

Evidence of Suspicion in Civil Procedure Law (Study analysis of the use of prejudice as a judge's consideration in decision No 10/PDT. G/2018/PN. END)

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Abstract: *This study aims to dig deeper into the role of prejudice in the civil law system in Indonesia by focusing on its definition, types, and impact on judges' decisions. This study specifically discusses the use of suspicion in Decision Number 10/Pdt.G/2018/PN. End, as a case that marks the importance of the role of allegations in resolving civil law disputes. The Methode uses normative juridical; this study elaborates and examines allegations based on Burgerlijk Wetboek and HIR provisions and pays attention to secondary legal materials to enrich discussion and analysis of related judicial practices. The findings of this study confirm that the allegation not only acts as prima facie evidence but also reverses the burden of proof that must be borne by those who deny it, also evidenced by an analysis of the role of allegations in the case that is, the focus of the study, showing that the judge has the flexibility to formulate allegations from the facts proven at trial. However, the allegation must meet the criteria in Article 173 HIR and Article 1922 of the Civil Code to be considered valid and adequate as evidence.*

Keywords: Civil Procedure, Disclaimer, Judge's Consideration.

INTRODUCTION

Indonesia places justice and legal certainty as fundamental pillars. Every action, behaviour, and decision, whether by individuals, groups, institutions, or governments, must be in harmony with the legal principles applicable in this country¹. The right of every citizen to legal certainty and fair and impartial treatment is a fundamental commitment to the rule of law². When discussing legal justice, emphasize that justice is one of the main objectives of the law, along with legal certainty and legal benefits.

According to a survey conducted by the Indonesia Judicial Research Society in 2019, legal justice in Indonesia reached an index score of 69.6%, indicating a sufficient level of legal justice.³ However, this figure could be more encouraging, as there are still many problems in implementing legal justice in Indonesia.

Fairness in deciding a case by a judge is essential in the judicial process. As an institution seeking and obtaining justice, the judiciary must ensure that every decision is based on robust and valid evidence⁴. In the context of trials, both criminal and civil cases, the main point is to seek clarity and

¹ Arief Hidayat, 'The State of Law with the Character of Pancasila', in *Seminar material delivered in the framework of the Faculty of Law Week*, 2017; Niru Anita Sinaga, 'Code of Ethics as a Guideline for the Good Implementation of the Legal Profession', *Scientific Journal of Aerospace Law*, 10.2 (2020); Janpatar Simamora, 'Legal Certainty of Cassation Submission by Public Prosecutors Against Acquittal Verdicts', *Judicial Journal*, 7.1 (2014), 1–17

² Abdul Latif, 'Guarantees of the 1945 Constitution in Due Process of Law', *Journal of the Constitution*, 7.1 (2010), 49–66

³ Indonesia Judicial Research Society, *INDEX OF ACCESS TO JUSTICE IN INDONESIA 2019* (Jakarta, 2019).

⁴ FenceM Wantu, 'Realizing Legal Certainty, Justice and Expediency in Judges' Decisions in Civil Courts', *Journal of Legal Dynamics*, 12.3 (2012), 479–89

bright spots from an issue⁵. To achieve this goal, the evidentiary process plays a central role. Proof is an effort to provide clarity and confidence in an event or fact in a case. "R. Subekti asserts that proof is the activity that convinces the judge of the correctness of the propositions put forward during the court hearing.⁶ This process is very important because it is the basis for judges in making decisions. The judge considers the evidence and arguments presented by both sides to ensure that the verdict is fair and impartial. Article 283 RBg, Article 163 Het Herziene Indonesisch Reglement (HIR), and Article 1865 of the Civil Code regulate the burden of proof in civil law. Both the plaintiff and the defendant have an obligation to prove the arguments they put forward. This obligation is important to ensure that judges have sufficient information to decide cases fairly." Both parties must present relevant and valid evidence to support their arguments.

The evidentiary process ensures judges have a solid foundation for making fair and equitable decisions⁷. With an effective and thorough evidentiary process, justice in the judiciary will be easier to achieve. Therefore, all parties involved in a case must participate actively in the evidentiary process. They must prepare and present valid and convincing evidence to support their arguments in court. This is important so the judge can make the right decision, resulting in justice for all parties involved. In realizing justice in the judiciary, the role of judges is also very important. The judge must objectively assess the evidence and arguments put forward by both sides. They must ensure that they are impartial to either party and that all evidence is set fairly. Thus, justice in the judiciary can be achieved, and

all parties involved can be satisfied with the outcome.

