

Article

Exceptio Dilatoria in the Indonesian Context : Implementation of Justice and Legal Certainty from Radbruch's Perspective

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Abstract

Exceptio dilatoria is an exception that states that a lawsuit filed with the Religious Court cannot be granted because it is premature. Until now, exceptio dilatoria is a problem that still often arises in the civil world. As for the consequences of the application of exceptio dilatoria, it is not uncommon for it to be a burdensome decision for one of the aggrieved parties. This study aims to analyze the legal considerations made by the panel of judges in deciding a lawsuit that is considered premature. By attaching several decisions from the lawsuit divorce case that was decided as a premature lawsuit. This study also analyzes the legal consequences of the existence of exceptio dilatoria in the case of contested divorce on the theory of legal justice and the theory of legal certainty. The research method used is normative juridical with case approach method. The results show that exceptio dilatoria is a problem that cannot be avoided as long as there is no legal rule governing it. This can be seen from the inconsistency of judges in applying exceptio dilatoria in cases of contested divorce. So that the considerations made by the panel of judges in applying exceptio dilatoria still cannot meet the standards of justice and legal certainty as formulated by Gustav Radburch.

Keywords

Exceptio dilatoria; female-initiated divorce; Gustav Radburch

Abstrak

Exceptio dilatoria adalah suatu eksepsi yang menyatakan bahwa gugatan yang diajukan ke Pengadilan Agama tidak dapat dikabulkan karena prematur. Hingga saat ini, exceptio dilatoria merupakan masalah yang masih sering muncul dalam dunia perdata. Konsekuensi dari penerapan exceptio

dilatoria tidak jarang menjadi keputusan yang memberatkan salah satu pihak yang dirugikan. Penelitian ini bertujuan untuk menganalisis pertimbangan hukum yang dilakukan oleh majelis hakim dalam memutus gugatan yang dianggap prematur. Dengan melampirkan beberapa putusan dari kasus gugatan cerai yang diputus sebagai gugatan prematur. Penelitian ini juga menganalisis akibat hukum dari keberadaan exceptio dilatoria dalam kasus perceraian yang disengketakan berdasarkan teori keadilan hukum dan teori kepastian hukum. Metode penelitian yang digunakan adalah yuridis normatif dengan metode pendekatan kasus. Hasil penelitian menunjukkan bahwa exceptio dilatoria adalah masalah yang tidak dapat dihindari selama belum ada aturan hukum yang mengaturnya. Hal ini dapat dilihat dari inkonsistensi hakim dalam menerapkan exceptio dilatoria dalam kasus perceraian yang disengketakan. Sehingga pertimbangan yang dilakukan oleh majelis hakim dalam menerapkan exceptio dilatoria masih belum dapat memenuhi standar keadilan dan kepastian hukum sebagaimana yang diformulasikan oleh Gustav Radbruch.

Kata kunci

Exceptio dilatoria, gugatan perceraian perempuan, Gustav Radbruch

INTRODUCTION

Divorce in Islamic law is an act that results in the dissolution of a marriage bond, chosen by a married couple when they feel their marital relationship can no longer be reconciled (Azizah, 2017). Article 116 of the Compilation of Islamic Law (KHI) on Marriage states that a divorce can be filed if there is an invalid marriage, such as when one party is involved in domestic violence, neglect of marital responsibilities, or prolonged disputes and conflicts between the husband and wife (Kompilasi Hukum Islam, n.d.).

In Islam, the procedure for divorce is regulated in a manner that ensures the welfare of the parties involved. This can be implemented through Law No. 50 of 2009 concerning Religious Courts and Article 115 of the Compilation of Islamic Law, which states that divorce can only be carried out in front of a Religious Court session after the court has attempted and failed to reconcile the parties (JDIH, 2009). Furthermore, when filing a case in the Religious Court, there are certain rules that must be followed by the parties involved regarding the process and procedure of litigation in each Religious Court. In practice, judges do not always grant the entire lawsuit but may partially grant, entirely reject, or declare it inadmissible in certain cases. This is similar to lawsuits deemed premature, which cannot be linked to any legal grounds for a decision.

Exceptio Dilatoria, or what is commonly referred to as a Premature Lawsuit, is a type of lawsuit that contains formal defects. This situation occurs when the lawsuit filed by the plaintiff to the Religious Court cannot be accepted because the subject matter does not meet the established legal grounds. In other words, the prematurity of the lawsuit refers to a situation where the filing time has not yet reached the specified time limit, either by a previously agreed-upon agreement or the legally permitted time limit (Putra et al., 2020).

