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# Analysis of the denial of the plaintiff's law suitt reconvening in relation to the convention plaintiff's suit in the syar'iyah court

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**Abstract**
In order to create a balance of relations between each other in society, it is necessary to have legal protection of one's rights in social life. It is the duty of the state to provide legal protection for the rights of the people and will also ensure that every implementation and rule is based on justice, as well as regulate restrictions in the interests of the public, nation and state. However, this is still not implemented in society, so the community is not satisfied with the rules. As in the case in the Syar'iyah Bireuen Court where the judge rejected the case for reconvencing and convention. Meanwhile, in the Syar'iyah Jantho Court, the judge accepted the reconvencing and contingency suit. This difference in judgment is highly irrelevant because the case is both a case of consecration of a lawsuit. The problem in this study is how the syar'iyah court has implemented a legal interpretation of the denial of the plaintiff's reconception suit and the convention suit. The research methodand method used are empirical juridical with a *statute approach*, and a comparison or *comprative approach*. The data sources are *library research* or literature research and *field research*. The results showed that there was a legal interpretation of the rejection of the plaintiff's suitand the convention suit according to the judge that any oarng who filed a suit could file his suit whether it was a merger of suits or not. The reason the judges have refused to file a lawsuit may be seen when the evidence of the parties not fulfilling the cretria of the evidence submitted is not in accordance with the wishes of the judge at trial. Therefore, if in the reconvencing and convention the initial plaintiff withdraws his suit, it may be dismissed by one of the parties if there is an agreement by one of the parties, but if there is no agreement between the plaintiff and the defendant then there-existence is still examined and resumed according to the procedures in force in the Syar'iyah Court.

**Keywords:** reconvencing, convention, dispute resolution, judge's authority court

## Introduction

In order to create a balance of relations between each other in society, it is necessary to have legal protection of one's rights in social life. It is the duty of the state to provide legal protection for the rights of the people and will also ensure that every implementation and rule is based on justice, as well as regulate restrictions in the interests of the public, nation and state.

A person who feels that his rights are violated by others and causes harm to him, then he can file a claim for his rights with the court as long as the court has the authority to adjudicate or be competent so that his case is resolved through legal channels, this is stated in Article 118 of the HIR.

In addition, the Court is obliged to examine and adjudicate civil cases filed as stated in article 10 paragraph 1 of Law No. 48 of 2009 on Judicial Power which reads: "The court shall not refuse to examine, and decide a case filed on the pretext that the law is not or is less clear, but is obliged to examine and adjudicate it".

According to Subekti, there are times when the defendant who is sued by the plaintiff feels that he can re-sue the plaintiff because there is a possibility of having other legal relationships (agreements) such as debt receivables which in this case the plaintiff still has a debt to the defendant and has not been repaid. Basically, an agreement is a legal relationship (regarding property wealth) between two people who give the right to one to demand something from the other, while the other person is obliged to meet that demand. Thus, since the defendant has the right to sue, then the defendant can resolve it through the judicial process by means of suing the plaintiff. In this case, if the defendant wants to sue the plaintiff, then he can sue in a separate case from the previous case between the first suit, the defendant is the plaintiff, while the plaintiff is a defendant, but the proceedings of the suit between the plaintiff and the defendant, the convention, the defendant can re-sue the plaintiff, which is not a separate event from the first claim. The lawsuit made by the defendant is a counterclaim (reconvencing suit).

The legal action for reconvencing suits is regulated in Article 132 a and Article 132 b of the HIR, as well as in Article 157 and Article 158 of the RBG. Article 132 a Subsection (1) of the HIR states:

1. In each case, the defendant is entitled to file a counterclaim, unless, ifthe plaintiff originally sued by some nature, while the counterclaim was about himself, or vice versa.
2. If the district court examining the original claim is not entitled to hear the counterclaim, in relation to the subject matter of the dispute.
3. In cases of disputes about the implementation of the judge's ruling.

If filtered out the elements of the article above then we can describe it as follows:

1. A reconvening suit is the right of the defendant to file it;

2. A reconvening suit is limited in nature, and cannot be filed against the 3 provisions mentioned in the above article;
3. The defendant cannot sue in his reconvencing to the person of the individual representing the plaintiff. Like a guardian representing a minor (Article 383 of the Civil Code) to bring a lawsuit, it means that the defendant cannot sue (in reconvencing) to the personal self of the guardian. Likewise with the guardian of a person who is placed under guardianship (Article 452 of the Civil Code).

According to Wirjono Prodjodikoro, the reconvening lawsuit is essentially a commute or combination of two suits where what is combined is a lawsuit from the plaintiff and a lawsuit from the defendant which aims to save costs, time, energy, facilitate examination procedures and avoid judgments that contradict each other. For the reconvening defendant, this reconvening suit means saving the cost of the case, because he is not obliged to pay the costs of the case in the reconvening suit.

This is because the filing of a reconvening suit is a privilege granted by the civil procedural law to the defendant to file a will to sue on the part of the defendant to the plaintiff jointly with the original claim (convention). But the two must have the same legal relationship basis. It is on that basis that the defendant in this case is allowed to advance a new reconvening suit in the public. However, if the duplicative reply has been completed and the judge has begun to examine the case, then the defendant is no longer allowed to advance the reconvening suit.

The following aresome examples of cases in the Syar'iyah Court in Aceh regarding the merger of lawsuits in filing their lawsuits, but there are Syar'iyah Courts that accept and some that reject, such as in the Bireuen Syar'iyah Court after the divorce between the plaintiff and the defendant with Judgment No. 42/Pdt.G/2019/MS. Beer. In the judgment, the plaintiff felt cheated by the defendant on the judge's ruling, in which the defendant had no good intention to carry out the outcome of the judgment, be it the defendant's promise to give up custody of the child or the wife's right to a living and the division of common property after divorce. Therefore, the plaintiff filed a contingency and reconsideration suit simultaneously with the aim of saving costs in the trial, so that the defendant could carry out his promise. However, in the application for contingency or reconception, the judge did not grant and reject the plaintiff's application. In this case, there has been a trial between the plaintiff and the defendant in the Bireuen syar'iyah Court.

Meanwhile, in the Syar'iyah Jantho Court, the judge accepted and granted the parties' suit for processing in accordance with the application filed by the parties regarding the reconvencing and contingency suit. It is in accordance with the procedural law that lawsuits can be combined in a single lawsuit.

