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Vexatious Litigation and Abuse of the Right to Sue in Indonesian Civil and Business Law: A Comparative and Doctrinal Analysis

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Abstract

This study examines vexatious litigation in Indonesia's civil and business law system, particularly its implications for access to justice, judicial efficiency, and legal certainty. In modern business practice, civil litigation is not only used as a legitimate mechanism to resolve disputes, but is increasingly exploited as a strategic tool to pressure opponents, delay obligations, or impose economic and reputational burdens. Unlike common law jurisdictions, which explicitly regulate vexatious litigation, Indonesian law has not yet recognized this concept as an autonomous doctrine, resulting in limited protection for defendants facing abusive lawsuits. This research employs normative legal research, focusing on the analysis of legal norms, principles, and doctrines relevant to abusive litigation practices. The study applies a statutory, conceptual, comparative, and case approach. It examines Indonesian civil procedure, doctrines of abuse of rights and unlawful acts, and analyzes selected landmark court decisions, while also drawing comparative insights from common law jurisdictions that have developed explicit regulatory mechanisms for vexatious litigation. The analysis demonstrates that Indonesian courts tend to address vexatious litigation implicitly, primarily through evidentiary assessment, findings of inadmissibility, or substantive dismissal of claims, without explicitly identifying or sanctioning abuse of the right to sue. Consequently, plaintiffs acting in bad faith face minimal legal consequences, while defendants bear disproportionate procedural, financial, and reputational costs. This situation undermines judicial efficiency and contradicts the principles of good faith and simple, speedy, and low-cost justice. The study concludes that although Indonesian law possesses doctrinal foundations capable of addressing vexatious litigation—particularly through the doctrines of abuse of rights and unlawful acts—the absence of explicit procedural mechanisms limits their effectiveness. It is therefore recommended that Indonesian civil procedural law adopt an early-stage judicial filtration mechanism grounded in good faith, proportionality, and seriousness, enabling courts to prevent abusive litigation while preserving constitutionally protected access to justice.

1. Introduction

In modern business law practice, civil courts play a central role as forums for resolving contractual, commercial, and corporate disputes. However, this function is not infrequently exploited strategically by litigants as an instrument of pressure, whether to delay contractual obligations, obtain economic advantage, or weaken an opposing party's bargaining position. In comparative legal scholarship, this phenomenon is commonly referred to as *vexatious litigation* or *abuse of process*, namely the formal exercise of the right to sue that is legally permissible yet substantively deviates from the pursuit of justice. The six court decisions analyzed in this study illustrate how the Indonesian civil judiciary responds to such

phenomena, particularly in the context of business disputes, government contracts, commercial transactions, and litigation framed as serving the public interest.

The first case, which culminated in Supreme Court Decision No. 37 PK/Pdt/2011, demonstrates how tort-based claims may be employed to protect—or, conversely, to impose—business reputational interests. The lawsuit was filed by a law firm and its attorneys against foreign individuals and corporate entities in response to an article published in an international media outlet containing serious allegations concerning professional integrity. From a business law perspective, this dispute directly implicated reputation as a high-value intangible asset. Nevertheless, at all judicial levels, the courts held that the plaintiffs failed to substantiate their claims. The defendants explicitly characterized the lawsuit as *vexatious litigation*, arguing that it was filed without sufficient evidentiary support and served primarily to impose financial and reputational pressure. Despite the complete dismissal of the claim, the courts refrained from making any explicit assessment regarding abuse of the right to sue, thereby limiting the legal consequences to the mere loss of the case. A similar pattern emerged in the third case, decided in Supreme Court Decision No. 632 PK/Pdt/2015, which arose from a government contract dispute relating to road construction. The plaintiff grounded its claim on a temporary work commencement order and sought additional payment for alleged work performed. Following on-site inspections and evidentiary assessment, the appellate court and the Supreme Court concluded that the claimed work had never been executed and that the documentary basis of the claim was of questionable authenticity. The defendant consistently alleged that the lawsuit constituted *vexatious litigation* capable of causing significant harm to public finances. Yet, as in the first case, the courts dismissed the claim solely on the grounds of failure of proof, without developing a normative analysis of bad faith or abuse of judicial process.

In contrast, the second case, resolved through Supreme Court Decision No. 2359 K/Pdt/2013, illustrates the boundary between unfounded litigation and legitimate business claims. The dispute originated from a contractual relationship between a contractor and a regional government concerning payment for excess work volume. Although the defendant alleged that the claim was *vexatious*, the courts found that the plaintiff successfully proved the existence of a valid contract, the execution of the work, and the defendant's failure to fulfill its payment obligations. Accordingly, the allegation of abuse of the right to sue was implicitly rejected because the claim was supported by both legal and factual foundations. This case underscores that not every high-value or financially impactful lawsuit in business contexts may be characterized as *vexatious litigation*. The fourth case, Supreme Court Decision No. 1572 K/Pdt/2015, reveals another manifestation of litigation as a business strategy, namely the annulment of cross-border commercial contracts. A debtor sought to invalidate a loan agreement valued at several million U.S. dollars by invoking the statutory requirement to use the Indonesian language in contracts. The defendant characterized the claim as a bad-faith attempt to evade repayment obligations and even linked it to broader risks to the investment climate. Nevertheless, the courts adopted a strictly formal-normative approach, declaring the agreement null and void without assessing the economic motives underlying the lawsuit. From a business law standpoint, this decision exposes a tension between formal legal certainty

and substantive justice, while simultaneously highlighting the absence of a doctrinal framework for evaluating abuse of the right to sue in commercial litigation.

The fifth case, Supreme Court Decision No. 2691 K/PDT/2024, situates allegations of *vexatious litigation* within the context of a high-value commercial transaction involving an individual and a state-owned enterprise. The defendant alleged that the lawsuit constituted an attempt to obtain double recovery in a gold bullion transaction. However, the appellate court and the Supreme Court found that the defendant failed to prove delivery of the goods and was therefore in breach of contract. Once again, allegations of *vexatious litigation* were not explicitly addressed, as the courts focused exclusively on the evidentiary determination of contractual performance. This case further confirms that, in Indonesian judicial practice, issues of bad faith are consistently subordinated to material proof. A notable development appears in the sixth case, Appellate Court Decision of the Jakarta High Court No. 1238/PDT/2024/PT.DKI, which, although not a purely commercial dispute, bears significant implications for judicial governance and legal certainty. A lawsuit filed in the name of public interest and citizen representation was held to lack a valid legal relationship and was dismissed for defective legal standing. The appellate court explicitly stated that such a right to sue is not recognized under positive law. While the court did not employ the terminology of *vexatious litigation*, its reasoning substantively reflects an effort to curb abuse of the right to sue that could otherwise burden the judicial system.

Taken together, these six decisions reveal a consistent pattern in Indonesian civil jurisprudence. Courts have not recognized *vexatious litigation* as an autonomous legal doctrine but instead address it implicitly through evidentiary assessment, findings of breach of contract or tort, or procedural defects in standing. Consequently, plaintiffs acting in bad faith face no specific sanctions beyond the dismissal of their claims, while defendants continue to bear substantial transaction costs, reputational risks, and business uncertainty. From a business law perspective, this imbalance undermines the protection of economic efficiency and legal certainty. Accordingly, this jurisprudential analysis demonstrates the urgent need for the development of a normative framework addressing abuse of the right to sue within Indonesian civil law. Absent explicit recognition of *vexatious litigation*—whether through Supreme Court regulations or progressive jurisprudence—courts risk remaining arenas for unhealthy business strategies, contrary to the principles of good faith and the objectives of a judicial system that is simple, expeditious, and cost-effective.

