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The Meaning of Audi Et Alteram Partem Principle In Verstek Verdict Of Civil Law

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Abstract

The purposes of this study are 1) To identify and analyze the philosophy of imposing *verstek verdict in civil law case* 2) To discover and analyze the meaning of *audi et alteram partem* principle in imposing *verstek* verdict in civil law case 3) To discover the ideal legal concept in imposing the *verstek* verdict by the Judge to provide legal protection especially for defendant under the national law framework which refer to the philosophy of Pancasila and base on the UUD 1945. This study is normative research as well as doctrinal by analyzing provisions in various law regulations that relate to the impose of verstek verdict such as HIR, RBg, Rv and the draft of Civil Law, analyzing legal principles, the meanings, and expert opinions which relate to the discussed topic, using the law approach, conceptual and historical approaches. The result of this study is showing that the nature of *verstek* is the statement of defendant is not present in the court. Other than the verstek verdict is imposed by the judge with condition that the defendant has been legitimately and properly called however the concerned person nor the legal counsel is not present without any proper reason, the other reason is the accusation of the litigant is not against the law/base on law. The aim of the impose of *verstek* verdict by the judge is to encourage all parties to obey the trial procedure, to be present in the trial to defend their interests and rights. The impose of verstek verdict is not violating *audi et alteram partem* principle because the Judge has given a chance to the defendant to be present in the trial to defend their interest however they failed, also has been given equaled opportunity to all parties to prove their propositions as well as the same rights to take legal actions. The *audi et alteram partem* principle has the meaning of the given of equaled opportunity (the principle of equilibrium) to the both side to defend and protect their right in front of the Judge, this principle is constituting the reflection of justice, as one of aspects of justice is equality before the law. The equality of rights can be seen from the same rights that given to both parties to be present at the trial, to prove their argument (principle of burden of proof), and to take a legal action on the judge verdict. The imposition of an ideal verstek verdict other than based on the applicable law, it also should require a prudence attitude of the judge in imposing verstek decision. Result of the verdict is not just formalistic, but also reflecting a certainty of law, justice and expediency. This can be achieved not only by relying on the ability of the judges themselves, but also by having legal certainty through a clear and firm legal regulations that adhered and applicable in the society. Judge's verdict should be able to provide a legal protection to everyone which eventually will provide the sense of Justice.

Key Words : the principle of equilibrium, verstek verdict, and justice

1. Preliminary

National development tries to improve human quality in all aspects of life in a sustainable manner, including in law development, therefore Law as the vehicle of community renewal should not be left behind the process of development that happened in the society. The development of law in Indonesia is directed to the realization of a steady legal system which covering the structure, legal apparatus, legal facilities and infrastructure, for the manifestation of community with a high awareness and legal culture to create a state of law. Steps to be taken to support the improvement of law system and politic in law development programs are covering: Law Planning

Program, Law Formation Program, performance improvement program of justice institutions and other law enforcement institutions, Quality Improvement Program of Legal Professions and Law Awareness Program and Human Rights.

Mochtar Kusumaatmadja, express that law as the tool of community renewal (development) is also growing along with the speed of development in all aspects of life.[1] In a line with the needed of law changes, Mariam Darus said that law is functioned to serve people, to keep the activity in the community is going smoothly, interests are fulfilled. If the interest of the people is changed, the law must be updated and laws that are inconsistent with its duties of serving should be discarded, should be abandoned.[2] The regular change can be helped by regulation or court decision, or a combination of both considering court decision is also a law, due to jurisprudence is one of law sources.[3]

Law development is implemented through the law renewal to improve the certainty, awareness, the serve and enforcement of law that cored to justice, truth, order and prosperity to provide more orderly and tidy state admistration. Law enforcement is one of inescapable requirements for the effort of establishing a peace and prosper nation. Conceptually, the core and the meaning of law enforcement lies on the activity of harmonizing the relations of values which are translated in the rules that exist in society to maintain and keep the order.[4] Basically law enforcement starts from the role of law enforcer itself because law enforcer is the guard fence whom prevent dan exterminate all forms of manipulation or devian behavior, segala bentuk penyelewengan atau tingkah laku menyimpang, so it is for the judge in establishing law enforcement that characterized by justice, certainty of law, and benefit through the judiciary.

Basically, the purpose of the establishment of the judiciary is to give legal protection to individual rights and the rights of community, to achieve harmony, equality, and conformity between personal interests and general interests of the community.[5] Court institutions is not only performed its functioned in law enforcement, but also able to run a mission to enforce justice. The Law State provides guarantee on protection and ceratainty of law as well as equal treatment before the law by submitting lawsuit of the rights through judiciary institutions with purpose to avoiding "*eigenrichting*" or acting of self judgement. In the attempt of law enforcement Judiciary Institutions must be fair, by providing a balanced opportunity to the parties to defend their interests. This is known as principle of "listen to both sides" or principle of "the equality of both parties who lit up before the judge" (*audi et alteram partem* atau *eines manres rede ist keines mannes rede*), these priciples mean the judge shall not give a verdict without giving a chance to hear both parties.[6] In a civil case lawsuit, the Judge should not impose any verdict by only base on information by one party, unless having the fact that after a proper calls the defendant is still not present nor instructing their representative or law attorney and not using their right to be heard, then Judge can impose the verstek verdict.[7]

Verstek verdict may be imposed by a Judge if the Defendant has been properly and legitimately called but is not present at the hearing for no legitimate reason, or the defendant is never telling others to be present at the hearing as their legitimate representative, and the lawsuit is justified and not against the law. The absence of the defendant does not preclude the examination process of the case. The impose of verstek verdict by the judge will only consider to the lawsuit and matters that submitted by the Plaintiff, this is different with the principle of *audi et alteram partem* which requires the judge to hear both sides lit before imposing the verdict. Nevertheless, on the handling of this verstek verdict, the parties are given the opportunity to make efforts on the verdict of verstek. This is an effort to protect the law especially for the defendant who was never present at the hearing. Base on above matters, which is the imposed of verstek verdict by the judge as well as being associated with the principle

[1]Mochtar Kusumaatmadja, *Pembinaan Hukum Dalam Rangka Pembangunan Nasional*, Lembaga Penelitian Hukum dan Kriminologi Fakultas Hukum Universitas Padjajaran, Binacipta, Bandung, 1986, hlm. 3-6. (selanjutnya disebut Mochtar Kusumaatmadja I),

[2]Mariam Darius Badrulzaman, *Beberapa Guru Besar Berbicara Tentang Hukum dan Pendidikan Hukum, Kumpulan Pidato-Pidato Pengukuhan*, Penerbit PT. Alumni, Bandung, 1981, hlm. 95.

