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Authentic Deeds as Evidence in Civil Cases

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ABSTRACT: Deeds in law have a very important function and role in proving to resolve legal problems, especially authentic deeds. Authentic deeds in resolving civil cases are very important for determining rights and obligations when a dispute arises from a civil legal relationship. In social life there is always a gap between practice and theory, especially regarding the rights and obligations of the parties. The existing problems are: 1. how to apply Authentic Deed Evidence in civil cases in court, 2. what is the judge's consideration (legal reasoning) in assessing authentic deeds which are argued to have dwaling (mistake), fraud (bedrog) or coercion (dwang) . Based on the analysis of normative juridical research, it will be clear that: First, the application of authentic deed evidence in civil cases in court is based on statutory regulations as stated in statutory regulations, namely Article 1866 of the Civil Code and Article 164 HIR, which consists of: a .documentary evidence, b. witness evidence, c. allegation, d. confession, and oath. Second, that the judge's consideration (legal reasoning) in assessing an authentic deed which is postulated to be dwaling (mistake), fraud (bedrog) or coercion (dwang) is and is based on the existence of general facts and specific facts in making a decision and is based on the judge's confidence in determining The quality of the decision is based on Article 1865 of the Civil Code, Article 163 HIR. According to this system, evidence must focus on the main arguments relating to rights or facts, as long as they are denied by the opposing party.

KEYWORDS: authentic deed; evidence; civil law

I. INTRODUCTION

The law is not merely a guide to be read, seen or known, but the law is implemented or obeyed. The law must be implemented by all components in a legal state. The Indonesian state is a legal state, that is the mandate given by the Indonesian constitution, namely the 1945 Constitution in Article 1 Paragraph (3). Within the scope of civil law, it is known that there are two laws that are within the scope of civil law, namely material law and formal law. To implement civil material law, especially in the event of a violation or to maintain the continuity of civil material law in the event of a claim for rights, a series of other legal regulations are needed besides the civil material law itself. These legal regulations are called formal law or civil procedural law.

Civil procedural law is a legal regulation that regulates how to ensure compliance with material civil law through the mediation of a judge. In other words, civil procedural law is a legal regulation that determines how to guarantee the implementation of material civil law. More concretely, it can be said that civil procedural law regulates how to submit rights claims, examine, decide and implement decisions.[1]

Civil Procedure Law is also called formal civil law, because it regulates the process of resolving cases through the courts. In resolving a case before the Judge determines the law, he must first determine the events or position of the case, because of the events stated by the parties or the Plaintiff and Defendants are not necessarily all important to the law. So these events still have to be separated which are relevant for the law.

In this regard, Retnowulan Sutantio and Iskandar Oeripkartowinoto argue that "One of the legal tasks is to investigate whether a legal relationship or legal event which is the basis of a lawsuit really exists or not.".[2] This relevant event is what the judge needs, he must obtain certainty that the event which is the basis of the lawsuit actually occurred and can be proven to be true.

Based on the definition above, what the Judge does in order to obtain certainty and truth of the event itself, according to Sudikno Mertokusumo, has several meanings, namely: proving in a logical sense, namely providing absolute certainty, because it applies to everyone so that it does not allow for opposing evidence. . Proving in the conventional sense, here also proving means also providing certainty, only certainty that is relative or relative in nature. Proving in a juridical sense, proof here only applies to the

[1] Sudikno Mertokusumo, 2006, *Hukum Acara Perdata Indonesia*, Yogyakarta: Liberty, p. 3.

[2] Retnowulan Sutantio dan Iskandar Oeripkartowinoto, 1986, *Hukum Acara Perdata Dalam Teori dan Praktek*. Bandung: Alumni, p. 41.

parties involved in the case or those who obtain rights from them. Thus, proof in the juridical sense does not lead to absolute truth, because there is a possibility that if the confession, testimony or documents are not true or fake or falsified then it is possible that there will be opposing evidence.[3]

According to the descriptions above, the author can underline that evidence is a very important action in resolving a case in court, even in Civil Procedure Law, to win a case a person does not need to have confidence, what is important is the existence of valid evidence. . Based on these pieces of evidence, the judge will make a decision on who wins and who loses. The evidence referred to in Article 164 HIR and Article 284 RGB, namely: documentary evidence, witness evidence. Evidence of suspicion, Evidence of confession and Evidence of oath.

Apart from the evidence mentioned in Article 164 HIR and Article 284 Rbg, there are other evidence, namely local examinations and expert testimony. In practice, the Judge's knowledge is also a means of evidence, even though in a disputed event evidence has been submitted by the parties involved in the case, but this evidence must still be assessed by the Judge.

In assessing evidence, the judge can act freely or be bound by law. In this regard, theories arise about how the judge should evaluate the evidence presented to him by the plaintiff and defendant. The theories in question are: first, the theory of free evidence. This theory does not require any provisions that bind the Judge, so that the assessment of how far can be left to him. Both theories of proof are negative. According to this theory, there must be binding provisions that are negative in nature, namely that they must limit the prohibition proposed to the Judge from doing anything related to evidence. And third is the theory of positive proof. Apart from the prohibition, this theory requires an order to the judge".[4]

Meanwhile, in writing this research, what the author will discuss in more depth about the various types of evidence mentioned above is documentary evidence, especially letters in the form of authentic words. Letters are written evidence that contains writing to express someone's thoughts as evidence, according to its form. Written evidence is divided into two types, namely deeds and non-deeds. Own deed from authentic deed and underhand deed. The definition of a letter according to Sudikno Mertokusumo, SH "A letter is anything that contains reading signs which are meant to express one's heart or to convey one's thoughts and are used as proof, while the definition of a deed is one which is signed and contains the events which form the basis rather than a right or obligation that was established from the beginning as proof, what is meant by an authentic deed is a deed made by or in the presence of an authorized official according to predetermined provisions, while what is meant by the word underhand is a deed made by the parties themselves".[5]

Apart from that, letters, especially authentic deeds, nowadays are very much needed as evidence if a dispute arises in the future, therefore the author wants to know more about authentic deed evidence if the authentic deed is used as evidence in civil cases, because proof is an important part of the civil case examination process which will determine a decision, therefore what is the Judge's opinion and assessment of the authentic deed which is used as a tool? Letters as authentic evidence according to their form are divided into two types, namely deeds and non-deeds. A deed is a letter that is dated and signed, which contains the events that form the basis of a right or obligation that is used as proof. There are two types of deeds, namely authentic deeds and private deeds. According to the provisions of Article 165 HIR, an authentic deed is "a deed made by or presented to an official who is authorized to do so. "It is complete evidence for both parties and their heirs and the person who gets the rights from them regarding all matters mentioned in the letter and the notification only, but the latter is only as long as what is notified is directly related to the subject matter of the deed."

Officials who are authorized by law to make authentic deeds include notaries, civil registry employees, judges, clerks, bailiffs, and so on. In carrying out their work, these officials are bound by the terms and conditions of the law so that it is a guarantee to trust the officials and the results of their work.

In the authentic deed the official explains what was done, seen, experienced, so that it happened in front of him according to actual reality. Because the authentic deed contains official information that is valid according to law, everyone recognizes and believes the contents of the authentic deed to be true. The truth of its contents is sufficient to be proven by the form of the deed itself until it can be proven otherwise.

From these provisions it can be seen that an authentic deed is: a. Perfect/complete evidence for the parties, their heirs and people who obtain rights from them, but can still be disabled. b. Evidence is free for third parties, meaning its assessment is left to the judge's discretion.

Apart from that, authentic deeds have three types of evidentiary power, namely: First, binding evidentiary power, proving between the parties and third parties, that on that date the deed in question had appeared before a public official and explained what was written in the deed. Second, the strength of formal evidence, proving between the parties that they have explained what was written in the deed. Third, the strength of material evidence, proof by the parties that the events in the deed actually occurred".[6]

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[3] Sudikno Mertokusumo, *Op. Cit.*, p. 103-104.
[4] *Ibid*., p. 102.
[5] *Ibid.*, p. 109-110.
[6] Retnowulan Sutantio dan Iskandar Oeripkartawinata, *Op.Cit.*, p. 49.

Authentic Deeds as Evidence in Civil Cases

Authentic deeds can be classified into two types, namely aktaambtelijk and party deeds. Amtelijk deed is a deed made by an official who is given the authority to do so, by which the official explains what he saw and did, for example a protest deed on a money order, a civil registration deed, a party deed which is a deed made in the presence of an official, by which the official explains what seen and carried out and interested parties acknowledge the information in the deed by affixing their signatures, for example a land sale and purchase deed before the Land Deed Official (PPAT), a marriage deed, a deed of establishment of a Limited Liability Company and so on.