Beyond the realm of civil procedure, vexatious litigation carries significant implications for business competition law (*hukum persaingan usaha*). In the Indonesian competition law framework established by Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, the concept of unfair business practices encompasses not only market-distorting conduct such as cartel agreements, predatory pricing, or abuse of dominant position, but also strategic litigation employed as an instrument to weaken or eliminate business competitors. When civil proceedings are initiated not in pursuit of genuine legal redress but as a means of imposing financial burdens, reputational damage, or operational disruptions upon rival business actors, such conduct may constitute an

anticompetitive strategy that undermines market efficiency and fair competition.[1] In comparative competition law jurisprudence, this phenomenon is known as "sham litigation," a doctrine developed most prominently in United States antitrust law under the Noerr–Pennington doctrine. Under this doctrine, petitioning activity—including the filing of lawsuits—is generally immune from antitrust liability, unless it constitutes a "sham" designed not to obtain a legitimate judicial outcome but to interfere directly with a competitor's business through the judicial process as an anticompetitive weapon. The sham exception applies when the litigation is both objectively baseless and subjectively motivated by anticompetitive intent.[2] Indonesian competition law has not yet explicitly incorporated sham litigation as a discrete prohibited practice. Nevertheless, Article 19 of Law Number 5 of 1999 prohibits business conduct that obstructs or impedes access to markets or business opportunities, which may, under appropriate circumstances, encompass the strategic instrumentalization of civil litigation to achieve anticompetitive ends. The Komisi Pengawas Persaingan Usaha (KPPU) has progressively expanded its interpretive approach to address novel forms of anticompetitive conduct, including those arising in digital markets, suggesting an institutional readiness to engage with more sophisticated abuse mechanisms.[3] The intersection of vexatious litigation and competition law therefore adds a further dimension to the doctrinal analysis pursued in this study: not only does abusive litigation harm individual defendants and erode judicial efficiency, but it may also distort the competitive equilibrium of commercial markets, thereby implicating the broader public interest in maintaining fair and healthy business competition. This observation reinforces the urgency of developing a coherent legal framework capable of addressing vexatious litigation from both procedural and market-regulatory perspectives. This business-law dimension is not incidental to the present inquiry: it falls squarely within the scope announced in the title of this study, which situates abuse of the right to sue within Indonesian civil and business law, and it is accordingly carried through in the procedural filtration mechanism proposed in the discussion below, which is framed to be equally responsive to competitively motivated vexatious claims.

2. Methods

This study employs a normative legal research method, which examines the existence, nature, substance, procedures, and objectives of legal norms to identify and analyze legal rules, principles, and doctrines relevant to the issue under investigation.[4] The research is directed at systematically explaining legal norms, principles, and doctrinal developments to address the problem of vexatious litigation within the Indonesian legal system. To achieve this objective, the study applies several complementary approaches, namely the statutory approach, conceptual approach, comparative approach, and case approach, each utilized

[1] Andi Fahmi Lubis et al., *Hukum Persaingan Usaha*, ed. Ningrum Natasya Sirait, Andi Fahmi Lubis, and Helena Wirastri Wulandari, Edisi Kedua (DKI Jakarta: Komisi Pengawas Persaingan Usaha (KPPU), 2017).

[2] Deborah Platt Majoras et al., *Federal Trade Commission Report Drafters and Contributors*, n.d., http://www.ftc.gov/speeches/majoras/050208currebttopics.pdf.

[3] Ria Setyawati, Stefan Koos, and Zalfa A F Jatmiko, "Data Driven Dominance in Digital Markets: Assessing Indonesian Competition Law in the Digital Age," *Jurnal IUS Kajian Hukum Dan Keadilan* 12 (2024), doi:10.29303/v12i2.1377.

[4] Peter Mahmud Marzuki, *Penelitian Hukum* (Malang: Setara Press, 2010).

according to the analytical needs of the discussion. The statutory approach is used to examine legislation relevant to civil procedure and access to justice, while the conceptual approach explores legal doctrines and scholarly views, particularly those concerning abuse of rights and unlawful acts. The comparative approach analyzes legal regulation and practice in selected jurisdictions that have explicitly addressed vexatious litigation, especially jurisdictions that first developed such mechanisms. In addition, the case approach is employed to analyze landmark and final court decisions concerning bad-faith litigation, abuse of rights, and the evolving role of judges in civil law systems, as well as relevant Indonesian court decisions, to assess how these concepts may inform the development of a coherent framework for addressing vexatious litigation in Indonesia. These six decisions were selected through purposive sampling from the Supreme Court's official decision directory (Direktori Putusan Mahkamah Agung), using the search terms "*perbuatan melawan hukum*," "*itikad tidak baik*," and "*penyalahgunaan hak*," and were further screened for (i) landmark or final and binding status, and (ii) direct doctrinal relevance to bad-faith litigation, abuse of procedural rights, and the evolving role of judges in civil proceedings.

3. Results and Discussion

3.1. Vexatious Litigation

As a preliminary theoretical framework, it is necessary to situate the discussion of abusive litigation within broader comparative perspectives on judicial access, procedural fairness, and civil liability. This approach allows the phenomenon to be examined not merely as an isolated procedural anomaly, but as a structural challenge that intersects with foundational principles of justice systems across legal traditions. The phenomenon of unfounded, repetitive, and bad-faith litigation is not a novel issue within modern judicial systems. In legal theory and practice, such conduct is commonly conceptualized as *vexatious litigation*, namely the formal exercise of the right to litigate that, while procedurally permissible, substantively constitutes an abuse of judicial process. This phenomenon has long been recognized in common law jurisdictions, where courts and legislatures have progressively developed explicit doctrines and regulatory mechanisms to address misuse of access to justice. In contrast, civil law systems, including Indonesia, tend to address similar conduct indirectly through general principles such as good faith, abuse of rights, and tort liability rather than through a distinct doctrinal framework.[5]

The comparative experience of common law jurisdictions demonstrates that the recognition of vexatious litigation emerged not in opposition to access to justice, but as a doctrinal response to its systemic misuse. This insight is crucial for understanding why procedural restraint mechanisms are framed as safeguards rather than restrictions. In common law traditions, access to courts is widely recognized as a fundamental right, often protected constitutionally or quasi-constitutionally. However, this right has never been understood as absolute. Courts have consistently acknowledged that unrestricted access to judicial processes may be exploited to harass opposing parties, delay finality, undermine legal certainty, and impose disproportionate financial and administrative burdens on both litigants and judicial institutions. Consequently, the doctrine of vexatious litigation has emerged as a corrective

[5] Syahrul Machmud, *Penegakan Hukum Dan Perlindungan Hukum Bagi Dokter Yang Di Duga Melakukan Medikal Malpraktek*, Cetakan Kesatu (Bandung: CV Mandar Maju, 2008).

legal instrument aimed at maintaining equilibrium between individual access to justice and the protection of judicial integrity.[6]

England stands as one of the earliest jurisdictions to formally regulate vexatious litigation. The enactment of the *Vexatious Actions Act* in 1896 followed an extreme case in which a single individual persistently initiated lawsuits against numerous parties without any reasonable legal foundation. This legislation marked an early institutional acknowledgment that judicial processes could be systematically abused and that courts required statutory authority to restrain irresponsible litigants. Under this framework, individuals declared vexatious could be prohibited from initiating further proceedings without prior judicial authorization. Subsequent legal developments in England and Wales have refined this approach through procedural innovations embedded within the Civil Procedure Rules. These rules establish a graduated system of civil restraint orders, calibrated to the seriousness and persistence of abusive litigation conduct. Limited civil restraint orders prohibit further applications within ongoing proceedings without leave of the court, while extended civil restraint orders prevent litigants from initiating new claims or applications relating to similar subject matter. In the most severe cases, general civil restraint orders entirely restrict a litigant's ability to commence proceedings without prior judicial permission. This tiered system reflects a proportional response that preserves access to justice while preventing systemic abuse. Judicial reasoning in England has repeatedly emphasized the necessity of balancing competing rights.

In *Her Majesty's Attorney General v. Oakes*, Lord Bingham underscored that any restriction on an individual's right to access the courts constitutes a serious legal measure that must not be imposed lightly. Nevertheless, courts must also consider the cumulative harm inflicted upon defendants who are repeatedly subjected to meritless litigation, particularly where costs orders provide no meaningful compensation. As such, regulation of vexatious litigation is framed not as a denial of justice, but as a mechanism to ensure that judicial access is exercised responsibly. While England represents an early centralized model of regulating vexatious litigation through statutory intervention, other common law jurisdictions have developed distinct regulatory trajectories shaped by their constitutional and institutional structures.The United States has adopted a decentralized and jurisdiction-specific approach to vexatious litigation, reflecting its federal constitutional structure. While definitions vary among states, vexatious litigation is generally understood as the repeated initiation of legal actions without legal merit and with intent to harass, delay, or burden opposing parties. Although the concept existed in judicial practice earlier, comprehensive statutory regulation emerged only in 1963, when California enacted its vexatious litigant statute California Vexatious Litigant Statute, Cal. Civ. Proc. § 391 [1963].

