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# Reconstructing the Role of Judges in Indonesian Civil Procedural Law: Between the Principle of Judicial Passivity and Procedural Justice

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**ABSTRACT**

*Indonesian civil procedural law remains strongly influenced by colonial legal paradigms that position judges as passive actors strictly bound by the parties' claims. In judicial practice, the formalistic application of the passive judge principle frequently generates problems of procedural justice, particularly when litigation is terminated on procedural grounds without substantive examination. This condition is problematic within a rule-of-law framework that requires courts to uphold justice and the protection of rights. This study aims to examine the normative construction of the passive judge principle in Indonesian civil procedure and to formulate a reconstruction of the judicial role capable of ensuring procedural justice without undermining judicial impartiality and legal authority. This research employs normative legal research using statutory and conceptual approaches, analyzed through qualitative descriptive methods. The findings indicate that the passive judge principle cannot be interpreted absolutely, as it must be understood systemically within the framework of the rule of law and the purposes of law. Furthermore, a reconstruction of the judicial role through the measured use of judicial discretion is necessary to prevent civil litigation from being trapped in procedural formalism and to ensure a balanced realization of justice, legal certainty, and utility.*

***Keywords:*** *Civil Procedure Law; Judge; Procedural Justice.*

Hukum acara perdata Indonesia masih kuat dipengaruhi oleh paradigma hukum kolonial yang menempatkan hakim dalam posisi pasif dan sangat terikat pada kehendak para pihak. Dalam praktik peradilan, penerapan asas hakim pasif secara formalistik sering kali menimbulkan persoalan keadilan prosedural, terutama ketika proses beracara berhenti pada aspek formil dan mengabaikan pemeriksaan pokok perkara. Kondisi tersebut menjadi problematik dalam negara hukum yang menuntut peradilan berorientasi pada keadilan dan perlindungan hak. Penelitian ini bertujuan untuk menganalisis konstruksi normatif asas hakim pasif dalam hukum acara perdata Indonesia serta merumuskan rekonstruksi peran hakim yang mampu menjamin keadilan prosedural tanpa mengabaikan asas imparsialitas dan batas kewenangan hakim. Penelitian ini menggunakan jenis penelitian hukum normatif dengan pendekatan perundang-undangan dan konseptual, yang dianalisis secara deskriptif-kualitatif. Hasil penelitian menunjukkan bahwa asas hakim pasif dalam hukum acara perdata tidak dapat dipahami secara absolut karena harus ditafsirkan secara sistemik dalam kerangka negara hukum dan tujuan hukum. Selain itu, rekonstruksi peran hakim melalui penggunaan diskresi yang terukur diperlukan agar proses litigasi perdata tidak terjebak pada formalisme prosedural, melainkan mampu mewujudkan keadilan, kepastian hukum, dan kemanfaatan secara seimbang.

**Kata Kunci:** *Hukum Acara Perdata; Hakim; Keadilan Prosedural.*

## A. INTRODUCTION

Civil procedural law constitutes a fundamental instrument within the national legal system, as it functions as the primary means for enforcing and safeguarding private rights through judicial mechanisms. Without civil procedural law, substantive civil law norms lack enforceability, since no lawful procedures exist through which infringed private rights may be asserted, examined, and executed. Accordingly, civil procedural law cannot be understood merely as a body of technical or procedural rules, but rather as an integral component of the legal protection system within a state governed by the rule of law.

Doctrinally, civil procedural law is conceived as formal civil law that serves to ensure the enforcement of substantive civil law through the judiciary. Sudikno Mertokusumo (2002) explicitly defines civil procedural law as a body of legal rules governing the manner in which compliance with substantive civil law is guaranteed through the intermediary of judges. This definition underscores that, from its inception, civil procedural law places judges at the center of the rights-enforcement process, while simultaneously affirming that the effectiveness of substantive civil law is highly dependent upon the operation of judicial procedures.