In party deeds there is always the strength of material evidence and is perfect evidence because in party deeds the truth of the contents of the deed is determined by the parties and the official explains what the parties see and know. However, in an ambtelijk deed there is not always the strength of material evidence, meaning that anyone can deny the truth of the contents of the authentic deed, as long as they can prove it. Because what officials see and do is only based on what the interested parties want.

Apart from authentic deeds, there are other private deeds, which are said to be underhand because they are not made by or in the presence of an authorized official for that purpose, but rather are made by the person concerned with the aim of being used as a tool. According to the provisions of Article 16 Stb. 1867 Number 29, Article 288 Rbg, a private deed whose deed or signature is acknowledged by the person to whom the document is used, provides the power of perfect evidence such as an authentic deed against the parties, their heirs and the person who obtains rights to it. The main difference between an authentic deed and a private deed lies in the strength of the signing and the date the deed was made. The strength of proof of a private deed depends on whether the writing, content or signature contained in the deed is acknowledged or denied. A private deed is submitted to him. He is strictly obliged to deny the writing or content or signature contained in the private deed or admit it. (Article 2 Stb, 1867 Number 29). This is intended to protect every person against forgery of their signature, and for heirs or people who have rights, so that they do not recognize the writing or signature of the person they represent. This is different from an authentic deed, where the signature contained in it is not an issue and if a private deed is used as evidence, then checking the veracity of the signature contained in it is the first event. If the signature contained in the private deed is denied by the party who is said to have signed the private deed, then the party submitting the private deed whose signature is denied must prove the truth of the signature contained in the private deed using a tool. other evidence. According to Article 3 Stb, 1867 Number 29, Article 290 Rbg, if a writing or signature orders that the truth of the writing or signature be examined before a court.

In general, private deeds do not have the power of external evidence, because the signature can be denied. Meanwhile, the strength of formal and material evidence is the same as an authentic deed. There are also letters that are not deeds. It is said to be not a deed because there is no signature. Non-deeds are notes or letters that are made accidentally and will be used as evidence of an event. The strength of the proof of a letter which is not a deed is left to the discretion of the Judge who examines it, meaning it is up to the Judge whether to consider it as the beginning of written evidence, if such a letter is presented in court. Examples of motorbike storage tickets, telegrams, notes and so on. However, there are several notes or letters that are stipulated by law as binding evidence that must be trusted by the judge, namely: Letters that clearly state a payment that has been received. Letters which expressly state that the note that has been made is to correct a deficiency in a basis of rights (title) for a person for the benefit of whom the letter mentions an obligation. Notes written by someone who owes money (creditor) are affixed to a basis of rights which they will forever hold if what is written constitutes a release from the debtor (debtor). The notes which the debtor affixes to a copy of the legal basis for a payment receipt are in the hands of the debtor".[7]

Based on the descriptions above, the problem can be formulated as follows: 1. How is Authentic Deed Evidence applied in civil cases in court, 2. What is the judge's consideration (legal reasoning) in assessing an authentic deed which is argued to have dwaling (mistake) , fraud (bedrog) or coercion (dwang)?

II. CONCEPTUAL FRAMEWORK

a. Deed

A writing that is created intentionally to serve as evidence of an event and is signed by the author.[8]

b. Authentic deed

Deed made by/before an official authorized to do so by the authorities, according to the provisions that have been determined, either with or without the assistance of those interested in being recorded therein.[9]

The evidential strength of the authentic deed is as follows:

1. The power of birth evidence
2. If a deed appears to be an authentic deed and meets the specified requirements, then the deed is valid or can be considered an authentic deed, until proven otherwise. This means that the official's signature is considered to be the original, until there is proof to the contrary.

[7] R. Subekti, 1982, *Hukum Acara Perdata*, Bandung: Bina Cipta, p. 99.
[8] Rocky Marbun, CS, *Kamus Hukum Lengkap*, Jakarta: Visimedia, 2012, p. 12.
[9] *Ibid.*, p. 12.

3. Strength of Formal Proof. In the formal sense, authentic deeds prove the truth of what officials see, hear and do. This is proof of the truth of the official's statement regarding what he did and saw. In this case, what is certain is the date and place where the authentic deed was made and the authenticity of the signature.
4. Strength of Material Proof. In general, official deeds do not have material force, because official deeds do nothing more than prove the truth of what the official saw and did. Official deeds that have material evidentiary power are deeds executed or issued by the civil registration office.

c. Civil Procedure Law

1. Understanding Civil Procedure Law

   Civil Procedure Law is a legal regulation that regulates how to ensure compliance with material civil law through the mediation of a Judge. It can also be said that Civil Procedure Law is a legal regulation that determines how to ensure the implementation of material civil law. It can be said more clearly that the Civil Procedure Law is the law that regulates how to submit and implement the decision.

   Filing a rights claim means asking for legal protection for one's rights that have been violated by someone else. Rights claims can be divided into two, namely: first, rights claims that are based on a dispute that has occurred, called a lawsuit. In this kind of claim there are at least two parties involved, namely the plaintiff (the person making the claim for rights) and the defendant (the person being sued) and secondly, a claim for rights that does not contain a dispute is usually called a petition. In this second claim of rights there is only one party. Civil Procedure Law includes three stages of action, namely as follows: Preliminary Stage, which is preparation for determination or implementation. In the Determination Stage, an examination of the incident is carried out and at the same time the proof and decision is carried out. Implementation Stage, the stage where the decision is implemented.[10]
2. Sources of Civil Procedure Law

   The most important sources of Civil Procedure Law include: Law Number 14 of 1970 concerning the Principles of Judicial Power which has been refined by Law Number 43 of 1999. The updated Herzine Inlands Regulations (HIR) or Bumi Putera Regulations were issued by Dutch East Indies Government Staadblad No. 44 of 1941 as well as the Procedural Law for the Javanese and Madurese (Recht Buiten gewesten (RBg) of 1943). Law Number 14 of 1985 concerning the Supreme Court. Law Number 2 of 1986 concerning General Justice.[11]
3. Principles of Civil Procedure Law

   The implementation of Civil Procedure Law is based on the principles or principles of Civil Procedure Law which are widely known in civil justice circles, as follows: Judges are waiting. This legal principle means that the initiative to litigate or go to court must fully come from the parties to the dispute, not from the Judge. Judges are prohibited from rejecting cases. This legal principle means that if a case has been submitted (registered to court) then there is no reason for the judge to reject it on the grounds that there are no laws or regulations. This principle requires judges to make efforts to explore the law or create new law according to the needs of the parties. This principle is stated in Article 14 of Law Number 14 of 1970 concerning Basic Provisions of Judicial Power. Judges are active. This legal principle emphasizes that if the parties have agreed that the court route is the chosen route, then the judge must help those seeking justice and try hard to find the fairest law possible by setting aside obstacles and obstacles to achieve a speedy trial, and modestly simple (Article 5 Paragraph (2) of Law No. 14 of 1970 concerning Basic Provisions of Judicial Power). The judge must hear both sides. This legal principle means that in finding the fairest law, the judge must listen to the facts, reasons, considerations and evidence presented by both parties in a balanced and impartial manner. This means that the judge must not only listen to one party, because the opponent must also receive an equal and balanced opportunity. Therefore, the presence of both parties is absolutely necessary as regulated in (Article 5 paragraph (1) of Law No. 14 of 1970 concerning Basic Provisions of Judicial Power, Articles 132a, 121 RIB and Article 157 RBg). Decisions must be accompanied by reasons. This legal principle means that every decision handed down by a judge must always have objective, factual and logical reasons within the legal framework. Only with objective, factual and logical reasons will the judge's decision have authority and be accountable. Regulated (Article 23 of Law No. 14 of 1970 concerning Basic Provisions of Judicial Power, Article 184 paragraph (1) RIB). Justice is simple, fast and low cost (cheap). Legal principles are the dream of justice seekers, which means that the judicial process takes place clearly, is not complicated, is easy for the parties to understand and is completed quickly. In (civil) judicial practice, conditions like this are difficult to achieve because often a case is delayed for years and costs a lot of money and is slow, complicated and boring for justice seekers (Article 4 paragraph (1) of the Law No.14 of 1970 concerning Basic Provisions of Judicial Power). Judiciary operates objectively (objectivity principle). This legal principle emphasizes that judges should act objectively and not take sides with any of the parties to the case on any pretext except for the truth alone. (Article 5 paragraph (21) Law No. 14 of 1970 concerning Basic Provisions of Judicial Power). The judge did not test the law (test unknown). This legal principle means that Indonesian judges do not have

[10] Masriana Tiena Yulies, *Pengantar hukum Indonesia*, Sinar Grafika, Jakarta, 2004, p. 94.
[11] Bisri Ilhami, *Sistem hukum Indonesia*, PT Rajagrafindo Persada, Jakarta, 2004, p. 62.

the right to review laws. The Supreme Court (Article 26 paragraph (1) Law No. 14 of 1970) is given the right to examine legal regulations that are below the level of the Law with the consequence of being able to confirm or declare whether the legal regulations are valid or not.[12]

The Civil Procedure Law (in addition to the Criminal Procedure Law) is the most important criminal law instrument in law enforcement in Indonesia, because these laws and regulations are the 'entry point' for every Indonesian citizen who will litigate before a (civil) court to defend their rights against people. other.

