

RECONSTRUCTING THE REGULATION ON THE WITHDRAWAL OF CIVIL LAWSUITS UNDER ARTICLES 271 AND 272 OF THE REGLEMENT OP DE RECHTSVORDERING (RV) TO ADDRESS THE LEGAL VOID IN THE HIR/RBG

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Abstract

The regulation of civil lawsuit withdrawal within the Indonesian civil procedural law system faces normative issues because the *Herziene Indonesisch Reglement* (HIR) and *Rechtsreglement voor de Buitengewesten* (RBg) do not explicitly govern the mechanisms, requirements, time limits, and legal consequences of such withdrawals. This regulatory gap necessitates judicial law-finding to ensure the smooth conduct of judicial proceedings and legal certainty for the parties involved. This study aims to analyze the reconstruction of regulations regarding civil lawsuit withdrawal by adopting the principles found in Articles 271 and 272 of the *Reglement op de Rechtsvordering* (Rv) to address the legal vacuum in the HIR/RBg and achieve legal certainty. The study employs a normative legal research method, utilizing statutory, conceptual, and case-based approaches. The findings indicate that Article 271 Rv grants the plaintiff the right to withdraw a lawsuit before the defendant submits a response without requiring the defendant's consent, whereas withdrawal after the response has been submitted requires the defendant's approval. Meanwhile, Article 272 Rv regulates the authority of the parties entitled to withdraw a lawsuit. In judicial practice, these principles serve as guidelines to fill the HIR/RBg legal vacuum, grounded in the principles of *process doelmatigheid* (procedural efficiency) and *process orde* (procedural order). The application of these principles is exemplified in the Sekayu District Court Order Number 20/Pdt.G/2024/PN Sky, where the judge utilized Articles 271 and 272 Rv as the basis for law-finding to resolve issues surrounding lawsuit withdrawal. Reconstructing the regulations on lawsuit withdrawal is essential to establish clear parameters regarding the stages of withdrawal, the requirement for defendant consent, the authority of the withdrawing party, and the legal consequences of withdrawal; this ensures legal certainty, orderly judicial proceedings, and a balanced protection of the parties' interests.

Keywords: *Withdrawal of Lawsuit, HIR/RBg, Articles 271 and 272 Rv, Legal Discovery, Legal Certainty.*

INTRODUCTION

Civil procedural law consists of a set of rules governing court proceedings aimed at enforcing substantive civil law. In practice, reliance on colonial era codifications such as the HIR and RBg often gives rise to legal gaps, as existing regulations do not fully accommodate the dynamics of specific cases. This disparity necessitates judicial law finding to ensure the judiciary continues to function effectively in restoring individuals' rights. (Abdulkadir Muhammad, 2015). The application of the *Herziene Inlandsch Reglement* (HIR) and the *Rechtsreglement voor de Buitengewesten* (RBg) in current judicial practice continues to face challenges stemming from the legal dualism inherited from the colonial era. As cited by R. Soeroso from the views of Subekti, despite the aspiration to replace these codes with national legislation, the HIR and RBg remain in effect to this day.

The issue is that the HIR and RBg often fail to provide detailed regulations regarding certain procedural forms; consequently, in practice, courts frequently adopt procedural forms not recognized in the HIR by drawing upon established case law (*yurisprudensi*). A notable limitation concerns the mechanism for withdrawing a lawsuit. Given that civil procedural law in Indonesia remains regionally differentiated with the HIR applying to Java and Madura and the RBg to regions outside Java normative gaps frequently arise. This necessitates that judges refer to more comprehensive provisions, such as the Rv (*Reglement op de Rechtsvordering*), to fulfill the court's fundamental objective of seeking material truth (R. Soeroso, 2011). In light of the foregoing, the most critical legal lacuna in the HIR and RBg is the absence of explicit provisions regarding the mechanism for withdrawing a lawsuit specifically

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concerning the procedure, time limits, and legal consequences. Yet, the withdrawal of a lawsuit is a common legal action resulting from errors regarding the subject matter of the case (error in objecto) or the legal parties involved (error in persona), or arising from other strategic considerations. To address this gap, judicial practice commonly refers to the Reglement op de Rechtsvordering (Rv) as a supplementary source of law. Technically, Article 271 Rv gives the Plaintiff the right to withdraw the lawsuit before the response stage without the opponent's consent, while Article 272 Rv regulates the special authority of the attorney in carrying out the withdrawal. The use of this Rv is considered valid as long as it is intended to ensure the smooth running of the judicial procedure and does not conflict with the principles of national procedural law. (Reglement op de Burgerlijke Rechtsvordering (Rv), Stb. 1847 No. 52 Article 271 and Article 272).