For instance, in the context of civil law, a premature lawsuit can occur if the plaintiff files a lawsuit before the deadline set in an agreement between the involved parties or before meeting the requirements of the applicable laws related to their claims. Thus, a premature lawsuit indicates that the plaintiff has taken an inappropriate legal step, which may result in the lawsuit being rejected or declared invalid by the court (Leks&Co, 2013).

This research uses the rulings from specific divorce cases as objects of analysis for lawsuits that were deemed inadmissible by judges due to formal defects (premature). The cases examined include Decision No. 1389/Pdt.g/2016/PA.Gm at the Giri Menang Religious Court, Decision No. 8/Pdt.G/2021/PTA.Plg at the Palembang Religious High Court, and Decision No. 881/Pdt.G/2016/PA.Bpp at the Balikpapan Religious Court. The purpose is to analyze the legal considerations made by the panel of judges in applying the exceptio dilatoria in divorce cases. This research also examines the legal consequences of the exceptio dilatoria in these decisions based on the theories of legal justice and legal certainty from the perspective of Gustav Radbruch.

This article will discuss in-depth the concept of exceptio dilatoria and its application in the Indonesian legal system. The analysis includes how exceptio dilatoria is used in judicial processes, incorporating relevant case examples, and how the concepts of justice and legal certainty according to Gustav Radbruch can be applied in the Indonesian context. Therefore, this article aims to provide a comprehensive understanding of the importance of exceptio dilatoria as a guarantee of justice and legal certainty in the Indonesian judicial system.

METHODS

In this thesis research, the author uses a research method in the form of normative juridical research, which analyzes a decision with applicable legal regulations in Indonesia. this research uses a case approach method. There are two data sources used in writing this research, namely primary and secondary. Primary legal sources include (1) Giri Menang Religious Court Decision No. 1389/Pdt.G/2021/PA.GM, (2) Palembang Religious High Court Decision No. 8/Pdt.G/2021/PTA.Plg, (3) Balikpapan Religious Court Decision No. 881/Pdt.G/2016/PA.Bpp, (4) Law No. 50 of 2009 concerning Religious Courts, (5) Compilation of Islamic Law (KHI), (6) Article 19 of Government Regulation Number 9 of 1975. While secondary data sources include Secondary data is a statement that has legal authority applied by a branch of government power which includes documents contained in books, articles, scientific journals, magazines, newspapers, and on the internet that are relevant to the theme of this research. The data collection method in writing this research uses library research. After data collection is carried out, then conduct a legal study by analyzing, examining and classifying the legal issues that exist in the judge's decision in the case.

RESULTS AND DISCUSSIONS

Justice and Legal Certainty According to Gustav Radbruch

In general, legal certainty is a crucial concept in a country's legal system. This concept refers to a state where the law possesses clear, definite, and comprehensible authority for all involved parties. In this context, legal certainty provides the public with confidence that the applicable rules will be enforced fairly and consistently. The principle of legal certainty also functions as a tool to protect individuals from arbitrary actions by authorities. With legal certainty, individuals can expect that their rights will be recognized and upheld, and that they will receive what they anticipate in certain situations. This helps maintain social stability and prevents uncertainties that could harm individuals and society as a whole (Indriawati & Arifah, 2023).

Justice, on the other hand, is something that aligns with facts or logic and conforms to all prevailing norms of good and bad in society. Justice is generally understood as an effort to provide equality. However, this effort is certainly not easy to fulfill because equality exists only within the scope of relationships, not regarding substantial equality itself. Equality in relationships means that every individual or group is treated equally in social, economic, and legal interactions. This is often difficult to achieve due to the different conditions, needs, and contexts faced by each party. Legal justice is the principle underpinning the judicial system to ensure that every individual is treated fairly and equally before the law. This principle involves the application of moral norms, ethics, and values of justice in legal processes, aiming to achieve fair and appropriate outcomes for all parties involved in a dispute or legal case (Moho, 2019).

The concept of justice indicates that decisions and actions must be based on applicable objective standards. However, it is important to understand that justice is a relative concept, meaning that what is considered just for one person may differ for another. Therefore, when someone claims to have acted justly, the relevance must be assessed within the context of norms and public order widely recognized as benchmarks of justice. In this context, it is important to understand that the definition of justice can vary depending on individual perspectives and the values upheld in a society (Nasir et al., 2023).

In his book, Gustav Radbruch states that there are three fundamental principles of law that are identified with the objectives of the law: legal utility, legal certainty, and legal justice. According to Radbruch, justice is the equal right for all people before the court. Utility or finality describes the content of the law that aligns with the objectives it aims to achieve, while legal certainty is defined as the condition where the law can function as a regulation that must be adhered to (Fakhrurrahman Ari, 2021).