Nevertheless, the Indonesian civil procedural system continues to rely heavily on regulations inherited from the colonial era, particularly *Herziene Inlandsch Reglement* (HIR) and *the Rechtsreglement voor de Buitengewesten* (RBg). The continued application of HIR and RBg as positive civil procedural law reflects the enduring influence of the classical procedural paradigm, which positions judges in a relatively passive role while vesting full initiative and control of the proceedings in the hands of the litigating parties (Martana, 2016).

This paradigm is explicitly reflected in various provisions of the HIR. Article 118 of the HIR stipulates that a civil claim must be filed by the plaintiff before a competent court, thereby rendering the initiation of proceedings entirely dependent upon the will of the interested party. This provision illustrates that judges are not endowed with an active role in initiating or shaping cases, but rather are required to await the assertion of claims by the parties.

Furthermore, Article 178 paragraph (3) of the HIR expressly prohibits judges from adjudicating matters not claimed or granting relief beyond what is sought. This norm represents a direct manifestation of the principle of judicial passivity (*lijdelijkheid van de rechter*), which restricts judicial discretion so as not to exceed the limits of the petitum. Consequently, the scope of judicial examination and adjudication is strictly determined by the formulation of claims submitted by the parties.

The passive orientation of judges is also evident in the evidentiary system of Indonesian civil procedure. Article 163 of the HIR provides that a party asserting a right or legal fact bears the burden of proof. As a result, judges are not required to actively seek or uncover facts beyond those presented by the parties. Judges are instead tasked with evaluating the evidence introduced during the proceedings, such that the truth pursued in civil procedural law is fundamentally formal truth rather than material truth.

This procedural paradigm is premised on the assumption that litigating parties are situated in relatively equal positions, possess sufficient legal knowledge, and are capable of effectively pursuing their interests through formal procedures. In contemporary

judicial practice, however, these assumptions frequently prove untenable. Disparities in legal knowledge, limited access to legal assistance, and the inherent complexity of procedural rules often place one party in a structurally weaker position (Sari & Aprillia, 2025).

Such conditions give rise to serious concerns regarding procedural justice in civil litigation. Procedural justice does not merely require compliance with formal procedural rules, but also demands that judicial processes ensure equal opportunities for parties to be heard, treated fairly, and obtain decisions through rational and transparent procedures. When judges apply the principle of passivity rigidly without considering its impact on the balance between the parties, judicial proceedings may be formally valid yet procedurally unjust.

These issues become even more complex when examined in light of the rule of law principle enshrined in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which declares Indonesia a state governed by law. The rule of law requires that the exercise of judicial power be oriented not only toward formal legal certainty, but also toward justice and the protection of human rights. Within this framework, courts cannot be reduced to mere forums for the mechanical application of procedural rules, but must function as institutions for the pursuit of justice (*forum justitiae*).

This principle is further reinforced by Law No. 48 of 2009 on Judicial Power. Article 5 paragraph (1) of this law obliges judges to explore, follow, and understand the legal values and sense of justice living within society. This provision indicates that judges cannot fully shield themselves behind procedural formalism, but instead bear an active responsibility to ensure that judicial processes reflect justice. Moreover, Article 10 paragraph (1) of the Judicial Power Law stipulates that courts are prohibited from refusing to examine and adjudicate cases on the grounds that the law is absent or unclear. This norm implies that judges are required to assume an active intellectual and interpretive role in resolving disputes, including addressing normative ambiguities and procedural deficiencies.

Taken together, these provisions signal a paradigmatic shift in the conception of judicial roles, from passive law appliers toward actors responsible for ensuring justice within the judicial process. However, this shift has not been fully accompanied by corresponding reforms in the civil procedural system, which remains anchored in the HIR and RBg. As a result, a normative tension emerges between the classical passive judge paradigm embedded in civil procedural law and the demand for a more active judicial role within the modern framework of judicial power (Sibuea, 2006).

