Juridical Review of The Power of Evidence Local Examination in Proof Civil Jurisdiction

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Abstract. This study aims to describe the strength of local examinations in proving local examinations. By using a qualitative approach method, as well as normative juridical methods, assisted by literature studies as a data collection tool, then analyzed using descriptive analysis, to produce a comprehensive study. The results of the study show that the strength of local examination evidence in proving civil case trials is that local examinations are facts found by judges at trial, therefore, have binding power for judges.

Keywords: strength of evidence; local examination; law

1 Introduction

The law of evidence in civil procedural law occupies a very significant and complex place in the litigation process. The situation of complexity is getting more complicated because the proof is related to the ability to reconstruct past events or events as truth. Even though the truth that is sought and realized in the civil court process, is not the absolute truth, but is relative truth or even quite probable, to seek such truth still faces difficulties.[1]

The evidentiary process is one of the procedural processes informal civil laws is one of the most important processes. A court case cannot be decided by a judge without being preceded by evidence. Proof in the juridical sense itself is not meant to seek absolute truth. It is because the evidence, whether in the form of confessions, testimonies, or letters submitted by the disputing parties, may not be false or falsified. The judge must give a decision that is acceptable to both parties in examining every case submitted to him. The provisions in Article 163 HIR and Article 1865 of the Civil Code are a guideline for judges in determining the burden of proof, if the judge follows the rules, it will cause a balanced burden of proof between the parties. [2] The truth of an event can only be obtained by the process of proof and to be able to pass a fair verdict then the judge must know the event whose truth has been proven.

The law of civil procedure recognizes a variety of instruments of evidence, while according to civil procedure judges are bound by valid instruments of evidence, which means that judges can only make decisions based on the instruments of evidence determined by law alone. The instruments of evidence in civil procedure law mentioned by law as regulated in Article 1866 of the Civil Code, namely (a) written evidence/evidence by letter, (b) witness evidence, (c) suspicion, (d) confession, (e) oath. [3]

Evidence in the case of civil matters, not all circumstances and or objects of dispute in a conference can be explained and presented on the face of the conference. Therefore, if deemed necessary the judge can conduct a local examination (descente). Finding the formal truth

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through evidence in a civil trial is not easy, often found many difficulties because terms of evidence that one with the other contradict each other.

Land disputes, for example, often find differences in facts that are not clear and also sometimes uncertain. It is not uncommon for the boundaries of the land, the area, and the name of the road as the condition of the land presented by the two disputing parties to be contradictory. The judge also had difficulty in making his evidence, given that the object of the dispute could not be presented before the trial. So, the step to prove the clarity and certainty of the object of the dispute is to conduct a local inspection. This paper intends to describe related to the power of local inspection in the evidence of local scrutiny.

2 Research Methods

The research uses a qualitative approach, as well as a normative juridical method. This method is used to examine related to the study of legislation and the study of its implementation.[4] Data collection was reviewed by the literature study as a means of analyzing data, both primary, secondary, and tertiary.[5] Data analysis was made using descriptive analysis to produce a comprehensive study.

3 Results and Discussion

The judge in making a final decision requires the existence of materials regarding the facts, with the existence of materials regarding these facts can be known and conclusions are drawn about the existence of evidence. Proof in legal science whose proof is not absolute and illogical but the proof is social because there is an element of uncertainty. So absolute proof is proof whose truth is relative. Evidence in legal science only exists if there is a conflict between the disputing parties because they deny a right and or affirm their rights regarding civil interests whose settlement is solely the authority of the court.

According to the Big Indonesian Dictionary, the proof is a process, a way of proving an attempt to show the right or wrong of a defendant in a court trial.[6] The proof is the presentation of legal evidence to the judge who examines a case to provide certainty about the truth of the events presented before the trial. The proof is required in a case adjudicating a dispute before a court or in petition cases that result in a determination. Proving contains several meanings [7]: Proving in a logical sense means giving absolute certainty because it applies to everyone and does not allow opposing evidence. Proving in the conventional sense means giving assurance but not absolute certainty but relative certainty that has the following levels: Certainty which is only based on feelings, so it is intuitive and is called conviction intime. Certainty is based on reasoning, so it is called conviction rationale. Proving in a juridical sense (civil procedural law) means nothing but providing sufficient grounds for the judge examining the case to provide certainty about the truth of the events proposed.

The proof is a process to determine the truth of events with certainty in the trial, by means provided by the judge, the judge considers or gives logical reasons why an event is declared genuine. Civil law expert Munir Fuadi, self-evident in Legal Studies has the meaning of a process, both in civil and criminal proceedings, as well as other events, whereby using legal evidence, actions are taken with special procedures, to know whether a fact or statement, especially a fact or disputed in the Court, submitted and stated by one of the parties in the court process is true or not as stated. While the Law of Evidence contains the notion of a set of legal rules that regulate evidence.[1]

The proof is the presentation of legal evidence according to law to a judge who examines a case to provide certainty about the truth of the events presented. Article 283 RBg/163 HIR states "Whoever says he has a right or proposes an act to confirm his right, or to refute the rights of another, must prove the existence of that act." The proof is required in a case adjudicating a dispute before a court (juridicto contentiosa) or in petition cases that result in a determination (juridicto voluntair). In a civil process, one of the duties of the judge is to investigate whether a legal relationship that forms the basis of the lawsuit exists or not.