In the context of Civil Law, Article 1868 of the Civil Code describes five types of valid evidence, namely Letters, Witnesses, Allegations, Confessions, and Oaths. Although letters and witnesses are often the primary evidence in a case, presumptive evidence remains crucial. Article 1915 of the Civil Code defines a Disclaimer as a conclusion derived by law or a judge from a known event to understand an unknown event. There are two types of allegations: those regulated by law and those that judges determine. Yahya Harahap, in his literature "Civil Method," explained that the allegations based on the law are further divided into two, namely those that cannot be refuted and those that can be refuted⁸. Meanwhile, presumptions not rooted in the law are left entirely to the judge's discretion. The judge is authorized to make allegations based on facts or facts that have been proven in the trial, as stipulated in Article 1922 of the Civil Code.

The Decision of the Supreme Court of the Republic of Indonesia No. 1137 K / Pdt / 1984 is a decision that reflects the use of judges' allegations, marked by the minimal presence of the defendant, which only appears once throughout the series of trials. His conspicuous absence is interpreted as an implicit acknowledgement of the plaintiff's argument. However, this situation poses problems because of the subjective character of the judge's allegations. This may pose an obstacle to achieving fair legal certainty. Other aspects beyond the evidence presented can influence the judge's conviction, creating a complicated dynamic in decision-making. Therefore, it is essential to always consider and balance every element of evidence in a case. This

⁵ Rommy Haryono Djojarahardjo, 'Realizing Justice Aspects in Judges' Decisions in Civil Court', *Journal of Legal Media and Justice*, 5.1 (2019), 88–100

⁶ R Subekti, 'Law of Evidence', *Pradnya Paramitha*, Jakarta, 2008.

⁷ Hendri Jayadi, 'The Power of Proof of Expert Testimony Based on Indonesian Civil Procedural Law',

AL-MANHAIJ: Journal of Islamic Law and Social Institutions, 5.2 (2023), 1816–22

⁸ M Yahya Harahap, *Civil Procedural Law: About Lawsuits, Trials, Forfeitures, Evidence, and Court Decisions* (Sinar Grafika, 2017).

step confirms the continuous efforts to ensure justice and legal certainty in every legal situation.

This study aims to achieve a deeper and more thorough understanding of the concept of prejudice in the context of civil law in Indonesia. First, this study seeks to define and explain what suspicion means in the context of civil cases in Indonesia. Second, this study will identify and analyze the types of allegations recognized and applicable in the Indonesian civil law system. Third, this study also aims to understand the role of suspicion in influencing judges' decisions in civil cases, specifically in Decision Number 10/Pdt.G/2018/PN. End.

Research on the role of allegations in Indonesian civil cases has significant benefits and contributions. *First*, this study aims to broaden the horizons of allegations, explaining their role in the civil court process in Indonesia. *Second*, the results of this study will enrich the Indonesian legal literature, by providing insight and up-to-date information on the role and function of prejudice in civil law. *Third*, this research will be a valuable reference for further legal research, assisting in shaping and directing the focus of future legal research related to allegations.

RESEARCH METHODS

This research highlights Decision Number 10/Pdt.G/2018/PN. End, as a case study, shows how allegations play their role in influencing judges' decisions. Normative juridical methods are applied in this study to observe and analyze this phenomenon in a deep and structured manner.⁹ This research uses the statute, case, and conceptual approach. This study refers to the Civil Code, HIR, and other relevant laws and regulations for this topic as primary legal material. This study uses primary legal materials and secondary legal materials to provide a broader and more diverse view of

the topic. Secondary legal material will enrich the analysis and discussion, enabling this research to provide more comprehensive insights into how prejudice functions in judicial practice.