[3]Mochtar Kususmaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan*, Penerbit PT Alumni, Bandung, 2002, hlm. 19. (selanjutnya disebut Mochtar Kusumaatmadja II).

[4]Fence M. Wantu, *Idee Des Recht: Kepastian Hukum, Keadilan, dan Kemanfaatan (Implementasi Dalam Proses Peradilan Perdata)*, Pustaka Pelajar, Yogyakarta, 2011, hlm. 5.

[5]Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia*, PT Bina Ilmu, Surabaya, 1987, hlm. 90. (selanjutnya disebut Philipus M. Hadjon I).

[6]Achmad Ali dan Wiwie Heryani, *Asas-Asas Hukum Pembuktian Perdata*, Kencana, Cet. Kedua, Bandung, 2013, hlm. 61-62.

[7]Sarwono, *Hukum Acara Perdata Teori dan Praktik*, Sinar Grafika, Edisi 1, Cetakan Kedua, Jakarta, 2011, hlm. 21-22.

of audi *et alteram partem,* this journal will present 3 (three) formulations of the problem to be discussed, as follows:

1. What is the philosophy of the judgement of verstek verdict in civil cases?
2. What is the meaning of the principle of *audi et alteram partem* on the judgement of verstek verdict in civil cases?
3. How does the concept of legal protection against the defendant over the judgment of verstek verdict?

This research is based on several legal theories which are 1. The Theory of Justice by Aristoteles, which said that *unicuique suum tribuere* (giving everyone what they deserve) and *neminem laedere* (do not disadvantage others), or more completely by Kant, *honeste vivere, neminem laedere, suum quique tribuere/tribuendi.* That emphasis of justice is trying to fight for the state to give justice to those who deserve it. If someone has a right to something, then we are obliged to give that right.[1] 2. Theory of Law Enforcement by Muladi[2] which state that law enforcement is an attempt to uphold the norms of law and at the same time the values behind the norm. Law enforcers must really understand the spirit of the law (*legal spirit*) which underlie the rule of law to be enforced and this will be related to the various dynamics that occur in the life of society, in the nation and country. 3. The Theory of Legal Protection from Salmond , in essence the law aims to integrate and coordinate various interests in society by limiting them, and recognition of the rights of related parties.

The purpose of this study is 1)) To identify and analyze the philosophy of imposing *verstek verdict in civil law case* 2) To discover and analyze the meaning of *audi et alteram partem* principle in imposing *verstek* verdict in civil law case 3) To discover the ideal legal concept in imposing the *verstek* verdict by the Judge in order to provide legal protection especially for defendant under the national law framework

2. Research Methods

This study is a normative and doctrinal legal research. Normative is used because of the distinctive character of law science that lies in the method of research that is normative, jurisprudence.[3] Doctrinal research is used to analyze the principles of law (civil procedure law), legal literature, expert opinion (doctrine).[4]

This study uses a *statute approach*, *conceptual approach*, and *history approach*. The *statute approach* carried by reviewing all the rules and regulations which is related to legal issues of verstek verdict such as HIR, RBg, Rv (*ius constitutum*), as well as the draft of Statute of Civil Law as the *ius constituendum*. This approach is consistent with the view of law as a norm, theorem, and rules that apply in society in accordance with the principles of law.[5]

The conceptual approach goes from the expert opinion (doctrine) that is developed in the science of law. By studying the views and doctrines in the science of law, the author will discover ideas that gave rise to legal notions, legal concepts, and legal principles which is relevant to faced the issues especially with regard to the concept of verstek verdict in order to provide legal protection to all parties that have case.[6] Historical Approach (history) is carried by looking back to the development of the enactment of the legal rules on the civil law cases, especially with regard to the judgment of judges' verstek verdict. The legal material used is the primary legal material which is autoritative, consist of the statute, official records or the minutes of a law making and judge's decicions. While the secondary legal material is all publications about Law which are not official documents. The publication of law is including text book, legal dictionaries, legal journals, and comments on

[1]Dominukus Rato, *Filsafat Hukum, Suatu Pengantar Mencari, Menemukan, dan Memahami Hukum,* LaksBang Justitia. Cet. IV, Surabaya, 2014, hlm. 59.

[2]Muladi, *Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana,* Badan Penerbit Universitas Diponegoro, Semarang, 2002, hal. 70.

[3]Peter Mahmud Marzuki, *Penelitian Hukum,* Yuridika, Vol. 16, Nomor 1, Maret-April 2001, hlm. 103. (selanjutnya disingkat Peter Mahmud Marzuki I).

[4]*Ibid.*

[5] Soetandyo Wignjosoebroto, *Masalah Metodelogi Dalam Penelitian Hukum Sehubungan Dengan Masalah Keragaman Pendekatan Konseptualnya,* Makalah pada Metodelogi Penelitian, FH Undip, 1993, hlm. 30.

[6]Peter Mahmud Marzuki *Penelitian Hukum,* Edisi Revisi, Cet. Ke-VIII, Penerbit Kencana, Jakarta, 2013, hlm. 13. (selanjutnya disebut Peter Mahmud Marzuki II).

court decisions that relate to the verstek verdict..[1]

The method analysis of legal materials is covering legal concepts, legal norms, technical law concepts, law institutions, law figures, law functions and legal sources.[2]

Scientific journals has a logical-systemic character through the following steps :
1. Inventory of legal materials;
2. Identification of legal materials;
3. Systemization of legal materials;
4. Analysis of legal materials;
5. Design and research.[3]

3. Results and Discussion

These results and discussions will analyze some of the problems described above, so to be coherent this discussion will describe one by one the issue with the following results:

3.1 Philosophy of the impose of Verstek Verdict In The Civil Law

In the procedure of civil law in Indonesia there is no uniformity in the use of the term nor the research of word *verstek* to give the term and meaning to the defendant's absence in the hearing. On The research of word of *verstek* some use the term "law procedure without being present"[4], some are mention it as "event out of presence" (*verstek*).[5] On the other hand Subekti and Retnowulan Sutantio still use the original term, but his research is "perstek" not "verstek",[6] while Bambang Sugeng A.S. using term of "Special Occasion".[7] The term of "event out of presence" is a translation of the verstek procedure, and *verstekvonnis*[8] given the term of the verdict without any attendance or verdict out of the presence of defendant. The common law system gives the term of "*default procedure*" which has the same meaning with *verstek procedure*, which is event out of presence, and for the *verstek vonnis* (verdict without the presence) is called as *default judgementIn Indonesia, which adheres to the civil law law system, there is no difference in the intentions contained in terms between Common Law and Civil Law,* in research and in judicial practice using the standard term "verstek" because the term has been accepted in the treasury of legal terminology in Indonesia. Although some of law experts have their own terms in the use of the word verstek, it has the equation both by definition and its meaning. The difference of terms is caused by the original formulation of civil procedure law that applicable in Indonesia (HIR, RBg, or Rv) is a translation from Dutch, so in the process of translation into Indonesian, civil law experts have their own vocabulary to explain the original term.