The term for people who litigate before a civil court is a 'plaintiff', namely a party who takes the initiative to file a case because they feel that their rights are not fulfilled by other people, and a 'defendant' is a person who has to litigate in court, because other people want to fulfill their legal obligations.

4. Objectives and Functions of Civil Procedure Law

Civil Procedure Law aims to protect a person's rights. Protection of a person's rights is provided by the Civil Procedure Law through civil courts. In civil justice, the judge will determine what is true and what is not true after the examination and evidence are completed. With this trial, of course, someone who controls or takes someone's rights against the law will be judged to be at fault, therefore he is obliged to hand over what he has controlled to the right holder according to law. In this way, what is contained in material civil law can be implemented as it should. Besides aiming to protect someone's rights, there is another goal which is the ultimate goal of Civil Procedure Law, namely maintaining material law. In order to maintain the material civil law.[13]

The Civil Procedure Law functions to regulate how a person submits a claim for his rights, how the state through its apparatus examines and decides civil cases submitted to him. In other words, it can be stated that the function of Civil Procedure Law is as a means of demanding and defending one's rights.

d. Civil Procedure Evidence Law in Indonesia

1. Definition of Proof

Proof is the presentation of legally valid evidence by the parties to the case to the Judge in a trial, with the aim of strengthening the truth of the arguments regarding the legal facts at the heart of the case, so that the Judge obtains a basis of certainty for making a decision. Proof is also the ability of the Plaintiff or Defendant to utilize the law of evidence to support and justify the legal relationship and events that are postulated or denied in the legal relationship at issue. Subekti, former Chairman of the Supreme Court of the Republic of Indonesia and professor of Civil Law at the University of Indonesia, believes that proof is a process of how evidence is used, presented or defended according to applicable procedural law.[14]

Proving contains several meanings, namely:[15] Proving in a logical sense means providing absolute certainty, because it applies to everyone and does not allow for opposing evidence. Proving in the conventional sense, means giving certainty but not absolute certainty but rather relative certainty which has the following levels: Certainty which is only based on feelings, so it is intuitive and is called in-time conviction. Certainty is based on rational considerations, so it is called a raisone's conviction. Proving in the juridical sense (in Civil Procedure Law), means nothing other than providing sufficient grounds for the Judge examining the case to provide certainty regarding the truth of the events presented. At the stage of resolving a case in court, the evidentiary event is the most important stage to prove the truth of the occurrence of an event or certain legal relationship, or the existence of a right, which is used as the basis for the plaintiff to file a court lawsuit. Also at the evidentiary stage, the defendant can use his right to deny the arguments put forward by the plaintiff. Through proof using these types of evidence, the judge will obtain the basis for making a decision in resolving a case. The law of evidence in litigation is a very complex part of the litigation process. This complexity will be even more complicated because proof is related to the ability to reconstruct past events as truth. Even though the truth sought in the civil justice process is not absolute truth, but truth that is relative or even quite probable, finding such truth still faces difficulties.

Until now, the civil law verification system in Indonesia still uses the provisions regulated in the Civil Code (KUH Perdata) from Article 1865 - Article 1945, while in the Herzine Indonesische Reglement (HIR) it applies to the Bumi Putera group for the region. Java and Madura are regulated in Article 162, Article 165, Article 167, Article 169 - Article 177, and in the Rechtreglement Voor de Buitengewesten (RBg) applicable to the Bumi Putera group for areas outside Java and Madura regulated in Article 282-Article 314.

[12] Bisri ilhami, *Sistem Hukum Indonesia*, PT Rajagrafindo Persada, Jakarta 2004, p. 63.
[13] Masriana Tiena Yulies, *Pengantar Hukum Indonesia*, Sinar Grafika, Jakarta, 2004, p. 94.
[14] Subekti, 1991, *Hukum Pembuktian*, Jakarta: Pradnya Paramita, p. 7.
[15] Sudikno Mertokusumo, 2002, *Hukum Acara Perdata Indonesia*, Edisi Enam, Yogyakarta: Liberty, p. 127.

III. RESEARCH METHODS

1. Research Typology

This research is normative research, which means that this research examines various legal regulations that are used as the basis for legal provisions for analyzing authentic deeds as evidence in civil cases.

The approach method used in this research is the statutory approach. This approach is carried out by examining all statutory regulations related to the legal issues being faced. For example, this legislative approach is carried out by studying the consistency/conformity between the Constitution and the Law, or between one Law and another Law..[16] This approach is used because the discussion in this research will refer to the law.

2. Legal Materials

The legal materials used in this research can be divided into primary legal materials and secondary legal materials. Primary legal materials are materials in the form of laws and regulations that regulate and relate to the issues discussed in this research. Meanwhile, secondary legal materials are legal materials that are used to clarify primary legal materials.

a. Primary Legal Materials
   Primary legal materials, namely legal materials that are authoritative, meaning they have authority, consist of legislation and official records. Because it binds the issues to be studied in the form of statutory regulations including: the 1945 Constitution, the Civil Code, the Herizen Indonesia Civil Procedure Code (HIR) and the Buitengewesten Rechtglement (RBG)
b. Secondary Legal Materials
   Secondary legal materials, namely legal materials that provide explanations regarding primary legal materials sourced from literature, lecture materials related to this research
c. Tertiary Legal Materials
   Tertiary legal materials, namely materials that provide instructions and explanations for primary legal materials and secondary legal materials such as websites, newspapers, etc.

3. Material Collection Method

There are several ways to obtain the data used in this writing, including collecting primary legal materials, inventorying them and interpreting them, then categorizing them systematically and then analyzing them to answer existing problems. Secondary legal materials are used to support primary legal materials. From the collection of legal materials, they are then managed and analyzed, and presented argumentatively.

4. Analysis of Legal Materials

The analysis used by the author is deductive analysis, this analysis is based on norms, legal principles and values that have been recognized, then interpreted in a separate legal system to relate to the problems in this research.

IV. DISCUSSION

A. Application of Authentic Deed Evidence in Civil Cases in Court

1. Analysis of the Application of Authentic Deed Evidence in Civil Cases

The law of evidence in civil cases is a very complex part. Proof is related to the ability to reconstruct past events or occurrences as truth. So it is necessary to have materials regarding these facts, then it will be possible to know and draw conclusions about the existence of evidence.

Regarding evidence that is recognized in civil proceedings, it is regulated enumeratively in Article 1866 of the Civil Code and Article 164 HIR, which consists of: documentary evidence, witness evidence, allegations, confessions and oaths.

Letter or written evidence is placed first. This is in accordance with the fact that the type of letter or deed in civil cases plays an important role. All activities involving the civil sector are deliberately recorded or written down in letters or deeds. Every sale-purchase, rental-lease, gift, transportation, insurance, marriage, birth and death transaction agreement is deliberately made in written form with the aim of serving as evidence of the transaction or legal relationship event that occurred. If at any time a dispute arises regarding this event, the problem and its truth can be proven by the relevant deed. Due to this fact, in civil cases the most dominant and determining evidence is documentary evidence. Meanwhile, witnesses basically do not play a big role, especially in business transaction cases.

There are not the same types or forms recognized in criminal and civil cases. Likewise, the emphasis of the evidence is different. In criminal proceedings, in accordance with the provisions of Article 184 of the Criminal Procedure Code, evidence that is recognized enumeratively consists of: witness statements, expert statements, letters, instructions and defendant statements.

Regarding authentic deeds, it is regulated in Article 1868 of the Civil Code. 1 Authentic deeds are made by or in the presence of officials authorized to do so, called public officials. If the person who makes it is an incompetent or unauthorized official or is physically disabled, then according to Article 1869 of the Civil Code:

[16] Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2010, p. 26.