DISCUSSION

A. CASE POSITION

The case involved Yuliana Kemba, who claimed to be the legal owner of approximately 1 hectare of land obtained from the handover by the Mosalaki of Nuakota village, Petrus Saka, in Manulondo Village, Ndona District, Ende Regency. The land on Jalan Flores, RT 004, Nanganesa Village, Ndona District, is called Watutasu Karomage Otombamba Land. However, the times brought changes, the Otombamba highway was opened across the land in 1970. In 1997, Petrus Saka gave a land surrender letter to Yuliana Kemba. However, problems began to arise when Mohamad Said Ngadji allegedly violated Yuliana Kemba rights by claiming part of the land as her own and then certifying it. The study will investigate both parties' claims and examine the documentation of the land, the history of the handover, and the actions taken by both parties concerning the land.

It is reported that Yuliana Kemba and her son have cultivated and planted the land with crops such as mangoes, coconuts, and bananas. The claim given by Mohamad Said Ngadji made Yuliana Kemba submit a letter of cancellation of the land certificate to the Head of the Office of the National Land Agency of Ende Regency. Despite being summoned three times, Mohamad Said Ngadji has never been present for mediation. The problem was compounded by other alleged illegal acts by Ngadji, including the destruction of crops belonging to Yuliana Kemba in 2002 involving Wawo Abdullah, allegedly at Ngadji's behest. The case became even more complex due to allegations that the land certificate issued in

⁹ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana Prenada Media Group, 2017).

Mohamad Said Ngadji's name was invalid, raising significant questions about the legitimacy of Ngadji's actions and whether Yuliana Komba had rights to the land. The case also involves legal issues regarding issuing land titles and whether all proper procedures have been followed.

B. CIVIL CASE PROOF

Evidence in civil law cases ensures justice and legal certainty for parties, including judges. This process aims to convince the judge of the truth of a conflicting event by providing solid and valid foundations by applicable legal rules¹⁰. According to Riduan Syahrani, the evidentiary process is a systematic and organized effort to present good evidence to the judge to strengthen claims regarding the truth of an event¹¹. Not much different, Bachtiar Effendi et al also emphasized the importance of proof as a process in which valid evidence is presented by the disputing parties to the judge during the course of the trial¹². Its primary purpose is to strengthen the proposition's truth regarding the legal fact that is the object of dispute. Judges are provided sufficient information through this evidentiary process to make a fair and impartial decision. This process is essential to ensure that justice is served and decisions are made based on concrete and legitimate evidence. This process provides certainty to the judge regarding the veracity of the events in dispute. In civil law, proof is a crucial element that relates only to the issue in dispute. Only aspects that are sources of controversy need to be proven in court. Judges have the freedom to assess evidence unless otherwise provided by law. With solid evidence, proof can be made. Evidence is needed to provide a convincing basis to

the judge for the correctness of a proposition put forward at trial.

The evidentiary process has significant juridical significance in civil procedural law. Any attempt to prove something must always be based on applicable legal norms. Evidence by legal provisions allows judges to decide disputes between disputing parties. Evidence is a basis for judges to reach fair and objective decisions regarding disputed issues. The primary purpose of the evidentiary process is to ensure that the judge's decision is based on valid and convincing evidence presented during the trial. In the field of criminal and civil law, there are significant evidentiary differences. In criminal law, a person cannot be blamed without valid evidence that makes the judge convinced of the guilt of the accused, as stipulated in Article 183 of the Civil Procedure Code (KUHAPerdata).¹³ While in civil law, valid evidence is submitted by both parties to the dispute. Based on that evidence, the judge decides to determine the winning party in the case. In civil law, what is sought is formal truth, in contrast to criminal law, which seeks material truth. The judge makes a decision based on the evidence presented by the parties, seeking the formal truth in the case.

C. THEORY OF PROOF

In the judicial world, various theories of evidence adorn discussions and practical applications. Although bound by evidence presented in the courtroom, judges hold significant freedom in assessing such evidence. For example, although letters or deeds are often considered compelling evidence in civil law, judges are only sometimes obliged to believe witness testimony fully by Article 172 HIR. *The*

¹⁰ Guruh Marda and Vito Dewangga, 'Civil Procedural Law Proof Through Judges' Knowledge', *Journal of Law and Welfare*, 8.2(2023), 35–49.

¹¹ Riduan Syahrani, 'Basic Material Book of Civil Procedural Law, Bandung: PT', *Citra AdityaBakti*, 2004.