Legal provisions which is governing the handling of verstek verdict and still using the term "verstek" can be seen in some provisions of articles such as Article 125 paragraph (1) HIR that state "*if the defendant, even though has been called legally, does not present on the appointed day, and does not have another person present as his representative, then the claim is accepted by a decision without presence (verstek), unless it is evident to the court that the claim is against the law*". The provisions of Article 149 paragraph (1) RBg also rules the same matter that state "*If on the appointed day the defendant did not arrive even if he had been properly summoned, as well as not sending her/his representative, the lawsuit will be granted without the presence of the defendant (verstek) unless it turns out according to the court of the country that the lawsuit has no legal basis or has no reason according to the law*".

[1] *Ibid*, hlm. 181.
[2] Philipus M. Hadjon, *Pengkajian Ilmu Hukum Dogmatik (Normatif)*, Makalah, Fakultas Hukum Unair, Surabaya, 1994, hlm. 3-4. (selanjutnya disebut Philipus M. Hadjon II).
[3] Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersial*, Kencana Prenada Media Group, Edisi Pertama, Cet. Ke-3, Jakarta, 2013, hlm. 43.
[4] Abdulkadir Muhammad, *Hukum Acara Perdata Indonesia*, Citra Aditya Bakti, Bandung, 2000, hal. 86.
[5] Soepomo, *Hukum Acara Perdata Pengadilan Negeri*, Pradnya Paramita, Jakarta, 1993, hal. 34. Bandingkan dengan Retnowulan Sutantio dan Iskandar Oeripkartawinata, *Hukum Acara Perdata: Dalam Teori dan Praktek*, Mandar Maju, Cet. Kesebelas, Bandung, 2009, hal. 22.
[6] Subekti, *Hukum Acara Perdata*, Bina Cipta, Jakarta, 1977, hal. 56.
[7] Bambang Sugeng A.S. dan Sujayadi, *Hukum Acara Perdata, Dokumen Litigasi Perkara Perdata*, Kencana Prenada Group, Jakarta, 2011, hal. 32.
[8] Marianne Termorshuizen, dalam M. Yahya Harahap *Hukum Acara Perdata:Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, Sinar Grafika, Cet. Kelima, Jakarta, 2007, hlm. 381.

The setting of the judgement of verstek verdict is also set in the provisions of Article 78 Rv which said *"In the condition that the defendant did not present after the grace period and order is fullfilled, then the verdict is imposed without the presence of the defendant and the plaintiff's claim is granted unless the judge considers that the lawsuit has no right or without a legal basis"*.[1] The arrangement of future verstek verdict (*ius constituendum*) is set in the provisions of Article 61 Subsection (1) Draft of Civil Law (hereafter abbreviated as RUU HAPdt) said *"On the day of the prescribed trial, the defendant or his representative whom has a special power of attorney is absent despite being legally called, then the plaintiff's claim may be granted by a verdict of verstek, unless the judge who examines the case is in the opinion that the lawsuit is unreasonable or illegitimate"*.

This study will still use the term "verstek" to mean defendant's term is not present in the court, by the reason of some legal theories, provisions of legislation, as well as judicial practice the word of *verstek has been familiar*, also for not to give different interpretations in terms of the absence of the defendant in the hearing. From some of the terms mentioned above, as well as in the various provisions of law mentioned before, according to Sudikno Mertokusumo the word of verstek means the statement that the defendant did not arrive on the day of the first hearing.[2] Similarly according to Retnowulan Sutantio interpreting perstek is a statement that the defendant is absent, although that person - according to the procedural law – must come. Perstek can only be declared if the defendant at whole is not present at the first hearing, and if the case is postponed according to Article 126 HIR the defendant is also entirely absent.[3] Based on the expert opinion referred to, the author agrees that verstek means the statement of the defendant is not being present at the hearing without valid reason even though the concerned person has been legally called.

In the Judicial practice regarding the imposed of verstek verdict, in the finding judicial verdict before the judgement on the subject matter, firstly stating the statement that the defendant has been called legally and appropriately however neither the defendant nor his/her legal appointee are not present at the hearing without valid reason. After the statement, then the judge decides the subject of the dispute between the parties based on the evidence presented by the plaintiff only (due to the absence of the defendant), but still within the scope of the verstek statement. The statement of *verstek in judicial verdict, it is the distinguish between the verstek verdict with the judgement of a contradictory lawsuit.* Relating to the judicial verdict, it can be seen in various decisions of the District Court such as: 1). Verdict of Pontianak District Court Number: 73/PDT.G/2011/PN.PTK dated September 28th, 2011 with judicial verdict: 1. Stating that the defendant who had been summoned properly to come before the court was not present; 2. Granted a part of plaintiff's claim with verstek... 3. Et cetera… 2). Verdict of Medan District Court Number: 127/Pdt.G/2014/PN. Mdn dated October 16th, 2014 which the judicial verdict said: 1. Stating that the defendants who had been properly summoned to come before the court were absent; 2. Granted a part of plaintiff's claim with verstek... 3. Et cetera…, 3). Verdict of Jakarta Barat District Court Number: 322/Pdt.G/2008/PN. Jkt.Bar dated November 20th, 2008 which the judicial verdict said: 1. Stating the defendant was absent despite being properly summoned; 2. Granted a part of plaintiff's claim with verstek... 3. Et cetera…