Authentic Deeds as Evidence in Civil Cases

There are 3 (three) evidentiary powers of an authentic deed, namely: first, the formal evidentiary power, namely proving between the parties that they have explained what is written in the deed. Second, the strength of material evidence, namely proving between the parties concerned that the event actually occurred according to what was stated in the deed. Third, the strength of external or external evidence, namely proving not only between the parties involved but also against third parties, that on that date they had appeared before a public official and explained what was written in the deed. The process of proving civil cases according to legal rulesThis stipulates that every person is required to behave in such a way that the interests of other members of society will be safeguarded and protected and if these legal rules are violated, then the person concerned will be subject to sanctions or punishment. It needs to be emphasized that what is meant by interests are civil rights and obligations, which are regulated in substantive civil law. The opposite of material civil law is formal civil law.

2. Principles of Proof

The principles in the law of evidence are the basis for the application of evidence for all parties, including the judge, who must adhere to the standards outlined by the principles in question. The evidentiary system adopted by civil procedural law does not have a negative stelsel according to law (negative wet telijk stelsel), such as in the process. A criminal investigation that requires a search for the truth. The truth that is sought and realized in the criminal justice process, apart from being based on valid evidence and reaching the minimum threshold of proof, must be believed by the judge. This principle is called beyond reasonable doubt. The truth that is realized is truly based on evidence that cannot be doubted, so that the truth is considered valuable as the ultimate truth.

This evidentiary system is regulated in article 183 of the Criminal Procedure Code. However, this is not the case in the civil justice process, the truth sought and realized by the judge is quite formal truth (formeel waar heid). Basically, it is not prohibited for civil courts to search for and discover material truth. However, if the material truth is not found, the judge is legally justified in making a decision based on the formal truth.

In order to seek formal truth, it is necessary to pay attention to several principles as a guide for judges and the parties involved in the case:

a. The duties and roles of judges are passive

   The judge is only limited to accepting and examining matters submitted by the plaintiff and defendant. Therefore, the function and role of the judge in the civil case process is only limited to seeking and finding the formal truth, where the truth is realized in accordance with the basic reasons and facts presented by the parties during the trial process. In connection with this passive nature, if the judge believes that what the plaintiff is suing and asking for is true, but the plaintiff is unable to present evidence regarding the truth of what he believes, then the judge must get rid of that belief by rejecting the truth of the lawsuit's argument, because it is not supported by evidence in the trial. Passive means not just accepting and examining what the parties submit, but still having the role and authority to assess the truth of the facts presented at trial, provided that: the judge is not permitted to take active initiative in asking the parties to submit or add the necessary evidence. All of these are the rights and obligations of the parties, whether or not sufficient evidence is submitted is completely up to the wishes of the parties. Judges are not permitted to help any party to do something, except to the extent determined by law. For example, based on Article 165 RBg/139 HIR, one of the parties can request assistance from the judge to summon and present a witness through an authorized official so that the witness appears on the appointed court date, if the witness concerned is relevant but the party cannot present The witness himself volunteered. Receive every confession and denial put forward by the parties at the trial, to then be assessed for truth by the Judge. The judge's examination and decision are limited to the claims submitted by the plaintiff in the lawsuit. Judges must not violate the principle of ultra vires or ultra petita partium as outlined in Article 189 RBg/178 HIR paragraph (3) which states that judges are prohibited from making decisions on matters that were not requested or granting more than what was requested. For example, what the plaintiff demanded was Rp. 100 million, but at trial it was proven that the loss suffered was Rp. 200 million, then what can be granted is only limited to Rp. 100 million according to the demands stated in the lawsuit petitum. The judge's examination and decision are limited to the claims submitted by the plaintiff in the lawsuit. Judges must not violate the principle of ultra vires or ultra petita partium as outlined in Article 189 RBg/178 HIR paragraph (3) which states that judges are prohibited from making decisions on matters that were not requested or granting more than what was requested. For example, what the plaintiff demanded was Rp. 100 million, but at trial it was proven that the loss suffered was Rp. 200 million, then what can be granted is only limited to Rp. 100 million according to the demands stated in the lawsuit petitum.

b. Decision Based on Evidence of Facts

   Judges are not permitted to make decisions without evidence. The key to rejecting or granting a lawsuit must be based on evidence originating from the facts. facts presented by the parties. Proof can only be established based on the support of facts and evidence cannot be established without facts that support it. These facts are:

   1) The facts assessed and taken into account are limited to those presented in the trial. The parties are given the right and opportunity to present material or evidence, then the material or evidence is handed over to the judge. The material or evidence that is considered to prove the truth of what is postulated by any party is only facts directly related to the disputed

case. If the material or evidence presented at trial is unable to confirm the facts relating to the disputed case, then it is of no value as evidence.

2) Facts revealed outside the trial. It has been explained above that only the facts presented at trial can be assessed and taken into account to determine the correctness of making a decision. This means that the facts that can be assessed and taken into account are only those presented by the parties to the judge at the trial. Judges are not permitted to assess and take into account facts that are not presented by the litigants. For example, facts that the judge finds from newspapers or magazines are facts that the judge obtained from outside sources, not during the trial, so they cannot be used as facts to prove the truth of what is argued by one of the parties. Even though there are so many facts obtained from various sources, as long as these facts are not presented and obtained in the trial then these facts cannot be assessed in making a decision. Even though many people tell and show facts to the Judge regarding the truth of the disputed case, these facts must be rejected and set aside in seeking the truth of the case in question. Such facts are called out of court, therefore they cannot be used as a basis for seeking and finding the truth.
3) Only facts based on reality are of evidentiary value.

Apart from facts that must be presented and discovered in the trial process, facts that are valuable as evidence are only limited to facts that are concrete and relevant, namely clearly and clearly proving a situation or event that is directly related to the disputed case. In other words, the evidence that can be submitted is only that which contains concrete and relevant facts or is prima facie, that is, proving a situation or event that is directly and closely related to the case being examined. Meanwhile, abstract facts in the law of evidence are categorized as artificial, therefore they are not valuable as evidence to prove something is true.

c. Confession Ends Case Examination

In principle, a case examination ends when one of the parties provides a comprehensive confession regarding the subject matter of the case. If the defendant admits purely and unanimously the main material argued by the plaintiff, it is considered that the disputed case has been resolved, because with this admission the legal relationship between the parties has been ascertained and resolved. Likewise, if the plaintiff confirms and admits the counterargument put forward by the defendant, it means that it can be ascertained and proven that the claim put forward by the plaintiff is completely false. Moreover, if approached from passive teachings, even if the judge knows and believes that the confession is a lie or is contrary to the truth, the judge must accept the confession as fact and truth. Therefore, the judge must end the examination because with this admission the main material of the case is deemed to have been completely resolved. However, so that the application of the confession to end the case is not mistaken, several things need to be explained further, including the following:

1) Recognition given without conditions. Includes, among other things: first, a meaningful confession to end the case. Second, the confession is given expressly. A confession that is spoken or stated expressly either orally or in writing before the court. Third, the confession given is pure and unanimous. The confession is pure and unanimous and comprehensive regarding the subject matter of the case, thus the confession given must be unconditional or without qualification and directly regarding the subject matter of the case if the confession given is conditional, especially not directed at the subject matter of the case. , then this confession cannot be used as a basis for ending the case investigation
2) Not denying by remaining silent if the defendant does not submit a denial but takes a silent attitude, the event cannot be interpreted as a fact or proof of an unconditional confession, therefore the defendant's attitude cannot be constructed as a pure and unanimous confession because of the category of such confession. must be stated explicitly before it can be validly acknowledgedn which is pure without conditions, whereas in a state of silence it is not clear what is being acknowledged so that the resolution regarding the subject matter of the case has not been completed, therefore, it is not valid to use it as a basis for ending the case.
3) Denying without sufficient reasons, in this case a denial or objection is submitted but it is not supported by basic reasons (opposition without basic reasons) can be constructed and considered as a pure and unanimous confession without conditions thereby freeing the opposing party to prove material facts In this way the case examination process can be ended, however, the development of practice shows a more flexible tendency, which gives the right to parties who are silent or to those who submit objections without basic reasons (opposition without basic reasons) to change their silence or denial in the process. next trial, and this is a right so the judge is obliged to give the person concerned the opportunity to change and improve it. It's different when confessions are given explicitly at trial. This acknowledgment is immediately binding on the parties, therefore it cannot be revoked and cannot be changed or revised in accordance with the provisions of Article 1926 of the Civil Code.
4) Facts that do not need to be proven

Not all facts need to be proven. The focus of the evidence is aimed at the event or event of the legal relationship which is the subject of the dispute in accordance with what is postulated in the fundamentals of the plaintiff's lawsuit on one side and what the opposing party denies on the other side. In this regard, things will be explained that do not need to be proven in civil case examinations, namely:

Authentic Deeds as Evidence in Civil Cases

1) Positive law does not need to be proven

   This starts from the doctrine of curia novit jus or jus curia novit, namely that the court or judge is assumed to know all positive law. In fact, it is not just positive law but includes all laws. The litigant does not need to state which law has been violated and which law must be applied, because this is assumed to be known by the judge. However, what needs to be remembered regarding this problem is as follows:

   a) Judges must implement the law in accordance with the disputed case, and the law that must be applied must not conflict in the slightest with positive law or with applicable objective law.
   b) Judges are required to search for and find the exact applicable law to be applied in the case in question, either from a collection of laws, official gazettes, jurisprudence or legal comments.
   c) The parties to the case cannot be required to prove to the judge that there are statutory regulations or jurisprudence that apply to the disputed case. Even regarding customary law, the parties involved in the case cannot be required to prove it.