This normative tension manifests in concrete juridical problems in civil litigation practice. In numerous cases, judges rely on the principle of passivity as a justification for refraining from clarifying vague claims, failing to guide procedurally weaker parties, or directly declaring claims inadmissible (*niet ontvankelijke verklaard*) due to formal defects. While such practices may be procedurally defensible under the HIR, they simultaneously risk undermining the parties' right to obtain a fair examination of the merits of their case (Sunarto, 2016).

Within a conceptual framework, the issue of the judge's role in Indonesian civil procedural law cannot be understood in a fragmented manner by merely juxtaposing the principle of judicial passivity with the demand for justice. Rather, it must be situated within a systemic relationship between the rule of law, procedural justice, and judicial discretion. Historically, the principle of passive adjudication has served to safeguard judicial impartiality and legal certainty; however, in a modern rule-of-law state, this

principle cannot operate in isolation. It must instead be oriented toward the protection of rights and the realization of procedural justice as fundamental objectives of adjudication.

Procedural justice requires that judicial proceedings be not only formally lawful but also perceived as fair by the parties through equal opportunities to be heard and treated impartially. In this context, judicial discretion acquires normative legitimacy not as an expression of unbounded judicial activism, but as a measured judicial instrument designed to mediate the tension between procedural formalism and substantive fairness within the framework of the rule of law. Accordingly, the reconstruction of the judge's role in Indonesian civil litigation should be understood as a conceptual endeavor to recalibrate the relationship between the principle of judicial passivity, procedural justice, and judicial discretion in a proportional and accountable manner, so that civil adjudication remains impartial while simultaneously delivering procedural fairness (Tyler, 2006).

In this context, the concept of procedural justice emerges as a relevant analytical framework. By adopting procedural justice as a normative benchmark, the role of judges is no longer assessed solely in terms of activity or passivity, but rather in relation to the extent to which judicial conduct and attitudes ensure fairness for the parties. This approach allows for a reconstruction of judicial roles that does not negate the principle of judicial passivity, but instead situates it proportionally within a justice-oriented adjudicative system.

Previous studies have examined the role of judges in civil procedure by either emphasizing the importance of judicial passivity or advocating for a more active judicial role. However, much of this scholarship remains confined within the active and passive dichotomy and has yet to systematically articulate the normative limits of judicial intervention within the Indonesian civil procedural framework. In other words, a comprehensive conceptual construction that delineates the extent to which judges may or must act actively, without violating the principle of impartiality and the boundaries of judicial authority, remains underdeveloped (Marda et al., 2023).

Unlike previous studies that predominantly frame the role of judges in civil procedural law within a dichotomous active and passive paradigm, this article does not confine itself to that debate. Instead, it offers a normative and conceptual contribution by proposing a reconstruction of the judicial role grounded in procedural justice and the calibrated exercise of judicial discretion within the framework of the rule of law. Under this approach, the judge's role is not assessed merely by the degree of judicial activity or restraint, but by the extent to which judicial actions ensure procedural fairness without undermining impartiality, jurisdictional limits, and legal certainty. The reconstruction advanced in this article seeks to fill an existing conceptual gap in Indonesian civil procedural law by providing a more proportional and context sensitive normative framework for redefining the judicial role amid the tension between procedural formalism and the demands of justice in a rule of law state..

Based on the foregoing, a conceptual gap exists within Indonesian civil procedural law concerning the formulation of an ideal judicial role that balances the principle of judicial passivity with the demands of procedural justice. This gap constitutes the central rationale for the present study, which seeks to examine and reconstruct the role of judges in Indonesian civil litigation in a normative and systematic manner. Accordingly, this research addresses two principal legal issues: first, how the normative construction of the principle of judicial passivity is articulated within Indonesian civil procedural law; and second, how the judicial role in Indonesian civil litigation may be reconstructed so

as to ensure procedural justice without undermining judicial impartiality and the limits of judicial authority.