Since that time, at least twelve U.S. states have adopted statutes, procedural rules, or a combination of both to regulate vexatious litigation. California's statutory framework remains among the most detailed. Under Section 391 of the California Code of Civil Procedure, a litigant may be classified as vexatious if they have initiated at least five unsuccessful litigations within seven years, repeatedly attempted to relitigate matters previously decided against

[6] Bill Raftery, *Vexatious Litigants*, 2023.

them, or persistently filed frivolous motions, pleadings, or discovery requests designed to cause unnecessary delay or harassment. Courts may also rely on prior vexatious litigant determinations issued by other state or federal courts. A distinctive feature of California's regime is the maintenance of a publicly accessible list of vexatious litigants. By the end of 2015, this list contained more than 900 entries, with judicial findings revealing that some individuals used aliases to evade restrictions imposed in other jurisdictions. Such practices illustrate both the persistence of vexatious litigants and the structural challenges involved in enforcing judicial restraint mechanisms.[7]

Beyond Anglo-American jurisprudence, comparable concerns regarding abusive litigation have also informed legislative responses in other common law jurisdictions, particularly within the Australian legal system. Australia provides another significant comparative example, particularly through the legislative frameworks adopted in Victoria and Queensland. Victoria has regulated irresponsible litigation conduct since 1928, with contemporary provisions codified in Section 21 of the *Supreme Court Act 1986* (VIC). This provision empowers the Supreme Court, upon application by the Attorney-General, to declare an individual a vexatious litigant and prohibit them from commencing or continuing proceedings without leave of the court. The Victorian Attorney-General has described this mechanism as an essential safeguard to protect courts and court users from individuals who pursue collateral objectives or misuse legal processes for personal gain.[8]

Further justification for this approach emerged from the Victorian Law Reform Committee's *Inquiry into Vexatious Litigant Law*, which emphasized that unchecked vexatious litigation undermines judicial efficiency, diverts public resources, and erodes public confidence in the justice system.[9] The inquiry further observed that the absence of early intervention mechanisms often results in prolonged litigation cycles that disproportionately harm defendants and public institutions.[10] Queensland's approach, embodied in the *Vexatious Proceedings Act 2005*, offers one of the most comprehensive statutory definitions of vexatious litigation in the common law world. The Act defines vexatious proceedings as those that constitute an abuse of court or tribunal process; are instituted to harass, annoy, cause delay or detriment, or pursue another improper purpose; lack reasonable grounds; or are conducted in a manner that produces similar harmful effects. A vexatious litigant is defined as a person who persistently initiates proceedings without sufficient justification.[11]

Irish jurisprudence further reinforces this comparative framework through reliance on inherent judicial jurisdiction. In *Riordan v. An Taoiseach*, Chief Justice Keane affirmed that courts possess inherent authority to restrain proceedings in order to prevent abuse of process, including repeated attempts to reopen concluded litigation or to pursue claims that are manifestly groundless. The Court emphasized that judicial responsibility extends not only to

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[7] *Id.*
[8] *Inquiry into Vexatious Litigants Final Report of the Victorian Parliament Law Reform Committee*, 2008.
[9] *Id*, xxv
[10] *Id,* 141-143.
[11] Narelle Bedford and Monica Taylor, *Model No More: Querulent Behaviour, Vexatious Litigants and the Vexatious Proceedings Act 2005 (Qld)*, 2014, http://sites.thomsonreuters.com.au/; Vivian Stevenson and Francesca Ghossein, "What Are Vexatious Complaints + What Can Regulators Do About Them?," *Field Law*, 2020.

protecting litigants' rights of access, but also to safeguarding others from harassment and unnecessary expense. Across common law jurisdictions, a consistent normative principle emerges: courts must strike a careful balance between protecting access to justice and preventing abuse of judicial processes. This balance is operationalized through objective statutory criteria, graduated restraint mechanisms, judicial oversight, and, in some cases, public transparency. These measures are designed not as punitive sanctions, but as institutional safeguards to preserve judicial integrity and procedural fairness.The comparative overview above reveals a consistent judicial concern across common law systems: the need to preserve access to justice while preventing its instrumentalization for improper purposes. This comparative insight becomes especially relevant when examining how civil law jurisdictions, including Indonesia, address analogous problems without an explicit vexatious litigation doctrine.

The foregoing comparative analysis acquires additional normative weight when considered alongside the principles of business competition law. The strategic instrumentalization of litigation as a tool to weaken or eliminate commercial competitors represents a point of intersection between civil procedure and competition regulation. In Indonesian competition law, Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition prohibits a range of anticompetitive conducts, including the abuse of dominant position and business practices that obstruct or impede market access. Scholars in Indonesian competition law have consistently emphasized that the effectiveness of competition regulation depends not merely on prohibiting overt market-distorting conduct, but also on addressing more subtle forms of anticompetitive behavior that may assume a legally permissible procedural guise.[12] In the context of comparative antitrust law, the doctrine of "sham litigation" addresses precisely this problem. The United States Supreme Court in *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.* (1993) established a two-part test for identifying anticompetitive sham litigation: the challenged lawsuit must be objectively baseless in the sense that no reasonable litigant could realistically expect success on its merits, and the litigant must have concealed an attempt to interfere directly with a competitor's business through the governmental process as an anticompetitive weapon. This doctrine, which forms part of the broader Noerr–Pennington framework, illustrates how competition law systems have developed specific tools to distinguish legitimate judicial petitioning from litigation wielded as a market exclusion strategy. The Federal Trade Commission has similarly recognized that patterns of baseless, repetitive litigation can constitute an abuse of judicial process with anticompetitive effects, warranting scrutiny under antitrust law.[13]

At the European Union level, the concept of abuse of dominant position under Article 102 TFEU has similarly been applied to cases involving vexatious or strategically motivated litigation initiated by dominant undertakings against competitors. EU competition authorities and courts have recognized that the use of judicial processes to impose disproportionate procedural burdens on competitors—without a genuine legal basis—may constitute an exclusionary abuse of dominance. This approach reflects a broader normative convergence

[12] Lubis et al., *Hukum Persaingan Usaha*.
[13] Majoras et al., *Federal Trade Commission Report Drafters and Contributors*.

between procedural law principles and competition law, wherein the right to litigate, like any other legal right, must be exercised proportionately and in good faith.[14] For Indonesia, the absence of an explicit regulatory framework governing sham litigation within either civil procedure or competition law represents a normative lacuna with practical consequences for commercial markets. Business actors who deploy litigation strategically to impose costs upon competitors or to delay market entry by rivals may do so without facing specific competition law liability, provided that their claims satisfy minimum formal standing requirements. This gap reinforces the argument for an integrated regulatory approach: a comprehensive framework addressing vexatious litigation must engage not only with civil procedure reform but also with the principles of fair competition, good faith in commercial relations, and proportionality in the exercise of legal rights that are foundational to Indonesian business law.[15]

By contrast, Indonesia and other civil law jurisdictions have yet to develop vexatious litigation as a distinct legal doctrine. Instead, courts rely on general principles such as good faith and abuse of rights, which often prove insufficient to address the systemic harms caused by repetitive and malicious litigation. Comparative analysis suggests that adopting clearer procedural mechanisms—without undermining constitutional access to justice—may enhance judicial efficiency and protect litigants from bad-faith legal practices. The right to access justice (*access to justice*) constitutes a foundational element of the rule of law and serves as the normative basis for an individual's right to initiate legal proceedings. This right is widely recognized not merely as a procedural entitlement but as an intrinsic component of human rights protection. In Indonesia, the constitutional status of access to justice is inseparable from the doctrine of the rule of law (*negara hukum*), as explicitly affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which establishes the state's responsibility to guarantee equality before the law and equal legal protection for all citizens.

This constitutional understanding of the rule of law aligns with the principles articulated in the Athens Declaration of 1955 by the International Commission of Jurists, which emphasizes that the state must itself be subject to law, that governmental power must respect individual rights under the rule of law, and that judges must exercise their functions independently, impartially, and free from political or governmental interference. These principles collectively underscore that access to justice must be understood as both a normative guarantee and an institutional commitment. The constitutional foundation of access to justice in Indonesia is further reinforced by Article 28D paragraph (1) of the 1945 Constitution, which guarantees the right to recognition, protection, and fair legal certainty, as well as equal treatment before the law. This provision is elaborated statutorily through Article 17 of Law Number 39 of 1999 on Human Rights, which affirms that every person, without discrimination, has the right to seek justice by submitting applications, complaints, and lawsuits in criminal, civil, and administrative matters, and to be adjudicated through an

[14] Setyawati, Koos, and Jatmiko, "Data Driven Dominance in Digital Markets: Assessing Indonesian Competition Law in the Digital Age"; Pınar Akman, "A Critical Inquiry into 'Abuse' in EU Competition Law," *Oxford Journal of Legal Studies* 44, no. 2 (June 7, 2024): 405–33, doi:10.1093/ojls/gqae008.
[15] Ioannis Lianos and Pierre Regibeau, "'Sham' Litigation: When Can It Arise and How Can It Be Reduced?," *The Antitrust Bulletin* 62, no. 4 (December 14, 2017): 643–89, doi:10.1177/0003603X17735193.

independent and impartial judicial process. These constitutional and statutory provisions collectively establish access to justice as a legally protected right rather than a discretionary privilege.