The impose of verstek verdict in civil procedure law is limited to the statement of the defendant either singularly or plurally as the whole as well as the legal representative were never present at the hearing despite being legally and properly summoned. The presence of one of the defendants (in case the defendant is plural) cannot be imposed by verstek verdict but a contradictory verdict. The main purpose and the aim of the verstek system in civil law procedure is to encourage the parties to obey the order so that the examination of the case is spared from anarchy or abused. The verstek event is not an exception of the principle of *audi et alteram partem* (principle of listening to both parties), because of *verstek* verdict is imposed only if the defendant has been properly summoned but is not present at the hearing. This means that the law has given the widest opportunity to both the defendant and the plaintiff to be present at the hearing through a legitimate summoning process, but the defendant was not present without a valid reason. With this verstek event, all parties will try to be present at the hearing to defend their interests or rights and try to avoid the judge imposing verstek verdict. So therefore, a verstek verdict then able to be imposed by the Judge when the defendant or his attorney was not present at the hearing for no valid reason despite being properly summoned, and the plaintiff's lawsuit is also not against the law.

[1]I Ketut Artadi, *Kumpulan Peraturan Perundang-undangan Hukum Acara Perdata*, Pustaka Bali Post, Denpasar, 2009, hlm. 5, 70, 152.

[2]Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Edisi Ketujuh, Penerbit Liberty, Yogyakarta, 2006, hlm. 108. (selanjutnya disebut Sudikno Mertokusumo I).

[3]Retnowulan Sutantio, dk, 2009, *Op.Cit*, hlm. 25.

The imposed of verstek verdict other than based on the absence of the defendant or the defendants as mentioned above, also the existence of the stages of proofing the arguments, especially the arguments of the plaintiff's claim. Although the defendant is never attended the hearing to defend his interests or rights, there is the obligation of the plaintiff to prove the arguments of his lawsuit, it is intended as the manifestation of the value of justice. The law issues in law enforcement through the trial which leads to the impose of verstek verdict, then the matter of justice is very important because the law (judge's verdict) must be fair to both parties. Justice is a fundamental issue in law because the purpose of law is justice. the realistic objective of law is legal certainty and legal benefit. Although justice is not the sole of legal purpose, but the most substantive purpose of law is justice. Justice can appoint three things: circumstance, claim, and virtue. Justice as the circumstance states that everyone is entitled to get their right and treated equally the same. Justice as a claim states that everyone has the right to demand for justice to be created by taking the necessary action (act when necessary and reasonable according to a sense of justice) as well as to stay away from unfair actions. Justice as a virtue is a determination to always think, say and behave fairly, that is the substantive of honesty.[1]

The imposed of verstek verdict has been in accordance with the fairness value in the procedural process, although the judgment of the verstek verdict only listens to the information of one party (the plaintiff), but the Judge has been fair to treat both sides equally and in the same capacity. Although one party is not present, but the provisions of procedural law are binding and forcing, and must pass all the stages of the examination process in a balanced manner to both parties. This can be seen by the given of equal opportunity to the plaintiff and the defendant to be present at the hearing through a legitimate and proper summoning process. Other opportunities relate to the burden of proof to the plaintiff, although the arguments have never been denied, also the same opportunity is given for the treatment of legal action is being taken by the party whom objected the judgment of verstek verdict, including to the defendant whom was never present at the hearing to defend his interests. The given of that equal opportunity is the manifestation of justice aspect, where according to Aristotle the aspect of justice gives everyone something they deserve and the state gives justice to those who are entitled and to obtain it is the existence of equality of rights before the law.

3.2. The Meaning of Audi Et Alteram Partem Principle in Verstek Verdict of Civil Law

Talking about the settlement of rights claim in civil court until the verdict cannot be separated from the procedural process. In prosecuting the cases, other than being bound by the rules of material law Judge also has to be bound by "rules of game" of formal law. The judge shall not do a basic conclusion by accepting information from only one party without giving the other party the opportunity to respond and express his or her opinion. The settlement process is also inseparable from the legal principles. In some studies, the word "basis" is often synonymous with "principle". From the view of some experts the word principle has different meanings. Principle is something that became the base of thought or opinion.[2] Principle also means the basic rule.[3] According to The Liang Gie, principle is a general proposition that expressed in general terms without suggesting specific ways of its implementation, which is applied to a series of deeds to be the proper clue to the action.[4] According to Mahadi,[5] principle is something that can be used as a base, to restore something that we want to explain.

In the context of law, the term "principle" according to the Black's Law Dictionary contains the notion of

: "*a fundamental truth or doctrine, as of law….*"[6] or it can also contain the meaning of : "*a basic rule, law or doctrine*".[7]

Based on the description of the definitions of principle mentioned above, then the principle can be interpreted as the basis for thinking or giving opinion, are the values or foundations that become the starting point in thinking or arguing. Understanding of a principle is expected to be beneficial in order to know more clearly about what and how the relation between principle and its norms in a certain laws and regulations. Abdul Hamid S Attamimi,

[1]Dominikus Rato, 2014, *Op.Cit,* hlm. 62-63.
[2]Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia,* Balai Pustaka, Jakarta, 2002, hlm. 70.
[3]Sudarsono, *Kamus Hukum,* Edisi Baru, Cet. Ketiga, Rineka Cipta, Jakarta, 2002, hlm. 37.
[4]The Liang Gie, *Teori-Teori Keadilan:Sumbangan Bahan Untuk Pemahaman Pancasila*, Cet. Kedua, Supersukses, Yogyakarta, 1982, hlm. 8.
[5]Mahadi, *Falsafah Hukum (Suatu Pengantar*), Citra Aditya Bakti, Bandung, 1989, hlm. 119.
[6]Henry Campbell Black, *Black's Law Dictionary*, A Bridged Sixth Edition, West Publishing. St. Paul, Minn, 1991, hlm. 828.
[7]Bryan A Garner, (ed), *Black Law Dictionary,* Seventh Edition, West Group-St. Paul Minn, 1999, hlm. 1211.

whom copied the view of Paul Scholten's, has explained it clearly that a legal principle (rechtsbeginsel) is not a rule of law (rechtsregel). To be said as a rule of law, then a principle of law is too general. The application of legal principles with subsumption or grouping as a rule is not possible therefore it must first need to be formed more concrete in the content. In other word the principle of law is not the law itself, but the law cannot be understood without first understanding the principles of the law. Paul Scholten further argues that it is the task of legal science to trace and seek the legal principle embodied in a positive law.[1]