## B. METHOD

This study employs normative legal research, which conceptualizes law as a system of norms comprising legal principles, statutory rules, judicial decisions, agreements, and legal doctrines (Fajar & Ahmad, 2010). The research applies both a statutory approach and a conceptual approach. According to Peter Mahmud Marzuki, the statutory approach is conducted by analyzing all relevant legislation related to the legal issues under examination (Muhaimin, 2020). Meanwhile, the conceptual approach is grounded in the views and doctrines that have developed within legal scholarship (*ibid*.).

The data sources utilized in this study consist of secondary data, namely legal materials encompassing primary, secondary, and tertiary legal sources (Amiruddin & Azikin, 2018). Primary legal materials include legislation and court decisions; secondary legal materials comprise scholarly books, journal articles, and legal commentaries; while tertiary legal materials consist of reference works that support the understanding of primary and secondary sources. With respect to data collection techniques, this research relies on literature review or library research, involving a systematic examination of relevant legal texts and academic literature. The analytical method employed is descriptive-qualitative analysis, a technique that does not prioritize statistical data but instead emphasizes descriptive interpretation of research findings and focuses on the substantive quality of the data analyzed (Salim & Nurbani, 2014).

## C. RESULTS AND DISCUSSION

### 1. The Normative Construction of the Principle of Judicial Passivity in Indonesian Civil Procedural Law

The principle of judicial passivity (*lijdelijkheid van de rechter*) constitutes one of the fundamental doctrines that has long shaped the Indonesian civil procedural system. Historically and normatively, this principle is deeply rooted in colonial civil procedural law, which continues to apply through the *Het Herziene Indonesisch Reglement* (HIR) and the *Rechtsreglement voor de Buitengewesten* (RBg). Within this framework, judges are positioned as actors who await the initiative of the litigating parties, remain bound by the formulation of claims, and are strictly constrained from exceeding the relief sought. Such a construction has produced a civil procedural system characterized by proceduralism, formalism, and an orientation toward formal truth.

Normatively, the principle of judicial passivity is explicitly reflected in various provisions of the HIR. Article 118 of the HIR stipulates that a civil action must be filed by the plaintiff before a competent court, thereby placing the initiation of proceedings entirely within the will and initiative of the parties. Judges are not vested with authority to initiate or shape cases, but are instead confined to examining and adjudicating disputes brought before them based on the claims formulated by the plaintiff. This provision demonstrates that civil procedural law establishes a strong correlation between party autonomy and the scope of judicial authority.

Furthermore, Article 178 paragraph (3) of the HIR expressly prohibits judges from adjudicating matters not claimed or granting relief beyond what is sought. This norm represents a direct manifestation of the principle of judicial passivity, intended to safeguard judicial impartiality and protect the autonomy of the parties in

determining the legal interests in dispute. Within this construction, judges are not conceived as seekers of material truth, but rather as evaluators of formal truth based on what is asserted and proven by the parties.

The passive orientation of judges is further reinforced by Article 163 of the HIR, which places the burden of proof entirely upon the party asserting a right or legal fact. The consequence of this provision is that judges are not obligated to actively investigate facts or uncover the truth beyond the evidence presented by the parties. Accordingly, the Indonesian civil procedural system is normatively designed to produce formal truth, namely truth constructed through the parties' arguments and evidentiary submissions, rather than material truth that is actively sought by the court.

From a conceptual standpoint, this normative construction of judicial passivity aligns with the classical paradigm of civil procedure, which conceives litigation as a private arena in which parties pursue their rights on an ostensibly equal footing. This paradigm assumes that the parties possess relatively equal capacity, legal knowledge, and bargaining power, such that excessive judicial intervention is perceived as a threat to balance and impartiality. Within this context, judicial passivity is viewed as a guarantee of objectivity and legal certainty.