If it is guided in the civil procedural law, that the suit can be combined with two conditions of close relationship or connectivity between each other, this is stated in Article 127 of the HIR, and there is a legal relationship in the case, then the case can be combined in one claim. However, in the Syar'iyah Bireuen Court in the case of merging the suit of the judge dismissed the suit of the contingency plaintiff/reconsideration defendant under Judgment Number 140/Rev.G/2020/MS. Beer. on the other hand, Syar'iyah Jantho Court with Judgment 149/Rev.G/2020/MS. Jantho, accepted and granted the application for the charges to be processed.

Thus, from the description of the aforementioned matter, the author wants to examine and analyze the cause of the judge rejecting the suit filed by the defendant in the form of the plaintiff's lawsuit for reconvencing and the convention suit.

**Formulation Masalah**

1. Is it the implementation of the syar'iyah court's implementation of the legal interpretation of the denial of the plaintiff's suit for reconciliation and the convention suit?

**Research Methods**

1. Types and Approaches to Research

The method used in this study is to use the type of empirical juridical research by examining the reality that occurs in society, this research is also referred to as a sociological approach. Thus, there are several approaches used in this study, namely the approach through legislation or *statute approach,* and through a comparative approach or *comprative approach*. The data collection technique in this study was carried out by means of literature research (*Literature Research*) obtained in regulations per-Law, textbooks, journals, research results and other materials related to the problems discussed. Then use simple and population research. The ones used as *Informan* are:

a. Judge and Clerk of the Court of Syar'iyah Bireuen;
b. Judges and Clerks of the Syar'iyah Court of Banda Aceh;
c. Judge and Clerk of the Court Syar'iyah Lhokseumawe.

The *respondents* are:

a. Plaintiff
b. Defendants

The location of the study is in several Syar'iyah Courts in Aceh, because this research is related to the rejection of the contingency claimant's lawsuit in relation to the reconception claimant's lawsuit at the Bireuen Shari'a Court.

**Discussion**

**Definition of reconvencing lawsuit**

A reconvening suit is a suit filed by defendant as a counterclaim against the suit that Plaintiff filed against him, and a reconvencing suit filed by Defendant in court at the time of the proceedings of the examination of the suit filed by Plaintiff against Defendant.

The reconvening suit is also called a counterclaim from the plaintiff against the defendant. This counterclaim must be brought forward along with the answer. According to jurisprudence a reconciliation lawsuitvensi can still be filed along with duplication. However, a demand that has only been put forward at the cassation level cannot be accepted.

Reconvencing is a right given by law to a defendant in a case to file a counterclaim against the plaintiff. Based on practical observations, sixty percent of cases filed with the court, are always attached to it a reconvening suit. Although not all reconvencing suits have a legal basis, there are even times when they are just far-fetched without being based on clear basis and facts, but nevertheless the reality faced, reconvening lawsuits have become a practical need that

needs attention. Section 132a subsection (1) of the HIR gives only a brief sense whose meaning is that reconvencing is a suit filed by the defendant as a counterclaim against the suit filed by the plaintiff against him and the reconvening suit, filed by the defendant in the District Court, during the course of the examination of the suit filed by the plaintiff. The definition that can be borrowed is the word *counterclaim* from the *Common Law legal system, counterclaim* is the same as the definition of reconvencing in the *Civil Law* system. That is, the suit of resistance filed by *the defendant* against the *claim* filed by *the plaintiff* against him.

In the structure of a case, there is a specificity when in a case there is a reconvencing. In general circumstances, in a case there is a plaintiff, a defendant and the suit itself filed by the plaintiff. There is a particular difference when in a case the defendant filed a retaliation or reconvencing. In the presence of a reconvening lawsuit, the composition of the lawsuit becomes as follows:

a. The plaintiff's suit is referred to as a convention suit (*eis in conventie*) which means as an original suit addressed by the plaintiff to the defendant;
b. The defendant's suit is referred to as a reconvening suit (*eis in recoventie*) which means a counterclaim addressed by the defendant to the plaintiff.

Technically, at the same time facing each other's convention and reconvening lawsuits in one ongoing vetting process. In addition to the emergence and mutual confronting of convention and reconvening suits, there are other consequences to the composition that put the parties in the position of:

a. The original plaintiff as a convention plaintiff (*eiser in conventie*) at the same time was a reconvening defendant against a reconvening suit filed by the defendant;
b. The original defendant as a reconvening plaintiff (*eiser in reconventie)* at the same time was a convention defendant.

Basically, in accordance with the provisions of the Code of Civil Procedure, each lawsuit filed by a party against the other party has a separate individual nature and stands alone from the other lawsuits. It is clearly stated in Article 121 subsection (1) of the HIR that each suit is given a register and assigned a separate number by the registrar in the register book provided for the said. In its specificity, however, Article 132a of the HIR overrides the general rule that requires each suit to stand alone. Based on these provisions, in the process of hearing the ongoing lawsuit:

a. Granted the right to the defendant to file a reconvencing suit as a counterclaim to the plaintiff's suit; and
b. The reconvening suit was dismissed by the defendant with the plaintiff's convention suit.

The system of reconvening and conventions, judicial administration upholds the following principles:

a. The reconvening suit register number hitchhiked and became one with the convention suit register number.
b. The cost of pursuing a reconvening suit case is considered by itself to have been attached to the panjar of a convention suit.

Such an arrangement carries its own consequences in the conduct of civil proceedings in practice. The whole is a series in the context of enforcing material civil law with the principle of a simple, fast and low-cost trial. The possibility of the right of the defendant to file a reconvening suit is also an arrangement with certain intentions.

The meaning of the reconvencing suit contained in Article 244 B.Rv is almost the same as that formulated in the provisions of Article 157 R.Bg / Article 132 a paragraph (1) of HIR, which says that a reconvening suit is a counterclaim filed by the Defendant against the Plaintiff in an ongoing litigation process, but because the HIR is used by Java and Madura, the author suffices to use the R.Bg, because the judiciary is outside Java and Madura, but to get a comparison for the term of reconvencing it is necessary to include Article 244 B. Rv.