From a theoretical perspective, Bedner conceptualizes access to justice as access by individuals—particularly those from poor and disadvantaged groups—to fair, effective, and accountable mechanisms for the protection of rights, the control of abuses of power, and the resolution of disputes. This conception extends beyond mere access to courts and includes the ability to obtain remedies through formal and informal justice systems, as well as the capacity to influence law-making and law-implementation processes.[16] Such an understanding situates access to justice within a broader socio-legal framework that emphasizes substantive justice alongside procedural availability. Kennedy similarly observes that the meaning of access to justice varies depending on context. At its most comprehensive level, it encompasses normative questions regarding the values that constitute justice and whether substantive law reflects those values. At a minimum, however, access to justice requires that civil litigation be affordable, timely, and procedurally simple. Even scholars advocating for broader interpretations of access to justice agree that efficient and uncomplicated civil procedure remains an indispensable instrument for its realization.[17] Institutional perspectives further reinforce this view. Research conducted by the American Bar Association, in cooperation with the Legal Aid Foundation of Makassar, identifies several core components of access to justice: a coherent legal framework governing rights and obligations; public legal awareness; access to legal advice and representation; accessible and affordable judicial institutions; fair and impartial procedures; and enforceable judicial decisions.[18] These elements demonstrate that access to justice is systemic in nature and depends upon both procedural safeguards and institutional capacity.[19]

Recognizing access to justice as a constitutional and human rights guarantee inevitably raises the question of its doctrinal limits. Legal systems must therefore articulate mechanisms that distinguish legitimate judicial access from claims that undermine procedural integrity.Within this framework, the concept of legal standing (*personae standi in judicio* or *standing to sue*) functions as a doctrinal mechanism that connects access to justice with judicial discipline. Legal standing determines who may legitimately bring a claim before a court and on what basis. Peter Mahmud Marzuki emphasizes that legal standing reflects the relationship between legal norms and the protection of concrete legal interests, ensuring that judicial intervention is grounded in legally cognizable rights rather than abstract or speculative concerns.[20]

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[16] Adriaan Bedner, *Towards Meaningful Rule of Law Research: An Elementary Approach* (Leiden: MS Unpublished, 2010).
[17] Gerrard J Kennedy, "Rule 2.1 of Ontario's Rules of Civil Procedure: Responding to Vexatious Litigation While Advancing Access to Justice?," *Windsor Yearbook of Access to Justice* 35 (May 30, 2018): 243–303, doi:10.22329/wyaj.v35i0.5691.
[18] Dio. Ashar, *Access to Justice Index in Indonesia 2019 : Civil Society Consortium for Access to Justice Index in Indonesia* (Indonesia Judicial Research Society (IJRS), 2022).
[19] Januardo Sulung Partogi Sihombing et al., "The Regulation of Legal Protection for Poor Communities Toward Justice in Indonesia and the Netherlands," *Journal of Human Rights, Culture and Legal System* 4, no. 2 (May 27, 2024): 331–53, doi:10.53955/jhcls.v4i2.274.
[20] Peter Mahmud Marzuki, *An Introduction to Indonesian Law* (Malang: Setara Press, 2012).

Sudikno Mertokusumo distinguishes between contentious claims (*gugatan*), which involve disputes between opposing parties and fall within contentious jurisdiction, and non-contentious claims (*permohonan*), which involve a single party and fall within voluntary jurisdiction. Judicial determinations in voluntary proceedings are strictly limited to exceptional circumstances explicitly authorized by statute, reflecting the principle that judicial authority must be exercised within clearly defined normative boundaries.[21] In civil law systems, not every interest qualifies as a legally protected interest capable of forming the basis of a claim. Only interests that have given rise to enforceable rights and that have been violated by another legal subject may justify judicial intervention. This requirement serves as a preventive mechanism against indiscriminate litigation and reflects the principle *point d'intérêt, point d'action*. As Chainur Arrasjid notes, this principle ensures that judicial processes are reserved for disputes involving genuine legal interests rather than personal grievances or abstract dissatisfaction.[22]

However, legal standing alone does not fully prevent the misuse of procedural rights. Even where standing formally exists, the manner in which rights are exercised may still conflict with their legal and social purposes. The doctrine of abuse of rights (*misbruik van recht* or *abus de droit*) provides a critical conceptual bridge between access to justice and the regulation of abusive litigation in civil law systems. Originating in Continental European legal thought, the doctrine challenges the classical maxim *neminem laedit qui suo iure utitur* by recognizing that the formal exercise of a right may nonetheless produce unjust or socially harmful consequences. Rights must be exercised in accordance with their legal and social purposes; deviation from these purposes transforms lawful conduct into abuse. Van Apeldoorn conceptualizes rights as legally regulated powers grounded in moral and social considerations rather than mere physical force. Accordingly, exercising a right in a manner contrary to its social purpose constitutes abuse of rights.[23] Utrecht, as cited by Chainur Arrasjid, similarly argues that exercising rights in a manner inconsistent with their legal objectives undermines legal certainty and violates the fundamental purpose of law.[24]

Pitlo further refines this doctrine by asserting that abuse of rights does not require malicious intent. Even where conduct appears reasonable, abuse may be established if the benefit gained by the right-holder is manifestly disproportionate to the harm suffered by others.[25] Dutch jurisprudence has accordingly identified criteria for abuse of rights, including conduct lacking reasonable justification, actions undertaken solely to harm others, or outcomes that are grossly disproportionate to the purported benefits. This doctrine converges with the broader concept of unlawful acts (*onrechtmatige daad*), which requires conduct that violates the rights of others, breaches legal obligations, contravenes morality, or conflicts with standards of social propriety. Where abuse of rights fulfills these criteria and results in fault and damage, it may give rise to liability and compensation. In such cases, a party who appears

[21] Soeroso, *Pengantar Ilmu Hukum* (Jakarta: Sinar Grafika, 2006).
[22] Chainur Arrasjid, *Dasar-Dasar Ilmu Hukum* (Jakarta: Sinar Grafika, 2005).
[23] L. J. van Apeldoorn, *Pengantar Ilmu Hukum* (Jakarta: Pradnya Paramita, 1978).
[24] Arrasjid, *Dasar-Dasar Ilmu Hukum*.
[25] Agnes M. Toar, *Kursus Hukum Perikatan Tentang Perbuatan Melawan Hukum* (Yogyakarta: Dewan Kerja Sama Ilmu Hukum Belanda dengan Indonesia, 1987).

abstractly entitled to exercise a right may nonetheless be held liable for acting unlawfully in concrete circumstances.

When read together with the comparative analysis of vexatious litigation in common law jurisdictions, the doctrine of abuse of rights functions as a functional analogue within civil law systems. Both frameworks aim to prevent the instrumentalization of legal rights for improper purposes. However, while common law jurisdictions rely on explicit statutory mechanisms and procedural restraints, civil law systems tend to depend on general principles applied ex post facto. This structural difference highlights the potential value of developing clearer procedural safeguards to address abusive litigation without undermining the constitutional guarantee of access to justice. When the abuse of procedural or substantive rights produces harm to others, civil law systems require a liability framework capable of translating abstract doctrinal violations into concrete legal consequences. In Indonesian law, this function is primarily fulfilled by the doctrine of perbuatan melawan hukum. The concept of *perbuatan melawan hukum* originates from Dutch civil law under the term *onrechtmatige daad*, which in common law jurisdictions is generally associated with the law of tort or unlawful acts. Indonesian legal scholars have translated this concept variably, either as "acts against the law" (*perbuatan melanggar hukum*) or "unlawful acts" (*perbuatan melawan hukum*), although doctrinally both terms refer to the same foundational civil liability framework.[26]

According to R. Wirjono Projodikoro, an unlawful act is not merely an act that violates written law, but any conduct that disrupts the balance of social relations within society. He further argues that the notion of *onrechtmatige daad* must be interpreted broadly to include acts that contradict morality, propriety, or accepted standards of conduct within social interactions.[27] This expansive interpretation aligns with the modern understanding that unlawful acts encompass violations of subjective rights, statutory obligations, moral norms, and unwritten standards of due care. Munir Fuady conceptualizes unlawful acts as a collection of legal principles aimed at controlling harmful behavior, attributing liability for losses arising from social interactions, and providing appropriate remedies for victims through civil claims.[28] Thus, *perbuatan melawan hukum* includes both acts and omissions that infringe upon the rights of others, breach legal obligations, violate moral norms, or fail to meet the standard of prudence reasonably expected in societal relations.