To implement these three objectives of the law, Radbruch uses a scale of priority principles to address the tension between these fundamental values (Islamiyati, 2018). The primary priority is justice, followed by utility, and lastly, legal certainty. This aims to create a well-ordered and balanced social life

(Taufik, 2019). However, in practice, not all judges apply these priorities, as it depends on how each judge views the case at hand. It is also possible that judges who have established the above priority principles may receive recognition of fairness from the parties involved, as what is considered fair by one party may not be perceived as fair by the other.

Therefore, Radbruch felt it necessary to propose an additional element to complement the idea of justice, namely utility. Utility is understood as the effort to serve the diverse desires of various parties. In this regard, the law must be able to provide significant benefits to society by considering the differing needs and interests. This effort can be fulfilled relatively, as various parties have divergent views that cannot be unified, potentially leading to endless differences in perspective. These differences often create challenges in achieving consensus and balanced justice.

Here, Radbruch then offers the final element, namely legal certainty. In this context, law is established positively, because through this, differences are essentially eradicated. Legal certainty provides a clear and structured framework that society can rely on. With consistent and enforceable legal rules, people can plan their actions with the assurance that the law will apply fairly and evenly. Legal certainty helps to resolve ambiguities and conflicts that may arise from differing interpretations of what is just and beneficial. Therefore, these three elements—justice, utility, and legal certainty—become essential pillars in creating an effective and harmonious legal system that can address various challenges in fulfilling social functions and ensuring justice for all parties.

Radbruch also interprets legal certainty as a condition where the law can function as a rule that must be obeyed. Legal certainty provides individuals with a guarantee to behave in accordance with the provisions of the applicable law. Conversely, without legal certainty, there are no guidelines regulating an individual's behavior. Achieving legal certainty can be divided into two main elements: (a) The law must be clear and unambiguous, (b) The authorities implementing the law must not act arbitrarily and must adhere to the principle of legality (Muslih, 2017).

For example, in adjudicating a case, judges must consider various factors that can be accepted by all parties and do not deviate from legal principles. This way, justice and legal certainty can be implemented together. Although in Radbruch's priority principles, legal certainty is placed last, if carefully observed, legal certainty can strengthen the concept of justice, thus forming a robust legal unity.

Gustav Radbruch states that the three main values in law justice (philosophical), legal certainty (juridical), and utility for society (sociological) must be fundamental elements in a legal approach to achieve order in society. Society always desires order, and to achieve it, the law must be able to provide justice, utility, and certainty. According to Radbruch, the objectives of law that must be achieved are justice, utility, and legal certainty.

In the process of achieving these legal objectives, the priority of these three basic values must be determined. This is important because often, efforts to achieve justice can clash with benefits and legal certainty, and conversely, legal certainty sometimes ignores justice and benefits. Radbruch's order of priority is: first, Legal Justice; second, Legal Benefit; and third, Legal Certainty. By establishing this order of priority, it is hoped that the legal system can resolve conflicts between the three values. Justice means fair, impartial, and equal treatment in accordance with the rights of each party. Benefit means that the law must provide benefits to society, both for those who are harmed and those who are not harmed. Both parties must benefit from every legal decision. Meanwhile, legal certainty means that the provisions or decisions of judges must be based on clear, consistent, organized rules, and free from subjectivity. According to Radbruch, the law must be able to combine these three objectives with the main priority on legal justice, followed by legal benefits, and finally legal certainty (Fitrihabib et al., 2021).

Radbruch's justice is defined as a personal trait or quality, which reflects a person's commitment to treat others fairly and equally. This justice has both subjective and objective dimensions. Subjective justice, also referred to as secondary justice, refers to an individual's stance, attitudes, views and beliefs geared towards achieving objective justice. Objective justice, or primary justice, is the idealized and generally accepted standard of justice in society. The sources of justice come from two main sources: positive law and the legal mind (*rechtsidee*). Positive law is the rules officially enacted by the competent authority, such as laws and government regulations. Legal ideals, on the other hand, are ideas or ideals that form the basis of legal philosophy in a society. It reflects the fundamental values and principles that positive law is expected to realize. The essence of justice is equality. This equality does not only mean equality in treatment, but also in opportunities and rights. Gustav Radbruch, a legal philosopher, followed Aristotle in dividing justice into two types: distributive justice and commutative justice (Priyono, 2024).

First, Distributive Justice. Distributive justice deals with the distribution of resources and opportunities in society. The basic principle of distributive justice is that resources should be shared fairly based on individual needs, contributions or rights. This means that in the distribution of resources, such as wealth or opportunities, each person gets a share according to certain criteria, such as how much they need or how much they contribute to society. For example, in a progressive tax system, people with higher incomes are subject to higher taxes, which reflects the principle of distributive justice.