By allowing the defendant to file a lawsuit back with the plaintiff, the defendant does not need to file a new lawsuit. Thisrecontion suitis sufficiently filed together with the answer, against the plaintiff's suit, therefore in that case there will be two suits, namely the convention suit and the reconvening suit. In a convention suit the plaintiff is the original plaintiff and the defendant is the original plaintiff who is commonly referred to as the plaintiff in thecontra vency suit and the defendant in the convention. While in the recontraction suittheplaintiff is the defendant, one of the original defendants, whom the plaintiff calls in the reconnaissance, and the defendant is the plaintiff one of the plaintiffs in the convention and is called the plaintiff in the reconvening.

The purpose of the reconvencing suit is to compensate the Plaintiff's suit, so that both can be examined at once, combining two related claims to be examined in the trial at once, simplifying the examination procedure, avoiding judgments that conflict with each other, neutralizing convention claims, facilitating evidentiary events and saving costs, and the various positive purposes contained in si stem the reconvening. The benefits obtained in combining two lawsuits at once, are not just fulfilling the interests of the Defendants, but include the interests of the Plaintiffs and the enforcement of legal certainty in a broad sense. The most important among those goals is to uphold the principle of a simple judiciary, saving costs and time.

### 1. Reconvening Lawsuit According to Laws and Regulations

The reconvening suit is provided for in Article 132 a and Article 231 b of the HIR inserted in the HIR with Stb. 1927-300 which is taken over from sections 244-247 B.Rv. Whereas in the R.Bg, the reconvencing is provided for in Article 157 and Article 158. In the Code of Civil Procedure, a reconvening suit is known as a "counterclaim," because defendants also defaulted on Plaintiffs. The defendant may only bring a reconvening suit, if by chance it relates to the treasury that is being examined in the trial court, the reconvening suit shall not be carried out against matters relating to individual law or relating to the status of persons, otherwise all of the Plaintiff's suits are reciprocated with a reconvening suit.

Any treatment has a legal basis for its implementation. Similar to divorce lawsuits, these reconvencing suits have a clear legal basis. Based on the provisions in article 16 paragraph 1 of Law No. 4 of 2004 which reads: "The court must not refuse to examine, and decide a case filed on the

pretext that the law is not or is not clear, but is obliged to examine and adjudicate it".

This a reconvening suit is essentially a commute or combination of two suits where what is combined is a lawsuit from the plaintiff and a lawsuit from the defendant aimed at saving costs, time, effort, simplifying the examination procedure and avoiding judgments that contradict each other. For reconvening defendants, this reconvening lawsuit means saving the cost of the case in accordance with Law No.4 of 2004, concerning judicial power and is not required to pay the costs of the case in the reconvening lawsuit.

This is because the filing of a reconvening suit is a privilege granted by the civil procedural law to the defendant to file a will to sue on the part of the defendant to the plaintiff jointly with the original claim (convention). But the two must have the same legal relationship basis.

It is on that basis that the defendant in this case is allowed to advance a new reconvening suit in the public. However, if the answer question is over and the judge has started by examining the case in this case of proof, then the defendant is no longer allowed to advance the reconvening suit.

In Indonesian society, a reconvening lawsuit is widely known as a counterclaim carried out by suing back. This phrase is the same as that found in the RBG which uses the phrase counterclaim and within the HIR is used counterclaim. The original term of the word reconvention comes from the Dutch *reconventie (eis in reconventie),* as opposed to *conventie (eis in conventie),* then in Indonesia it became reconvention and its original lawsuit in Indonesia also became a convention. The legal basis for the reconvencing suit is regulated in HIR Article 132 a and origin 132 b, as well as in the RBG regulated in Article 157 and Article 158. Article 132 a Subsection (1) of the HIR states: In each case, the defendant is entitled to file a counterclaim, except: (RV. 244.)

a. If the plaintiff was originally suing by some nature, while the counterclaim was about himself, or vice versa; (Penal Code 383, 452, 1655 etc.)
b. If the district court examining the original claim is not entitled to hear the counterclaim, in relation to the subject matter of the dispute; (ISR. 136; Ro. 95.)
c. In cases of disputes about the implementation of the judge's ruling. (IR. 207.)

If filtered out the elements of the article above then we can describe it as follows:

a. A reconvening suit is the right of the defendant to file it.
b. A reconvening suit is limited in nature, and cannot be filed against the 3 provisions mentioned in the above article.
c. The defendant cannot sue in his reconvencing to the person of the individual representing the plaintiff. Like a guardian representing a minor (Article 383 of the Civil Code) to bring a lawsuit, it means that the defendant cannot sue (in reconvencing) to the personal self of the guardian. Likewise with the guardian of a person who is placed under guardianship (Article 452 of the Civil Code).

And also to the directors or management of the company representing their company to file a lawsuit against the plaintiff (Article 1655 of the Civil Code), then the plaintiff cannot file a reconvening suit by withdrawing the individual management of the company who is representing his company, even though the personal self of the administrator has a legal relationship say debt receivables with the convention defendant, then the convention defendant if he will file a lawsuit on the basis of a legal relationship related to the issue of legal relations related to the issue of the debt receivable, must file a separate lawsuit instead of including it in the reconvencing suit.

The same is true for an attorney (advocate) who is representing his client in court, the reconvening plaintiff cannot sue the advocate, but rather still sues the advocate's attorney who filed the convention suit.

d. The religious court that examined the claim of the original plaintiff and the religious court declared itself to be entitled to hear the case, so the defendant could not file a counterclaim or reconvencing. So that if the convention suit is not admissible, then the reconvening suit must also be declared inadmissible.

This is stated also in Supreme Court Decision No. 1527 K/Sip/1976 which states: "Because the reconvening suit which has been decided by the judex facti is closely related to the convention suit. while this convention suit is not/has not been examined, because it is declared inadmissible, then the reconvening suit must not be examined and decided before the convention suit is examined/decided".

e. In cases concerning the implementation of the judge's decision cannot be filed a reconvening suit. For example, for example, it looks like the following: there has been a court decision of permanent legal force between A and B. then when it is about to be executed C filed a suit of resistance (derden verzet) against the judgment of the court.

This suit of resistance cannot be filed for reconvencing by the opposed party. The legal provisions regarding the time to file a reconvening suit are provided for in Article 132 a Paragraph (2) of the HIR and Article 132 b of Paragraph (1) of the HIR. Article 132 a Subsection (2) of the HIR states "If in the examination in the first instance no counterclaim is filed, then in the appeal no longer may be brought the claim". It is generally understood by most perpetrators in the legal world, that to file a reconvening suit must be carried out at the time the case is processed in the District Court as well as in the Religious Court (Syar'iyah Court). The common question and debate is that in the proceedings in the District Court as well as in the Religious Court (Syar'iyah Court), at which stage a reconventional suit is filed, whether when applying for the first answer, duplication, examination, or before there is a judgment.