Article 1365 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*) provides the fundamental legal basis for unlawful acts, stating: "Every unlawful act which causes damage to another obliges the person by whose fault the damage was caused to compensate for such damage".[29] From this provision, four cumulative elements must be satisfied for an act to qualify as an unlawful act: (1) the existence of an unlawful act, (2) fault, (3) damage, and (4) a causal relationship between the act and the damage.

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[26] Rosa Agustina, *Perbuatan Melawan Hukum*, Cetakan Pertama (Jakarta: FHUI Pascasarjana, 2003).
[27] Wirjono Prodjodikoro, *Perbuatan Melanggar Hukum: Dipandang Dari Sudut Hukum Perdata* (Bandung: Mandar Maju, 2000).
[28] Munir Fuady, *Perbuatan Melawan Hukum* (Bandung: PT Citra Aditya Bakti, 2002).
[29] R Subekti and Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata* (Jakarta: PT Pradnya Paramita, 2003).

1. The Existence of an Unlawful Act

An act is considered unlawful when it violates the subjective rights of another person or contradicts statutory obligations. Van Apeldoorn defines subjective rights as legal entitlements derived from objective law, which confer authority upon a particular individual while simultaneously imposing obligations on others.[30] Subjective rights are traditionally divided into absolute rights, which may be asserted against anyone, and relative rights, which apply only against specific persons. An act may also be deemed unlawful if it contravenes statutory duties, whether derived from public law or private law. Consequently, a violation of criminal law norms may not only constitute a criminal offense (*wederrechtelijk*), but under certain circumstances may also give rise to civil liability as an unlawful act (*onrechtmatig*). However, modern Dutch jurisprudence emphasizes that not every statutory violation automatically constitutes an unlawful act in the civil sense. Several additional requirements must be fulfilled, including: (a) the claimant's interests must be affected or threatened by the violation; (b) the violated norm must aim to protect the claimant's interest (the *Schutznorm* doctrine); (c) the interest must fall within the protective scope of Article 1365 of the Civil Code; (d) the conduct must be contrary to propriety vis-à-vis the claimant, considering both parties' behavior; and (e) no legal justification must exist.[31]

2. Fault (*Kesalahan*)

The element of fault is explicitly embedded in Article 1365 through the phrase "by whose fault the damage was caused." Fault (*schuld*) refers to blameworthy conduct attributable to the perpetrator, encompassing both intent and negligence. The conduct and its harmful consequences must be imputable to the actor and capable of giving rise to legal responsibility. This classical conception of fault reflects an individualistic legal philosophy that emphasizes will (*wilsvereiste*) and culpability (*schuldvereiste*) as prerequisites for liability. Although some scholars, such as Van Oven, equate unlawfulness with fault, others, notably Meijers, argue that fault must remain a distinct element, as not all intentional or negligent acts necessarily constitute unlawful acts in the civil law sense.[32]

It bears emphasis that filing a lawsuit is, on its face, a formally lawful exercise of the constitutional right to sue (het recht om te vorderen). This formal lawfulness does not, however, foreclose a finding of fault under Article 1365, because Indonesian doctrine and jurisprudence have long recognized that the exercise of a right becomes unlawful — and therefore culpable — once it degenerates into misbruik van recht, or abuse of right. Fault in this context does not attach to the act of litigating as such, but to the subjective intent and objective circumstances surrounding it: a plaintiff who initiates or maintains proceedings without a reasonable legal basis, in the knowledge that the claim is baseless, or predominantly to harass, coerce, or inflict cost and reputational harm upon the defendant, exercises the formal right to sue in a manner inconsistent with the standard of propriety and prudence (kepatutan dan kehati-hatian) expected of a reasonable litigant. The formal legality of filing suit therefore operates only at the level of procedural admissibility; it does not immunize the litigant from a

[30] L. J. van Apeldoorn, *Pengantar Ilmu Hukum*.
[31] M.A. Moegni Djojodirdjo, *Perbuatan Melawan Hukum* (Jakarta: CV Rajawali, 1984).
[32] Mariam Darus Badrulzaman, *K.U.H. Perdata Buku III: Hukum Perikatan Dengan Penjelasan* (Bandung: Alumni, 2011).

separate, substantive inquiry into fault, which turns on whether the right to sue was exercised in bad faith or for a purpose other than the vindication of a genuine legal interest. Reconciled in this way, the fault element of Pasal 1365 KUHPerdata provides the doctrinal bridge that allows perbuatan melawan hukum to reach vexatious litigation without denying litigants their legitimate access to the courts.

3. Damage (*Kerugian*)

Indonesian civil law does not provide a precise definition of damage within Article 1365. While Articles 1246–1248 of the Civil Code describe damages in the context of breach of contract, their application to unlawful acts is not automatic. Nevertheless, it is generally accepted that compensation for unlawful acts may include both actual losses (*vermogensschade*) and lost profits (*winstderving*). Damage may be material or immaterial, including moral harm or reputational injury. Hoffman-Drion classifies damage into three categories: reduction of assets, damage to tangible property, and immaterial harm causing psychological distress.[33] Remedies may take various forms, including monetary compensation, restitution in kind, reimbursement of recovery costs, or compensation for suffering.

4. Causal Relationship

A claim for damages can only be granted if a causal link exists between the unlawful act and the damage suffered. Courts typically assess causation using several theories, including the *conditio sine qua non* theory, the adequate causation theory (*adequate veroorzaking*), and the theory of reasonable attribution (*toerekening naar redelijkheid*). The adequate causation theory limits liability to damages that could reasonably have been foreseen as a consequence of the unlawful act, while the theory of reasonable attribution emphasizes fairness and proportionality in assigning responsibility.[34] Mariam Darus Badrulzaman's proposed reformulation of unlawful acts further broadens the concept by explicitly incorporating omissions and violations of societal propriety into the definition of unlawfulness, thereby reflecting contemporary legal developments.[35]

In this sense, the doctrine of perbuatan melawan hukum provides the normative closure of the analytical framework developed in the preceding sections. It supplies the legal criteria through which abusive litigation, although formally grounded in procedural rights, may be evaluated as unlawful conduct when it satisfies the requisite elements of fault, damage, and causation. In conclusion, unlawful acts in Indonesian civil law are understood in a broad and dynamic sense, encompassing not only violations of written law but also infringements of subjective rights, statutory duties, moral norms, and standards of due care. This expansive interpretation provides a doctrinal foundation for civil liability that aligns with principles of justice, legal certainty, and social responsibility, while ensuring adequate protection for victims of unlawful conduct.[36]

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[33] Agustina, *Perbuatan Melawan Hukum*.

[34] Sutan Remy Sjahdeini, *Naskah Akademis Peraturan Perundang-Undangan Tentang Perbuatan Melawan Hukum* (Jakarta: Badan Pembinaan Hukum Nasional, Departemen Kehakiman Republik Indonesia, 2007).

[35] Mariam Darus Badrulzaman, *K.U.H. Perdata Buku III: Hukum Perikatan Dengan Penjelasan*.

[36] Syahrul. Machmud, *Penegakan Hukum Dan Perlindungan Hukum Bagi Dokter Yang Diduga Melakukan Medikal Malpraktek* (Mandar Maju, 2008).

The preceding discussion has demonstrated that access to justice constitutes a fundamental constitutional and human rights guarantee, yet one that is not absolute and must be exercised in accordance with its legal and social purposes. Within this framework, vexatious litigation represents a critical point of tension between the protection of individual rights and the preservation of judicial integrity. Beyond its doctrinal characterization as an abuse of rights or an unlawful act, vexatious litigation produces concrete and far-reaching consequences for individuals, the judicial system, and legal professionals. These consequences underscore the urgency of addressing abusive litigation not merely as a theoretical anomaly, but as a systemic problem that undermines the effective administration of justice. From a practical perspective, vexatious litigation imposes a substantial burden on defendants. Civil proceedings inherently require time, financial resources, and procedural engagement, even when claims lack substantive legal merit. Defendants are compelled to respond to claims, attend hearings, submit pleadings, and comply with procedural requirements. For laypersons unfamiliar with legal processes, effective participation in litigation often necessitates professional legal assistance, thereby significantly increasing litigation costs. While defendants may theoretically choose not to appear or respond to claims, such inaction exposes them to default judgments (*verstek*), which carry legally binding consequences. As a result, even unfounded or malicious claims exert coercive pressure on defendants to engage with the judicial process regardless of their lack of merit.