The legitimacy of utilizing this supplementary source of law aligns with the legal principle requiring judges under such circumstances to examine, adjudicate, and decide upon cases brought before them, as mandated by Article 10, Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. This provision affirms that courts are prohibited from refusing to hear and decide a case on the grounds that the law is nonexistent or unclear (Article 10, Paragraph (1), Law Number 48 of 2009 concerning Judicial Power). This reflects the fundamental principle that a judge is not merely a mechanical applier of statutes, but an upholder of justice obligated to provide legal solutions through the process of legal discovery (rechtsvinding) to fill existing legal voids. When engaging in legal discovery to fill such a normative gap, a judge must not act arbitrarily but must instead remain grounded in the values of procedural justice. As emphasized by Wahyu Muljono, judges have a constitutional obligation to uphold the principle of audi et alteram partem, the principle of the equality of parties before the law (Wahyu Muljono, 2012).

Doctrinally, this principle requires the judge to meticulously examine every stage of the ongoing proceedings particularly regarding the right to terminate the case. This is not merely a matter of procedural administration but a crucial juncture in determining legal certainty for those seeking justice. Wahyu Muljono indicates that a balance of rights must be maintained; specifically, if the Defendant has not yet submitted a response, the Plaintiff retains full procedural authority over their claim to withdraw the case without requiring the opposing party's consent. However, the urgency of applying Articles 271 and 272 of the Rv arises precisely to place clear limits on that sovereignty. Once the proceedings have moved beyond the stage of the statement of defense, the Defendant's right to be heard becomes absolute as a matter of law; this is essential to prevent potential material or non-material losses resulting from a sudden withdrawal of the claim. It is precisely this highly decisive procedural distinction that is neither explicitly nor exhaustively regulated in the HIR or RBg (Wahyu Muljono, 2012).

Therefore, in practice, referencing the Rv is not merely a matter of adhering to antiquated rules; rather, it is a legal necessity for giving effect to universally recognized principles of civil procedure that are not otherwise accommodated within existing national regulations. The urgency of utilizing the Rv (Dutch Code of Civil Procedure) as supplementary law underscores that the application of Articles 271 and 272 of the Rv concerns not merely the procedure for withdrawing a lawsuit, but also the allocation of litigation costs, thereby ensuring legal certainty. Even when a lawsuit is withdrawn, the liability for costs remains with the party withdrawing the suit; this serves to protect the opposing party's interests and uphold the orderly administration of justice (Binar Tarasari et al., 2024).

This perspective also views the practice of judicial discovery through the Rv as a crucial step in addressing gaps within the national civil procedural law framework. Judges possess the active authority to respect a plaintiff's intent to withdraw a lawsuit particularly to overcome procedural hurdles and achieve the simple, speedy justice mandated by the Law on Judicial Power. Consequently, referencing the Rv in court practice is not simply a matter of adhering to colonial-era rules; rather, it is a legal necessity to give effect to universally recognized civil procedural principles that are not otherwise accommodated within existing national regulations (Anita Afriana et al., 2022). The application of Articles 271 and 272 of the Rv serves as clear evidence that the Rv remains the primary reference for filling that legal gap. However, the application of this colonial provision needs to be examined more deeply to see how should the regulations regarding the withdrawal of civil lawsuits be reconstructed through the adoption of the principles found in Articles 271 and 272 of the Reglement op de Rechtsvordering (Rv) to address the legal vacuum in the HIR/RBg and ensure legal certainty.

DISCUSSION

The regulation of civil lawsuit withdrawal through the adoption of the principles of Articles 271 and 272 of the Reglement op de Rechtsvordering (Rv) to address the legal vacuum in the HIR/RBg and ensure legal certainty.