In this regard, we must refer to the provisions of Article 132 b Subsection (1) of the HIR which states "The defendant shall file a reconvening suit together with the answer, either in writing or orally". However, this article invites a difference of interpretation related to the word "answer", which does not explain which answer or answer to which reconvening suit should be filed. Some argue that a reconvening suit must be filed simultaneously with the defendant's first answer, and cannot be filed at the time of filing a duplication. This kind of opinion is based on Supreme Court Decision No. 346 K/Sip/1975 which essentially states "Since a new reconvening suit was filed on

the second written answer, the reconvening suit was too late".

**Definition of convention lawsuit**

Convention is actually a term to refer to a preliminary lawsuit or an original lawsuit. This term is indeed rarely used compared to the term lawsuit because the term convention will only be used if there is a reconvencing (the defendant's counterclaim to the plaintiff). The arrangements regarding the examination system for the resolution of convention and reconvencing suits are provided for in Article 132b paragraph 3 *of the Herziene Inlandsch Reglement* ("HIR"). There are 2 (two) completion inspection systems, namely:

1. **The Convention and Reconvening suit was examined and decided at once in one judgment.**

This system is a *general rule* that outlines the process of examining and resolving convention and reconvening lawsuits, provided that:

a. Carried out simultaneously in one examination process, in accordance with the rules of conduct outlined by the law, namely the openness of the right to submit exceptions, answers, replies, duplications, proofs and conclusions both to conventions and reconvencing. The examination process is set forth in the same minutes. Further, the results of the examination are completed simultaneously in one ruling, by systematics;
b. The placement of the description of the convention award in the initial section, includes the postulate of the convention suit, the petitum of the convention suit, the description of the convention considerations and the legal conclusion of the convention suit. Then, a description of the reconvening suit that includes the same things as the substance of the convention suit.
c. Amar ruling as the last part, consists of amar ruling in convention and in reconvencing.

The application of such a system, in accordance with the resolution of each case of kumulation. Therefore, it must be completed simultaneously and simultaneously in the same examination process, and also set forth in the same judgment under the same register number and the pronouncement of the judgment is carried out at the same time and day.

2. **Separate inspection process is allowed**

The exception to the procedure for simultaneous and simultaneous examination of conventions and reconvencing, is also provided for in Article 132b paragraph 3 of the HIR, with the following application:

a. The examination was conducted separately but was handed down in one judgment. If the convention and reconvening are correct, it does not contain a connection so that a very different and different examination treatment is carried out, namely:

- A separate examination may be made between convention and reconvencing.
- Each of the inquests was set forth in different minutes of the hearing.
- The manner of the examination process, the process of examining the convention suit is completed first, but the judgment is rendered until the completion of the examination of the reconvening suit and following the completion of the examination of the reconvening suit.
- The final settlement was handed down in one judgment with the same case number register. Pronounced at the same time and day.

b. The examination is carried out separately and is decided in different rulings

In this system, although the judicial register number is technically the same as the convention and reconvening code, there are 2 (two) judgments consisting of a convention ruling and a reconvening ruling.

Each of the plaintiffs of convention and reconvencing may appeal against the judgment in question. The grace period for appealing is subject to the provisions of Article 7 paragraph 1 of Law Number 20 of 1947, which is 14 (fourteen) days from the date the verdict is handed down or 14 (fourteen) days from the date the judgment is notified. As for the grounds for the ability to conduct examinations separately between convention and reconvencing, it is not explained in the law, and is entirely left to the judgment of the judge's consideration. However, the reason that is considered rational in general is if there is no close connection between the two, so it requires a separate solution and handling.

**Definition of dispute resolution in the judiciary**

Disputes can happen to anyone and anywhere, disputes can occur between individuals and individuals, between individuals and groups, between groups and groups. Disputes will occur if a person in meeting his needs causes losses to the other party. Disputes will occur if the aggrieved party cannot harbor his feelings of dissatisfaction with the losses he suffered, so that the aggrieved party expresses his dissatisfaction with the party who caused the loss.

According to the applicable Civil Procedure Law, there are several stages of litigation in resolving civil disputes through the district court, starting from filing a lawsuit, checking the identity of the parties, peace efforts (mediation), answers from the defendants if the mediation fails, replies, duplications, first conclusions, evidentiary processes, second conclusions, drafting judgments by a panel of judges. The implementation of these stages takes a long time, at least between three and six months. If any party is dissatisfied with the judge's decision, then that party can file legal remedies both ordinary and extraordinary legal remedies. With such a dispute resolution process, it can be concluded that the dispute resolution process is not simple, fast, and it is very likely that the litigants will have to spend a large amount of money to carry out the dispute resolution process. Dispute resolution through the courts, has the following characteristics:

a. The process is very formal;
b. Decisions are made by third parties appointed by the state (judges);
c. The parties are not involved in decision-making;
d. The nature of the verdict is *coercive and binding*;
e. Orientation to legal facts (finding the guilty party);
f. The trial is open; and
g. If any party is dissatisfied with the judge's decision, it can apply for an effort law.

According to Achmad Ali, a dispute is a conflict between two or more parties that starts from different perceptions of an interest or property right that can have legal consequences for both. Furthermore, according to Sarwono,

a dispute is a matter that occurs between the parties to the dispute in it containing a dispute that must be resolved by both parties.

A dispute according to the English dictionary is something that causes dissent, quarrels, disputes, disputes. According to the law, a legal dispute occurs when there are one of two or more persons who bind each other civilly to what is promised. Of course there are many types of disputes but what will be discussed in this writing is disputes in the business world, before starting the discussion about disputes in business law let's look at what underlies a dispute, namely agreements. Article 1313 of the Civil Code A treaty is an Act by which one or more persons bind themselves to one or more other persons, the agreement is valid according to 1320 of the Civil Code if agreed, capable, what is promised, what is promised is lawful in the intention of not contradicting an applicable Law.

As for resolving disputes, one can take the court route or use alternative dispute resolution. Taking the court route of a person suing a defendant(term for a person who is sued civilly in the District Court) in the territory where the defendant lives under section 118 (1) HIR). In addition to the courts, Alternative dispute resolution is another option if a person wants to resolve his civil dispute as for the types used in practice, namely mediation and arbitration, but in using mediation or arbitration, both parties to the dispute must agree with each other which I will explain in the next article.