According to Theo Hujibers the legal principle can also be called the notions and values that became the starting point of thinking about the law. These principles are the starting points for the formation of laws and the interpretations.[2] To find the meaning of the most appropriate legal principle, it seems necessary to elaborate the views of the experts. Here are the views of experts such as Bellefroid, van Eikema Hommes, and Scholten on the meaning of law principles.[3] Bellefroid argues that the principle of common law is the basic norm outlined by the positive law and which by law science does not come from the more general rules. The principle of law is the precipitation of positive law in a society. While van Eikema Hommes says that the principle of law should not be regarded as concrete legal norms, but should be regarded as general basis or guidelines for applicable law. The formation of practical law needs to be oriented to the principles of the law. Scholten says that the principle of law is the tendencies implied by our moral judgmental view of the law, it is a common trait with all its limitations as a common trait, but which does not, should not exist In the opinion of Peter Mahmud Marzuki, the principles of law may arise from the view of propriety in social intercourse which was then adopted by lawmakers to become the rule of law, however not all legal principles can be poured into the rule of law. Nevertheless, the principle of law should not be ignored but should be referred.[4] J.J.H. Bruggink argues that on the basis of a system of rules there are fundamental rules of judgment called legal principles.[5] Paul Scholten as has also been quoted by J.J.H. Bruggink then stated that the definition of the principle of law as the basic thoughts which is contained within and behind each legal system is then formulated into the laws and judges' decisions and so on, so it is clear that the role of law as a meta-rule relates to the rule of law in the form of rules of conduct.[6]

According to Sudikno Mertokusumo, the principle of law is not a concrete law, but a common and abstract basic of thought, or is the background to the concrete rules that contained within and behind any legal system which is incarnated in the legislation and judge's decisions. It refers to these concrete similarities by elaborating concrete legal rules into general rules which due to being general in nature, cannot be applied directly to concrete events.[7]

One of a fair and impartial judge attitude is by listening to both litigant parties (*Horen van beide partijen*) or the principle of equality of both parties before the judge (*audi et alteram partem* atau *eines manres rede its keines manres rede*). This principle means giving an equal (balanced) opportunity to both parties to maintain and protect their rights before the judge. This is a reflection of justice, where one of the justice aspect is pointing to the equality before the law. This principle is elaborated in Article 4 subsection (1) Act Number 48 Year 2009 of the Judicial Authority which declares that the Court to judge according to the law and not by discriminating against persons.

The balance aspect or the principle of *audi et alteram partem* hinted that the Judge should not impose any verdict before listening to all the information from both parties. This principle may be disregarded when a defendant has been summoned appropriately, but the concerned person or his authorized attorney is not present without a valid reason, then the plaintiff's claim is granted with a verdict out of the present or *verstek*, unless the claim is unlawful or unwarranted. In applying the verstek verdict the judge must fulfill the following requirements:

1. The Defendant has been legally summoned;
2. The Defendant / authorized attorney is not present without a valid reason;
3. The Plaintiff's claim is warranted and not against the law;

[1]A. Hamid S. Attamimi, *Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara*, Disertasi, Universitas Indonesia, Jakarta, 1990, hlm. 293-303.

[2]Theo Hujibers, *Filsafat Hukum*, Cet, Kesebelas, Kanisius, Yogyakarta, 2005, hlm. 79.

[3]Sudikno Mertokusumo, *Penemuan Hukum Sebuah pengantar*, Liberty, Yogyakarta, 2009, hlm. 5. (selanjutnya disebut Sudikno Mertokusumo II).

[4]Peter Mahmud Marzuki, *Batas-Batas Kebebasan Berkontrak*, Yuridika, Vol. 18, No. 3, Mei 2003, hlm. 193-221. (selanjutnya disebut Peter Mahmud Marzuki III).

[5]J.J.H. Bruggink, *Rechts Reflecties, Grondbegrippen uit de Rechtstheorie*, alih Bahasa Arief Sidharta (*Refleksi Tentang Hukum*), Citra Aditya Bakti, Bandung, 1996, hlm. 119.

[6]*Ibid*, hlm. 119-120.

[7]Sudikno Mertokusumo II, 2009, *Op. Cit*, hlm. 6.

The imposed of verstek verdict by the judge is essentially to realising the principle of *audi et alteram partem,* does not merely deviate from the principle, but also the application of simple justice principles, fast and low cost as well as the principle of *litis finiri opertet* which means that the judicial process must end, should not drag on without any clarity when it ends. The meaning of the principle of *audi et alteram partem* is narrowly given that the new trial resumes when both parties are present, will provide an opportunity for the defendant to refuse to be present at the hearing, because of presumming that the judge would not impose the verdict before listening to both parties. This hurts the principle of simple, fast and low cost and the principle of *litis finiri opertet*, as well as the objectives of the law itself, especially the certainty of law and justice especially for those whom have been presenting to protect their interests.

The principle of *audi et alteram partem* in the imposed of *verstek* verdict is not just at the stage of summoning the parties to attend the trial, but also give the opportunity to the parties to prove their arguments. The obligation of the parties to defend their respective interests in the court by showing evidence (*the burden of producing evidence*) and to convince the judge of the truth of the evidence (*the burden of persuasion*). But in the absence of any evidence presented by both parties is equally strong, it is the duty of the judge to charge either party or both parties with the burden of proof (*the burden of proof*). The implementation of the burden of proof is set with certain restrictief principles, *it* is to limit the freedom of judges to avoid the misuse of position or authority (*de tournament de pouvoir*).[1] The principle of burden of proof is set within Article 163 HIR/Article 283 RBg, Article 1865 KUHPerdata which contain *"whoever claims to have rights or whom based on an event to uphold his rights or to deny the rights of others must prove the existence of that right or the event."*

This has become a permanent jurisprudence as stated in the Supreme Court Decision Number: 1121K/Sip/1971 dated April 15th, 1972. Nevertheless, to proving it is not easy, because the truth of an event cannot always be proven, especially to prove a negative matter. For that the principle of *negative non sunt probanda* is applied, that something negative cannot be or is difficult to be proven.[2] The principle of *audi et alteram partem* the same equal position for the parties before the judge, is a principle in dividing the burden of proof. This means that judges should share the burden of proof based on equal parity of the parties equally. Thus, the possibility of winning for the parties must be the same.[3]

The principle of burden of proof is also applicable to the judgment of verstek verdict attended only by the plaintiff. The absence of the defendant has resulted in the absence of a denial or the admission of the argument from the defendant, nevertheless the obligation of the plaintiff to prove the arguments of his lawsuit. This has the purpose of avoiding the existence of designed matters and providing legal protection to the absentee.