In social life, amidst individuals with differing temperaments and interests, disputes or conflicts are inevitably difficult to avoid. Such disagreements may stem from trivial matters with no legal consequences such as a difference of opinion with a spouse regarding the timing of an out of town trip or they may involve serious issues

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with legal implications, such as boundary disputes with neighbors or conflicts concerning a prior agreement. A disagreement surfaces and escalates into a formal dispute largely because each party believes they are in the right and entitled to the subject of the contention; conversely, if a party acknowledges their error and realizes they have no valid claim to the matter at hand, the dispute is effectively resolved or ceases to exist. (R. Subekti, 1981) The application of (substantive) civil law can occur informally between interacting parties, without the need to involve official institutions. However, violations of (substantive) civil law frequently occur, resulting in harm to a party and a disruption of the balance of interests within society. In such instances, the violated substantive civil law must be upheld and enforced. (R. Subekti, 1981)

Among the various relationships that exist, some are classified as legal relationships, thereby giving rise to rights and obligations for the respective parties. Disputes may arise between parties in such legal relationships, potentially leading one party to feel that their rights have been infringed upon. Conflicts or clashes between individuals are inevitable, given the multitude of potentially conflicting interests; such conflicts of interest occur when an individual harms another party while pursuing their own interests a situation that cannot be avoided in social life. (Sudikno Mertokusumo, 2003) Civil procedural law comprises the body of rules aimed at implementing, upholding, or enforcing substantive civil law through the authority of the state. State intervention in upholding and enforcing substantive civil law occurs through the judicial process; this method is known as litigation. Fundamentally, in litigation, the initiative to bring a case rests with the litigant (in this instance, the plaintiff). In other words, the decision to initiate a case must be made by the individual or individuals who believe their rights have been violated namely, the plaintiff or plaintiffs. (Soetjipto Rahardjo, 1978)

A lawsuit filed by a plaintiff sets forth their claims regarding their rights. Such a claim is an action aimed at securing legal protection for one's rights granted by the court to prevent *eigenrichting* (taking the law into one's own hands). Taking the law into one's own hands involves the arbitrary enforcement of rights based solely on one's own will, without the consent of other interested parties, thereby causing harm. Resorting to such self help measures is not a legitimate means of asserting or exercising one's rights. (Sudikno Mertokusumo, 2006) Regarding the court proceedings, the case resolution process begins with the filing of a lawsuit with the competent court. During the hearing process, attention must also be paid to the complaint itself, which may be amended prior to the scheduling of the hearing by the chief judge or the presiding judge. Once a lawsuit filed with the District Court is accepted by the court, the judge presiding over the civil case will always attempt to facilitate a settlement between the parties before proceeding with the actual examination of the case.

Apart from mediation leading to the discontinuation of civil proceedings, a civil case may also be terminated unilaterally by the plaintiff through the withdrawal of the lawsuit previously filed with the court; this action must be taken prior to the commencement of hearings addressing the merits of the case such as the receipt of the defendant's answer meaning the proceedings have only reached the stage of summoning the parties (both plaintiff and defendant). (<https://repositori.uma.ac.id>) The withdrawal of a civil lawsuit at the court of first instance is permissible. Although the withdrawal of a case is not expressly regulated in the HIR (Het Herziene Indonesisch Reglement) or the R.bg (Reglement Buitengewesten), the practical needs of judicial proceedings necessitate the existence of guidelines for its implementation. Due to this absence of specific rules, Articles 271–272 of the Rv (Reglement op de burgerlijke rechtsvordering) may serve as a guideline for the court. The court must uphold the principle that the withdrawal of a case is a right inherent to the plaintiff, just as the filing of the lawsuit itself is. (M. Yahya Harahap, 2015)

A lawsuit may be withdrawn prior to the commencement of the hearing, provided the defendant has not yet submitted a response. The right to withdraw a lawsuit is inherent to the plaintiff; the law grants the plaintiff the full right to withdraw the suit without the defendant's consent. Nevertheless, the plaintiff as the party withdrawing the suit must notify the opposing party (the defendant) via a simple instrument (such as a letter) that the lawsuit has been withdrawn. This notification must be made in writing or by formal instrument to ensure legal certainty and to serve as proof of the withdrawal.