In general, civil litigation performs several essential legal functions, including dispute resolution, compensation for harm, legal protection of rights, and the establishment of binding judicial determinations. Through judicial adjudication, disputes between parties are resolved within a structured legal framework designed to ensure fairness, legal certainty, and respect for individual rights. Litigation also enables claimants to seek redress for losses suffered as a result of unlawful conduct, thereby reinforcing accountability and deterrence. Moreover, judicial decisions contribute to legal development and provide authoritative clarification of rights and obligations. However, these functions presuppose that litigation is pursued in good faith and grounded in legitimate legal interests.

Vexatious litigation distorts these foundational purposes. Rather than serving as a mechanism for dispute resolution or rights protection, it instrumentalizes judicial procedures as tools of harassment, intimidation, or delay. Consequently, the harmful effects of vexatious litigation extend beyond individual disputes and generate negative externalities across the justice system. These impacts may be examined at three interrelated levels: individuals, judicial institutions, and legal professionals. At the individual level, vexatious litigation produces both material and immaterial harm. Material harm primarily manifests in the form of excessive legal costs. Parties involved in abusive litigation must incur expenses related to court fees, legal representation, transportation, and other procedural costs. These expenses are often disproportionate to the substantive value of the dispute, particularly where claims are repeatedly dismissed or lack legal foundation. In addition, individuals may suffer indirect financial losses, such as reduced income due to frequent court appearances or reputational damage that affects professional or business activities. Such financial strain is not limited to

defendants; vexatious litigants themselves may also suffer economic consequences, particularly when sanctions or adverse cost orders are imposed.[37]

Immaterial harm is equally significant and often more enduring. Repeated exposure to baseless litigation may cause psychological distress, including anxiety, stress, emotional exhaustion, and other mental health effects. The uncertainty and prolonged nature of abusive litigation can disrupt personal relationships, family life, and professional stability. Moreover, public association with legal disputes—especially when claims involve allegations of wrongdoing—may damage an individual's reputation irrespective of the eventual outcome. These non-economic harms highlight that vexatious litigation inflicts injury that cannot be fully remedied through financial compensation alone. Beyond individual harm, vexatious litigation poses a systemic threat to the judicial system itself. Courts operate within finite institutional capacities, constrained by limited resources, personnel, and time. Abusive litigation consumes judicial attention that could otherwise be devoted to resolving legitimate disputes. As a result, vexatious claims contribute to case backlogs, procedural delays, and diminished judicial efficiency. Over time, this erosion of efficiency undermines public confidence in the judiciary and weakens the perception of courts as effective and impartial arbiters of justice.[38]

Within this context, vexatious litigation may be conceptually linked to the doctrine of contempt of court. In Indonesian legal discourse, contempt of court refers to conduct that undermines the authority, dignity, or proper functioning of judicial institutions. The concept was formally introduced into Indonesian law through Law Number 14 of 1985 on the Supreme Court, as amended by Law Number 5 of 2004 and Law Number 3 of 2009. These statutes recognize acts, behavior, attitudes, or expressions—whether occurring inside or outside court—that degrade the dignity and authority of the judiciary as contemptuous conduct.[39] The statutory explanation to Article 12 paragraph (1) letter b of Law Number 5 of 2004 clarifies that disgraceful conduct includes actions or attitudes that demean judges or the judicial institution, emphasizing the protection of judicial authority and integrity. This understanding aligns with broader doctrinal definitions of contempt of court found in comparative jurisprudence. In common law tradition, contempt of court encompasses willful acts, omissions, or statements that impair judicial authority or obstruct the administration of justice.[40] From this perspective, vexatious litigation may be interpreted as a form of indirect contempt of court. While such litigation does not necessarily involve explicit disobedience to court orders or overtly disrespectful conduct, its cumulative effect undermines judicial authority by misusing procedural mechanisms, burdening courts with meritless claims, and obstructing the efficient administration of justice. Repeated filing of unfounded claims reflects a lack of respect for the judicial process and transforms access to justice into an instrument of disruption. As noted in Indonesian legal scholarship, contempt of court encompasses not only direct violations of

[37] Samantha Rust, "The Vexatious Litigant Problem," *Houston Law Review* 62 (2024): 453–75.
[38] Kennedy, "Rule 2.1 of Ontario's Rules of Civil Procedure: Responding to Vexatious Litigation While Advancing Access to Justice?"
[39] Lilik Mulyadi, *Contempt Of Court Di Indonesia: Urgensi, Norma, Praktik, Gagasan Dan Masalahnya* (Bandung: Alumni, 2021).
[40] Bryan A. Gardner, *Black's Law Dictionary*, ed. Bryan A. Garner, Ninth Edit (United States: West, 2009).

court orders but also behavior that interferes with judicial proceedings or diminishes institutional respect.[41]

Accordingly, the regulation of vexatious litigation serves not only to protect litigants but also to preserve the dignity and authority of judicial institutions. Addressing abusive litigation may thus be viewed as an implicit mechanism for safeguarding the administration of justice and preventing the erosion of judicial legitimacy. The adverse effects of vexatious litigation also extend to legal professionals, particularly advocates. The provision of legal assistance is a core component of the rule of law and constitutes an essential mechanism for realizing access to justice and equality before the law. In Indonesia, these principles are constitutionally guaranteed under Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. Legal representation enables individuals to effectively assert and defend their rights regardless of differences in education, experience, or social status.

Within civil procedure, advocates act as legal representatives or attorneys-in-fact pursuant to Article 123 of the Herziene Indonesisch Reglement (HIR), which permits parties to be assisted or represented by authorized legal counsel.[42] The legal profession thus functions as an institutional bridge between abstract legal norms and their practical realization within judicial proceedings. Under Law Number 18 of 2003 on Advocates, advocates are defined as legal professionals who provide legal services both within and outside court, including legal consultation, representation, assistance, defense, and other legal actions undertaken in the client's interest. Advocates are independent professionals who are not subject to hierarchical command structures and who operate based on client authorization and professional ethics.[43]

However, the involvement of advocates in vexatious litigation presents ethical and professional dilemmas. While advocates owe a duty of loyalty to their clients, they simultaneously bear responsibilities toward the court and the legal system. Professional ethics require advocates to act in good faith, refrain from misleading the court, and uphold the dignity of judicial institutions. As Munir Fuady emphasizes, the legal profession is a noble profession (*officium nobile*) characterized by public responsibility and moral accountability.[44] Codes of professional ethics articulate these dual obligations. Advocates must balance zealous representation with respect for procedural integrity and judicial authority. Participation in abusive litigation—whether knowingly or through negligence—risks transforming advocates into instruments of procedural abuse. Such conduct not only exposes advocates to ethical sanctions but also contributes to the degradation of public trust in the legal profession.[45]

Therefore, the problem of vexatious litigation cannot be isolated from broader questions of professional responsibility. Advocates play a critical role in filtering claims, advising clients on legal merit, and discouraging abusive litigation strategies. Their professional judgment serves as an important safeguard against the misuse of judicial processes. As Sartono and

[41] Pustaka Konstitusi, *Contempt of Court* (Jakarta: Mahkamah Konstitusi Republik Indonesia, 2006).
[42] Hendri Jayadi, *Buku Ajar Hukum Acara Perdata* (Jakarta: Publika Global Media, 2022); Elisabeth Sundari, Helidorus Chandera Halim, and Ousu Mendy, "Should Indonesia Adopt Legal Representation in Civil Cases?," *Journal of Human Rights, Culture and Legal System* 5, no. 2 (August 27, 2025): 554–80, doi:10.53955/jhcls.v5i2.604.
[43] Rapaun Rambe, *Teknik Praktik Advokat* (Jakarta: Grasindo, 2003).
[44] Munir Fuady, *Profesi Mulia* (Bandung: Citra Aditya Bakti, 2018).
[45] Shidarta., *Moralitas Profesi Hukum : Suatu Tawaran Kerangka Berpikir* (Refika Aditama, 2006).

Bhakti Suryani observe, the foundational principles of the legal profession demand integrity, responsibility, and commitment to justice rather than mere procedural victory.[46] In light of these considerations, vexatious litigation emerges as a multidimensional legal problem that transcends individual disputes. It implicates constitutional rights, procedural integrity, judicial authority, and professional ethics. The comparative analysis discussed earlier demonstrates that common law jurisdictions have responded to this problem through explicit statutory mechanisms designed to balance access to justice with the prevention of abuse. By contrast, Indonesian law currently addresses abusive litigation indirectly through doctrines such as abuse of rights, unlawful acts, and contempt of court.

The foregoing analysis suggests that while Indonesian law possesses doctrinal foundations capable of addressing vexatious litigation, the absence of clear procedural mechanisms may limit their effectiveness. Developing a more explicit framework—while remaining consistent with constitutional guarantees of access to justice—could enhance judicial efficiency, protect litigants from harm, and reinforce respect for the judicial process. In this sense, regulating vexatious litigation should not be perceived as restricting access to justice, but rather as an essential measure to ensure that access to justice is exercised responsibly, proportionately, and in accordance with the rule of law.