¹² Bachtiar Effendie, Masdari Tasmin, and A Chodari, *Lawsuit Letter and Law of Evidence in Civil Cases* (Citra Aditya Bakti, 1991).

¹³ Mappasessu, Zulkifli Makkawaru, and Andi Tira, 'Theory of Evidence in Land Title Dispute Resolution (Case Study: Decision Number 6/Pdt.G/2020/Pn.Wsn)', *Indonesia Journal of Legality of Law*, 5.1 (2022), 167–73

Theory of Free Proof, as outlined by Nasir, stands out as one general approach in this regard¹⁴. This theory highlights the freedom of judges to assess evidence without binding restrictions, allowing significant flexibility in evaluation based on the evidence presented. However, there is also a Negative Proof Theory that asserts the existence of limits that bind judges negatively. As explained by Nasir, there must be provisions that restrict or prohibit judges from taking specific actions related to evidence by Articles 169 HIR and 1905 of the Civil Code. On the other hand, the Theory of Positive Evidence puts forward the need for explicit orders to judges in carrying out their evidentiary duties, despite specific prohibitions, by Articles 165 HIR and 1870 of the Civil Code. The judge is obliged to do something but must meet certain conditions. Each theory offers a different perspective on the role and freedom of judges in assessing evidence. Free Proof Theory prioritizes the flexibility and autonomy of judges, while Negative and Positive Proof Theory offers a structure that is more bound by clear rules and regulations. In practice, these theories form the basis for judges to navigate the complexities of proof in civil cases, providing a framework that allows for a careful and thorough evaluation of the evidence presented. Given the importance of proof in the judicial process, a deep understanding of these theories is essential.

D. EVIDENCE OF SUSPICION AND ITS CLASSIFICATION

Article 164 HIR outlines five types of legal evidence used in civil court proceedings, namely "letter evidence, witness evidence, allegations, confessions, and oaths¹⁵. All of this evidence plays an important role for parties involved in legal disputes to prove their claims or defences¹⁶. To understand this evidence of suspicion in

depth more is needed to rely on the provisions in HIR or RBG alone. Both of these regulations have limitations in explaining the evidence of suspicion. Given the limitations of HIR and Rbg, understanding this evidence of suspicion cannot be separated from the Civil Code, which more comprehensively explains the evidence of suspicion. The Civil Code explains the evidence of suspicion in more detail, including eight articles, namely Articles 1915-1922. Through these articles, the Civil Code provides a more complete and detailed picture of the evidence of suspicion.

A more comprehensive understanding can also be obtained by involving the opinions of legal scholars. Legal scholars often provide their interpretations and views on legal provisions, including on evidence of suspicion, which can provide more profound and more detailed insight and understanding. Their analysis and views sometimes offer new perspectives that need to be covered by the legislation. Studying the provisions in the Civil Code and the opinions of scholars is essential to gaining a holistic understanding of the evidence of suspicion. This is because HIR and Rbg, although they include provisions regarding evidence of suspicion, are limited in scope. A broader and deeper understanding will undoubtedly be more helpful in applying the law in concrete cases in court.

In Indonesia's civil law context, the definition of presumption needs to be explicitly explained in HIR or Rbg. Article 173 HIR and Article 310 Rbg only highlight the judge's allegation, which is drawn based on existing reality but does not clearly define the allegation itself. However, we can find clues regarding the presumption in Article 1915 of the Civil Code, which discusses the conclusions that can be drawn by law or judges from known events to unknown events. Meanwhile, legal scholars

¹⁴ Muhammad Nasir, *Civil Procedure Law* (Djambatan Publishers, 2005).

¹⁵ Then Samsu Rizan, Nurjannah S., and Yulias Erwin, 'Juridical Analysis of the Position and Legal Certainty of

Electronic Evidence in Civil Case Examination', *Pro Law Journal*, 11.5 (2022), 410–25

¹⁶ Nolfi Papendang, 'The Power of E-Mail Evidence in Civil Case Trials', *Lex et Societatis*, 5.1 (2017), 98–104

have given their views on the notion of presumption.