One of the legal issues that may arise during court proceedings is the withdrawal of a lawsuit. A plaintiff may withdraw their lawsuit while the examination process is underway. The reasons for this vary; for instance, the filed lawsuit might be defective, the grounds for the claim may be weak, the claim itself might be contrary to the law, or other factors may be involved. (M. Yahya Harahap, 2015) In reality, neither the Herziene Indonesisch Reglement (HIR) nor the *Rechtreglement voor de Buitengewesten* (RBG) contains provisions regarding the withdrawal of a lawsuit. Due to this legislative gap, it is necessary to identify a justifiable legal basis. The legal bases considered valid include:

“Articles 271 and 272 of the Reglement op de Rechtsvordering (Rv)

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Although the Rv is not formally in force, it still serves as a necessary guide for specific matters in accordance with the principles of *procesdoelmatigheid* (procedural expediency) or *procesorde* (procedural order) where the HIR and RBG are silent; and Jurisprudence. In addition to Articles 271 and 272 of the Rv, judges may utilize jurisprudence as a guideline or reference. Although Indonesia does not adhere to a strict system of binding precedent, this does not preclude judges from following prior court rulings in a liberal and rational manner". (M. Yahya Harahap, 2015)

The withdrawal of a lawsuit is a right inherent to the plaintiff. Regarding the withdrawal of a lawsuit prior to the commencement of the examination, its application is governed by the provisions of Article 271 of the Rv (Code of Civil Procedure), first paragraph, which stipulates:

The plaintiff may withdraw their case, provided that the withdrawal is effected before the defendant submits a response. (M. Yahya Harahap, 2015)

In civil proceedings, the submission of a response takes place during the first hearing, the second hearing, or a subsequent hearing if previous hearings were adjourned without the defendant having submitted a response. In such instances, even if the parties are present at the hearing, the examination is deemed not to have commenced as long as the defendant has not yet submitted a response. Under these circumstances, the law grants the plaintiff the full right to withdraw the lawsuit without the defendant's consent.

Although Indonesia does not adhere to a system of binding precedent, judges may still use jurisprudence as a guideline and reference. This is illustrated, among other instances, by Supreme Court Judgment Number 1841 K/Pdt/1984, which affirms that "Before the trial proceedings have commenced, the plaintiff has the right to withdraw the lawsuit without the defendant's consent; once the proceedings have begun, withdrawal is still permissible, provided that the defendant's consent is obtained). (M. Yahya Harahap, 2015). A lawsuit may be withdrawn either before or after the defendant has submitted a response. The differences between these two scenarios are discussed below.

The plaintiff's right to withdraw a lawsuit in its purest and most absolute form exists primarily during the initial stages of registration and distribution to the judicial panel, before the proceedings advance to the stage of summoning the parties. However, pursuant to Article 271 of the Rv (Code of Civil Procedure) and prevailing court practice, this right extends to the period prior to the defendant filing a formal response. This principle is also affirmed in a Supreme Court ruling, which states:

1. As long as the examination of the case in court has not yet commenced, the plaintiff is entitled to withdraw the lawsuit without the defendant's consent;
2. Once the examination process has begun, withdrawal remains permissible, provided the defendant consents. (<https://fjp-law.com/id/pengaturan-pencabutan-gugatan-dalam-hukum-perdata-indonesia/>)

The procedure for withdrawing a lawsuit before the defendant submits a response is as follows:

- 1) Withdrawal is effected via a written document
 - a. Addressed and submitted to the Chief Judge of the District Court
 - b. Contains a clear statement withdrawing the lawsuit. In principle, an oral withdrawal is invalid and must be rejected, though exceptions may apply under certain conditions.
 - The withdrawal is executed before the Chief Judge or the court clerk
 - A formal record (*akta*) of the withdrawal is drawn up and signed by the plaintiff and the Chief Judge or the court clerk

- 2) The Chief Judge handles the judicial administration regarding the withdrawal

If a hearing summons has already been served to the defendant, the judicial administrative actions to be completed by the Chief Judge or the judicial panel are:

- 1) Ordering the bailiff to serve notice of the withdrawal to the defendant;
- 2) The notice of withdrawal may be served on the scheduled hearing date;
- 3) Ordering the court clerk to strike the case from the registry. (<https://fjp-law.com/id/pengaturan-pencabutan-gugatan-dalam-hukum-perdata-indonesia/>)