2) Publicly known facts are not proven

   Regarding facts that are generally known to have not been proven, the Civil Procedure Law is not regulated expressly, but this has been widely accepted as a legal doctrine of evidence known as notoir feiten or notoir facts. The definition of a generally known fact is any event or situation which is considered to be known by educated or civilized people who follow the times, they are deemed to have to know the event or situation without carrying out careful and in-depth research or examination and this is known for certain based on general experience in community life, that an event or situation is such, to be used as a legal basis to justify serious social action in the form of a judge's decision. For example, it is a notarized fact that on Sundays all government offices are closed, and that land prices in cities are more expensive than land prices in villages. In connection with the matters described above, facts known to the Judge personally do not include facts known to the public. Therefore, facts known to the judge personally cannot stand alone as evidence but must be supported by other evidence to reach the minimum threshold of proof.

3) Facts that are not disputed do not need to be proven

   In accordance with the principle of evidence, what must be proven is the thing or fact that is denied or refuted by the opposing party. Starting from this principle, facts that are not denied by the opposing party do not need to be proven because logically a fact that is not denied is considered to have been proven to be true. Not denying or refuting is considered admitting the arguments and facts discovered during the trial process do not need to be proven. Facts or events that the judge knows, experienced, saw or heard during the trial examination process do not need to be proven. Because of facts or factsThis is the way it is, so it is a truth that no longer needs to be proven because the judge himself knows what it really is. For example, if the defendant does not come to attend the hearing that has been determined, the plaintiff does not need to prove this fact because the judge himself knows about it and this has even been recorded in the minutes. Or, for example, if the plaintiff or defendant makes an explicit confession at trial, the incident does not need to be proven because the judge knows and hears this himself. Or when the defendant refuses or is unable to show letters, original documents or photocopies of the evidence he has submitted, this is a fact that does not need to be proven, because the judge himself saw and found out about this himself through the trial, and this was even recorded in the minutes of the trial.

4) Counter Evidence (tegen bewijs)

   One of the principles in the law of evidence is to give the opposing party the right to submit opposing evidence. Article 1918 of the Civil Code states: "A judge's decision which has absolute force, by which a person has been sentenced for a crime or violation, in a civil case can be accepted as evidence of an act that has been committed, unless it can be proven otherwise. ” In other words, Article 1918 of the Civil Code gives the opposing party the right to submit contrary evidence to the evidence attached to a court decision which has permanent legal force. Proving the opposite is what is meant by opposing evidence or tegen bewijs.

In theory and practice, opposing evidence is always attributed to the defendant. Therefore, opposing evidence is always interpreted as refuting evidence (contra en quete) submitted and presented by the defendant at trial to disable the evidence put forward by the opposing party. The main purpose of presenting opposing evidence, apart from being to refute and paralyze the opposing party's truth, is also intended to undermine the Judge's assessment of the truth of the evidence submitted by the opposing party.

There are two main principles that must be considered in relation to the application of opposing evidence. The first principle is that all evidence presented by another party, in this case the plaintiff, can be refuted or weakened by opposing evidence. Opposing evidence can also be presented if the evidence provided has mandatory evidentiary power. All evidence can be refuted or weakened. He also added that opposing evidence is evidence of the same quality and level as the evidence. The tools used to provide evidence to an opponent are the same as the tools used to provide evidence, and the power of those tools is equally strong. The second principle is that not all evidence can be overpowered by opposing evidence. This depends on the provisions of the law. If the law determines that the value of the evidentiary power attached to the evidence is decisive (beslissen de bewijs kracht) or compelling (dwingen de bewijs kracht) then the evidence cannot be refuted or weakened by opposing evidence. For example, evidence of the

breaking oath (besliss en deeed) is mentioned in Article 1929 of the Civil Code and Article 182 RBg/155 HIR. In this way, opposing evidence can only be presented against evidence that has a free strength value (vrij bewijs kracht), such as witness evidence or evidence that has a perfect strength value (volledig bewijs kracht) such as an authentic deed or a private deed. One thing that needs to be paid attention to is that basically the submission of opposing evidence must be based on the principle of proportionality. This means that the opposing evidence presented must not be of lower value than the evidence that is to be suppressed. In this regard, it is considered reasonable to determine the conditions or level of opposing evidence that can be submitted to disable the evidence submitted by the opposing party:

a. the quality and level of strength of the evidence is at least the same as the evidence being challenged.
b. The opposing evidence submitted is of the same type as the opposing evidence.
c. perfection and the value of the power of evidence attached to it are equally strong.

However, this requirement is not absolute. If statutory regulations determine otherwise, the requirement can be waived.

Before discussing further the various types of evidence, you must first know and understand several definitions of evidence:

1. Weak evidence
   Weak evidence is evidence put forward by the plaintiff that does not provide the slightest proof or provides evidence but does not fulfill the requirements needed to accept the arguments of the lawsuit, meaning that this evidence only has preliminary evidentiary power (kracht van begin bewijs). So the required level of evidence has not been achieved, therefore the lawsuit must be rejected and the plaintiff is the losing party. Initial evidence alone cannot be the basis for a judgei acceptance of a lawsuit.
2. Perfect proof
   Perfect evidence is the evidence submitted by the party concerned is perfect, meaning that it no longer needs to be supplemented with other evidence, without reducing the possibility of being presented with refutation evidence (tengen bewijs). So with perfect evidence presented, it gives the judge sufficient certainty, but it can still be overturned by refutation evidence. Thus, perfect evidence results in the Judge's opinion that the plaintiff's claim is true and must be accepted unless the defendant, with proof of his denial (tengen bewijs), succeeds in presenting evidence that is sufficient to refute what the Judge considers to be true.

3. Definite/determining evidence (Besliss end Bewijs)
   As a result of submitting evidence with evidence that has definite/determining evidentiary power, the evidence is not permitted to advance refutation evidence. Proving with definite/determinant evidence results in a position that cannot be contested for the plaintiff or defendant who presents the evidence. Thus the demands submitted are considered correct, reasonable and acceptable. The opportunity for the opposing party to submit refutation evidence no longer exists.
4. Binding evidence (Verplicht Bewijs)
   With the existence of evidence that has binding evidentiary power, the judge is obliged to adjust his decision to the evidence. An example of this is in the case of a severing oath (decissoir oath).
5. Proof of refutation (Tengen Bewijs)
   Refutation evidence is evidence used in refutation of the evidence submitted by the opponent in the trial. This evidence aims to thwart the opposing party's lawsuit. In principle, all evidence can be weakened by refutation evidence, unless the law itself expressly prohibits the submission of refutation evidence, for example the oath of severance (Oath decissoir) as regulated in Article 1936 of the Civil Code.[17]

3. Theory of the Probative Strength of Evidence

When discussing the assessment of evidence, the evidence submitted by the parties to the trial will be assessed, in this case the person with authority to carry out the assessment is the judge. In general, as long as the law does not provide otherwise, judges are free to evaluate the evidence. In this case, legislators can bind judges to certain pieces of evidence (for example oath evidence), so that judges are not free to evaluate them. One example is documentary evidence which has binding evidentiary power for the judge and the parties. On the other hand, legislators can hand over and give freedom to judges in assessing the proof of evidence, for example witness statements which have independent evidentiary power, meaning that it is left to the judge to assess the evidence. The judge may or may not be bound by the information given by the witness..[18]

When assessing evidence, judges can act freely or be bound by law, in this case there are two theories, namely:[19]

a. Free Evidence Theory
   Judges are free to assess the evidence presented by the parties to the case, both evidence that has been mentioned by law, and evidence that is not mentioned by law.