Second, Commutative Justice. Commutative justice deals with transactions or exchanges between individuals. The basic principle of commutative justice is that exchanges should be made fairly and equally, with each party getting value proportional to what they give. This means that in any transaction or contract, the value given by one party should be equivalent to the value received by the other party.

By dividing justice into distributive justice and commutative justice, Radbruch shows how the principles of justice can be applied in various contexts, both in the distribution of resources at the societal level and in individuals' everyday interactions and transactions. This view helps explain how justice can be practically implemented in the legal system and social life, ensuring that everyone is treated fairly and equally (Hadi, 2018).

Portrait of Exceptio Dilatoria and its Application in the Indonesian Context

Exceptio dilatoria or commonly referred to as a premature lawsuit, is one of the variations of lawsuits that contain formal defects. Basically, there are three kinds of decisions from a lawsuit decided by a judge, namely the lawsuit is granted, the lawsuit is rejected, and the lawsuit cannot be accepted (Niet Ontvankelijke verklaard or NO). NO itself consists of several lawsuits, namely: (1) a lawsuit whose power of attorney does not meet the requirements, (2) a lawsuit that has no legal basis, (3) an error in persona lawsuit in the form of disqualification or plurium litis consortium, (4) a lawsuit that contains obscure defects or violates absolute or relative jurisdiction. In its application, exceptio dilatoria occurs when a lawsuit filed with the Religious Court has not met or has not arrived at the time specified in the Law. So based on its understanding, if the Plaintiff files his lawsuit not yet on the specified date, the judge can reject the lawsuit on the grounds that it is still premature (Wahyuni, 2022).

Premature lawsuits often become a significant issue in the judicial process. This is evidenced in the records of the Supreme Court, where a search for the keyword 'premature' reveals approximately 18,049 cases that are suspected or have already been declared as premature lawsuits by the judges. Despite the high number of such cases, an analysis of the term 'premature' in several decisions shows that a portion of these cases are exceptions raised by the defendant, as a defense against lawsuits that do not directly pertain to the substance of the matter. In other words, the argument or claim presented by one party in a legal dispute does not directly address the core issue being considered by the court.

An exception is not always granted by the judge. Some cases are declared not to be premature lawsuits, meaning the submission of the exception is rejected by the judge. This statement is made after the panel of judges re-examines the lawsuit in question raised by the party filing the exception. Conversely, some cases that are declared as premature lawsuits by the judge can result in the dismissal of the lawsuit or change the previously established legal status.

In this context, three decisions from divorce lawsuits are identified as examples of cases decided as exceptio dilatoria: Decision No. 1389/Pdt.G/2021/PA.GM, Decision No. 8/Pdt.G/2022/PTA.Plg, and Decision No. 0881/Pdt.G/2016/PA.Bpp. These cases were then analyzed as a crucial step to assess the consistency of judges' decisions within the judicial system. This process allows for an analysis of whether judges have consistently applied legal principles in similar cases. By comparing the factors that influence the

status of premature lawsuits and the judges' assessments of them, a clearer understanding can be gained of the consistency in law enforcement as well as maintaining the integrity and justice within the judicial system.

In Decision No.1389/Pdt.G/2021/PA.GM, it was stated that the wife as the Plaintiff and the husband as the Defendant, had entered into marriage on May 12, 2007 which was also recorded at the X Religious Affairs Office Number.77/05/V/2007, dated May 15, 2007. During their marriage, the Plaintiff and the Defendant lived in harmony as husband and wife. However, in January 2010 the peaceful household of the Plaintiff and the Defendant began to experience disputes and arguments that made the family disharmonious. Based on the arguments of the plaintiff's lawsuit dated November 25, 2021, this dispute was caused by; the defendant having another woman, getting drunk and selling alcohol, often using harsh words and damaging household furniture, and threatening the plaintiff using sharp weapons (Putusan Pengadilan Agama Giri Menang No.1389/Pdt.g/2016/PA.Gm, 2016).

Then, the household breakdown continued until it culminated around November 8, 2021 which resulted in the Plaintiff being unable to stand the Defendant's attitude and finally the Plaintiff left the Defendant and returned to her parents' house. The Plaintiff also stated that from that day until the day of filing this lawsuit, the Plaintiff has no longer had physical or mental relations. However, during the examination process, the Defendant then stated that prior to the two-week separation, the Plaintiff and the Defendant still had marital relations. This was later acknowledged by the Plaintiff, so the statement was considered by the judge as an admission that no longer needed to be proven (valid). Based on these reasons, the Panel of Judges stated that the lawsuit could not be accepted or was considered premature, because the reason for the separation of the Plaintiff and the Defendant, as believed by the judge, had not fulfilled the *sighat taklik talak*.

