the court proceedings are not regulated. Due to the lack of clarity, the civil procedural law at the appellate court for Java and Madura uses the Rv.

With regard to judicial practice, the Supreme Court's ruling No. 879 K/Sip/1974 dated 14-4-1976<sup>52</sup> confirmed that the High Court is to hear and decide a case on appeal based on the case file submitted by the District Court to the High Court; it does not mean a decision handed down without the presence of the litigants is not valid, such a system is a usual procedure in the appellate level. It appeared that, in this case, the losing party questioned on the procedure for civil proceedings carried out by the high court without the presence by the parties, and felt injustice.

Hearing of a case in the appellate court as though it is a court of cassation is wrong, as confirmed by the civil case of Mrs. Surjati Munaba (Nio Swie Heang) versus Lie Tiong Ho,<sup>53</sup> which stipulates that "The procedure for civil proceedings at the appellate court seems to resemble a court of cassation that considers objections raised by the appellee is wrong. The judges are supposed to re-hear the case in its entirety, both the facts and the application of law".

The legal implications for first-instance courts' and appellate courts' conducting civil proceedings that deviate from procedural law

is that the case must be re-heard, as confirmed by the case of Dirik Moningka et al. versus Corenus Leonardus Adrianus Wakkary and Pieterus Rarung, which stipulates that "since *judex facti* has heard the case by violating the applicable procedural law, so the decision was not based on the proper minutes of proceedings, the District Court is ordered to re-hear and decide this case".<sup>54</sup>

The procedure for civil proceedings at the appellate court under Article 204 of Rbg states that: "Provisions set out in Title VII of the First Book of Civil Procedure Regulation apply to appellate civil proceedings. The Civil Procedure Regulation in this case is *Reglement of de rechtsvordering* (Rv). Rv applies as it is *designated* by Article 204 of Rbg, while RBg that governs appeals is declared as valid by Emergency Law No. 1 of 1951. Rbg does not regulate the procedure for civil proceedings at the appellate court, but it designates Rv as the civil procedural law applicable to civil proceedings at the appellate court. The use of Rv as the procedural law for appellate courts for areas outside Java and Madura has a solid legal basis, but for Java and Madura there is no legal basis to impose Rv in civil cases proceedings at appellate courts.

Civil procedural law governing the procedure for civil proceedings at appellate courts apply provisions contained in Rv since Article 204 of RBg designate the application of Article 357 of Rv. According to scholars, the application of Rv to the judicial practice of appeals is based on the needs of procedural law.<sup>55</sup> Rv application to the appellate judicial practice, in my opinion, is not based on a solid philosophical basis since it does not consider the nature of the judicial appellate

<sup>52</sup> Chidir Ali, 1982, *Collection of Commercial Law Jurisprudence in Indonesia*, Pradnya Paramita, Jakarta, p. 73

<sup>53</sup> Mrs. Surjati Munaba (Nio Swie Heang) versus Lie Tiong Ho, the Supreme Court, No. 951 K/Sip/1973, dated 9-10-1975.

<sup>54</sup> Dirik Moningka versus Corenus Leonardus Adrianus Wakkary and Pieterus Rarung, The Supreme Court of the Republic of Indonesia, No. 223 K/Sip/1975, dated January 18, 1977.

<sup>55</sup> M. Yahya Harahap, *Op cit.*, p. 112.

court as the level-two *judex facti*. The nature of appellate courts is the same as the first-instance courts, namely as the *judex facti*, so that the procedural law applied should be the same, no difference. This leads to injustice in the civil judicial practice since there are two judicial institutions that serve the same function as *judex facti*, but with different procedural law. Verifying the truth must be done with the same procedural law, despite the different judges.

The legal consideration of Article 204 of Rbg to apply Article 357 of Rv as the civil procedural law to civil proceeding at the appellate courts is that Rv constitutes the procedural law applicable to the *Raad van Justitie* and, therefore, considers that *the Raad van Justitie* and the High Court is the same. Thus, it is appropriate to apply Rv to the high court, despite the difference between the two appellate courts.

#### **f. Supplementary Civil Proceedings**

Supplementary hearing emerged as an interpretation to the provisions of Article 15 paragraph (1) of Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura, which stipulates that: The High Court in the re-hearing of a case shall examine and decide with three judges, *if deemed necessary*, by listening themselves to both parties or witnesses.” The term “supplementary hearing” appears due to the practice of civil proceedings at the appellate courts pursuant to Article 357 of Rv that civil proceedings are carried out without much processes and the decision is taken based on the case file submitted by the district court to the high court. If, during the examination of the case file, the judges consider that they need statements of the litigants or witnesses, the

appellate court may conduct supplementary hearing. Supplementary hearing is carried out if there are unclear facts. Unclear facts constitute the judges’ consideration to conduct supplementary hearing.

In practice, the term “supplementary hearing” is found in the Supreme Court’s ruling No. 3136 K/Sip/1983,<sup>56</sup> that:

[...] In accordance with Article 15 paragraph (1) of Law No. 20 of 1947, the high court is authorized to conduct their own supplementary hearing; in fact, this procedure is more effective since the high court is more aware of what items are going to be heard; however, if the high court wants to carry out their own supplementary hearing of the parties, it should actually consider the cost factor that must be borne by the parties. Accordingly, supplementary hearing is not absolutely necessarily delegated to the district court by the high court.

Supplementary hearing appears since there is consideration that civil proceedings at the appellate courts only examine the case file submitted by the first-instance courts to the appellate courts. This practice actually violates the legal principle of two-level court, because it turns out that the appellate court did not examine the case in accordance with its function, the *judex facti*.

The practice of supplementary hearing extends the civil proceedings at the appellate court if the procedure follows the opinion of M. Yahya Harahap,<sup>57</sup> in which the appellate court is to issue a preliminary verdict if it implements it on its own or to assign a panel if it delegates its authority to the district court where the verdict has been handed down. Supplementary hearing should be an integral part of a regular hearing at the appellate court. If the current judicial practice performs

<sup>56</sup> *Ibid.*, p. 154.

<sup>57</sup> *Ibid.*, p. 157.

regular hearing, i.e., examination of the case file, then this practice should be corrected to be regular hearing as occurs in the first-instance courts with emphasis on the hearing of the parties or witnesses. This regular hearing will give satisfaction to the parties as the seekers of justice, so the appellate court becomes the ultimate court. Thus, there is no need for issuing a preliminary verdict to perform supplementary hearing.

Assigning a panel of judges to order the first-instance courts to conduct supplementary hearing would lead to juridical implications. With regard to the aspect of the authority to try a case, the first-instance courts are not subordinate to the appellate courts; thus, the first-instance courts may not carry out the assignment. If the first-instance courts are to try the case, the appellate court would certainly do the same as when the case is heard first.

Civil proceedings at appellate courts raise implications for the judicial function of

the appellate courts as *judex facti*. So as not to conflict with judicial functions of appellate courts as *judex facti*, the formulation of Article 15 paragraph (1) of the Law on Courts of Appeal should be corrected by removing the phrase “if deemed necessary”. Doing so would authorize the appellate courts to carry out the judicial function as the true *judex facti*.

RBg does not regulate supplementary hearing of civil cases at the appellate courts, so that the practice of supplementary hearing by appellate courts outside Java and Madura is not based on a solid legal basis. Thus, it is necessary to enact a law on civil procedure at the appellate court applied nationally.

### C. Conclusion

Current civil proceedings at the appellate courts do not have a solid legal basis since it is not regulated in Law No. 20 of 1947 concerning Appeal Court Regulation of Appeal Court in Java and Madura and HIR as well as Rbg.

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