

The Implementation of the Principle of Seeking Material Truth in Civil Procedure Law in Indonesia

Lonna Yohanes Lengkong^a, ^aLecturer of Civil Procedure Law Faculty of Law, Universitas Kristen, Indonesia
Email: lonna.yohanes@gmail.com

Civil Procedure Law is based on Het Herziene Inlandsch Reglement (HIR) in civil trial court implementing the principle of seeking formal principle (formeel waarheid) as a civil law procedure. Judges only implement seeking formal truth through evidence filed by parties in trials, where no conviction is required. In practice, judges exist who not only implement the seeking of formal truth, but also implement the seeking of material truth in examining a civil case in a court as a verdict. Does the Seeking of Material Truth Principle in civil procedure law not violate the civil procedure law, where judges in civil cases are passive rather than active as in criminal cases? Is the implementation of this principle beneficial for parties who seek justice for their case in a court trial? In the practice of civil litigations, do judges need to implement the Seeking of Truth Material (Materiele waarheid) regarding the proof of civil litigation, as mandatory to seeking formal truth (formeel waarheid). It is necessary to seek justice for parties with impartiality and uphold the truth in examining a civil case in a court to be a verdict.

Key words: *Principle of Material Truth, Law of Proof of Civil Litigation, Civil Procedure Law*

Introduction

Indonesia has become one of the countries for promising business investments. Both poor investment climate or economic conditions (business) in Indonesia to attract foreign capital are required (Hendrik, 2010) as follows: economic opportunity, political stability, and the requirement of legal certainty. Of the three conditions mentioned above, this paper focuses on the condition of legal certainty in law enforcement in order to provide law protection for businesses in conducting business activities in Indonesia, in practice based on law.



Making business agreements is not as easy as the implementation of agreements in the field. After an agreement is implemented, it is possible that friction, differences in interpretation or other matters related to the implementation of the business agreement occur. The agreed settlement is generally in the form of mediation. If this method does not work, then there is another way to resolve it, namely the choice of a forum to settle through an arbitration forum or court.

The settlement of business agreement disputes in the district court will be carried out according to the procedure of civil procedure law in Indonesia. According to the civil procedural proof system, the judge must prioritise the search for formal truth in settling a civil case dispute in court, which proves the system according to the civil procedural law based on Article 164 HIR and Article 1866 of the Civil Code.

However, in practice in deciding a civil case the judge in a district court in deciding a civil case puts forward not only seeking formal truth (*formeel waarheid*), but also putting forward elements of the judge's conviction based on the evidence in the trial in order to search material truth (*materiele waarheid*). The judge's conviction is actually based on the principle of seeking material truth rather than seeking formal truth. The study will examine the topic of judicial legal considerations in district court decisions that use the principle of proof seeking material truth in the application of proof theory to its legal rulings.

The process of examining cases in a court is carried out according to the provisions of the Civil Procedure Code in Indonesia. The evidentiary system according to the civil procedural law places more emphasis on the formal evidentiary system by basing it on the principle of seeking formal truth, that is, the judge putting forward the formal truth in examining and adjudicating a civil case. The formal truth principle sought by the judge in this civil case is carried out through the examination of evidence as regulated by Article 164 HIR: written evidence / letter, witness evidence, suspicion, recognition and oath (Tresna, 1996).

However in practice, in court, in fact that the judge apparently also puts forward the elements of the judge's conviction in court based on a minimum of two pieces of evidence and the principle of seeking material truth. The judge's conviction is the implementation of the principle of seeking material truth based on criminal procedure law is in force in Indonesia, which means that the judge has unconsciously applied the principle of seeking material truth in civil court proceedings in district courts. This papers intends to examine this topic, namely whether the application of the principle of seeking material truth (*materiele waarheid*) in civil litigation can be applied effectively in order to protect business participants in resolving disputes arising in conducting their business in Indonesia.

Identifying the Problem

1. So far, what proof theory has been applied to the practice of civil court proceedings according to civil procedural law in Indonesia?

How is the principle of seeking material truth (*materiele waarheid*) in civil litigation effective and beneficial for disputing parties by advancing a judge's conviction in seeking material truth.

Discussion

Civil procedural law is part of procedural law (*procesrecht* or *formeelrecht*) which aims to uphold and maintain provisions in material civil law (Mulyadi, 2009). Therefore, civil procedural law is an inseparable part of material civil law and interrelated with one another. According to experts, there are several views about civil procedure law. According to Sudikno Mertokusumo (Mertokusumo, 2013):

“Legal regulations govern ensuring compliance with material civil law through the mediation of judges. In other words, civil procedural law is a legal regulation that determines how to guarantee the implementation of material civil law regulated by civil procedural law regarding how to submit a claim for rights, examine and decide on it and the implementation of the decision.”

In addition, Mulyadi, (2008) also argues regarding the understanding of civil procedural law:

“Legal regulations govern a person's process for civil litigation in front of a court hearing and the process of a judge (court) receiving, examining, hearing and deciding a case, as well as the process of implementing decisions in order to maintain material civil law.”

