International Journal of Law and Politics Studies
ISSN: 2709-0914
DOI: 10.32996/ijlps
Journal Homepage: www.al-kindipublisher.com/index.php/ijlps

IJLPS
AL-KINDI CENTER FOR RESEARCH AND DEVELOPMENT

| RESEARCH ARTICLE

Searching for Material Truth in Civil Trials Based on Civil Procedure Law in Indonesia

Hendri Jayadi
Faculty of Law, Christian University of Indonesia
Corresponding Author: Hendri Jayadi, **E-mail**: hendrijayadi79@gmail.com

| ABSTRACT
Civil procedural law is a formal part of civil law. Its primary purpose is to defend or enforce civil law through courts when the civil law is violated or disputes arise. In deciding a case, a judge can seek formal truth (formele waarheid) or material truth (materielle waarheid). Material truth is truth. This research aims to discover the material truth in civil trials based on civil procedural law in Indonesia. This normative legal research was conducted by collecting literature-based secondary data. Primary legal sources, including books, decisions, and documents, generate secondary data. Secondary legal sources include the Civil Code and research journals from previous studies. "Evidence used in civil procedural cases is regulated in Article 164 HIR, which consists of Documentary evidence, regulated in Articles 165 to 167, 138 HIR; Witness evidence is regulated in Articles 139 to 152 HIR; Probationary evidence is regulated in Article 173 HIR; Proof of recognition is regulated in Articles 174 to 176 HIR; Proof of oath: regulated in Articles 155, 156,177 HIR". The study results show that the law of evidence from the point of view of civil procedural law Based on Indonesian civil procedural law, there is a section of civil examination in the district court called "evidence". The theory of Civil Procedure Law is one of the ideas about evidence that judges can use to assist them in seeing and deciding a case. This theory says that the burden of proof must be divided according to the "auditu et al. teram partem" principle. This is also called the principle of the equal procedural position of the parties before the judge. Judges must decide who should prove their case based on how similar the two sides are. The principle that both parties are in the same place in the process means that both parties have an equal chance of winning. So, the judge must provide evidence to the parties fairly or correctly. The types of evidence accepted by civil procedural law are documentary evidence, witness evidence, presumptions, confessions, and oaths.

| KEYWORDS

Material, Truth, Procedural, Law, Civil Law

| ARTICLE INFORMATION

ACCEPTED: 10 December 2021 **PUBLISHED:** 18 December 2021 **DOI:** 10.32996/ijlps.2023.5.4.6

1. Introduction

Civil procedural Law is a legal part of Civil Law. Its primary purpose is to defend or enforce civil Law through courts when civil Law is violated or disputes arise. Civil procedural Law also regulates obtaining legal rights and certainty without dispute (Puhi, 2020). This is done by submitting a "request" to the court. Civil procedural Law in Indonesia is still primarily based on colonial-era rules such as "HIR (Het Herziene Indonesisch Reglement) and RBg (Rechtsreglement voor dan RV (Wetboek Rechtvordering) apart from de Buitengewesten) op de Burgerlijke Wetboek van Rechtvordering. There are also other laws and regulations, such as the Law on the Supreme Court, the Law on Judicial Powers, the Law on General Courts, and others, which contain a section on civil procedural law" (Ardiansyah, 2020)

The difference between criminal and civil procedural Law is that a process aims to seek the truth. In civil process law, it is formal truth that is sought. Based on what both sides said, that was the truth that could be found. Truth emerges from the facts presented by the parties (plaintiff). In legal cases, the truth depends significantly on the people involved (formal).

In contrast, in criminal procedural Law, material truth is sought. The judge does not care what the public prosecutor or the defendant's attorney says. The judge tries to find the truth based on what the "facts" say, not what the public prosecutor or the defendant's attorney says. The Law of proof is essential in civil procedural Law. We know that the purpose of procedural or formal Law is to protect and maintain material Law. So, according to RBg and HIR, the Law of evidence tells us how to show evidence. On the other hand, the rules of evidence say whether or not certain pieces of evidence can be used in court and how strong the evidence is (Artha, 2016).