Furthermore, in Decision No.8/Pdt.g/2022/PTA.Plg, it was stated as the decision at the first level, that between the Plaintiff and the Defendant in their household there were frequent quarrels and disputes caused by the defendant who cared more about his family than the Plaintiff as a wife, then between the Plaintiff and the Defendant had been separated for one day. Based on these reasons, the Panel of Judges at the Lahat Religious Court granted the claim by applying Article 19 letter (f) of Government Regulation Number 9 of 1975. Then, at the Appeal level, the Panel of Judges of the Palembang Religious Court considered that the quarrels in the household of the Plaintiff and the Defendant were not included in the continuous category. Considering that the quarrels seen by the witness were only 2 times in the age of marriage which has reached 24 years and has been blessed with 4 children (Putusan PTA Palembang No.8/Pdt.g/2022/PTA.Plg, 2022).

Additionally, the duration between the Plaintiff and the Defendant during their separation ranged from approximately one week to one month. However, in the jurisprudence from the Supreme Court of the Republic of Indonesia decision No. 81/K/AG/1993 dated February 26, 1994, it states that "separation

of table and bed for less than one month does not meet the intent of Article 19 letter f of Government Regulation No. 9 of 1975.” Based on this reasoning, the judge declared that Article 19 letter (f) of Government Regulation No. 9 of 1975 is less appropriate if applied as a legal basis. Consequently, the judge annulled the decision of the Lahat Religious Court and dismissed the Plaintiff/Appellant’s lawsuit.

In decision No. 0881/Pdt.G/2016/PA.Bpp, it is stated that the Plaintiff (wife) and the Defendant (husband) were married on February 17, 1998. Initially, the household of the Plaintiff and the Defendant ran smoothly as a typical married couple. However, since early 2014, the harmony in their household ceased to exist, leading to disputes and arguments caused by several factors: the defendant no longer provided for the wife, the defendant often became angry without clear reasons, uttered divorce words, and threw things. The defendant often forced sexual relations by committing unpleasant actions such as using harsh words, breaking down the bedroom door, and slapping the wife. Additionally, the defendant acted inappropriately in front of the in-laws. The defendant repeatedly violated an agreement letter he made to not repeat his actions. Based on this lawsuit, the Plaintiff claimed to have suffered physically and mentally (Putusan Pengadilan Agama Balikpapan No. 0881/Pdt.G/2016/PA.Bpp, 2016).

Furthermore, the Defendant responded to the Plaintiff’s lawsuit claims, essentially acknowledging the date of marriage and the fact that they have four children, while denying the rest. The Defendant also admitted that the Plaintiff and Defendant still engaged in sexual relations twice, on July 9 and 12, 2016. Based on these facts, the Plaintiff confirmed this, explaining that it was done under pressure from the Defendant. After these facts emerged, the judge considered that the acknowledgment by the Plaintiff and Defendant regarding their marital relations indicated that there were no longer disputes and arguments between them.

Based on the comparative analysis of the above decisions, it can be concluded that the considerations made by judges in implementing exceptio dilatoria are varied or inconsistent. Some judges apply exceptio to lawsuits that should be granted, while others grant lawsuits in cases that are still premature. This raises questions about how to correctly implement exceptio dilatoria. Should it focus solely on claims that do not meet certain regulations without considering other substantive matters if they are proven not to meet the requirements, or should it be otherwise?

In decision No. 0881/Pdt.G/2016/PA.Bpp, the judge ruled the case as a premature lawsuit because the judge found that the Plaintiff and the Defendant admitted to still having marital relations under pressure from the Defendant two days before the trial. In his considerations, the judge decided that based on the admissions of the Plaintiff and the Defendant, the judge concluded that there were no disputes and arguments in their household. Therefore, in this case, the judge decided to reject the Plaintiff’s request on the grounds that the Plaintiff’s lawsuit was still premature. However, referring to Articles 8 and

47 of Law No. 23 of 2004 on the Elimination of Domestic Violence, the word “pressure” is one of the acts of domestic violence that causes suffering to a person. This is evidenced by the Plaintiff filing a lawsuit in the Religious Court as proof of her suffering in the household. However, in his ruling, the judge did not include this word as part of his considerations.