According to Perma no. 1 of 2008 Mediation is a way of resolving disputes through a negotiating process to obtain an agreement between the parties with the help of a mediator where if the parties agree in resolving their disputes the results of the agreement are stated in the peace deed, a deed containing the contents of the peace agreement and a judge's decision that corroborates the peace agreement which is not subject to ordinary or extraordinary legal remedies.

The dispute referred to here is a dispute in the narrow sense because its scope concerns only legal disputes. The dispute in a broad sense is divided into two groups, namely:

a. Social disputes are conflicts or disputes that do not cause legal consequences. It is usually related to ethics, rhythmic systems, or moral systems that live and develop in society.
b. A legal dispute is a dispute that causes legal consequences due to a violation of the rule of law or a conflict of rights and obligations of a person regulated by law. A distinctive feature of legal disputes is that their fulfillment or resolution can be prosecuted before the legal institutions of the State.

Dispute in the dictionary Indonesian means conflict or conflict. Conflict means opposition or opposition between people, groups, organizations against one object of the problem.

Conflicts or conflicts that occur between individuals or groups that have the same relationship or interest in an object of ownership, which give rise to legal consequences between one another.

Conflict or dispute is a situation and condition in which people experience disputes of a factual nature as well as disputes that exist in their perceptions only.

Therefore, disputes are not something to be feared, although avoidance of actions that can cause disputes is the best thing. In fact, according to Satjipto Raharjo, conflict is functional for the founding of society, thus the philosophy held is to channel conflict in such a way, so that it becomes productive for society.

**1. Forms of Dispute Resolution**

The presence of a dispute resolution institution is certainly expected to be able to resolve every problem and dispute effectively and efficiently. This is because in reality the existence of the judiciary as the last bulwark to seek justice in order to solve every problem that occurs as the principle of a fast trial, and the low cost is that the judge in adjudicating a case must try his best to resolve the case in the not toodistant future.

Moreover, in dispute resolution carried out through litigation channels the parties involved in the dispute will require large costs and a long time. In addition, the decisions taken by judges are not necessarily really fair because judges usually only have general knowledge of a case. The resulting judgment can still be appealed and appealed. That is why dispute resolution through litigation takes a long time. Therefore, the parties involved in the dispute will prioritize dispute resolution efforts through non-litigation or *ADR* (*Alternative Dispute Resolution*).

**1. Dispute Resolution Through Litigation (Courts)**

According to Suyud Margono litigation is a lawsuit over a conflict that is actualized to replace the real conflict, in which the parties give a decision-making two conflicting choices.

Litigation is a dispute resolution process in court, where all parties to a dispute confront each other to defend their rights before the court. The final result of a dispute resolution through litigation is a ruling declaring a *win-lose solution*.

Litigation is the preparation and presentation of each case, including providing comprehensive information as well as processes and cooperation to identify problems and avoid unforeseen problems. Meanwhile, the litigation route is the settlement of legal issues through the court channel. Generally, the execution of a lawsuit is called litigation. A lawsuit is a civil act brought in a court of law in which the plaintiff, the party claiming to have suffered losses as a result of the defendant's actions, demands legal or fair remedies. The defendant is required to respond to the plaintiff's complaint. If the plaintiff is successful, judgment will be given in support of the plaintiff, and various court orders may be issued to enforce the right, damage the award, or impose a temporary or permanent order to prevent or force action. People who have a tendency to litigation rather than seeking non-judicial solutions are called legally conscious.

The non-litigation path means resolving legal issues outside the courts. This non-litigation path is known as Alternative Dispute Resolution. The settlement of cases outside the court is recognized in the laws and regulations in Indonesia. First, in the explanation of Article 3 of Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power, it is stated that the settlement of cases outside the court, on the basis of peace or through referees (arbitase) is still allowed. Second, in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, in Article 1 number 10 it is stated that Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely

settlement outside the court by means of negotiation, mediation, conciliation and arbitration.

Consultation is a personal action between a party (client) and another party who is a consultant, who provides his opinion or advice to the client to meet the needs and needs of the client. The consultant only provides an opinion (legal) as requested by his client, and subsequently a decision regarding the resolution of such disputes will be taken by the parties. Negotiation, dispute resolution through deliberation / direct negotiations between the warring parties with the intention of finding and finding forms of settlement that are acceptable to the parties. The agreement on such settlement shall then be set forth in written form agreed by the parties. Mediation, is the settlement of disputes through negotiations assisted by impartial / neutral external parties in order to obtain dispute resolution agreed upon by the parties. Conciliation or Consilliation in English means peace, the settlement of disputes through negotiations by involving a neutral third party (consciliator) to assist the party in finding the form of settlement agreed upon by the parties. The result of this conciliation must be made in writing and signed jointly by the parties to the dispute, subsequently it must be registered in the District Court. This written agreement is final and binding on the parties. Expert opinion, an attempt to resolve a dispute by appointing an expert to give his opinion on the disputed issue in order to get an objective view.

Out-of-court (non-litigation) dispute resolution is an attempt at bargaining or compromise to obtain a mutually beneficial solution. The presence of a neutral third party is not to decide the dispute but rather the parties themselves take the final decision. The resolution of civil disputes outside the court (non-litigation) has been regulated in the Indonesian legal system in the Arbitration Law. Alternatives that can be made by the disputing party include: consultation, negotiation and peace, mediation, conciliation and arbitration. In Indonesia such alternative dispute resolution can be done through an institution such as the Indonesian National Arbitration Board (BANI). Article 6 of the Arbitration Act states that:

1. Civil disputes or differences of opinion may be resolved by the parties through alternative dispute resolution based on good faith by waiving a settlement by litigation in the district court.
2. The settlement of disputes or differences of opinion through alternative dispute resolution as in paragraph (1) is resolved in a direct meeting by the parties within a maximum of 14 (fourteen) days and the results are set forth in a written agreement.
3. In the event that a dispute or difference of opinion as referred to in paragraph (2) cannot be resolved, then by written agreement of the parties, the dispute or difference of opinion is resolved through one or more expert counsel or through a mediator.
4. If the parties within a maximum of 14 (fourteen) days with the help of one or more expert counsel or through a mediator do not manage to reach an agreement, then the parties may contact an arbitration institution or alternative dispute resolution institution to appoint a mediator.
5. After the appointment of a mediator by the arbitral institution or alternative dispute resolution institution, within no later than 7 (seven) days the mediation effort must have been able to begin.
6. Efforts to resolve disputes or differences of opinion through a mediator as referred to in paragraph (5) by upholding confidentiality within a maximum of (30) days must be reached an agreement in written form signed by all relevant parties.
7. The agreement on the resolution of disputes or differences of opinion in writing is final and binding on the parties to be carried out in good faith and must be registered in the district court within a maximum of 30 (thirty) days from the signing of the appointment.
8. The agreement on the resolution of disputes or differences of opinion as referred to in paragraph 7 (seven) must be completed within a maximum of 30 (thirty) days from registration.
9. If the peace efforts referred to in paragraphs (1) to (6) are not achieved, then the parties by agreement in writing may submit their settlement efforts through an ad hoc arbitration or arbitration institution."

**2. Dispute Resolution Through Non-Litigation (Out of Court)**

The dispute resolution procedure carried out in court (litigation), commonly known as the civil case trial process as determined under the civil procedural law (HIR) where the settlement of disputes in litigation is in the form of a judge's decision. The court's decision is not felt to solve the problem, tends to cause new problems, is slow in its resolution, this condition causes the parties to look for other alternatives, namely dispute resolution outside the formal judicial process.

In dispute resolution through non-litigation, we have become aware of alternative dispute resolution (ADR) or Alternative Dispute Resolution (APS), which is explained in Article 1 number (10) of Law Number. 30 of 1999 concerning arbitration and ADR, which reads; "Alternative dispute resolution is a dispute resolution or dissenting institution through a procedure agreed upon by the parties, namely the settlement of disputes outside the court by means of consultation, mediation, conciliation, or final assessment.

**Definition of the authority of the judge of the court**

The principle of Ius Curia Novit is of the view that every judge knows the law so that it must properly adjudicate every case brought against him. Historically, the Principle of Ius Curia Novit, known in the Civil Law Legal System, originated from the legists, which is a school of law that considers the only thing that is a law is a law and there is no more law than that.

As a state with a civil law legal system or statue law system, the main source of law that applies and becomes the basis for law enforcement in Indonesia is positive law in the form of codification. However, positive law will always change and be updated following the developments and dynamics of the law that occur in the midst of society. In urgent conditions, if there is a case filed before the court and the positive law has not regulated the legal basis for adjudicating the case, then the judge as the embodiment of the judicial pillar that is considered to know the law can seek and find the law (*rechtsvinding*) and create legal norms (*judge made law*).

The term judge is considered to know the law or better known as the adegium "*Iura Novit Curia / Ius Curia Novit / Curia Novit Jus*" which in English terminology is also

called *court knows the law*, was first discovered by medieval jurists (*legal glossators*) in writings about ancient Roman law, which is interpreted as the authority of judges to seek and establish a law, because the codified written law will basically never be complete, or in other words the law must have changed with the times.

If a judge is considered to know the law, then the judge is prohibited from refusing to examine, adjudicate and decide a case on the pretext that the law does not exist or is not clear (vide Article 10 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power). The history of law in Indonesia records that the principle of Iura Curia Novit has long been a principle for courts or judges to be prohibited from rejecting cases under the pretext that the law is unregulated or incomplete, as in Article 22 of *the Algemene Bepalingen Van Wetgeving Voor Indonesie* or the General Regulation on Legislation for Indonesia, which states that judges who refuse to try a case can be sentenced. Furthermore, in Article 859 Rv states that a judge who refuses to give an injunction on an application or judgment on a case, then the interested party may file a complaint.

Thomas Rowlandson dan Augustus Pugin di dalam Ackermanns Microcosm of London (1808) menyatakan bahwa "*In both common law and civil law legal systems, courts are the central means for dispute resolution, and it is generally understood that all persons have an ability to bring their claims before a court. Similarly, the rights of those accused of a crime include the right to present a defense before a court.*

It is an obligation for a judge to know and understand all positive laws, although basically a judge is unlikely to be able to understand all the laws that apply in Indonesia. Unlike indeed in the United Kingdom, in the judicial system adopted in the United Kingdom, the judiciary is divided based on several fields, namely civil justice, criminal justice, and light justice so that each court is filled with judges with special abilities according to their field of legal expertise. Therefore, the professionalism and capability of mastery and legal knowledge of each judge is very deep and can even be said to be an expert. The Supreme Court of the Republic of Indonesia as a home for judges needs to continue to promote innovations and breakthroughs in the advanced education system of the judge profession by providing technical judicial training or certification in accordance with the legal expertise that is in demand by each judge, so that judges in examining, adjudicating, and deciding a case really know and understand the law that is the basis for a case they handle.

At that time all applicable laws had been fully codified in a book of laws, making it easier for judges to find a punitive law that was in accordance with the facts proposed by the parties to the dispute, especially the laws at that time in a country were not as many as the laws of the present era, therefore the adherents of legism believed that the law was complete and clear in regulating all issues in its day. Reflecting on that time, it becomes true that Kelsen's positivism view states that there can be no legal vacuum, because if the legal system does not require the individual to a certainact then he is legally free, as long as the state does not establish anything then it is his personal freedom.

After the social development of society which also affects the demand for dynamic legal development causes every rule of law that is made always one step behind the reality of society. This is also influenced by the use of the laws and regulations themselves which apparently contain problems, namely:

1. Because the laws and regulations are not flexible so it is not easy to adjust to the development of society.
2. Legislation is never complete to fulfill all legal events and give rise to the so-called legal vacuum (*recht vacuum*). This problem causes chaos, injustice that leads to *bankruptcy of justice*, which is a concept that refers to conditions where the law cannot resolve cases due to the rule of law that regulates it. Such a reality caused the school of legism to be abandoned and the Ius Curia Novit Principle became merely a legal fiction, and as a reality it was already impossible to relate.