The concept of conjecture in the legal context invites much attention and interpretation from various legal experts. One is Prof. Mr. A. Pitlo, who illustrates the conjecture as a judge's interpretation in which proven facts are used to infer unproven facts. This highlights the central role of judges in concluding unproven facts based on available evidence. Similarly, Prof. R. Subekti provides a view that interprets conjecture as a conclusion drawn from an event that has been well known or considered to have been proven to be an event that has yet to be known or has yet to be established. Subekti's view reinforces that inference involves concluding known information in an unknown direction. Mrs. Retnowulan Sutantio, another jurist, gave a similar interpretation to Subekti, placing conjecture as a conclusion drawn from events considered to have led to unproven events. This confirms that conjecture is involved in concluding based on existing evidence to uncover the unproven. These views underscore the importance of existing evidence in forming conclusions about unproven facts. This process emphasizes the crucial role of evidence in the legal context, highlighting the importance of evidence in establishing facts and supporting judges' conclusions. It also shows the role of judges in determining the outcome of presumptions. Judges use available evidence to make inferences about unproven facts in carrying out their duties. They assess existing evidence and use it to draw conclusions about unproven facts.

Based on the explanations and views of previous legal experts, it is clear that the concept of conjecture is drawn from proven events or facts. This underscores the importance of concrete evidence as a foundation for making a presumption in civil law. The depth of understanding of assumptions cannot only be based on events or facts that are visible on the surface but attention must also be paid to their relation to the events being tried to be proven.

Whether a fact or event can be considered a conjecture depends on its ability to provide certainty regarding the event proposed for proof. In other words, a conjecture must give clarity on its relationship to the event to be proven, even if the event is not presented to be established explicitly.

Is one allegation sufficient as evidence in a civil case? This question opens the door for a deeper exploration of the mechanism of evidence in Indonesian civil law. In Subekti's view, the fruit of suspicion can be used as a basis for granting a claim because no provision in the Civil Code explicitly prohibits this kind of practice. However, Subekti places a stronger emphasis on the importance of avoiding using a single allegation as evidence. He expressed a view that was more inclined to prohibit judges from only making decisions based on one suspicion. This argument is based on the importance of ensuring that legal decisions are based on solid evidence and not just suspicion. This indicates the importance of evidence in providing justice and truth in every civil case decision.

The Civil Code provides a framework for conjecture, detailing its classification in Article 1915. This creates an apparent reference for how to categorize assumptions. Meanwhile, Article 173 HIR and Article 310 RBg also cover aspects of suspicion but do not provide explicit instructions regarding the classification of allegations described in the Civil Code. Two types of allegations have been identified based on Article 1915 of the Civil Code. The provisions of this article are:

"Persangkaan-persangkaan ialah kesimpulan-kesimpulan yang oleh undang-undang atau oleh hakim ditariknya dari peristiwa yang terkenal ke arah suatu peristiwa yang tidak terkenal."

Ada dua macam persangkaan, yaitu : persangkaan menurut undang- undang, dan persangkaan yang tidak berdasarkan undang-undang."

Article 1915 of the Civil Code divides allegations into two categories: those

derived from judges and those established by law. When the judge concludes, it falls into the category of the judge's presumption. Conversely, if the law ends, it is called a legal presumption. This view is also supported by Prof. R. Subekti in his work, "*The Law of Evidence*"¹⁷. According to him, naming the type of suspicion depends on the entity that concludes: the judge or the statute. This division illustrates the critical role of both judges and statutes in the legal process and how the two interact in creating and applying presumptions in the courtroom. It also emphasizes the importance of the judge's role in analyzing evidence and drawing conclusions in civil law cases.

E. ALLEGATIONS BASED ON THE PROVISIONS OF ARTICLE 1915 OF THE CIVIL CODE

There are various terms used to describe statutory presumption, which basically refers to a conclusion drawn based on specific provisions in the law, related to a particular act or event. Article 1915 paragraph (2) and Article 1916 paragraph (1) of the Civil Code use the term "*wettelijke vermoeden*" to refer to this concept¹⁸. However, in Indonesian, this term is more often interpreted as a statutory conjecture. In accordance with Article 1916 of the Civil Code, this concept includes conclusions drawn on the basis of specific provisions in the law, relating to specific actions or events. This implies that if an event can be proven, then the law can regard other events as proved, indicating a statutory presumption. Furthermore, Article 1916 of the Civil Code specifies that¹⁹:

"Persangkaan-persangkaan semacam itu (persangkaan undang-undang) adalah diantaranya:

- 1) *Perbuatan yang oleh undang-undang dinyatakan batal, karenasemata-mata demi sifat dan ujudnya, dianggap telah dilakukan untukmenyelundupi suatu ketentuan undang-undang;*
- 2) *Hal-hal dimana oleh undang-undang diterangkan bahwa hak milikatau pembebasan utang disimpulkan dari keadaan-keadaan tertentu;*
- 3) *Kekuatan yang oleh undang-undang diberikan kepada suatu putusanhakim yang telah memperoleh kekuatan mutlak;*
- 4) *Kekuatan yang oleh undang-undang diberikan kepada pengakuanatau kepada sumpah salah satu pihak."*

According to Yahya Harahap, legal allegations are divided into two types: **those that** cannot be refuted **and those that can be refuted**²⁰. In addition, Article 1916 paragraph (2) of the Civil Code regulates the indisputable allegations of law, which involve certain aspects such as threats of nullity or non-existence. For example, Article 1323 of the Civil Code confirms that agreements made by force can be canceled, where the law automatically declares the agreement void. This also applies to engagements made by minors or persons placed under custody, as stipulated in Article 1446 of the Civil Code²¹. Not only that, some provisions of articles in the Civil Code include prohibitions, such as Article 1337 which specifies that every agreement must be based on *halal causa*, and an agreement is prohibited if it conflicts with law, decency and public order. If there is a violation of this prohibition, the legal act becomes null and void, in accordance with the statutory provisions stipulated in the provisions of the relevant article.

¹⁷ Subekti.

¹⁸ Novita Dyah Kumala Sari and Syafrudin Yud, 'The Power of Proof of Allegations as Legal Evidence in Divorce Cases in Religious Courts (Study of Decision No. 216/Pdt.G/2015/Pa.Sgt)', *Verstek*, 4.3 (2016), 146–55

¹⁹ H. Enju Juanda, 'The Power of Evidence in Civil Cases According to Indonesian Positive Law', *Galuh Justisi Scientific Journal*, 4.1 (2016), 27–46

²⁰ Ha.

²¹ Benny Benny and others, 'A Juridical Review of Online Transactions by Minors Based on Indonesian Positive Law', *Scientific Journal of Law Enforcement*, 7.1 (2020), 36–43

The decision of a judge who has obtained permanent legal force, or commonly called Permanent Legal Force (BHT), according to Article 1916 paragraph (2) number 3 of the Civil Code, is a form of suspicion according to law that cannot be refuted. This shows the diversity of types of statutory assumptions in civil law practice. Nonetheless, the law provides an opening for extraordinary legal remedies, otherwise known as judicial review (PK). This illustrates that the absolute power of BHT rulings is actually relative, and not a permanent or absolute circumstance. On another aspect, related to confession or oath, the Civil Code stipulates that confessions made before the court have perfect evidentiary strength. This is contained in Article 1925 of the Civil Code, which underlines the importance of confession in court²². Furthermore, regarding oaths, the Civil Code stipulates in Article 1929 that oaths serve to strengthen evidence regarding an event²³. This shows that oath is considered a strong and convincing evidence in civil law. This principle affirms that oaths, in accordance with legal provisions, are another form of indisputable statutory conjecture, cementing its position as an important element in the Indonesian system of evidence. Overall, both BHT rulings, confessions, and oaths, all play a vital role as evidence in civil law, with clear provisions and limitations in accordance with applicable laws.

Furthermore, the literature search regarding the concept of judges' allegations, in the opinion of Mrs. Retnowulan Sutantio, covers a wide scope. Every event or circumstance in the trial, including materials obtained during the examination of the case, can be used as a basis for

forming the judge's conjecture²⁴. Certain attitudes or responses of the parties involved in the trial, such as evasive or unequivocal answers, and inconsistent nature, can lead to the suspicion that the arguments put forward by the opposing party are true, or at least considered negative for the parties concerned. Several legal references explain the judge's allegations. Under Article 1922 of the Civil Code, judges are empowered to make inferences based on their own evaluation and assessment of events. This is in contrast to statutory presumption, where conclusions about the occurrence of an event are determined by the law itself, with no room for interpretation or judge's consideration. However, Article 173 HIR/310 Rbg calls this allegation a reality-based allegation, emphasizing that it is an evaluation made by the judge based on evidence and facts presented during the trial. Judge's presumption, therefore, is a subjective evaluation process in which the judge collects and analyzes information to make conclusions or decisions regarding the truth of an event or claim in the case at hand. The provisions of Article 1922 of the Civil Code are as follows²⁵:

"persangkaan-persangkaan yang tidak berdasarkan undang-undang sendiri, diserahkan kepada pertimbangan dan kewaspadaan hakim, yangnamun itu tidak boleh memperhatikan persangkaan-persangkaan lain, selain yang penting, teliti dan tertentu, dan sesuai satu sama lain. Persangkaan-persangkaan yang demikian hanyalah boleh dianggap dalam hal dimana undang-undang mengizinkan pembuktian dengan saksi-saksi begitu pula apabila dimajukan suatu bantahan terhadap suatu perbuatan atau suatu

²² RismaPuspitaNingrum, Sofyan Arief, and Herwastoeti, 'Analysis of Supreme Court Decision No.2871K/PDT/2017 in the Case of Denial of Peace Agreement Deed No.04/PDT. G/2000/PN. Prob', *Indonesia Law Reform Journal*, 1.1 (2021), 70–87

²³ Erich Masinambow, 'The Position of the Res Ipsa Loquitur Doctrine in Civil Evidentiary Law in Malpractice Cases', *Lex et Societatis*, 4.5 (2016), 88–96

²⁴ Retnowulan Sutantio and Iskandar Oeripkartawinata, *Civil Procedure Law in Theory and Practice* (Mandar Maju, 2009).

²⁵ Yuli Heriyanti, 'Juridical Review of Evidence as Civil Case Evidence in Niet Ontvankelijk Verklaard (N.O) Decision (Case Study in Bangkinang District Court)', *Jurnal Pahlawan*, 3.1 (2020), 8–14

akta, berdasarkan alasan adanya iktikad buruk atau penipuan."

As stipulated in Article 173 HIR, the concept of a judge's allegation underlines the importance of allegations not based on specific statutory rules. In this case, the judge can only consider the allegations in ruling if the allegations are significant, conscientious, confident, and consistent. The jurist Yahya Harahap gives a deeper interpretation of this aspect. He referred to the provisions of Article 173 HIR and Article 1922 of the Civil Code as the basis for allegations based on facts or facts (*feitelijke vermoeden*) or *presumptiones facti*, derived from facts proven in the trial. The law gives judges the authority to make judgments based on existing facts. This provision also describes how assumptions can be drawn from events or events. This process requires the judge to start from facts that have been proven in the trial to reveal other unknown or unproven facts. Conclusions are drawn from existing and proven facts to find facts that have yet to be announced. Article 1922 of the Civil Code and Article 173 of the HIR affirm the importance of the criteria that must be met by the facts proposed. These facts must qualify as essential, careful, confident, and correlate with each other to be used to prove a proposition. This shows that the evidentiary process in civil law is strictly regulated by law to ensure that justice is achieved. In this context, the judge's presumption serves as an essential tool to assist the judge in making decisions that are fair and based on existing facts.

The provisions of Article 1922 of the Civil Code also remind judges to be careful and vigilant in making conclusions. This emphasizes the importance of prudence and thoroughness of judges in concluding that a proposition has been proven. The judge's allegation is considered evidence with the strength of accessible evidence. This means it is up to the judge's judgment to determine

the strength of the evidence given to a particular judge's allegation. Will it be regarded as evidence of perfect strength, preliminary evidence, or not given any power. This confirms the authority of judges in judging and determining the weight of judges' allegations based on their judgments and judgments. However, it is also important to remember that although judges have broad authority in this matter, they must always be guided by fairness, objectivity, and impartiality in their decision-making process.