If the verdict imposed by the Judge is felt not meet the sense of justice especially for the defeated, the verdict may be corrected by a higher judicial institution through legal action. The plaintiffs whom object to the imposed of verstek verdict may submit an appeal lawsuit. For a defendant whom convicted by a verdict of verstek and has objections to verstek verdict have the right to file a legal remedy against the resistance (*verzet).* The arrangement of legal remedies of resistance (*verzet*) in the provisions of civil law procedure is stipulated as follows:

1. Article 129 subsection (1) HIR stated "*Defendants who are punished with a decision without presence and do not accept the decision, may file a resistance*". Subsection (2) stated "*If the decision of the judge is notified to the defeated person, then the resistance shall only be accepted within fourteen days after the notice. If the judge's decision was notified not to the defeated person himself, then the resistance shall be accepted until the eighth day after the reprimand mentioned in article 196, or in case he or she is not coming after being properly summoned, until the eighth day after the chairman's order was passed as mentioned on Article 197*".

2. Article 153 subsection (1) RBg stated "*The defendant whom the case was terminated without his presence and could not accept the verdict could raise a resistance".* Subsection (2) stated "*If the notice of the decision has been received by the defeated person itself, the resistance may be made within fourteen days after the notice. If the decree was delivered not to the defeated person itself, the resistance may be filed until the eighth day after being warned according to Article 207, or if he does not appear*

[1]Achmad Ali, dk, 2013, *Op. Cit*, hlm. 109-110.
[2]Sudikno Mertokusumo I, 2006, *Op. Cit*, hlm, 133.
[3]Efa Laela Fakhriah, *Bukti Elektronik Dalam Sistem Pembuktian Perdata*, PT. Alumni, Cet. Kedua, Bandung, 2011, hlm. 46.

to be notified despite being properly summoned, up to the eighth day after the written order is being carried as mentioned in Article 208".

3. Article 83 Rv stated "*The defendant whose case is terminated without his presence (verstek) could file a resistance (verzet). The resistance must be carried out within thirty days after the verdict or a deed is created according to that decision or deeds for the execution of such decisions shall be notified to him personally or also after act on something that states that he knows about the verdict or commencement of the execution of the verdict".*

4. Article 63 RUU HAPdt stated: subsection (1) *In the case of a lawsuit is being granted with a verstek verdict, the Judge shall immediately order to notify the verdict to the defendant, accompanied by the statement that the defendant may file a resistance if he or she does not accept the verdict.* Subsection (2) The *resistance must be made within a period of no later than 14 (fourteen) days after the verstek verdict is notified directly to a personal defendant.* Subsection (3) *If the notification is not received by the defendant in person, the resistance must be filed within a period of no more than 8 (eight) days after the defendant is reprimanded to carry out the verdict as mentioned in Article 201, or if not coming then the resistance shall be submitted within a period of not later than 8 (eight) days after the executorial sanction is executed as mentioned in Article 202.*

The granting of the same rights to the parties to take legal remedy on the judge's verdict is the embodiment of the principle of *audi et alteram partem.* The situation of the defendant whom was never present at the hearing until the judge's decision was imposed (*verstek* verdict), the civil law procedure still gives the same rights to the defendant to take legal action. This right is also granted to the plaintiffs whom present at the trial. This means that the law procedural is forcing and should not be disregarded. The absence of this party does not remove the rights granted by law to it (take legal action). It is also the implementation of justice aspects that give equal rights before the law.

The imposed of verstek verdict other than realizing the principle of *audi et alteram partem,* is also the realization of law enforcement through the judiciary. Law enforcement is one effort to create order, security and peace in society, either a preventive effort or an eradication or prosecution after a violation of the law. The essence and meaning of law enforcement lies in the activities of harmonizing the relationships of values that are outlined in steady rules and manifesting attitudes and actions as a series of end-stage values, to create, maintain and keeping the peace of life.[1]

Basically, law enforcement is a process between values, rules and attitudes or behaviors that are influenced by several factors, which is the law tools, professional skills and integrity of the personality of law enforcers and culture of the concerned community. Law enforcement as a process is essentially a discretion that involves making decisions that are not strictly regulated by the rule of law, but has an element of personal assessment. In the essence, discretion is between law and morals (ethics in the narrow sense).[2] In that formulation, law enforcement is the "objective" of the judiciary and the hope of judicial power and can be the essence of the Judicial Power, so that the meaning of "Judicial Power" should be defined as "State Power to enforce law and justice for the implementation of the State of the Republic of Indonesia". Thus, Judicial Power does not only mean "judicial power" ie the power of enforcing the law in the judicial institutions, but includes the power of enforcing the law in entire law enforcement processes.[3]

3.3. The Ideal Concept of Verstek Verdict in Legal Protection

The law supremacy is a feature of a law state, to realize it requires law development. Law development in the broadest sense covers all aspects of community life, in the sense of development the law is not only about rules or legal norms (statute) but also includes the institutions and processes. Therefore the development of the law is not only about material law, but also includes formal law (procedural law). The function of law is to regulate the relationship between the state or society with its citizens and relationships between people, so that life in society runs smoothly and orderly, while the legal task is to achieve legal certainty (for the sake of order) and the existence of justice in society.

[1]Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, PT. Raja Grafindo Persada, Jakarta, 2002, hal. 3.
[2]*Ibid*, hal. 4.
[3]M. Hatta Ali, *Peradilan Sederhana Cepat dan Biaya Ringan*, PT. Alumni Bandung, 2012, hal. 31

Legal certainty requires the creation of general rules or generally accepted norms . In order to create a safe and peaceful circumstances within the community, the rules must be upheld and firmly implemented . For that purpose, the rules of law must be known prior with certainty. Legal certainty and justice are two mutually supportive factors in maintaining a balance between the interests in the society. One aspect of the development of national law is the formation of a law which is a national law. National law has a different meaning from positive law, the sense is more as *ius constituendum which is the legal system expected by the people of Indonesia*.