In practice, not all judges know the law but because the legal system in Indonesia still adheres to it, in the past to force judges to apply the *Ius Curia Novit* Principle, even added criminal sanctions Article 22 *Algemene Bepalingen Van Wetgeving voor Indonesie* (AB) or the General Regulation on Legislation for Indonesia which states, "Judges who refuse to make decisions on cases, on the pretext that the law does not provide for it, there is darkness or incompleteness in the law can be prosecuted for refusing to adjudicate cases". This criminal sanction although it has now been abolished and leaves only the Principle of *Rechtweigening* (the principle of prohibition of rejecting cases) in Article 10 of Law No. 48 of 2009 concerning Judicial Power, but this shows the demand for the professionalism of a judge. A Judge must have deep and broad knowledge and insight into the law to even the most up-to-date laws, therefore judges must not stop learning and must constantly update their knowledge and understanding of the law and its dynamics.

Judges should not simply resign themselves to the inadequate condition of laws and regulations because the justice-seeking community (*justiciabelen*) always has high hopes and trust that the cases filed will be examined and decided in accordance with law and justice. The judge as the last bastion of justice is obliged to apply *the Principle of Ius Curia Novit* in every judgment. The judge's decision as a form of the judge's statement in his position as a state official must contain dispute resolution so that it is the end of a series of examination processes for a case. According to Artidjo Alkostar, the judge's decision is part of the law enforcement process that aims to achieve truth and justice so that the quality of a verdict is highly correlated with the professionalism, moral intelligence, and sensitivity of the judge's conscience.

As is well known, that society is always digging and seeking the values of justice, the purpose of which the provision is implemented is to achieve that dream, and that provision is the intention of the existence of judges and judicial power. The basis of the authority of judges in the formal legal system is mentioned in the law and the existence of this article makes judges not have to be fixated with the existence of positive law, because if there is no law that regulates a case, then the judge must still accept and examine and adjudicate the case. It is inevitable that legislation is a form of result of the need for norms that grow in society. There are indeed some laws that are ready to be amended, but not a few are also difficult to amend, so to revise a law does not take a little time. Because the revision of a law will change the philosophy of the law as a whole, or it may interfere with the philosophy of other laws.

Judges are undeniably that they are not a legislator authorized to enact a law. However, it is also possible for judges to form a law or what is usually known as judge made law which is regulated in the content of article 10 paragraph (1) of law No. 48 of 2009 above. To form a law, the judge will carry out a legal construction and interpretation. Legal construction, is an effort by judges to fulfill the obligations of judges in filling legal vacancies or vagueness of a law with legal principles and joints.

In legal construction, it is divided into 3 (three) parts, namely as follows:

1. Analogy is the application of a law by a judge by analogizing a law that has the same treatment but based on different events;
2. Determination This term is also known as the smoothing of the law, that is, the judge does not apply or will apply the existing law or treat the law in a subtle way, so that it seems as if there is nothing wrong or right;
3. Argumentation is the judge's interpretation of the law based on the resistance between the reality of the event of the case and the event provided for in the law or what is also called argumentum a contrario. interpretation of the law using this argumentum a contrario will narrow the formulation of the law. This has the aim of emphasizing legal certainty so that there are no doubt gaps in the law. The second method is legal interpretation or referred to as legal interpretation by judges, interpretation is a method / way for judges to understand the meaning / meaning of a text of laws and regulations and then used to resolve concrete cases. It can also be used by judges to change the constitution in the sense of improving, subtracting, or adding to the mkana contained in a statutory text.

Legal considerations in decisions must be logical and in accordance with legal reason so as to realize justice based on legal norms and common sense. If the legal considerations in the judgment are not interconnected and correspond so that the judgment becomes insufficient to consider (*Onvoldoende Gemotiveerd*) then there will be a sense of discrepancy that gives rise to *the death of common sense* which even the most ordinary people will feel because it concerns the conscience of humanity.

Furthermore, according to Artidjo Alkostar, in an effort to find and apply justice and the truth of court decisions, it must be in accordance with the objectives of the court decision, namely the purpose of the court decision, which actually has five things, namely:

1. It must be an authoritative solution meaning that the judgment must provide a way out of the legal problems faced by the parties.
2. Because delayed justice is also an injustice (*justice delayed is justice denied*), the judge's ruling must contain efficiency, that is, fast, simple and low cost.
3. The judge's decision must be in accordance with the purpose of the law on which the judgment is based. Fourth, the decisions formed must contain aspects of stability, namely social order and the peace of society.
4. The existence of equal opportunities for litigants.

The application of the Ius Curia Novit Principle in judges' decisions also emphasizes the freedom of judges in deciding. The judge must be free from the influence of other powers beyond the power of the pagan, but must also be free from the influence of his own interests. Freedom for judges to decide is key to sound rulings. Without the freedom of judges, it is not open to the possibility of a verdict that breathes justice, expediency and legal certainty. The freedom of judges is also essentially a freedom for judges in the process of examining cases. Judges are free to render a verdict based on the law and their beliefs. Judges should not just be the mouthpieces and mouthpieces of legislation even though they are always legalistic. In other words, as Bagir Manan said, the judge's decision should not only fulfill legal formalities or simply maintain order but must also function in encouraging improvement in society and building social harmonization in associations.

The relationship between the freedom of judges and *the Principle of Ius Curia Novit* is very obvious when judges are faced with legal vacuum or the vagueness of the law, because the freedom of judges in giving judgments has been in line with the orders of the law that require judges as law enforcement and justice to explore, follow and understand the legal values that live in society.

In order to realize justice for the seekers of justice who plead for a verdict to him, a judge is obliged to dig up the unwritten law if it is not found to be basic in the written law, even if the provisions of the existing law are actually felt to be contrary to the public interest, propriety, civilization and humanity or the values that live in society then according to Yahya Harahap the judge is free and authorized to carry out contra legem actions, i.e. taking a judgment contrary to the article of the law in question. The amount of authority of judges in rendering judgments does not necessarily free judges to act arbitrarily, therefore restrictions must be created without compromising the principle of freedom as the essence of judicial power.

Judges as law enforcement are in charge of examining, adjudicating and deciding a case filed against him. In order to achieve justice, judges in deciding civil cases based on relevant regulations as a law enforcer. Every judge is prohibited from rejecting cases filed against him. If the judge rejects the case, then the judge can be prosecuted for violating the code of ethics and his duties. This is regulated in Article 10 of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power which states that:

1. The court is prohibited from refusing to examine, adjudicate, and decide a case filed on the pretext that the law does not exist or is less clear, but is obliged to examine and adjudicate it.
2. The provisions referred to in paragraph (1) do not close the effort to resolve civil cases by peace."