"Article 164 HIR, Article 284 RBg, and Article 1866 of the Civil Code all state that records, witness statements, presumptions, confessions and oaths can be used as valid evidence in civil cases." In a legal sense, "proving" means providing sufficient evidence for the judge examining the case to ensure that the events described are actual, even if the truth is not absolute. Errors in the evidence-gathering process lead to discontent and disappointment among the justice seeker community and the notion that the justice system is unfair to justice seekers and lacks integrity and professionalism. This study concerns people seeking material truth (Harahap & Ikhwansyah, 2018). This study aims to find material truth in civil trials in civil procedural Law in Indonesia. The results of this study can be used as a guide by various groups to find facts, especially in Indonesian civil procedural Law.

2. Literature Review

Civil procedural law is a set of rules to ensure that civil laws are followed through the assistance of judges. In other words, civil procedural law is a set of rules to ensure that material civil law is complied with (Ali & Heryani, 2012). Evidence at trial can help determine what is right and wrong. During the trial, the person involved in the lawsuit must speak about events that can be used to prove his or her rights or disprove the other party's rights. Demonstrating legally, namely seeking the truth about an event, is not the same as the same. In deciding a case, a judge can seek formal truth (formele waarheid) or material truth (materielle waarheid). Both types of truth are included in the social and legal truth (maatschappelijke werkelijkheid). In civil cases, judges seek formal truth, meaning that judges must follow the information or evidence provided by the parties. While ongoing, criminal and administrative cases are settled mainly by fact-finding courts (Zaifudin, 2018). Courts do not have to stop looking for and finding facts in legal cases. However, in a civil lawsuit, if no material truth is found, the judge can decide based on formal truth (Artha, 2016). The actual truth is what can be seen and touched (Zaifudin, 2018).

Article 164 HIR lists evidence that can be used to settle legal cases: written evidence, witness evidence, presumptions, confessions, and oaths. This type of evidence can be used to prove or disprove someone's rights. In addition to the evidence listed in Article 164 HIR, there are also Local Examinations (Descent) and Expert Witnesses (Expert), regulated in Articles 153 and 154, respectively. Some evidence is binding on the judge, while others are not, and it is up to the judge to decide (Juanda, 2016).

3. Methodology

This research is normative legal research or literature-based secondary data. Legal research investigating laws understood as norms or rules that apply in society and become guidelines for everyone's behaviour is called normative legal research. Primary legal sources generate secondary data, including books, decisions, and documents. Secondary legal sources include the Civil Code and research journals from previous studies. "Evidence used in civil procedural cases is regulated in Article 164 HIR, which consists of Documentary evidence: regulated in Articles 165 to 167, 138 HIR; Witness evidence is regulated in Articles 139 to 152 HIR; Probationary evidence is regulated in Article 173 HIR; Proof of recognition is regulated in Articles 174 to 176 HIR; Proof of oath: regulated in Articles 155, 156,177 HIR".

4. Results and Discussion

The law of evidence from the point of view of civil procedural law is based on Indonesian civil procedural law; there is a section of civil proceedings in the district court called "evidence". The theory of Civil Procedure Law is one of the ideas about evidence that judges can use to help them see a case and decide. Based on the idea of "auditu et al. teram partem", this theory says that the burden of proof must be shared. This is also known as the notion of the equal procedural position of the parties before the judge. Judges must decide who should prove their case based on how similar the two sides are. The idea that both parties are in the same place in the process means that both parties must have an equal chance of winning. So, the judge must provide evidence to the parties fairly or correctly. If the plaintiff sues the defendant for the sale and purchase agreement, then the plaintiff's task is to prove the existence of the sale and purchase agreement. It is not the defendant's right to prove that the plaintiff and the defendant disagreed. If the defendant says that he bought something from the plaintiff, but the sale was stopped due to reimbursement, the defendant must show that he has a claim against the plaintiff. In this case, the plaintiff does not have to show that he owes the defendant nothing. The only thing that needs to be proven is that something happened, not something that did not happen. Also, those who own the goods do not have to prove they are entitled to them. Those wishing to take goods from others must show they are entitled to them. In civil trials in district courts, plaintiffs, defendants, and judges always use these methods to show a point (Lengkong, 2020). "Article 164 HIR, Article 284 R.Bg, and Article 1866 of the Civil Code all talk about the types of evidence accepted by civil procedural law, namely documentary evidence, witness evidence, presumption, confessions, and oaths."