The issues in national development are include the many laws and regulations that do not yet reflect justice, prosperity, respect and protection of human rights, there is an overlap of regulations, the enforcement of the law has not been firmly, fairly and non-discriminatory implemented yet, and the judge's decision has not yet been felt by the community as a fair and impartial verdict through a transparent process. The formation of law today is done partially by arranging certain parts (not as a whole) according to the legal needs of the community, so that often newly created laws are not long-lived and must be adjusted again to suit the development needs of the community.

The scope of civil procedure law concerning Judicial Power as regulated in Act Number 48 Year 2009 about Judicial Power is not regulating the appeal procedure. Regarding the appeals procedure in civil cases it is still regulated in Act Number 20 of year 1947 concerning the Appeal for the Region of Java and Madura, as well as RBg for the regions outside of Java and Madura. Therefore, until now the regulation on Civil Procedure Law is still pluralism.

Legal diversity in Indonesia is still ongoing until now, with many encountered of various regulations from colonial times that are still valid and have not been revoked. It is necessary to revoke, change, renew, and adapt or even change the rules from the era of the Dutch East Indies by the rules of the National Law, so that there is a transformation of both the Western Law, Islamic Law and Customary Law into National Law, so it becomes an integral and systemic part of our national legal system which is under philosopy of Pancasila and based on the Constitution of 1945.[1]

In the law reform efforts need to be kept in mind that the nature of the procedural law which is the formal law of the rule of law in dispute resolution through courts, and binding for all parties and can not be disregarded, so the procedural law has a nature of public. For the sake of legal certainty, the procedural law must be codified in the nature of unification which can be generally accepted and binding for all parties. This is in line with the principle that current legal guidance is directed to a codified and uniformed written law. The main principle underlying in the civil law system is that the law obtains binding power because it is manifested in regulations that is in the form of statute and it is arranged systematically in certain codifications or compilations. This basic principle is adopted, since the main value which is the legal objective in this law system is the legal certainty. In order to achieve legal certainty a legislation must clearly and firmly regulate and limit the object (thing) that it regulates. Must be general (generally applicable), because legal certainty requires the creation of general rules or generally accepted norms.

Legal certainty is not necessarily manifest in the form of written regulations (laws) only, but can also be manifested in judicial decisions. Decision-making is based on procedural law as a formal law, so the arrangement of procedural law must be clear and firm to bring legal certainty through the judge's decision in resolving the dispute. This is in consideration that the civil procedure law having a binding and forcing the judge in deciding its decision.

In order to meet the above requirements, in line with the legal needs of the community, the legal arrangement of civil procedural law, especially the handling of verdict verstek and its legal efforts in the Civil Procedure Law draft, should not only formally regulates the requirement in the imposed of verstek verdict, but rather focused on the principle of legal protection especially to the defendant whom was never present at the trial, but provides clear explanations and arrangements regarding the assessment of the defendant 's absence for unlawful causes, as well as the frequency of the defendant's absence so that it is appropriate for the judge to impose the verstek verdict. Firm arrangements relate to the principle of proof of unargued claimants' arguments (because the defendant is absent), must provide legal certainty by obliging the Plaintiff to prove its argument even if there is no objection from the defendant. Similarly, the grace period arrangements in legal remedies for verstek verdicts

[1]Sunaryati Hartono, *Perencanaan Pembangunan Hukum Nasional*, Majalah Padjajaran, Jilid XXII, No. 1, 1995, hlm. 42.

through legal proceedings of defense (verzet) for defendants as well as legal remedies for plaintiffs should be regulated in a single rule of law. The civil law settings which are still valid at this moment (*ius constitutum*) is arranged in the provisions of HIR, RBg, Rv. The provisions of the judgment of verstek verdict can be seen in various legal provisions such as Article 125 subsection (1) HIR / Article 149 subsection (1) RBg / Article 78 Rv as mentioned above. The rule of law is a legacy of the Dutch colonial, which also resulted in the condition of Indonesian law which is loaded with positivistic nuance or legism that the law is a law.[1] Laws applied in Indonesia have many that are not in accordance with the personality, values and culture of the Indonesian nation. The development of the law must be based on the ideological value of Pancasila, historical, sociological (values according to the cultural values of society), juridical, and philosophical that intersects the sense of justice and the truth of society. The law based on these values gives a positive impact on society to be able to enjoy the sense of justice, certainty and legal benefits that ultimately form the attitude and awareness of society towards the law.[2]

In the aim of legal development based on the ideology of Pancasila, the law which is to be developed, especially the law regulation which arranged the law of civil procedure is compiled comprehensively, codified and unification so as to accommodate the need and the development of the always growing law of society by taking into account the principles of law. Law arrangements that specifically relate to the impose of verstek verdict cannot be separated from the principle of civil procedural law which one of them is the principle of equality that gives equal rights to the parties to defend their rights through the judiciary in order to provide legal protection for their interests. The imposed of verstek verdict by the judge for the legal protection of the parties, judge is not only fixated on the limitative provisions of the statutory provisions. The judge is expected to be able to examine the legal issues that occur in the trial and find the root of the problem so that in the end the judge handed down the verstek verdict.

In the several legal provisions mentioned above, the impose of verstek verdict depends on the summoning process of the parties. In examining the summons, the judge is forbidden to judge only in terms of mere formalities (the summons), but more than that the judge must examine the reason for the absence of such party. Is the absence because of the person does not know the calling, or does not want to appear in court to defend his interests? On the other hand, the judge must also give sufficient time in the summoning process both in terms of quality (the calling period with the day of the hearing) and the quantity aspect (as the number of summons made). If the judge concludes that the summons has been carried out properly and proportionally, then the process continues with proof. The provision of the law of the verstek verdict has no strict legal arrangement, that the judge in advance provides an opportunity for the party to prove his argument, considering this philosophical event of verstek is limited the examining to the absence of the defendant.

Judicial practice of several verstek verdicts, the Judge keeps examining the plaintiffs' petitum claims by proving the arguments, this is a precautionary form of the Judge in the judgment of verstek, in order to avoid any plaintiffs or their proxies to smuggle the law through engineered case.[3] In the examination of the principal case it will be obtained the conclusion of the plaintiff's claim is granted by verstek verdict if the plaintiff can prove the argument of his lawsuit. The reverse plaintiff's claim was rejected by verstek if the plaintiff could not prove the argument. The National Working Meeting (Rakernas) of the Supreme Court of the Republic of Indonesia in October 2009 in Palembang also produced a formula, that the Judge in deciding the case of verstek should always pay attention to the evidence presented by the Plaintiff.[4] Regarding to that matter it is also discussed by the Supreme Court on National Work Meeting in 2010 which is principally before imposing the verstek verdict, The judge needs to first check the evidence or granting the verdict without any proof filed by the Plaintiff. The result of the National Work Meeting is the need of early verification of cases which were imposed by verstek verdict, especially cases relate to land.