[17]http://materihukum.com/pembuktian-dalam-hukum-acara-perdata-indonesia/
[18] Efa Laela Fakhriah, 2013, *Bukti Elektronik dalam Sistem Pembuktian Perdata*. Cetakan ke-2, Bandung: PT Alumni, p. 40.
[19]*Ibid.*, p. 53.

b. Bounded Proof Theory
The judge is bound by the evidence presented by the parties to the case. The decision handed down must be in line with the evidence presented at the trial. This theory is further divided into:
1) Negative Evidence Theory Judges are bound by statutory prohibitions in evaluating certain pieces of evidence.
2) Positive Evidence Theory Judges are bound by statutory orders in evaluating a particular piece of evidence.
3) Combined Theory of Evidence Judges are free and bound in assessing the results of evidence. In assessing evidence, a judge must also remember important principles in civil evidence law.

4. Legal Principles of Evidence

A legal system is a unity of legal rules that are related to one another, and have been regulated and compiled based on principles. Legal principles are basic rules that cannot be further explained, above which no higher rules can be found. Legal principles are the basis for lower legal rules. The difference between legal principles and lower regulations is that legal principles are more abstract, if legal principles are not included in the law, they are not binding on judges, but only serve as guidelines. However, if this principle is expressly stated in law, it has binding force as law so that judges are obliged to apply this principle directly to all real cases for which there are no special rules.

The principles in the Law of Evidence are as follows:

a. The principle of ius curia novit
Judges are considered to know the law, this also applies to evidence, because in proving, the law does not have to be submitted or proven by the parties, but is considered to be known and applied by the judge.

b. The principle of audi et altera partem
This principle means that both parties to a dispute must be treated equally (equal justice under law). The same processual position for the parties before the judge. This means that the judge must distribute the burden of proof based on the equality of the parties' positions equally. Thus the possibility of winning for the parties must be the same.

c. The principle of affirmandi in cumbit probatio
This principle means that whoever claims to have a right must prove it.

d. The principle of acta publica probant seseipsa
This principle relates to the proof of an authentic deed, which means that a deed that appears to be an authentic deed and meets the specified requirements, the deed is valid or considered to be an authentic deed until proven otherwise. The burden of proof lies on who is questioning whether the deed is authentic or not.

e. The principle of testimonium de auditu
It is a principle in evidence using testimonial evidence, meaning that it is information that the witness obtains from other people, the witness does not hear it or experience it himself but rather hears from other people about the incident. In general, testimony based on initial hearings is not permitted, because the information given is not an event that the person personally experienced, so it is not evidence and no longer needs to be considered. This is in accordance with the jurisprudence of the Supreme Court of the Republic of Indonesia dated March 15 1972 No. 547 K/Sip/1971, which determines: de auditu witness testimony is not evidence.

f. The principle of unus testis nullus testis
Which means that one witness is not a witness, meaning that one piece of evidence alone is not enough to prove the truth of an event or the existence of a right. Article 169 HIR/306 RBg. States that the testimony of a witness alone without other evidence cannot be considered sufficient evidence. This is in accordance with the jurisprudence of the Supreme Court of the Republic of Indonesia No. 665 K/Sip/1973, which determines: "Just one letter of evidence without being supported by other evidence cannot be accepted as proof".[20]

B. Judge's Consideration (Legal Reasoning) in Assessing Authentic Deeds Which are Alleged to Exist Dwaling (Misconduct), Fraud (Bedrog) or Coercion (Dwang)

1. Burden of Proof Theory

In the division of the burden of proof, there is a principle known, namely, whoever postulates something is required to prove it, as stated in Article 163 HIR/283 RBg. This is at first glance easy to implement. However, in practice it is difficult to determine exactly who should be burdened with the obligation to prove something.[21]

Discussing the assessment of the legality of the use of evidence in the Criminal Procedure Law, there are the same principles as those regulated in the Civil Procedure Law as intended in Article 294 paragraph (1) HIR. Article 183 of the Criminal Procedure Code, in principle, regulates: "A judge may not impose a crime on a person unless, with at least two valid pieces of evidence, he is convinced that a criminal act has actually occurred and that the defendant is guilty of committing it."

[20]www.greasnews.com/berita/tips/81796-asas-pembuktian-perdata/

[21] Retnowulan Sutantio dan Iskandar Oeripkartawinata, 1995, *Hukum Acara Perdata dalam Teori dan Praktek,* Bandung: Mandar Maju, p. 55.

Meanwhile, in the Civil Procedure Law, in order to assess the validity of the use of evidence, there are no provisions like the above, and only recognize the principles of proof as specified in Article 163 HIR/283 RBg. jo. Article 1865 of the Civil Code stipulates that: "Whoever claims to have the right to an item, or points to an event to confirm his right, or denies another person's right, then that person must prove it"

From this incident, what must be proven is the truth. In Civil Procedure Law, the truth that must be sought by the Judge is formal truth, meaning that the Judge must not exceed the limits proposed by the parties to the case. Article 178 paragraph (3) HIR/Article 189 paragraph (3) RBg, prohibits judges from passing decisions on cases that are not demanded, or from granting more than what is demanded.[22]

Thus, based on the formulation of Article 163 HIR/283 RBg jo. Article 1865 of the Civil Code means that both parties, both the plaintiff and the defendant, can be burdened with the burden of proof by the judge. This means that the judge is obliged to give the burden of proof to the plaintiff to prove the argument or event that can support the argument put forward by the plaintiff, while for the defendant, the judge is obliged to give a burden of proof to prove his rebuttal to the argument put forward by the plaintiff. The plaintiff is not required to prove the truth of the defendant's denial, and vice versa the defendant is not required to prove the truth of the events presented by the plaintiff. Thus, if the plaintiff cannot prove the argument or event he put forward, he must be defeated, whereas if the defendant cannot prove his rebuttal, he must be defeated.[23]

There is an event that no longer requires proof because its truth has been generally acknowledged, which is called a notoir event (notoir feiten, visible facts). Everyone must know it, so the panel of judges must be sure that it is. For example, there is a ban on going out at night, no one is allowed to leave the house except security officers.[24]

Theories related to the burden of proof that can be a guide for Judges, namely:

a. Subjective Legal Theory
   This theory argues that a civil process is always an implementation of subjective law, and whoever asserts or claims to have a right must prove it. In this case the plaintiff does not need to prove everything. The plaintiff is obliged to prove the existence of special events that give rise to rights, while the defendant must prove the absence of general events (conditions) and the existence of special events that hinder and cancel.
b. Objective Legal Theory
   According to this theory, the plaintiff must prove the truth of the events he submits and then seek the objective law to apply to those events. The judge, whose job is to apply objective law to the events submitted by the parties, can only grant a lawsuit if the elements determined by objective law are present.
c. Public Law Theory
   Says that seeking the truth of an event in court is in the public interest, so judges must be given greater authority to seek the truth. Apart from that, there are obligations of the parties which are public law in nature, namely to prove with all kinds of evidence. This obligation must be accompanied by criminal sanctions.
d. Procedural Law Theory
   The principle of equal procedural standing for the parties before the Judge (audi et alteram partem), is the distribution of the burden of proof according to this theory. The judge must divide the burden of proof based on the equal position of the parties. This principle has the effect that the chances of winning for the parties must be the same. Therefore, the judge must burden the parties with evidence in a balanced or appropriate manner.

Regarding evidence and evidentiary law, apart from being regulated in the HIR and RBg, it is also regulated in the Civil Code. However, because civil evidence law is part of civil procedural law, in principle the court in handling civil cases must base it on the evidence law from HIR and RBg, while the Civil Code only serves as a guideline if necessary.[25]

2. Evidence in Civil Cases

a. Understanding Evidence
   Evidence is an important element in trial evidence, because the judge uses it as material for consideration in deciding the case. Evidence is a tool or effort submitted by a litigant that the judge uses as a basis for deciding the case. Viewed from the perspective of the litigants, evidence is a tool or effort used to convince the judge before the court hearing. Meanwhile, from the perspective of the court examining the case, evidence is a tool or effort that the judge can use to decide the case.[26]
   Legal expert Subekti is of the opinion regarding the formulation of evidence and evidence as follows: "Evidence is something to convince of the truth of a proposition or position. "Evidence, means of proof, means of proof are tools used to prove a party's arguments in court, for example: written evidence, testimony, allegations, oaths and so on." A similar opinion was also