The second paragraph of Article 271 of the Rv stipulates that a lawsuit may also be withdrawn after the defendant has submitted a response, provided the defendant consents. The withdrawal is effected through a hearing to obtain the defendant's consent, followed by the issuance of a court order confirming the withdrawal. (<https://qadlawoffice.com/berita/read/ketentuan-pencabutan-gugatan-perkara-perdata>)

The implementation of this adaptation provides clear legal certainty regarding judicial administrative processes "Removal from the Register valid and compliant applications will be acted upon by the court through a formal order or the removal of the case from the master case register. Clarity of Dispute Status this avoids uncertainty regarding the legal status of ongoing disputes and serves as authentic proof that the case has been officially

terminated. There is a legal lacuna regarding the withdrawal of civil lawsuits within Indonesian procedural law, as neither the *Herziene Inlandsch Reglement* (HIR) nor the *Reglement op de Buitengewesten* (RBg) explicitly regulates the procedures and conditions for withdrawing a case. To address this gap, judicial practice has adopted principles from Articles 271 and 272 of the *Reglement op de Rechtsvordering* (Rv), based on the doctrines of *process doelmatigheid* (effective procedural conduct) and *process orde* (procedural orderliness).

What are the legal consequences of withdrawing a civil lawsuit in Indonesia.

The existence of a dispute implies a core issue something being contested or litigated. Such disputes cannot be resolved by the parties themselves; instead, they require resolution by a judge acting as an authorized and impartial authority. Examples include disputes regarding inheritance, sales transactions, and the like. According to Gatot Supramono, to initiate and resolve a civil dispute arising between members of the public, one of the disputing parties must submit a request for adjudication to the court. A party whose rights have been infringed upon in a civil matter is known as the *penggugat* (plaintiff); this party files a lawsuit with the court against the party responsible for the infringement (the *tergugat* or defendant) by outlining the factual basis of the case (*posita*) and specifying the relief sought (*petitum*). (Gatot Supramono, 1993)

A civil dispute involves at least two parties: the plaintiff and the defendant. The plaintiff is the person asserting their civil rights before a civil court; this party is referred to as the *eiser* (Dutch). A plaintiff may be a single individual or a group of persons, giving rise to designations such as Plaintiff 1, Plaintiff 2, Plaintiff 3, and so forth. Legal representation may also be employed, leading to terms such as Counsel for Plaintiff 1, Counsel for Plaintiff 2, and so on. The opposing party to the plaintiff is known as the *tergugat* or *gedagde* (Dutch). Therefore, in practice, reference to the Rv is not merely a matter of adhering to archaic rules; rather, it is a legal necessity to give effect to universally recognized principles of civil procedural law that are not otherwise embodied in existing national regulations. (Wahyu Muljono, 2012).

In a civil case, there are at least two parties directly involved in the proceedings: the Plaintiff (or multiple plaintiffs) and the opposing party, known as the Defendant (or multiple defendants). The Plaintiff is the party who initiates the lawsuit before the court, while the Defendant is the party being sued for having caused loss or harm to the Plaintiff. The relevance of the need for judicial discovery of law to real-world practical issues is evident in the Sekayu District Court Order Number 20/Pdt.G/2024/PN Sky. In this case, the Plaintiff orally withdrew the lawsuit during the hearing scheduled for the reading of the complaint, citing a desire to amend the substance of the claim regarding the subject matter and the relevant parties. In its legal reasoning, the Panel of Judges explicitly acknowledged a legal lacuna, noting that the withdrawal of a lawsuit is not regulated by either the HIR or the RBg; consequently, in judicial practice guided by the principle of *process doelmatigheid* (procedural expediency) the provisions of Articles 271 and 272 of the Rv (*Reglement op de Rechtsvordering*) may serve as a guideline.

Furthermore, the text of the court order affirms that, pursuant to Article 271 of the Rv, the withdrawal of a case is a right of the Plaintiff, provided it is executed before a defense (answer) has been submitted. Since the request in this case was made prior to the Defendant submitting a defense, the Judge ruled that the request did not require the opposing party's consent and was sufficiently well founded to be granted. The application of the *process doelmatigheid* principle as a basis for referencing the Rv demonstrates the crucial role judges play in the discovery of law to ensure the smooth conduct of judicial proceedings amidst the absence of specific norms in national procedural law. The grounds for the panel of judges' consideration regarding the withdrawal of the lawsuit in Order Number 20/Pdt.G/2024/PN Sky are as follows on the day scheduled for the reading of the lawsuit, the Plaintiff's Counsel orally requested the withdrawal of the lawsuit on the grounds that the lawsuit would be amended regarding the subject matter of the case and the parties connected to said subject matter, and the Plaintiff (Principal) present at the hearing confirmed this.