Article 61 Paragraph (1) The law draft of Civil Procedure Law (ius constituendum) determines the same in respect of the imposed of verstek verdict in the case of the defendant or his representative whom has a special power of attorney is absent despite being legally summoned, the plaintiff's claim may be granted by the verstek verdict unless the judge who examines the case has opinion that the lawsuit is unreasonable and unlawful. In this

[1]Teguh Prasetyo, *Hukum dan Sistem Hukum Berdasarkan Pancasila,* Media Perkasa, Yogyakarta, 2013, hlm. 20.

[2]Teguh Prasetyo dan Arie Purnomosidi, *Membangun Hukum Berdasarkan Pancasila,* Nusamedia, Bandung, 2014, hlm. 148.

[3] Rumusan Hasil Diskusi Kelompok Bidang Perdata Umum dan Perdata Khusus pada Rapat Kerja Nasional Mahkamah Agung Republik Indonesia dengan Jajaran Pengadilan Tingkat Banding dari 4 (empat) Peradilan seluruh Indonesia di Balikpapan pada hari Selasa, 13 Oktober 2010.

[4]Amin Safrudin, *Permasalahan Putusan Verstek,* Makalah, Varia Peradilan Tahun XXVI, No. 308, Juli 2011, hlm. 61.

draft by looking at the phrase "can be granted with verstek" according to the Author gives freedom to the Judge to consider the proposed arguments of the plaintiff's lawsuit, this means that if the Plaintiff's claim is justified, the claim is granted. Whereas in the phrase "unless the judge who examines the case has opinion that the lawsuit is unreasonable and not according to the law", according to the Author it still provides space for the Judge to perform interpretation, whether the lawsuit is unreasonable and not based on the law, the judge may impose a verdict declaring rejecting the lawsuit or declared the lawsuit unacceptable, which is certainly still within the scope of the verstek statement because it had previously considered the absence of the defendant (verstek). The impose of the verstek verdict is not solely for the interests of the parties that present, the defendant's absentee must also obtain legal protection. The absence of the defendant is occasionally on his / her own will, and there are also those whom do not understand the summoned of the hearing. In order to provide legal protection as well as to the value of justice on both sides of litigation (plaintiff and defendant), the judge should be careful in handling the verdict of verstek. The judge's prudent attitude can be seen when the Judge scrutinizes the process of summoning the hearing, giving the burden of proof in a balanced manner to the parties present, as well as providing sufficient time and clear to the parties in order to make legal remedies on the judgment of the verstek verdict. Adequate time (grace period) proposes strict and clear legal remedies is one form of legal protection to the litigant. This is to avoid the closing of legal efforts due to the excessive grace period of legal effort caused by unclear legal regulation. The authors argue that the concept of applying the ideal verstek verdict corresponds to a more juridical legal protection, if the Article 125 paragraph (1) HIR / 149 paragraph (1) Rbg, Article 78 Rv or in the Law Draft of Civil Procedural Law related to the verstek verdict is formulated in the legal norm "if on the day of trial that has been determined neither the defendant nor the legal representative is not present despite on being legally summoned, the defendant shall be declared absent. The Plaintiff's lawsuit is accepted by Verstek if the lawsuit is based on law, and in the contrary the Plaintiff's lawsuit is unacceptable if the claim is unlawful or unwarranted.

4. Conclusion

Based on the result of the research, it can be concluded as follows:

1. In essence verstek means the statement of the defendant is not present at the hearing. In such circumstances the Judge is authorized to impose a verstek verdict with the terms of the defendant has been appropriately and reasonably summoned, the defendant or his lawful attorney is not present at the hearing for no valid reason and the plaintiff's claim is based on law. The purpose of applying verdict verstek to encourage the parties to attend the hearing to defend its interests and rights. The submission of the verstek verdict does not contradict the principle of *audi et alteram partem*, as the verstek verdict is imposed after the defendant is given the opportunity to appear at the hearing and defend his interests but the concerned person is not present at the hearing. The imposed of verstek verdict realizes the principle of *audi et alteram partem*, because the philosophy of verstek verdict is imposed by the judge to encourage the parties to obey the order in the court.

2. The principle of *audi et alteram partem* means giving equal opportunity (balanced) to both parties to maintain and protect their rights before the judge. This is a reflection of justice, in which one of the aspect of justice is pointing to equality before the law. The application of this principle is given equal opportunity to the parties to be present at the hearing, proving their arguments (the principle of burden of proof), and granting sufficient time and space to take legal action against the impose of verstek verdict by the judge.

3. The ideal imposed of verstek verdict in addition to observing the conditions set forth in various legislation in the HIR, RBg or Rv, as well as in the Law Draft of Civil Procedural Law, the most important thing in the imposed of verstek verdict is the prudent attitude of the judge as the decision maker, so that the result of verstek verdict is not only a mere formality, but produces a verdict that reflects the certainty of law, justice and expediency. the achievement of such judges depends not only on the individual's capacity of the judge, but also on the existence of legal certainty through clear, enforceable and applicable rules in society. The most important principle is that the verdict may provide legal protection both to the plaintiff and to the defendant. The application of such law will provide sense of justice.

5. Suggestion

Based on the above conclusions, shows that there are still weaknesses normatively related to the impose of verstek verdict and its legal efforts, therefore the author suggests several things, as follows:

1. The Verstek verdict cannot be unattached from the execution of summoning, so that the competent Officer (Bailiff, Judge, or Chief of the Village) must be honest, fair and responsible in carrying out his duties and authorities so that the function of justice as a means of legal protection for justice seekers can be fulfilled.

2. The Policymakers in making the rule of law (statute) are to be able to harmonize and aligning legal products without reducing the values, norms, and methods that apply in the community. Policymakers should be able to interpret every principle that contained in the rules to be made, so the regulation is in line with the expected objectives as a means of protection of the community.

3. Academics and legal practitioners always play an active role in reviewing the legal products produced by the government, so that the resulting legal products are in harmony and not contrary to other legal provisions.

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