(1) Proof of Writing/Letter

In terms of content, a deed must meet the legal requirements of an agreement, as stated in Article 1320 of the Civil Code ("KUHP"), which includes the agreement of the people who are bound, the ability to make an involvement, specific subject matter, and reasons that are not is known. Three letters can be used as written evidence: actual deeds, private deeds, and non-deeds (Lengkong, 2020).

a) Authentic deed

Ordinary letters such as what is called "personal letters" or agreements that are not made in front of an authorized official for that matter, such as a fiduciary guarantee deed, a limited liability company establishment deed, or an inheritance distribution deed, are all deeds drawn up by a notary and also called "authentic deed" does not have the same strength as other written evidence (Kobis, 2017). Based on the elucidation of Article 165 HIR, which reads: "An authentic deed is a letter made by or in the presence of a civil servant who is authorized to make it, giving rise to sufficient evidence for both parties and their heirs and all those who have their rights, namely regarding all things that are in the letter and also about what is said in the letter as a valid notification only; but the latter is only what is told, and it is directly related to the letter. Based on this legal understanding, it can be said that an authentic deed must: 1) be in the form of a letter or in writing, drawn up by or before a person authorized to make it, such as a notary, sub-district head, or others; 2) the contents are strong enough to prove for the maker and his heirs or other parties; and 3) contents of valid notification"(Lengkong, 2020).

b) Private deed

Article 1874, paragraph 1 of the Civil Code explains what "underhand writing" means. Article 1878 of the Civil Code states several types of private deeds. Namely: "(1) the deed must be entirely written by the signatory's own hands, and it must be stated who made the amount or amount of goods or money owed; (2) the deed must be signed by the party who made it; and (3) the parties must sign the deed without the help of civil servants" (Hirwansyah & Ambuwaru, 2023).

As proof of a private deed in a civil case, if the parties do not dispute it, it has the same legal force as an actual deed. However, if the signature on the deed under the hand is not believed to be accurate, then the deed must be proven true by other means of evidence, such as witnesses, presumption, and confessions. A deed under the hand is an act made by the person concerned without the help of a public official. Every private act must have a statement signed and dated by a notary or another person selected by law. Letters written by hand and signed in front of a notary serve to prove that the letter was written by that person and not someone else (Palit, 2015).

c) A letter is not a deed.

The HIR says nothing about how non-deed documents should be arranged or what they mean. Even if the person who made the letters were not deeds on purpose, they were not intended to be used as evidence at a later date. These letters can be considered as a way to find evidence. So, a letter that is not a deed can only be used as evidence if the judge approves it. This is stated in Article 1881, paragraph 1 of the Civil Code, which reads: "Books and letters of household affairs do not provide evidence for the benefit of their maker; the letters clearly say that payment has been received; if the letters say that the note was made to correct the rights issue of the person for whose benefit the letter mentions the agreement or if the note has been made to show that payment has been received" (Lengkong, 2020).

(2) Witness evidence

Articles 139 to 152 of the HIR explain how witnesses can testify. Each party, the plaintiff and the defendant, try to prove their arguments or positions with this evidence. In court, testimony is one of the most critical ways to present evidence. The parties or judges can request expert evidence if they so choose. When a judge uses expert witness testimony, he or she is trying to learn more about something only experts know, such as a technical problem or local custom. Even when it comes to law, judges can ask for the help of expert witnesses. For example, a customary head or tribal chief can be heard as an expert on local customary law. The purpose of an expert witness is to provide objective and impartial certainty and information to the judge. Because of that, expert witnesses are needed to showcase that they do not know much about. Judges use expert testimony to help them make decisions (Jati, 2013). In assessing witness evidence, the judge based on Article 1908 of the Civil Code and Article 172 HIR. Based on these provisions, the judge must pay attention to the similarities between the statements of the witnesses. Correspondence between the statements with what is known and with other aspects of the case, the reasons that prompted the witnesses to state their statements, the way of life, suitability, the position of the witnesses, and everything related to the statements put forward (Lengkong, 2020).

(3) Presumption

When a judge looks at a civil case and makes a decision, it is always based on evidence, namely the efforts of the parties to guess what happened or their rights to obtain truth and justice in court. In order to prove that they have this right, the parties must present evidence as required by civil procedural law—specifically articles 164 HIR, 284 RBG, and 1866 of the Civil Code. The alleged evidence is one such evidence (Prasetya, 2014). Regarding the proof of presumption, HIR does not explain it, but "Article 1915 of the Civil Code explains that accusations are conclusions drawn by law or by judges from known events to unknown events." The presumption is a legal way to show something in a civil case and has weight the same as proof. The power of presumption has a perfect, binding, and final meaning. Article 1922 of the Civil Code says that allegations not based on the law are left to the judge's consideration and vigilance. The judge can only show suspicion that is important, comprehensive, certain, and related to one another (Sari & Yudowibowo, 2016).