Furthermore, the panel of judges holds the view that, pursuant to Article 272 letter a of the Rv, the party authorized to submit a request for the withdrawal of the lawsuit in addition to the Plaintiff personally is the legal representative appointed by the Plaintiff. Moreover, given that the request for withdrawal was submitted by the Plaintiff prior to the Defendant submitting a response, the request does not require the opposing party's consent under Article 271 of the Rv; consequently, the request for withdrawal submitted by the Plaintiff is justified and well founded, warranting its approval. Based on those considerations, the Panel of Judges, in the operative part of its ruling, granted the Plaintiff's request to withdraw the lawsuit in this case.

The application of Articles 271 and 272 of the *Reglement op de Rechtsvordering* (Rv) by the Panel of Judges in Ruling Number 20/Pdt.G/2024/PN Sky constitutes an act of legal discovery (*rechtsvinding*) intended to address the regulatory gap regarding the withdrawal of lawsuits in the HIR and RBg. This reasoning is based on the fact that

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neither of those regulations explicitly governs the mechanism for withdrawing a lawsuit; consequently, the judges adopted the provisions of the Rv as a guideline to ensure legal certainty, orderly judicial administration, and adherence to the principles of simple, speedy, and low cost judicial proceedings. Thus, the application of Articles 271 and 272 of the Rv in the case at hand does not conflict with national civil procedural law; rather, it represents the implementation of the judges' obligation to explore, heed, and comprehend legal values and to discover the law in order to resolve the case fairly and provide legal certainty.

This analysis is supported by the jurisprudence established in Supreme Court Decision No. 1841/K/Pdt/1984, which affirms that the withdrawal of a lawsuit may be effected under the following conditions:

1. Prior to the commencement of the trial proceedings, the plaintiff has the right to withdraw the lawsuit without the defendant's consent.
2. Once the trial proceedings have commenced, withdrawal remains permissible, provided that the defendant's consent is obtained.

The withdrawal of a lawsuit in a civil case entails specific legal consequences, namely: "In contrast, regarding general civil litigation: if a lawsuit is withdrawn without requiring the defendant's consent (because no response has yet been filed), the plaintiff has an absolute right to refile the lawsuit. However, if the lawsuit is withdrawn with the defendant's consent, it cannot be refiled". The withdrawal of a lawsuit, when agreed to by the defendant in court, is construed as an agreement under Article 1330 of the Civil Code and is analogous to a settlement judgment as outlined in Article 130 of the HIR (M. Yahya Harahap, 2015). Such a withdrawal also constitutes a dispute resolution that is final and binding upon both the plaintiff and the defendant. Consequently, the dispute is deemed conclusively resolved; the matter underlying the lawsuit cannot be refiled by the parties meaning neither the plaintiff nor the defendant may bring the claim again.

CONCLUSION

- A. The regulation of civil lawsuit withdrawal through the adoption of the principles of Articles 271 and 272 of the Reglement op de Rechtsvordering (Rv) to address the legal vacuum in the HIR/RBg and ensure legal certainty are as follows there is a legal lacuna regarding the withdrawal of civil lawsuits within Indonesian procedural law, as neither the *Herziene Inlandsch Reglement* (HIR) nor the *Reglement op de Buitengewesten* (RBg) explicitly regulates the procedures and conditions for withdrawing a case. To address this gap, judicial practice has adopted principles from Articles 271 and 272 of the *Reglement op de Rechtsvordering* (Rv), based on the doctrines of *process doelmatigheid* (effective procedural conduct) and *process orde* (procedural orderliness).
- B. What are the legal consequences of withdrawing a civil lawsuit in Indonesia are as follows In contrast, regarding general civil litigation: if a lawsuit is withdrawn without requiring the defendant's consent (because no response has yet been filed), the plaintiff has an absolute right to refile the lawsuit. However, if the lawsuit is withdrawn with the defendant's consent, it cannot be refiled.

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