Moreover, in her lawsuit, the Plaintiff mentioned that since 2014, her household had not been functioning well. This was due to the Defendant not providing for the Plaintiff, often uttering words of divorce, frequently forcing the Plaintiff to have marital relations, using harsh language, and even slapping the Plaintiff. Based on these admissions, it is highly likely that the marital relations that occurred on July 9 and 12, 2016, were the result of coercion from the Defendant, as the Defendant mentioned in his response that he objected to divorcing the Plaintiff because he still loved her.

Therefore, based on these considerations, the application of *exceptio dilatoria* in this lawsuit appears to be inappropriate, considering the complexity of the case which should have been granted, as it meets the grounds for divorce stipulated in Article 19 of Government Regulation No. 9 of 1975. Similar circumstances occurred in decision No. 1389/Pdt.G/2021/PA.GM. The actions by the Defendant that harmed the Plaintiff cannot be assured not to recur in the future. Hence, it is advisable that in applying *exceptio dilatoria*, the urgency of each lawsuit needs to be carefully assessed.

In decision No. 8/Pdt.G/2022/PTA.Plg, the main issue causing the rejection of the lawsuit was continuous arguments due to the Defendant being overly concerned about his parents and a separation from the home for one day. In this instance, the judge evaluated that the duration or frequency of the arguments in the Plaintiff and Defendant’s marriage cannot be categorized as continuous. During the trial, witnesses also stated that they only witnessed such arguments twice, which is considered minimal for a marriage of 24 years. Additionally, according to the regulations regarding the duration of separation between spouses, it should be for three months.

Furthermore, the substance of these arguments was due to the Defendant’s frequent attention to his sick parents. However, under Article 19 of Government Regulation No. 9 of 1975, caring for parents is not a reason specified for allowing divorce. Moreover, in this case, the Plaintiff appealed to the cassation level, introducing facts such as “the Defendant has not provided emotional support to the Plaintiff for approximately 8 years due to stroke,” which strengthened the Plaintiff’s claim. Therefore, based on these factors, the application of *exceptio dilatoria* needs to be reconsidered in cases where they may be granted and where they may not.

Based on the analysis of these three case examples presented above, it is evident that the principle of *exceptio dilatoria* or premature lawsuit plays a crucial role in the judicial process. This principle emphasizes the importance of considering the grounds of the Plaintiff’s lawsuit in relation to applicable legal rules. The analysis of lawsuit grounds with legal rules is a procedure conducted

by judges to determine if the timing of the Plaintiff's lawsuit conforms to the applicable rules. In other words, if a lawsuit does not meet the rules and is deemed premature, the judge will automatically reject the lawsuit without further consideration of its substance.

Therefore, the parameters of justice based on procedural and substantive considerations need to be strengthened by weighing the urgency of decisions that impact the parties involved. By reinforcing these parameters, it is hoped that legal decisions made will provide clear legal certainty and avoid negative impacts that may harm the ongoing lives of both the Plaintiff and the Defendant families (Rasyid et al., 2021).

Legal Consequences of Exceptio Dilatoria as Guarantees of Justice and Legal Certainty: A Perspective by Gustav Radburch

As explained in his theory, legal acts performed by legal subjects such as individuals or legal entities like companies/organizations can have legal implications, known as legal consequences. All consequences arising from such acts are recognized as expressions of the will of the actor subject to the applicable legal regulations in society. One such consequence can be court decisions.

In general, clarity regarding legal consequences forms a crucial foundation to ensure effective legal certainty within a legal system. When individuals or institutions have a clear understanding of the outcomes resulting from specific actions or legal decisions, it provides a solid basis for predictability and stability in law. Moreover, parties involved in litigation can assess risks and consequences of their actions better, thereby minimizing potential errors or misuse of the law.

Clarity in legal consequences also plays a significant role in determining consistency in legal application. When laws are applied consistently and clearly, legal actors can rely on fair and predictable processes. They can have confidence that decisions made will align with applicable legal norms, without gaps or inconsistencies that obscure certainty. However, if legal certainty is not assured, such as due to inconsistent interpretations or ambiguous legal rules, predicting the appropriate legal consequences becomes challenging. This can create uncertainty detrimental to all parties involved in the legal system, undermine trust in the legal process, and hinder social and economic development (Kholish & Ulumuddin, 2022).

In this context, exceptio dilatoria refers to a matter that is not clearly regulated in any specific law. Despite the underlying issues causing premature lawsuits being addressed in related articles, the application of exceptio dilatoria remains a problem that often arises but is not widely understood by the public. Therefore, the relationship between clarity regarding legal consequences and legal certainty is an essential prerequisite in building a strong and functioning legal system. By ensuring that legal consequences are clearly and consistently understood and applied fairly and consistently, a legal system can provide effective protection, promote justice, and support sustainable societal

development. Through analyzing the issues in the aforementioned decisions, we can see how judges resolve cases based on elements of legal certainty in matters deemed premature, up to determining the legal strength or legal consequences of the judgments they render (Putra et al., 2020).