(4) Confession

"Articles 174–176 HIR/Articles 311–313 RBg and Articles 1923–1928 Criminal Code" state what can and cannot be used as evidence. An acknowledgement is a written or oral statement made by one party to another party in court while examining a case. The statement in the acknowledgement explains all or part of the events, rights and legal relations without the other party's consent. The judge does not need to seek the truth (formal truth) if the party being sued says he is sorry. This shows that the person being sued told the truth, and the plaintiff won the case because the defendant agreed with the plaintiff's point in the posita. This is a pure (unanimous) confession, perfect evidence and substantial evidence (Rahmadhany et al., 2021).

One party pleads guilty before the court or outside the courtroom. Confessions made before trial are infallible evidence against the person who committed them, whether they did them themselves or through someone authorized to do so. Oral statements from the court cannot be used as evidence unless the witness says so. However, it is up to the judge to decide how strong the evidence is when someone says something out loud outside of court (Weller, 2021). Acceptance as evidence can be given orally or in writing. In confessing, a party can admit the truth about a legal event, either in whole or part, as long as it concerns rights or events related to the case being handled. Since he has already said what he did, the judge need not ask the parties to show what he said. “Article 174 HIR/Article 313 RBg Jo. Paragraph 2 of Article 1916 of the Criminal Code says that confession is perfect, convincing evidence, and no one can dispute it. In addition, according to "Article 176 HIR/Article 313 RBg and Article 1924 KUPdt, the judge must accept all of the aforementioned information". Judges cannot choose which parts of a statement are accepted or rejected (Rahmadhany et al., 2021).

(5) Oath

Regarding proof, neither the HIR oath nor the Civil Code provides a clear and complete definition. The law only covers oaths in "Articles 155 to 158 HIR, Articles 177 HIR, and Articles 1929 to 1945 of the Civil Code. An oath is a solemn statement made when making a promise or statement. This is done by remembering that God is all-powerful and believing that He will punish anyone who makes false information or promises." The promise consists of two parts, namely "an oath ordered by the judge is regulated in Article 1940 of the Civil Code up to Article 1943 of the Civil Code, and the oath requested by the opposing party is regulated in Article 1930 of the Civil Code up to Article 1939 of the Civil Code". In court, oaths are the last thing that can be used as evidence if the parties cannot find other evidence to support their claims or arguments. Moreover, when the Panel of Judges orders both parties to take an oath, or when both parties ask to take an oath, the evidence of the oath can indirectly affect the soul and mind of the party that will or will not take the oath. Oath. Because the oath is directly related to the Almighty (God), anyone who swears or agrees to take the oath will be directly affected by all the risks and consequences. The oath has the power of proof that is perfect, binding and final. Even if the person who swears does not tell the truth, the judge cannot call it perjury unless it can be proven through a criminal verdict. In civil proceedings, an oath is a promise made by a person who takes an oath and an oath is made orally in front of a panel of judges. In evidentiary law, an oath is one type of valid evidence written in procedural law. As stated in "HIR, RBg, and the Civil Code, several types of oaths can be used as evidence in an Islamic court. These include severe oaths, additional oaths, and estimator oaths" (Daud, 2022).

5. Conclusion

The study results show that the law of evidence from the point of view of civil procedural law Based on Indonesian civil procedural law, there is a section of civil examination in the district court called "evidence". Theory of Civil Procedure Law is an idea about evidence that judges can use to assist them in seeing and deciding a case. This theory says that the burden of proof must be shared according to the audit et al. teram partem principle. This is also called the principle of the equal procedural position of the parties before the judge. Judges must decide who should prove their case based on how similar the two sides are. The principle that both parties are in the same place in the process means that both parties have an equal chance of winning. So, the judge must provide evidence to the parties fairly or correctly. The types of evidence accepted by civil procedural law are "documentary evidence, witness evidence, presumptions, confessions, and oaths". "Evidence used in civil procedural cases is regulated in Article 164 HIR, which consists of Documentary evidence: regulated in Articles 165 to 167, 138 HIR; Witness evidence is regulated in

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Funding: This research received no external funding.
Conflicts of Interest: The authors declare no conflict of interest.
Publisher's Note: All claims expressed in this article are solely those of the authors and do not necessarily represent those of their affiliated organizations, or those of the publisher, the editors and the reviewers.

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