However, when the principle of judicial passivity is examined through the lens of the theory of the rule of law, more fundamental normative issues emerge. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state governed by law, implying that the entire exercise of judicial power must be directed toward ensuring the protection of human rights, justice, and legal certainty in a balanced manner. In a modern rule-of-law state, courts are not merely mechanisms for the formal application of rules, but institutions responsible for ensuring that legal processes operate fairly and meaningfully for justice seekers.

This principle is further reinforced by Law No. 48 of 2009 on Judicial Power. Article 5 paragraph (1) of this law obliges judges to explore, follow, and understand the legal values and sense of justice living within society. Conceptually, this norm indicates that judges cannot fully shelter behind passive and formalistic attitudes, as the rule of law demands active judicial responsibility in ensuring justice. Consequently, a normative tension arises between the construction of judicial passivity embodied in the HIR and the judicial role envisioned within the constitutional framework and the Judicial Power Law.

This tension becomes even more apparent when considered alongside Article 10 paragraph (1) of the Judicial Power Law, which prohibits courts from refusing to examine and adjudicate cases on the grounds that the law is absent or unclear. This provision positions judges as active subjects obligated to overcome legal gaps and ambiguities through interpretation and legal reasoning. In this context, judges are no longer conceived merely as "mouthpieces of the law," but as constitutional actors responsible for ensuring that law functions effectively to protect citizens' rights.

If the principle of judicial passivity is rigidly maintained without adjustment to the rule-of-law framework, civil procedural law risks being reduced to a formally valid but substantively deficient procedural mechanism. This condition demonstrates that, juridically, judicial passivity cannot be understood as an absolute principle, but rather as one that must be interpreted systematically and contextually within the rule-of-law paradigm.

This issue becomes more pronounced when analyzed through Gustav Radbruch's theoretical framework. Radbruch (2006) posits that law embodies three fundamental values, namely justice, legal certainty, and utility, which must be balanced in their application. In civil procedural law, the principle of judicial passivity has historically emphasized legal certainty by strictly limiting judicial authority. However, when such emphasis sacrifices justice and utility, the overarching purpose of law remains unfulfilled.

Overly formalistic application of judicial passivity may result in claims being declared inadmissible (*niet ontvankelijke verklaard*) solely due to procedural defects, without ever addressing the substance of the dispute. From Radbruch's perspective, such a situation reflects the dominance of legal certainty at the expense of justice and utility. Although judicial proceedings may formally comply with procedural rules, they fail to provide meaningful protection of rights and tangible benefits to justice seekers. Accordingly, the principle of judicial passivity requires reassessment to ensure its alignment with the objectives of law itself.

Within the context of judicial discretion, mechanisms exist to bridge the tension between judicial passivity and the demands of justice. Judicial discretion does not signify unfettered freedom, but rather a normatively justified space to take certain decisions or actions when procedural law provides no clear guidance or when rigid application of rules would undermine justice. In Indonesian civil procedural law, judicial discretion functions as an instrument to maintain equilibrium between legal certainty and procedural justice.

Sunarto (2016) emphasizes that although civil procedural law adheres to the principle of judicial passivity, judges nevertheless retain an active role in leading proceedings, preventing procedural injustice, and ensuring that litigation unfolds fairly. According to this view, judicial activity should not be equated with partiality, but understood as a form of responsibility aimed at guaranteeing the effectiveness and fairness of judicial processes. This perspective underscores that judicial discretion is an inherent component of the judicial function within a rule-of-law state.

Accordingly, the normative construction of judicial passivity in Indonesian civil procedural law cannot be detached from the framework of the rule of law, the objectives of law, and judicial discretion. While the principle remains relevant as a safeguard of impartiality and legal certainty, it cannot be maintained absolutely without regard to justice and utility. Normatively, judicial passivity must be interpreted dynamically and proportionally, enabling judges to exercise limited and accountable discretion in order to ensure procedural justice.