Gustav Radbruch proposed four fundamental aspects related to the meaning of legal certainty. Firstly, that law is positive, and positive law is legislation. The concept that law is positive emphasizes that laws are established in written form through legislation. In other words, positive law encompasses all regulations officially established by the government and enforced within a country. The importance of positive law lies in its ability to provide a clear and structured framework for society to govern their behavior.

When positive law is predictable to society, it enables legal actors to make informed decisions and understand the consequences of their actions. Legal certainty is key in this regard because it allows society to have realistic expectations about how the law will be applied in specific situations. By knowing and understanding the applicable positive law, individuals can avoid actions that violate the law and ensure their behavior aligns with established rules (Oktavira, 2018).

In this case, in decision No. 1389/Pdt.G/2021/PA.GM, positive law refers to how the judge applies Article 80 of the Compilation of Islamic Law and the Form of Divorce Statement (*Sighat Taklik Talak*) as legal grounds applicable in Indonesia to the core of the lawsuit stating that during two weeks of separation, the Defendant did not provide any form of maintenance, as well as the fact regarding the marital relations between the Plaintiff and Defendant prior to the separation. Based on these points, the judge immediately ruled the case as premature, without considering other grounds of the lawsuit. However, generally, *exceptio dilatoria* does not have a solid foundation in the prevailing legal regulations, as seen in decision No. 0881/Pdt.G/2016/PA.Bpp as well. Therefore, in this case, the judge could have considered other aspects that would have a better impact on both parties involved in the lawsuit, rather than deciding on something that could harm the livelihood of one party, such as the psychological condition of the Plaintiff if the marriage between the Plaintiff and Defendant were to continue. Essentially, the actions of the Defendant that led to this lawsuit being filed cannot be guaranteed not to recur, especially those that have caused harm to the Plaintiff, both physically and emotionally (Robaniyah, 2019).

Secondly, law is based on facts, or based on reality. Law based on facts or reality refers to the principle that legal processes must be based on circumstances that are truly occurred or can be proven factually. This means that in enforcing the law, decisions and actions taken must be based on clear and verifiable evidence, not assumptions or opinions alone. The dismissal of *exceptio dilatoria* in decisions No. 1389/Pdt.G/2021/PA.GM and No. 0881/Pdt.G/2016/PA.Bpp was already based on concrete facts revealed during the trial. Despite the facts that the Plaintiff and Defendant continued to have marital relations both before

the separation and before the lawsuit was dismissed, in the trial proceedings, there was no mention of defense by the Plaintiff, even though previously, the Plaintiff had stated that these relations were at the insistence of the Defendant. This cannot be justified, as the judge focused only on the facts presented by the Defendant without considering the previous grounds of the Plaintiff, which then led to the conclusion that there were no more disputes in their marriage.

However, these facts can be proven. If the Plaintiff purely engaged in marital relations due to the improved conditions of their household, as understood by the judge, then on the day of the next trial or on the day the Plaintiff would file the lawsuit, they would explicitly withdraw their claim or even have no intention to proceed with the lawsuit against the Defendant. However, the reality is that until the final decision was made in this case, the Plaintiff continued with their grounds for the lawsuit.

Thirdly, facts must be formulated clearly to avoid misunderstandings in their interpretation and application of the law. In the judicial system, clarity in formulating facts plays a crucial role in preventing incorrect interpretations or manipulation of information. This applies to both the answers provided by both the Plaintiff and the Defendant during the examination of the case. In practice, based on the aforementioned decisions, it seems as though the judge did not allow the Plaintiff to present their response. The Plaintiff's grounds for the lawsuit were no longer considered against the newly revealed facts. However, examining and exploring every fact is the duty of the judiciary, as stated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Authority, which states, "Judges and constitutional judges must explore, follow, and understand the legal values and sense of justice that live within society."

Fourthly, positive law should not be easily changed. Its positive nature indicates that it has been formally established by the government or authorized bodies, such as parliament or legislative bodies, and can be enforced by the judiciary. In the case of *exceptio dilatoria* as a type of lawsuit variation that can annul a lawsuit, it certainly needs to be precise and not easily changed. As discussed earlier, the application of *exceptio dilatoria* in this divorce lawsuit appears inconsistent. For instance, how *exceptio dilatoria* can conclude a complex case that should have been granted, to how it grants a case that should still be premature. This emphasizes the importance of the principle of legal certainty in the judicial process, where clarity of rules and consistent decisions are crucial aspects to ensure justice in the legal system. Legal certainty provides a foundation for people to understand their rights and obligations and gives them confidence that the law will be applied fairly and evenly.