[22] Efa Laela Fakhriah, *Sistem Pembuktian Terbuka Dalam Penyelesaian Sengketa Perdata Secara Litigasi*. http://pustaka.unpad.ac.id/wp-content/uploads/2012/05/pustaka_unpad_ sistem_ pembuktian.pdf., dikutip pada 2 Maret 2019.
[23] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Edisi Enam, Yogyakarta: Liberty, p. 114.
[24] Abdulkadir Muhammad, *Hukum Acara Perdata Indonesia*, Bandung: Citra Aditya Bakti, p. 116.
[25] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Edisi Enam, Yogyakarta: Liberty, p. 135-136.
[26] Anshoruddin, 2004, *Hukum Pembuktian Menurut Hukum Acara Islam dan Hukum Positif*, Surabaya: Pustaka Pelajar, p. 25.

expressed by Criminal Law Expert, Andi Hamzah, who gave almost the same definition of evidence and evidence, namely as follows: Evidence is something to convince the truth of a proposition, position or accusation. Evidence means efforts to prove through tools that are permitted to be used to prove arguments, or in criminal cases charges at court, for example the defendant's statement, testimony, expert testimony, letters and instructions, in civil cases including allegations and oaths.[27]

In civil proceedings, the Judge is bound by valid evidence, which means that in making decisions, the Judge must submit to and be based on evidence that has been determined by law only, namely as regulated in Article 164 HIR/284 RBg and 1866 of the Civil Code. Outside of Article 164 HIR/284 RBg, there is evidence that can be used to reveal the truth of the occurrence of an event which is a dispute, namely local examination (descente) as regulated in Article 153 HIR/180 RBg and expert testimony (expertise) as regulated in Article 154 HIR /181 RBg.

Evidence or what is known in English as evidence, is information used to establish the truth of legal facts in an investigation or trial. Paton in his book entitled A Textbook of Jurisprudence, as quoted by Sudikno Mertokusumo, states that evidence can be oral, documentary or material. Oral evidence is the words spoken by someone during a trial. Documentary evidence includes documentary evidence or written evidence. Material evidence includes evidence in the form of items other than documents.

b. Various types of evidence

Freddy Haris divides the evidence in the evidentiary legal system into several parts, namely:[28]

1) Oral Evidence
   a) civil (witness statements, confession of oath).
   b) criminal (witness testimony, expert testimony, and defendant testimony).
2) Documentary Evidence
   a) civil (letters and allegations).
   b) criminal (goods used to commit a criminal act, goods which are the proceeds of a criminal act).
3) Electronic Evidence
   a) the concept of grouping evidence into written and electronic evidence.
   b) the concept mainly developed in common law countries.

The ElectronicEvidence arrangement does not create new evidence but expands the scope of documentary evidence.

Evidence in civil cases regulated in Article 1866 of the Civil Code is as follows: written evidence; evidence with witnesses; evidence by conjecture; proof by confession and proof by Oath.

When compared with article 164 HIR/284 Rbg, the evidence in civil cases is as follows: written evidence; evidence with witnesses; proof by presumption and proof by oath.[29]

3. Burden of Proof

One important part of the legal system for proving civil cases is the burden of proof (bewijstlast/burden of proff). To which party is the burden of proof given if a case arises? Is it on the defendant in part? Mistakenly assigning the burden of proof can lead to arbitrariness on the part of the burdened parties, and provide free benefits to other parties. To avoid the error of a disproportionate burden of proof, it is necessary to understand the principles and practices relating to its application.[30]

1) Principle of Burden of Proof

Talking about the burden of proof is directly related to the issue of dividing the burden of proof. What issues is the burden of proof on the plaintiff, and which issues are the burden on the defendant. So that there are no charging practices that are detrimental to either party, the following principles must be guided:

a. Not Be Partial

In giving the burden of proof, the judge must be: fair, in accordance with the principles of a fair trial and not be biased or partial, but impartial. The judge must not harm the interests of one of the parties, but wisely distribute them according to the legal system of evidence by giving the same calculation to the parties in the case. Therefore, the distribution of the burden of proof is allocated in accordance with the mechanism outlined in statutory regulations. As an example of how to allocate the burden of proof fairly and proportionally, it can be seen in Supreme Court decision no. 1490 K/Pdt/1987. As explained in article 163 HIR, anyone who postulates a right or the existence of a fact to uphold a right or to deny another person's right, must prove that right or other facts.

b. Enforcing Burden Allocation Risks

As explained, the burden of proof is carried out fairly and impartially in accordance with the allocation mechanism outlined by the legal system of evidence. In this allocation mechanism, risks are inherent which must be borne by each

[27] Andi Hamzah, *Kamus Hukum*, Jakarta: Ghalia Indonesia, p. 99.

[28] Freddy Haris, 2008, *Cybercrime Dari Perspektif Akademis*, www.gipi.or.id

[29] Alfira, 2011, *Hukum Pembuktian Dalam Beracara Pidana, Perdata dan Korupsi di indonesia*, Cetakan 1, Jakarta: Raih Asa Sukses, p. 133.

[30] M. Yahya Harahap, 2005, *Hukum Acara Perdata (Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*. Jakarta: Sinar Grafika.

party. Whoever or demands the law is burdened with proof, means getting an allocation to prove that thing. If the party concerned cannot afford what is allocated to him, that party bears the risk of losing his rights or position due to failure to provide relevant evidence regarding this matter. With the risk that must be borne as a result if you fail to prove the problem allocated to the litigants, you should not be careless in the distribution of allocations. If an inappropriate burden of proof is given according to law to a party, of course the person concerned will experience difficulties and failure to prove it. And that mistake will bring injustice to him. However, if the allocation of the burden of proof is carried out fairly and impartially, the judge must firmly enforce the risk of failure to prove what is given to one party. The firmness of risk enforcement can be seen in Supreme Court decision no. 3565 K/Pdt/1984.

2) Guidelines for Dividing the Burden of Proof

Viewed from the perspective of statutory provisions and practice, there has been development of burden of proof guidelines. The benchmark is no longer based solely on the law, so in this case the guidelines for the burden of proof will be outlined.

a. General Guidelines based on Law As general guidelines or rules outlined in article 163 HIR, Article 283 RBG or article 1865 of the Civil Code which reads: Every person who argues that he has a right or in order to uphold his own right or dispute another person's right, appoints in an event, it is mandatory to prove the existence of the right or event. This is not much different from what is explained in article 163 HIR, which reads: Whoever says he has a right, or mentions an action to strengthen his right, or to dispute another person's right, then the person must prove the existence of that right or the existence of that incident. The main essence of the articles is given a brief and detailed conclusion as follows:
   a) whoever claims to have a right or brings up an event to strengthen that right, he or she is obliged to provide evidence to prove that right.
   b) On the other hand, whoever disputes another person's rights will be obliged to provide evidence to prove the denial. Or technically, judicially, it can be summarized as follows: Whoever argues for a right, the burden of proof is upon him to prove the right he has argued for and whoever submits a rebuttal argument in order to overrule the right argued by another party, he is given the burden of proof to prove the rebuttal argument.

4. Burden of Proof Guidelines

The burden of proof guidelines outlined by the law in these guidelines are the basis for general rules in implementing the distribution of the burden of proof. And the application of the burden of proof is necessary if the parties to the case dispute the arguments put forward by the plaintiff. However, if the parties reach an agreement or the other party admits what is in dispute, the guidelines for dividing the burden of proof outlined in Article 1865 of the Civil Code, Article 163 of the HIR no longer have urgency and relevance, because there are no longer any rights or interests that need to be proven.

In Common Law, principles or guidelines for the distribution of burdensThe proof explained above is formulated in a short sentence: he who asserts must prove, who asks something, must prove it. This guideline is called the standard burden of evidence which applies as a General Rule. Thus, he who asserts proves is a strong guideline or principle (cogent guilding principle) in distributing the burden of proof.

The principles or guidelines outlined by Common Law above are the same as those outlined in Article 1865 of the Civil Code, Article 163 HIR. The law requires a person to have a burden of proof to prove the claims or objections they put forward. This principle is the basis and basis for dividing the burden of proof in civil cases, that is, whoever submits something is obliged to prove it.

a. Burden of Proof Based on Rights Theory

In the development of law, a theory of the distribution of the burden of proof emerged which is called the theory of rights or subjective legal theory. According to rights theory, there are two factors that guide the application of the distribution of the burden of proof, namely:[31]

1. Burden Starting from Defending Rights

   According to this theory, every civil case always involves and aims to defend rights. If that is the case, the guidelines for the burden of proof must be based on the interests of maintaining these rights. Thus the principles that must be a guide:
   a. whoever asserts a right is obliged to prove that right.
   b. This means that the obligation to bear the burden of proof first is imposed on the plaintiff, because he is the one who is first regarding his rights in the case in question.
2. Not all facts must be proven

   According to rights theory, in the burden of proof not all facts must be proven, on the following basis:
   a. Requiring to prove all irrational facts does not require all things to be proven. The rights or facts that must be proven are facts or arguments relating to rights.
   b. Requiring the burden of proof to prove everything, means that proof leads to unlimited mandatory proof. Both in theory and practice, no one can prove everything inherent in a case. On this basis, requiring the burden of proof to

[31] *Ibid.*

prove everything is considered unrealistic. The facts that must be proven are as explained above, the burden of proof should not lead to unlimited proof. The way to apply rational evidentiary exemption is done by distinguishing the facts inherent in the case in question.