Based on the foregoing analysis, it can be concluded that there exists an urgent normative need to reinterpret the principle of judicial passivity within Indonesian civil procedural law. This reinterpretation is not intended to negate the principle, but rather to situate it within a more comprehensive rule-of-law and teleological framework. In doing so, judicial passivity may function as an instrument of legal certainty that remains compatible with justice and utility, while allowing judges to exercise measured discretion to safeguard procedural justice in civil litigation.

**2. Reconstructing the Judicial Role in Civil Litigation to Ensure Procedural Justice without Undermining Impartiality and the Limits of Judicial Authority**

The reconstruction of the judicial role in Indonesian civil litigation constitutes a normative necessity arising from the development of the modern rule-of-law state and the increasing demands for justice in judicial practice. Indonesian civil

procedural law, which remains largely grounded in the HIR and RBg, was historically designed to serve a formalistic adjudicative paradigm characterized by a passive judiciary. However, the evolution of post-constitutionalism principles has repositioned courts not merely as forum procedendi, but as institutions entrusted with safeguarding justice and protecting citizens' rights (Sibuea, 2006).

Within the framework of the rule of law, judges occupy a strategic position as independent and accountable executors of judicial power. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms Indonesia as a state governed by law, implying that all judicial processes must be directed toward the protection of human rights and the realization of substantive justice, rather than mere formal legal certainty. This principle situates judges as active subjects in law enforcement, rather than as mere procedural operators (Asshiddiqie, 2005).

This construction is further reinforced by Article 5 paragraph (1) of Law No. 48 of 2009 on Judicial Power, which obliges judges to explore, follow, and understand the legal values and sense of justice living within society. This norm demonstrates that Indonesian positive law explicitly mandates judges to move beyond purely textual application of rules and to engage in justice-oriented legal assessment.

Nevertheless, such a mandate must be applied proportionately so as not to give rise to arbitrariness. Reconstructing the judicial role cannot be understood as abolishing the principle of judicial passivity, but rather as a normative adjustment to changes in the function of courts within a rule-of-law state. In civil procedural scholarship, procedural judicial activity is in fact regarded as a prerequisite for achieving fair and effective adjudication, particularly in contexts marked by asymmetries between the parties (Sunarto, 2016).

From Gustav Radbruch's theoretical perspective, the necessity of such reconstruction becomes even more evident. Radbruch (2006) posits that law embodies three fundamental values, namely justice (*Gerechtigkeit*), legal certainty (*Rechtssicherheit*), and utility (*Zweckmäßigkeit*), which must be placed in a balanced relationship. Radbruch emphasizes that positive law which excessively sacrifices justice in favor of legal certainty loses its moral legitimacy and no longer deserves to be regarded as law.

Radbruch's thought has been widely employed in modern legal discourse, including in procedural law analysis. Alexy et al. (2016), for example, affirms that Radbruch's value triad constitutes a foundational element of contemporary legal theory in assessing the validity and legitimacy of positive law. In the context of civil procedure, the dominance of legal certainty manifested through procedural formalism may lead to the neglect of justice and utility, particularly when claims are declared inadmissible solely due to formal defects that are, in fact, remediable.

Indonesian civil litigation practice demonstrates that judgments of *niet ontvankelijke verklaard* are frequently rendered by rigid reference to HIR provisions, without adequate consideration of their impact on the parties' right to obtain a substantive examination of the dispute (Sari & Aprillia, 2025). From Radbruch's perspective, such practices reflect an imbalance in which legal certainty prevails over justice and utility. Although judicial proceedings may be normatively valid, they fail to fulfill the purpose of law as a means of fair and beneficial dispute resolution.

It is within this context that reconstructing the judicial role must be directed toward restoring balance among the values underlying the objectives of law. Judges

are not required to disregard legal certainty, but rather to situate it proportionately so that it does not negate justice and utility. In other words, reconstructing the judicial role constitutes a normative effort to ensure that civil procedural law continues to function as an instrument of justice, rather than merely as an administrative mechanism for case disposition.