3.2. *Ius Constituendum*

In principle, Indonesian civil procedural law provides broad access for every citizen to submit a claim before the court whenever their civil rights are allegedly violated. The right to bring an action constitutes a concrete manifestation of the rule of law, particularly the principles of access to justice and equality before the law, which are universally recognized as foundational elements of modern legal systems.[47] Procedural law functions as an instrument to realize substantive justice by enabling rights to be asserted and protected through lawful mechanisms.[48] Within civil litigation practice, claims are generally categorized as breach of contract (*wanprestasi*) and unlawful acts (*perbuatan melawan hukum*), both of which aim to restore violated rights and provide compensation to injured parties.[49] However, empirical practice demonstrates that not all claims are filed in alignment with these normative objectives. In certain cases, lawsuits are initiated without adequate factual or legal foundations and are not oriented toward the restoration of rights, but rather toward harassing, pressuring, or burdening the opposing party. This phenomenon is commonly referred to in legal literature as vexatious litigation or vexatious requests, which fundamentally represent an abuse of procedural rights.[50] Such litigation deviates from the legitimate purpose of access to justice and undermines the integrity of adjudicative institutions. Comparative perspectives similarly define vexatious complaints as repetitive, meritless actions pursued with the intention to disrupt legal or administrative processes.[51]

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[46] Sartono and Bhakti Suryani, *Prinsip-Prinsip Dasar Profesi Advokat* (Jakarta: Dunia Cerdas, 2013).
[47] Soepomo, *Hukum Acara Perdata* (Jakarta: Pradnya Paramita, 2006).
[48] Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*, Edisi Kedua (Yogyakarta: Liberty, 2006).
[49] P.N.H. Simanjuntak, *Hukum Perdata Indonesia* (Jakarta: Kencana, 2015).
[50] Syamsudin Noer, *Vexatious Request* (Depok: Rajawali Pers, 2021).
[51] Stevenson and Ghossein, "What Are Vexatious Complaints + What Can Regulators Do About Them?"; Teddy Prima Anggriawan, Shinfani Kartika Wardhani, and Donny Yuhendra Wibiantoro,

Although the concept of vexatious litigation is predominantly articulated within common law jurisdictions, similar patterns have emerged in Indonesian legal practice. Nevertheless, Indonesian positive law does not explicitly regulate vexatious litigation within civil procedural law, rendering it a problematic legal vacuum. From a jurisprudential standpoint, this situation reflects the inherent openness of law as a system of rules and principles that must be interpreted and developed to address new forms of legal abuse.[52] Law, therefore, is not exhausted by written rules alone but also relies on evaluative judgment to prevent misuse of legal rights.

Implicit recognition of principles analogous to vexatious litigation can be found in the regime governing public information dispute resolution. The Regulation of the Information Commission Number 1 of 2013 concerning Procedures for the Resolution of Public Information Disputes, enacted on 28 March 2013 by the Chairman of the Central Information Commission Abdul Rahman Ma'un, expressly requires that dispute resolution applications be submitted seriously and in good faith (Peraturan Komisi Informasi Nomor 1 Tahun 2013 tentang Prosedur Penyelesaian Sengketa Informasi Publik). Article 4 paragraphs (1) and (2) of the Regulation affirm that applications must be grounded in legitimate purposes and procedural propriety (Pasal 4 ayat (1) dan (2) Perki No. 1 Tahun 2013). Article 4 paragraph (3) further categorizes repetitive, unfounded, or disruptive applications as lacking good faith (Pasal 4 ayat (3) Perki No. 1 Tahun 2013), while paragraph (4) authorizes the Information Commission to terminate proceedings when such abuse is established (Pasal 4 ayat (4) Perki No. 1 Tahun 2013). The General Explanation of the Regulation clarifies that these provisions were designed to close procedural loopholes that had been exploited to manipulate dispute resolution mechanisms to the detriment of public bodies and other applicants (Penjelasan Umum Perki No. 1 Tahun 2013).

Doctrinally, vexatious requests are not merely procedurally defective but normatively problematic because they undermine institutional credibility and judicial efficiency. Although this regulatory framework demonstrates that Indonesian law has acknowledged the necessity of restricting abusive procedural conduct, its sectoral nature reveals structural weaknesses. Decisions terminating dispute resolution processes remain subject to review before the Administrative Court, potentially undermining the principle of simple, speedy, and low-cost justice. Comparable reasoning may be observed in the practice of the Constitutional Court, particularly in judicial review proceedings. Applicants are required to fulfill formal and substantive requirements, and failure to demonstrate seriousness results in non-registration of the application. While the terminology of vexatious litigation is not employed, applications submitted without coherence or genuine intent may substantively be classified as vexatious requests. This approach reflects the broader principle that procedural rights are inseparable from the obligation to exercise them responsibly.[53]

Accordingly, within the framework of ius constitutum, Indonesian law has implicitly recognized limitations on the abuse of the right to litigate. The principles of seriousness and

"Kedudukan Prinsip Imparsialitas Atas Gugatan Vexatious Dalam Penegakan Hukum Pada Proses Mediasi," *UNES Law Review* 6, no. 2 (2023).

[52] H.L.A Hart, *The Concept of Law* (Oxford: Oxford University Press, 1988).

[53] George Whitecross Paton, *A Text-Book of Jurisprudence* (Oxford: Clarendon Press, 2006).

good faith operate as evaluative standards to distinguish legitimate legal remedies from procedural harassment. However, this recognition remains fragmented and has not been systematically integrated into civil procedural law, despite the need for coherence in maintaining procedural justice.[54] From the perspective of future legal development, Indonesian civil procedure does not recognize vexatious litigation as a distinct procedural category, nor can it be equated with procedural defenses such as exceptions (eksepsi). Exceptions address formal defects in claims, including obscurity of pleadings (obscuur libel), and are adjudicated together with the merits pursuant to Article 136 HIR.[55] Consequently, even claims ultimately declared inadmissible may impose significant burdens on defendants due to prolonged proceedings.[56]

Justice remains the foundational principle of civil adjudication. Jurisprudential theory emphasizes that justice entails proportional equality and rational differentiation.[57] Judges are therefore required to act impartially and to balance competing interests through objective adjudication.[58] In addition to justice, effectiveness and efficiency constitute core principles of civil adjudication. Indonesian law mandates that judicial proceedings be conducted in a manner that is simple, speedy, and low-cost, as a condition for meaningful access to justice. Protracted proceedings and abusive litigation practices erode public trust and undermine the legitimacy of the judiciary. Therefore, controlling vexatious litigation is not merely a procedural concern but a structural necessity to preserve justice, efficiency, and legal certainty within the Indonesian civil justice system. Civil dispute resolution through judicial proceedings in Indonesia commences with the filing of a lawsuit by a party who alleges that their civil rights have been infringed or harmed by another party. The plaintiff must demonstrate a sufficient legal interest and a clear legal basis to justify the claim. Indonesian civil procedural law, as governed by the Herzien Inlandsch Reglement (HIR) and Rechtsreglement voor de Buitengewesten (RBg), does not strictly regulate the formal structure of a statement of claim, thereby granting plaintiffs procedural freedom in formulating their pleadings.[59] Nevertheless, this freedom is not absolute, as the clarity, coherence, and completeness of the claim are decisive factors influencing judicial assessment and procedural admissibility.[60]

A properly formulated claim is essential to ensure synchronization between the factual allegations (*posita*) and the remedies sought (*petitum*). An unclear or defective claim complicates judicial examination and undermines procedural efficiency. Consequently, Indonesian courts recognize the doctrine of *Niet Ontvankelijke Verklaard* (inadmissibility), whereby a claim is declared unacceptable due to formal defects rather than substantive deficiencies. Such defects include obscure pleadings (*obscuur libel*), absence of legal standing,

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[54] M. Natsir Asnawi, *Hukum Acara Perdata: Teori, Praktik, Dan Permasalahannya* (Yogyakarta: UII Press, 2016).
[55] Efa Laela Fakhriah, *Perbandingan HIR Dan R.Bg. Sebagai Hukum Acara Perdata Positif Di Indonesia* (Bandung: Keni Media, 2015).
[56] Djamal, *Hukum Acara Hak Kekayaan Intelektual Di Indonesia* (Bandung: Pustaka Reka Cipta, 2009).
[57] Suparman, *Arbitrase Dan Dilema Penegakan Keadilan* (Jakarta: Fikahati Aneska, 2012).
[58] Sidik Sunaryo, *Kapita Selekta Sistem Peradilan Pidana* (Malang: UMM Press, 2005).
[59] M Yahya Harahap, *Hukum Acara Perdata* (Yogyakarta: Sinar Grafika, 2017).
[60] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Universitas Atma Jaya, 2010).