In the burden of proof there are several types of facts, namely:

a) General facts

What are considered general facts in a case are legal provisions that are inherent in the personal nature of the parties, such as those relating to the quality of the parties to take legal action. Or it could also be that general provisions relating to agreements include the conditions outlined in Article 1320 of the Civil Code, regarding free will, agreements (objects or prices), not containing illegitimate powers. Or the object promised does not concern inheritance that has not been divided.

b) Specific facts

The main special facts that can be classified are those that give rise to rights, hinder rights, and eliminate rights. So, in terms of the burden of proof according to the theory of rights, not all facts must be proven: they are only limited to specific facts, while general facts must be proven if the opposing party denies them.

Taking into account the conclusions stated above, the theory of rights is almost no different from the guidelines outlined in Article 1865 of the Civil Code, Article 163 HIR. According to this system, evidence must focus on the main arguments relating to rights or facts, as long as they are denied by the opposing party.

5. Burden of Proof Based on Legal Theory

The starting point of legal theory, which is also called subjective legal theory, is the distribution of the burden of proof, in the process of examining and resolving cases, judges implement the law. Implementing the law is the same as implementing statutory regulations. Every time a case occurs in court, the judge must implement and enforce the law or statute. In general, laws or regulations have determined the facts that must be proven in each incident. Starting from this principle, the facts that must be proven are:

a. refers to the requirements specified in the relevant statutory regulations.
b. just read and look in the statutory regulations for the facts that are required to be proven. In this way, all problems of the burden of proof are resolved through statutory regulations.

6. Burden of Proof Based on Merit

This burden of proof is also called the theory of propriety based on law, based on the guidelines provided by this theory, providing a balanced burden of proof for the parties' advantages and disadvantages. Sometimes the definition of propriety can be used to add to or strengthen legal provisions. For example, by confirming that the provisions of the relevant articles of law comply with propriety and applicable regulations.

In that case, this propriety strengthens the provisions of the law. However, sometimes, the propriety applied overrides the provisions of the applicable law, if its provisions are deemed to conflict with a sense of justice. Even in compromise or peace, the parties get rid of or set aside laws based on propriety that they consider to be fair. The guidelines used as a benchmark for the burden of proof based on this theory do not adhere rigidly to the basis of Article 1865 of the Civil Code, Article 163 HIR.

7. Principles that Develop in the Application of the Burden of Proof

Starting from the general provisions outlined in Article 1865 of the Civil Code, Article 163 HIR, connected with subjective and objective legal theory and the theory of propriety, several principles have emerged for the application of the distribution of the burden of proof in judicial practice, namely:

1) What must be proventhe positive

Something is said to be positive, if it contains facts, or it contains events or happenings. For example, the plaintiff argues that the defendant terminated the contract unilaterally. In the lawsuit there are positive facts or events in the form of termination of the contract by the defendant. Therefore, it must be proven and the burden of proof is the plaintiff. On the other hand, if the defendant files a counter claim regarding the incident, he is given the obligation to prove that denial.

Negative things are not proven. A thing is said to be negative if:

a. things or circumstances or events stated regarding something that was not done or was not done by the person concerned.
b. in such cases, it is inappropriate or inappropriate (unpropriate) to give the mandatory burden of proof to someone who does not know or does not know or someone who has not done or received something to prove it.

In this regard, it is inappropriate or inappropriate to burden the defendant with mandatory evidence regarding negative matters, because it is impossible to prove things that he did not know or do. Regarding negative things that are often found in cases. For example, the argument states that the buyer has not paid the price, has not delivered the goods, has not divided the inheritance. In such cases, it is unfair or unnecessary to impose the burden of proof on the plaintiff because in this case it is considered that it is easier for the buyer or defendant to prove that he has paid for the goods than for the seller to be burdened with proving that he has

not received payment. Likewise, in cases of inheritance that have not been divided, it is much easier for the defendant to prove that there has been a division of the inheritance than for the plaintiff to be required to prove that there has never been a division.

The application that prohibits burdens from being imposed on opposing parties regarding negative matters is basically still within the framework of the guidelines outlined in Article 1865 of the Civil Code, Article 163 HIR.

In proving that the party who controls a right to unencumbered goods is required to provide proof, the application is based on the principle of propriety. It is considered inappropriate to place the burden of proof on someone to prove the goods they control. Therefore, whoever controls or has rights to an item does not need to prove it. If someone says the item belongs to him, he is the one who is obliged to prove that the person who controls it has no right to it. Thus, whoever demands the delivery or disposal of an item, that person is obliged to prove that he or she has the right to the item. It is considered excessive and inappropriate to force someone who has rights or control of goods, to prove that right and control. If someone is sued regarding the rights to the goods they control, they should not be burdened with evidence to prove their rights and control of the goods in their hands. The party who must bear the burden of proof is the party who attacks or interferes with the right to control the goods.

The material law itself determines the burden of proof. There are several articles of the material law law which determine which party is given the burden of proof. If such a provision is found, the guidelines for dividing the burden of proof will no longer refer to Article 1865 of the Civil Code, Article 163 HIR, but are fully guided by the relevant article. Below are several articles of the law that determine the mandatory evidence that must be applied in certain cases, including the following:[32]

a. Article 1244 Civil Code
   This article regulates the debtor's ability to apply for force majeure or force majeure circumstances which are the cause of not being able to fulfill the agreement properly.
b. Article 1365 Civil Code
   states that every unlawful act that causes loss to another person requires that the person, because of his/her fault in causing the loss, compensate for the loss.
c. Article 1394 Civil Code
   Regarding payments for house rent, land rent, annual allowance for subsistence, eternal interest or life interest, interest on loan money, and in general everything that must be paid annually or at shorter intervals, then with three letters of payment in three installments respectively, there is a presumption that the previous installments have been paid in full, unless proven otherwise.
d. Article 1764 Civil Code
   If it is impossible for him to fulfill this obligation, he is obliged to pay the price of the goods he borrowed taking into account the time and place of returning the goods according to the agreement. If the time and place are not agreed upon, the return must be made according to the value of the loan item at the time and place of borrowing.
e. Article 489 Civil Code
   A person who claims a right, which is said to have passed from an absent person to him, but the right only passed to the absent person after the circumstances of his life or death became uncertain, is obliged to prove that the absent person was still alive at the time. This right falls to him as long as he does not prove this, then his claim must be declared inadmissible.
f. Article 533 Civil Code
   The holder of the security must always be considered to have good intentions, whoever accuses him of bad intentions must prove it. Thus submit certain articles which specifically or specifically determine the distribution of the burden of proof. Regarding the provisions in question, the application of the mandatory burden of proof is certain, so it is not guided by the general regulations outlined in Article 1865 of the Civil Code, Article 1643 HIR.

V. CLOSING

In this chapter, conclusions and suggestions are discussed. The conclusion is the final result of the previous materials which were discussed in the discussion below. Suggestions are all input and constructive criticism from readers of the results of this research.

1. Conclusion

Based on the discussion in the previous chapter, this research concludes as follows:

a. that the application of authentic deed evidence in civil cases in court is based on statutory regulations as stated in statutory regulations, namely Article 1866 of the Civil Code and Article 164 of the HIR, which consist of: a. Letter evidence, b. Witness evidence, c. Allegation, d. Confession, ande. Oath.
a. that the judge's consideration (legal reasoning) in assessing an authentic deed which is postulated to be dwaling (mistake), fraud (bedrog) or coercion (dwang) is and is based on the existence of general facts and specific facts in making a decision and is based on the judge's confidence in determining The quality of the decision is based on Article 1865 of the Civil Code, Article 163 HIR. According to this system, evidence must focus on the main arguments relating to rights or facts, as long as they are denied by the opposing party.

[32] *Op.cit.*

2. Suggestions

Addressed to the Judge in making a decision, apart from basing the decision based on justice based on the Almighty God, it is also a measure of the Judge's belief which is an activity that has no measure, because it is absolute/absolute, it is necessary to have absolute guidelines for belief.

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