This reconstruction finds its conceptual foundation in the doctrine of judicial discretion. Judicial discretion is understood as a normatively justified space for judges to take certain actions or decisions when positive law provides no clear guidance or when rigid application of rules would undermine the objectives of law. Discretion does not entail absolute freedom, but rather a constrained freedom bounded by law, principles, and the pursuit of justice (Galligan, 2018).

Within Indonesian civil procedural law, judicial discretion has been extensively analyzed by Sunarto (2016), who asserts that the principle of judicial passivity does not negate the judge's obligation to actively manage proceedings and ensure procedural fairness. Procedural judicial activity, such as clarifying vague claims, directing the course of proceedings, and preventing imbalance between the parties, constitutes a legitimate and necessary exercise of discretion to secure justice.

This view aligns with modern judicial literature that conceives judges as managers of the trial, rather than as passive spectators. Cappelletti (2017) emphasizes that in contemporary judicial systems, judges must assume an active role in managing proceedings to ensure access to justice and adjudicative effectiveness. Although developed in a comparative law context, this concept is conceptually relevant to the reform of Indonesian civil procedural law.

The exercise of judicial discretion must, however, be normatively constrained so as not to violate the principle of impartiality. Such constraints include a clear distinction between procedural activity and substantive intervention. Judges may, and indeed must, be active in managing the procedural aspects of litigation, but they must refrain from steering the substance of claims or evidence in a partisan manner. This boundary is essential to maintaining public trust in the judiciary and preventing abuses of authority.

Accordingly, the reconstruction of the judicial role in Indonesian civil litigation must be situated within the framework of the rule of law, the objectives of law, and measured judicial discretion. This reconstruction does not seek to abolish the principle of judicial passivity, but rather to interpret it dynamically so that it aligns with the demands of procedural justice and rights protection. Normatively, judges remain bound by impartiality and legal certainty, yet are afforded legitimate discretionary space to ensure justice and utility. Such a reconstruction not only enriches academic discourse in civil procedural law, but also offers practical contributions to judicial reform. By positioning procedural justice as its primary orientation, Indonesian civil procedural law may evolve into a more responsive, just, and meaningful system within a democratic rule-of-law state.

## D. CONCLUSION

The principle of judicial passivity in Indonesian civil procedural law constitutes a historical construct that remains normatively entrenched within the civil procedural system, particularly through Articles 118, 163, and 178 paragraph (3) of the HIR. Fundamentally, this principle functions as a safeguard of judicial impartiality and legal certainty by limiting the scope of judicial intervention in the parties' autonomy.

Nevertheless, when judicial passivity is maintained rigidly and absolutely, it risks conflicting with the rule-of-law principle and the objectives of law itself. Within the framework of a modern rule-of-law state, judges are required not only to uphold legal certainty but also to ensure justice and utility through judicial processes. Accordingly, the principle of judicial passivity should not be understood normatively as an absolute prohibition on judicial activity, but rather as a principle that must be interpreted systemically and teleologically so as to align with the constitutional mandate of judicial power and the broader purposes of law.

The reconstruction of the judicial role in Indonesian civil litigation thus constitutes an unavoidable normative necessity within the context of the rule of law and modern adjudication. The analysis demonstrates that such reconstruction must be directed toward strengthening the judicial role as a guarantor of procedural justice, without undermining the principles of impartiality and the limits of judicial authority. Judicial role reconstruction is essential to rebalance the values of justice, legal certainty, and utility, which have tended to become distorted due to the dominance of procedural formalism. This reconstruction finds its normative legitimacy insofar as judicial discretion is exercised in a limited, transparent, and accountable manner to manage procedural aspects of litigation, rather than to intervene in the substantive merits of disputes. Accordingly, reconstructing the judicial role does not amount to a negation of the principle of judicial passivity, but rather constitutes a proportional reinterpretation that enables civil procedural law to function effectively as an instrument of rights protection and justice within a democratic rule-of-law state.

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