Based on the above provisions, a judge is required to be able to accept and adjudicate the case filed against him. "Judges should not reject cases on the grounds that there is no governing law or unclear legal arrangement because as a law enforcer, the judge is considered to know the law (Ius curia novit)." If a case submitted to the judge contains elements of norm vacuum or norm blur, then the judge has the authority to try and decide the case by digging and finding a new law or law that is appropriate to apply to the case.

Judges are authorized to dig and make legal findings on unregulated cases or unclear arrangements in laws and regulations, as regulated in Article 5 of the Ri Law Number

48 of 2009 concerning Judicial Power which states: "Judges are obliged to explore, follow and understand the legal values and sense of justice that lives in society". The provision makes it clear that judges have the freedom to decide a case. The freedom in question is that the judge is in a free state at the time of trial, meaning that the judge is not influenced by anything or anyone else in deciding a case. This free circumstance is very important because if the judge gives a verdict because it is influenced by something else outside the context of the case then the judgment does not achieve the desired sense of justice.

**Discussion II**

**Iimplementation of the Syar'iyah Court's Interpretation of the Law on The Denial Of Plaintiff's Suit Reconvensi And Convention Suit**

One of the specificities given by the State to Aceh Province is the right and opportunity to establish the Shari'a Court as an Islamic Sharia Court. This is explained in Law Number 11 of 2006 concerning the Government of Aceh (hereinafter referred to as the Aceh Government Law), especially in Article 128 paragraph (2) which states that "The Syar'iyah Court is a court for everyone who is Muslim and is in Aceh." Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as the Judicial Power Law) states that the organizer of independent judicial power to administer the judiciary to enforce the law and justice is carried out by the Supreme Court and the judicial bodies under it in the general judicial environment, religious judicial environment, military judicial environment, state administrative court environment, and by a Constitutional Court. Article 2 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Justice explains that the Religious Court is one of the perpetrators of judicial power for justice-seeking people who are Muslims regarding certain cases.

The presence of the syar'iyah court is as a political response and accommodating attitude of the central government to the demands of the Acehnese people who want the implementation of Islamic law. The existence of the syar'iyah court is the main symbol of the implementation of Islamic law where the authority of the shari'a court is greater than the authority of religious courts in general. In addition to authority in the field of family law and civil law, the syar'iyah court is granted additional authority in the field of Islamic criminal law or jinayat.

The implementation of the special authority of the syar'iyah court needs to be reviewed from several aspects, especially related to the support and obstacles faced by the syar'iyah court both internally and externally in resolving jinayat cases. In addition, it is necessary to conduct a study of structural, substantial and cultural aspects in order to comprehensively photograph the implementation of the authority of the syar'iyah court in resolving jinayat cases in Aceh. The results of the study concluded that various policy supports from the Supreme Court and the Aceh government are still needed for the implementation of the authority of the syar'iyah court in resolving jinayat cases.

The Islamic sharia court in Aceh conducted by the Shari'a Court is a Special Court within the Religious Court. The Islamic shari'a court in Aceh (Mahkamah Syar'iyah) is a special court within the religious judiciary as far as the authority of the religious judiciary is concerned, and is a special court in the general judicial environment as far as the authority of the general judiciary is concerned. In the judicial bodies subordinate to the Supreme Court it is possible to establish special courts such as the Children's Court, the Commercial Court, the Human Rights Court, the Corruption Court, the Industrial Relations Court within the General Judiciary. The special court within the Administrative Court is the Tax Court.

The powers of religious courts are limited by law to only a few aspects of Islamic law. Never the less the Shari'a Court remains part of the national judicial system. This has been expressly stated in the Aceh Government Law article 128 paragraph (1). Mohammad Laica Marzuki further explained that: "The existence of the Syar'iyah Court as an implementation of the mandate of Law Number 18 of 2001 concerning Special Autonomy for Nanggroe Aceh Darussalam Province is a bet as well as a *"test case"* of the government's political will. " The implementation of the Sharia Court is in order to fulfill the ideals and expectations of the people in Nanggroe Aceh Darussalam in enforcing Islamic Law. It is the right of the people of Nanggroe Aceh Darussalam, so never let the government let them down. There is no need to worry about the clashes," the Syar'iyah Court also adhered to three levels of justice, namely the first level, the appeal level and the cassation rate to the Supreme Court. The Shari'a Court in Aceh has been more broad in carrying out the obligation to establish Islamic laws, to cases of family law (*al-akhwal al-shakhshiyah*), mu'amalah (civil law) and *jinayat* (criminal) law.

As to the legal interpretation of the denial of the plaintiff's suit of reconsideration and the suit of convention according to the judge that any orang who files a suit may file his suit whether it is a merger of suits or not. The reason the judges have refused to file a lawsuit may be seen when the evidence of the parties not fulfilling the cretria of the evidence submitted is not in accordance with the wishes of the judge at trial. Therefore, if in the convention and reconvencing the initial plaintiff withdraws his suit, it may be dismissed by one of the parties if there is an agreement by one of the parties, but if there is no agreement between the plaintiff and the defendant then the reconvening is still examined and resumed according to the procedures in force in the Syar'iyah Court.

Please note that, in the trial of the judge before proceeding with the trial, it will first ask the parties for mediation to be carried out first. However, if the mediation process fails, the judge will continue the case until the final verdict. This is what happens in the proceedings, in the case of filing a reconvening suit and convention in the Syar'iyah Court, still guided by the applicable law, that each application of the parties will be seen in the results of the evidence he submitted in court, if in accordance with his application then the trial will continue.

In the case of the rejection of the filing of the reconvening and convention suit, that the rejection of the reconvening and convention suit is not because the judge does not want to accept the suit. However, the judge refused because the evidence presented by the parties to the initial application did not have autistic evidence, which is why the judge could not accept the application.

**Conclusion**

As to penafcirant hukum ditolaknya gugatan penggugat rcontingency and gugatan konvention according to the judge that any oarng who files a suit may file his suit whether it is

a merger of suits or not. The reason the judges have refused to file a lawsuit may be seen when the evidence of the parties not fulfilling the cretria of the evidence submitted is not in accordance with the wishes of the judge at trial. Therefore, if in the convention and reconvencing the initial plaintiff withdrawshis suit, it may be dismissed by one of the parties if there is an agreement by one of the parties, but if there is no agreement antara the plaintiff and the defendant then the reconvening is still examined and resumed according to the procedures in force in the Syar'iyah Court.

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