premature filing, misidentification or incompleteness of parties (*error in persona*), expiration of limitation periods, and lack of absolute or relative jurisdiction. An *obscuur libel* arises when the claim lacks clarity or contains internal contradictions, such as unclear legal grounds, indeterminate objects of dispute, inconsistent identification of parties, or incoherent petitions, thereby violating the requirement of certainty as articulated in Article 8 paragraph (3) of the Dutch Civil Procedure Code (Rv) and consistently applied in Indonesian jurisprudence (Yurisprudensi Mahkamah Agung Republik Indonesia No. 194 K/Sip/1971). Similarly, claims may be declared inadmissible where plaintiffs lack direct legal interest, fail to meet statutory prerequisites, or improperly designate defendants, including situations of *gemis aanhoedanigheid* and *plurium litis consortium*.[61]

The principle of *nebis in idem* further restricts repetitive litigation by prohibiting the re-adjudication of disputes that have been conclusively decided. Article 1917 paragraph (2) of the Indonesian Civil Code requires identity of parties, legal grounds, and legal relations for a claim to be barred under this principle, reflecting the doctrine of *res judicata pro veritate habetur*, which mandates respect for final judicial decisions.[62] However, where prior judgments address only procedural defects rather than the merits, refiling remains permissible upon rectification of such defects. In response to chronic case backlogs and in pursuit of the constitutional mandate for simple, speedy, and low-cost justice, the Supreme Court introduced the Small Claims Court mechanism through Supreme Court Regulation No. 2 of 2015, as amended by Regulation No. 4 of 2019. This mechanism limits claims to a maximum value of IDR 500,000,000 and confines jurisdiction to disputes arising from breach of contract or unlawful acts with straightforward evidentiary requirements. Judges play an active role during preliminary examination to determine procedural eligibility, reflecting a moderated form of the active judge principle distinct from criminal proceedings yet comparable to administrative courts.[63]

Procedural filtration also exists in administrative courts through the dismissal process regulated under Article 62 of Law No. 5 of 1986 on Administrative Courts, as amended. This mechanism authorizes the Chief Judge to summarily declare claims inadmissible or unfounded when jurisdictional or formal deficiencies are manifest. The dismissal procedure serves as an institutional safeguard against frivolous or abusive litigation and is reinforced by Supreme Court Circular Letter No. 2 of 1991.[64][65] Within this procedural architecture, the abuse of litigation rights has emerged as a significant concern. While access to justice is a fundamental right, it is not absolute and may be restricted when exercised in bad faith or for improper purposes. Comparative legal systems explicitly regulate vexatious litigants, empowering courts to impose sanctions or restrict future filings to preserve judicial resources and protect opposing parties. Although Indonesian civil procedure does not yet formally codify vexatious litigation doctrines, abusive claims may be sanctioned through

[61] Hendri Jayadi, *Buku Ajar Hukum Acara Perdata*.
[62] Gardner, *Black's Law Dictionary*.
[63] M. Syarifuddin, *Small Claim Court dalam Sistem Peradilan Perdata*, Jakarta: Imaji Cipta Karya, 2020, 45
[64] Rizky Ramadhan Baried, "Kedudukan Upaya Administratif dalam Dismissal Process," *Media Iuris* 7, no. 2 (2024): 347
[65] Rizky Ramadhan Baried, "Kedudukan Upaya Administratif dalam Dismissal Process," Media Iuris 7, no. 2 (2024): 201–220, https://doi.org/10.20473/mi.v7i2.55201.

inadmissibility rulings and liability under unlawful acts (*perbuatan melawan hukum*) pursuant to Article 1365 of the Civil Code.

These early-stage gatekeeping mechanisms are not without risk. Broadening judicial authority to filter claims at the preliminary examination stage carries the countervailing danger of restricting legitimate access to justice, particularly for plaintiffs whose claims are novel, evidentiarily complex, or brought against well-resourced defendants able to characterize genuine grievances as frivolous. To guard against this risk, any filtration mechanism should be bounded by clear safeguards: filtration should be confined to claims that are manifestly and objectively baseless on their face, rather than merely weak or difficult to prove; plaintiffs should retain a right to be heard and to remedy curable defects before dismissal; dismissal at this stage should be subject to appeal; and judges exercising this authority should be required to state written reasons demonstrating that the threshold of manifest groundlessness, and not the ordinary merits of the claim, was the basis for dismissal. These safeguards preserve the screening function of preliminary filtration while preventing it from becoming a substitute for adjudication on the merits.

Liability for abusive litigation may extend beyond procedural dismissal to include compensation for material and immaterial damages. Indonesian jurisprudence recognizes moral damages, including emotional distress and loss of enjoyment of life, as compensable under both Articles 1365 and 1371 of the Civil Code, following the Hoge Raad decision in *Kreuingen v. Van Bessum* (1943) and subsequent doctrinal development. Accordingly, vexatious plaintiffs may be ordered to reimburse litigation costs, attorney fees, and consequential losses suffered by defendants. In sum, Indonesian procedural law embodies a delicate balance between safeguarding access to justice and preventing procedural abuse. Through doctrines of admissibility, small claims mechanisms, dismissal procedures, and tort-based liability, the legal system implicitly acknowledges the necessity of controlling vexatious litigation. Nevertheless, the absence of explicit statutory regulation underscores the need for doctrinal refinement to ensure proportionality, legal certainty, and the integrity of judicial institutions.

Based on the foregoing analysis, a technically viable and normatively balanced solution lies in developing a procedural filtration mechanism within Indonesian civil procedural law that operates at the preliminary examination stage, grounded in the principles of seriousness, good faith, and proportionality. Rather than rigidly codifying vexatious litigation as a separate procedural category—which risks unduly restricting access to justice—the law should empower judges with explicit authority to conduct an early assessment of claims to identify manifestly abusive, repetitive, or bad-faith lawsuits before entering substantive examination. This may be achieved through the refinement of existing admissibility doctrines, clearer judicial guidelines on indicators of procedural abuse, and the integration of cost-shifting or compensatory sanctions for demonstrable abuse of process. Such an approach would preserve the constitutional right to litigate while simultaneously enhancing judicial efficiency, protecting defendants from undue procedural burdens, and safeguarding institutional credibility. Ultimately, embedding a calibrated, judge-centered control mechanism within civil procedure offers a pragmatic path toward reconciling access to justice with the systemic necessity of preventing vexatious litigation in Indonesia's civil justice system.

Operationally, this filtration is best implemented at the first case-management hearing, before the substantive examination of evidence begins, and should be triggered only where the defendant raises a specific objection supported by documentary proof that the claim is manifestly baseless — for example, a prior final and binding judgment on the same subject matter, an evident absence of legal standing, or an admission of fact that negates an essential element of the cause of action. The evidentiary standard at this stage should remain summary rather than exhaustive: the judge determines only whether the claim is objectively groundless on the face of the pleadings and the documents submitted, not whether it will ultimately succeed, and any doubt as to groundlessness should be resolved in favor of allowing the case to proceed to full examination.

4. Conclusions

Future regulation of vexatious litigation in the Indonesian civil justice system should be oriented toward the adoption of an early procedural control mechanism that operates at the preliminary stage of case examination, similar to the models already applied in small claims proceedings and the dismissal process in administrative courts. In small claims procedures, judges are authorized to assess at an early stage whether a claim satisfies specific formal and substantive requirements, such as the type of dispute, monetary limits, jurisdiction, and the legal standing of the parties. Claims that fail to meet these criteria are not examined on the merits and are removed from the court register. Likewise, the dismissal process in administrative courts allows claims to be declared inadmissible or unfounded when they clearly fall outside judicial competence, lack proper legal grounds, are premature or time-barred, or have effectively been resolved. These existing mechanisms demonstrate that early filtration of claims is both feasible and compatible with Indonesian procedural law. Accordingly, vexatious civil claims should be addressed through a preliminary examination that enables courts to refuse lawsuits that are repetitive, abusive, filed in bad faith, or intended to harass, delay, or cause loss to the opposing party without reasonable legal grounds. Where such characteristics are established, courts should be empowered to declare the claim inadmissible or rejected, order the plaintiff to compensate the defendant for losses incurred—including court costs, legal fees, and material or immaterial damages—and, where necessary, impose limitations on filing similar claims in the future concerning the same dispute. This approach maintains access to justice for legitimate claims while preventing procedural abuse, thereby reinforcing judicial efficiency, legal certainty, and the integrity of the civil justice system.

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