The word "fair" refers to something that is in accordance with facts or logic and adheres to all norms of good and bad prevailing in society. Justice is not only about conformity to reality or logic but also reflects harmony with the moral and ethical standards recognized by the community. Meanwhile, legal justice is a fundamental principle that shapes the judicial system with the aim of ensuring that every individual is treated fairly and equally in the eyes of the

law. This principle not only emphasizes the application of moral and ethical norms but also integrates principles of justice throughout the legal process. Legal justice seeks to ensure that every step in the judicial procedure, from investigation to final decision, is conducted fairly and impartially. According to Gustav Radburch, justice is divided into two types: distributive justice and commutative justice.

Commutative justice involves the reciprocal relationship between individuals, aiming to ensure that exchanges or transactions between them are conducted fairly and equally. In the context of divorce, commutative justice can be understood as the principle that ensures the rights and obligations of both parties are treated equitably. On the other hand, distributive justice involves the distribution of resources and benefits in society more broadly, aiming to ensure that such distribution is fair and equitable. In the context of divorce, distributive justice refers to the fair division of resources and responsibilities, which may not be strictly equal mathematically but strive to achieve social and economic fairness for all parties involved. Commutative and distributive justice are two important concepts in understanding justice in various contexts, including in the realm of divorce. These concepts help explain how justice can be applied to achieve fair and equitable outcomes for all parties involved.

In its application, commutative justice implies that something causing the rejection of a lawsuit due to not yet meeting a regulation, as done by both the plaintiff and defendant, then the judge fairly takes steps to render a decision based on applicable rules. For example, in cases involving marital relations just before the divorce filed by the Plaintiff and Defendant. Regardless of the reasons how this situation arose, everything done by an individual regarding the law will ultimately be governed by the law (treated equally). On the other hand, in distributive justice, the judge should pronounce guilt on the party proven to be at fault, based on the facts uncovered. Thus, by continuously uncovering new facts, justice that is acceptable to the parties involved can be created (Yahya, 2023).

Enforcing legal procedures is important because it ensures that all parties have a fair opportunity to prepare relevant arguments or evidence, thereby maintaining the integrity of the legal system and consistency in decision-making. However, substantive justice focuses on fair outcomes for all parties involved. If granting a divorce petition can provide the necessary protection and support for the spouse and children, it is considered a more substantively just solution. Judges must balance adherence to legal procedures with the achievement of substantive justice, taking into account special circumstances that may influence their decisions. For example, if delaying a divorce would cause significant harm to one party or the children, judges might consider temporary solutions to provide protection and support. A good legal system should be able to provide judges with the flexibility to make fair decisions, possibly through revising laws or regulations to allow exceptions in cases where substantive justice is paramount. Therefore, it is important for the

legal system to have mechanisms that enable a balance between adherence to legal procedures and the achievement of substantive justice, with cooperation between judges and policymakers.

CONCLUSIONS

Based on the research focus in this article, it can be concluded that the panel of judges in considering the application of exceptio dilatoria in the cases they examine, has not been consistent. This can be seen based on the analysis of the legal considerations by the panel of judges in case No. 1389/Pdt.g/2021/PA.GM, No. 8/Pdt.g/2022/PTA.Plg, and No. 881/Pdt.g/2016/PA.Bpp. Some of these decisions state that one strongest fact can be sufficient to prove the arguments of the lawsuit which are considered premature, so the judge no longer disputes the premature arguments. While the rest, illustrates that the substance of what has been argued by the Plaintiff in his lawsuit, will not apply as long as there are other facts that do not meet the relevant regulations. That is why exceptio dilatoria is a problem that is difficult to avoid as long as there are no legal rules governing it. In addition to uncertainty in its application, exceptio dilatoria also results in legal consequences that are quite worrying.

In a divorce case decided as premature even though its approval would better ensure the livelihood of the parties involved, there is a clear dilemma between enforcing legal procedures and achieving substantive justice. Enforcing legal procedures is crucial for ensuring process fairness and legal consistency, while substantive justice focuses on fair and humane outcomes for all parties involved. Judges must balance these two aspects, considering special circumstances that may require temporary solutions to provide the necessary protection and support. Therefore, the legal system must have flexibility and mechanisms to maintain the balance between legal justice and legal certainty. This way, legal procedures do not become obstacles to achieving fair and humane outcomes for all parties involved.

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