The existence of this legal relationship must be proven if the plaintiff wants victory in a case. If the plaintiff does not succeed in proving the arguments on which the lawsuit is based, then the lawsuit will be rejected, but if otherwise then the lawsuit will be granted. So it can be concluded, that the definition of proof is the whole rule of proof that uses a valid means of evidence as a tool to obtain the truth of an event through a verdict or determination of a judge. Evidence is the effort of the litigants to convince the judge of the truth of the event or incident presented by the disputing parties with the means of evidence prescribed by law.

The principle of the law of proof is the foundation of the application of proof. All parties, including judges, must adhere to the criteria outlined by the principles that have been determined. In the process of civil justice, the truth sought and realized by the judge is quite a formal truth (formeel waarheid). In principle, civil courts are not prohibited from seeking and finding material truth. However, if the material truth is not found, the judge is allowed by law to make a decision based on the formal truth. The litigants may present evidence based on lies and falsity, but such facts must theoretically be accepted by the judge to protect or defend the individual or civil rights of the party concerned.

Judges are not justified in making decisions without evidence. Haki to rejecting or granting a lawsuit must be based on evidence that comes from the facts submitted by the parties. Evidence can only be enforced based on the support of facts and evidence cannot be enforced without the facts that support it. In principle, the examination of a case has ended when one of the parties gives a comprehensive acknowledgment of the subject matter of the case. If the defendant admits purely and unanimously to the subject matter argued by the plaintiff, then the disputed case is considered to have been completed. Because of this recognition, the legal relationship between the parties has been confirmed and resolved.

Vice versa, if the plaintiff justifies and admits the argument of the rebuttal submitted by the defendant, it means that it has been confirmed and proven that the lawsuit filed by the plaintiff is not true at all. Even though the judge knows and believes that the confession is a lie or contradicts the truth, the judge must accept the confession as fact and truth. So, the judge must end the examination because with this confession the subject matter of the case is considered to have been completely completed.

Judges have the freedom to assess the evidence against evidence, for example, witness statements that 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.[1] A legal system is a unity of legal rules that relate to one another, and have been regulated and compiled based on principles. Legal principles are basic rules that can no longer be elaborated further, above which higher rules are no longer found. The principle of law is the basis for lower laws.

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 as guidelines. However, if the principle is explicitly stated in the law, it has binding power as a law so that the judge is obliged to apply the principle directly to all real cases for which there are no special rules.

Judiciary in the context of civil justice, in practice, does not always solve an issue, but can only decide. It is stated by Mukti Arto in the Preface to the book entitled "Seeking Justice for Criticism and Solutions to the Practice of Civil Justice in Indonesia" including the following reasons: First, the case settlement process usually runs too formally and rigidly so that it is less flexible and does not cover all aspects of the dispute. (case). Second, the judicial process is slow and convoluted so it is considered wasteful and a waste of time and money which is very detrimental to justice seekers. Third, truth and justice are measured by the opinions, beliefs, and feelings of the judge unilaterally so that the parties cannot understand and accept the judge's decision which is subjectively outside of their opinions, beliefs, and feelings. Fourth, judges tend to be formal because they only pay attention to legal aspects based on doctrine or legal texts without paying attention to the legal awareness of the parties.

Various stages to achieve justice must be carried out, starting from making a lawsuit, attending court, submitting evidence to submitting a request for execution. Where the most important in this stage is the proof level where each party tries to convince the judge that he is the most correct. The Civil Procedure Code has regulated the evidence, from the type of evidence to the value of the strength of the evidence. As previously stated, according to Article 164 HIR, Article 284 RBg, and Article 1866 of the Civil Code, five pieces of evidence applicable in civil procedural law are limitative or restrictive.[7] However, in practice, there is a lot of other evidence, which is used to support the evidence to obtain certainty about the truth of the event in dispute. Knowing the ins and outs of civil disputes is not easy, especially the information given by the litigants contradicts each other, and sometimes cannot explain the problem easily either in writing, verbally, or even in pictures. Differences in facts that are not clear and sometimes uncertain, the evidence submitted by the parties is contradictory to one another.

This problem will become more complicated if the situation or object of dispute in the trial cannot be brought before the court. The judge will find it difficult to prove, considering that the object of the quarrel cannot be brought or explained clearly before the trial. Objects of dispute that cannot be brought before the tribulation are immovable property such as houses, land, buildings, and so on. So the step to prove the clarity and certainty about the object of the dispute is to conduct a local inspection.

4 Conclusion

Although formally the local examination is not part of the evidence, the local examination can be used to prove clarity and certainty about the location, size, and boundaries of the object of the dispute so that later decisions that already have legal force can still be carried out properly. All judge decisions must be accompanied by reasons or considerations why the judge arrived at the decision. This consideration is the responsibility of the judge to the community.

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