F. THE USE OF PRESUMPTION IN ADJUDICATING CASES

Based on the judge's decision, there are essential considerations for the judge in making decisions. First, Hironimus Sare Gego's testimony was based on his father's information rather than his direct experience. This classifies his testimony as *testimonium de auditu*²⁶, based on Article 171 HIR, jo. Article 1907 of the Civil Code and Jurisprudence of the Supreme Court of the Republic of Indonesia Number 308 / K / Sip1959 is not qualified as witness evidence. This testimony is not to be considered witness evidence or as *vermoeden*. Second, in this case, also discussed the allegations as a means of evidence. According to civil procedural law, the allegation ranks third out of five pieces of evidence. There are two kinds of presumptive evidence: first, the conclusion based on the law, and second, the conclusion drawn by the judge from the circumstances arising at the trial. In this case, the allegation is not stand-alone evidence but must be based on facts that have been proven first.

In this analysis, it can be seen how the judge makes allegations. In creating presumptive evidence, judges must first ensure that basic facts have been proven. After that, the judge can make conclusions close to certainty based on those facts as long as they meet certain conditions. An

²⁶ Filzah Arina Putri and Ahad Mahyani, 'Testimony de Audit Used as Evidence in the Judge's Verdict', *Bureaucracy Journal*, 3.1 (2023), 341–53

example of the allegation in the case can be seen from the judge's assessment of the evidence of letters and witness statements given under oath at the trial. Although there is evidence of letters and witness statements, because they do not have a solid legal basis, they cannot be used as evidence of suspicion. Meanwhile, an example of why conjecture cannot be done lies in the case of Hironimus Sare Gego. Although there are witness statements, because the witness has no direct experience and the information is obtained from others, his testimony is considered invalid as evidence, so it cannot be used as a basis for making allegations.

It is important to note that allegations must be based on proven facts. In this case, the judge refused to use this evidence in his deliberations because there were insufficient facts to support the allegation. The panel of judges also considered theoretical descriptions in making their decisions. According to Pitlo, allegations are not included in the realm of evidence but are more accurately referred to as descriptions. Conclusions are drawn from known facts to create further certainty. In this case, by linking the facts proved by the plaintiffs with the relevant legal material, the Judges held that the evidence of letters and statements of witnesses did not have a solid legal reason to be used as evidence of suspicion. This shows the importance of having a solid factual basis before making allegations in a legal case.

When referring to the framework of the case, there is an attempt to use the judge's allegations drawn from the testimony of Hironimus Sare Gego. The testimony is not based on the witness's direct experience but on information from the witness's father. It classifies testimony as *testimonium de auditu*, which is considered ineligible as witness evidence according to Article 171 HIR and Article 1907 of the Civil Code. Therefore, such testimony cannot be viewed as witness evidence or *vermoeden*. The panel of judges stressed the importance of proving basic facts before making allegations. In this case, there were

insufficient fundamental facts to support the allegation, so the judges refused to use this evidence. Although there was evidence of letters and witness statements given under oath at trial, they did not have a good legal reason to be used as evidence of suspicion. The witness testimony of Hironimus Sare Gego is considered invalid as evidence, so it cannot be used as a basis for making allegations.

CONCLUSION

Allegations in civil cases play a vital role in determining the judge's decision. By law, an allegation is considered a proven fact unless proven otherwise, placing the burden of proof on the party challenging the allegation. Meanwhile, the judge's allegation, regulated in Article 173 HIR, gives the judge the authority to take allegations or allegations based on facts proven in the trial. The judge is free to formulate allegations based on facts established in the trial. Article 173 HIR and Article 1922 of the Civil Code stipulate that the facts submitted must meet the requirements of importance, thoroughness, and certainty and have a relationship with each other to be accepted as valid evidence. The judge's presumption is not automatically considered sufficient evidence to prove a proposition but aids the judge in determining the truth of an event or action.

Both forms of suspicion, both by law and by judges, aim to facilitate the judicial process by providing specific guidelines regarding the assessment of evidence. However, judges must always be vigilant and careful in drawing conclusions based on assumptions to ensure that decisions are based on mature, objective, and fair consideration.

SUGGESTION

A judge must consider all available evidence, including evidence that may contradict the allegation, before making a decision. In drawing conclusions from existing and proven facts, judges must also

consider the context and background of the event or situation concerned, and ensure that all relevant aspects have been thoroughly considered. The judge's presumption should not override the

importance of a fair and thorough evidentiary process, and the judge should always strive to reach the fairest and most correct decision based on the available evidence and facts.

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