In civil procedural law, a basic principles are applied in practice proceedings in the Indonesian district court:

The Principle of Judges Are Passive

the judge as a neutral party in examining and adjudicating a case, only examines the subject matter of the dispute or the scope submitted to the judge to be examined in principle determined by the parties to the dispute or litigation (Mertokusumo, 2013). That is, judges must not deviate from the subject matter disputed by the parties.

Lilik Mulyadi reviewed the principle of a passive judge from two aspects (Mulyadi, 2009) :

- a. Initiate vision of case coming;

The presence or absence of a lawsuit depends on the party who feels his or her rights are impaired, so the judge may not influence the parties to file the lawsuit.

b. The broad vision of the subject matter of the dispute, the scope of the claim, and the continuation of the subject matter.

Regarding the subject matter of the dispute or the scope of the claim the right to determine only concerns the parties, whereas the judge is passive and has no right to determine the subject matter of the dispute. Therefore the judge examines and hears a case based on or departs from the subject matter of the dispute submitted by the parties (*secundum allegat iudicare*).

Based on the doctrine of the law, it can be concluded that the passive principle of the indicated that the initiative always comes from the parties who then submit facts or legal events, which are then accepted and examined by the judge without leaving the disputed subject matter.

Principle of Hearing Both Disputing Parties

The purpose of this principle is that the judge should hear from both sides in a balanced, neutral and impartial way. The judge must treat both the plaintiff and the defendant equally, hear them together, and have the right to submit evidence together to prove the legal arguments in the trial. This principle is also known as the principle of *audi et alteram partem* or *Eines Manner Rede, ist keines mannes rede, man soll sie horen alle beide*, which means that the judge cannot accept one party's statement as truth while the other party's statement is not heard (Mertokusumo, 2013).

Principle Seeks Formal Truth

This principle of seeking formal truth is based on the formality of evidence and there is no need for conviction as in the principle of seeking material truth in criminal cases. Therefore, the parties may submit evidence based on lies, but theoretically the judge is obliged to accept it as truth to defend the civil rights of the parties concerned (Harahap, 2006).

However, the Supreme Court of the Republic of Indonesia also did not forbid judges from seeking material truth in evidence for civil cases, which can be seen from Decision Number 1071 K/Pdt/1984. As a result, judges are allowed to apply the principle of seeking formal truth in evidence of civil cases, as long as the conviction is derived from legal evidence and fulfills the minimum proof of qualifications. Thus, judges are allowed to feel confident based on valid evidence and meet the minimum threshold of proof. Panggabean (2012) argues that in order to find formal truth, one must meet the principles of applying evidentiary law, : the

duties and roles of passive judges, decisions based on evidence, and the new stream opposes total passivity towards an active argument.

Proof in Civil Case

There are several theories about the burden of proof that become guides for the judge in examining and deciding the case (Mertokusumo, 2013):

Proof of Strengthening Theory (bloot affirmatief)

According to this theory whoever puts forward something must prove it rather than deny it. The legal basis of this theory is that negative events cannot be proven (negative nonsun probanda). If negative events cannot be the basis of a right, even if the proof is possible, this they are not important and therefore cannot be imposed on someone. This "bloot affirmative" theory has now been abandoned.

Subjective Legal Theory

According to this theory, a civil process is always the implementation of subjective law or aims to defend subjective law, and whoever expresses or claims to have something has the right to prove it. In this case, the plaintiff does not need to prove everything. To find out which events have to be distinguished between general events and special events the latter

is further divided into special events that give rise to rights (rechtserzeugende tatsachen), special events that prevent the emergence of rights (rechtshindernde tatsachen) and special events that cancel rights (rechtsvernichtende tatsachen).

The plaintiff is obliged to prove the existence of special events that give rise to rights. The defendant must prove the absence of general events (conditions) and the existence of special events which are obstructing and null in nature. Other objections include too many abstract conclusions and not providing answers to problems about the burden of proof in processual disputes. In practice, this theory often creates injustice which can be overcome by allowing concessions to hold the burden of proof.

Objective Legal Theory

According to this theory, filing a claim for rights or a lawsuit means that the plaintiff asks the judge to apply objective legal provisions to the event filed. Therefore the plaintiff must prove the truth of the event filed and then look for an objective law to apply to the event. For example, it must state an agreement, look for in the law and legal conditions for approval based on Article 1320 of the Civil Code and then provide proof. There is no need to prove

that there is a defect in conformity to the will, because it is not mentioned in Article 1320 of the Civil Code. The existence of this defect must be proven by the opponent.

Judges whose job is to apply objective law to events proposed by the parties can only grant a lawsuit if the elements established by objective law exist. So, on the basis of the contents of the objective law applied, the burden of proof can be determined. This theory certainly will not be able to resolve problems that are not regulated by law. Furthermore this theory is formalistic.

Public Law Theory

According to this theory, searching for the truth of an event in justice is in the public interest. Therefore, the judge must be given greater authority to seek the truth. Besides, the parties have an obligation regarding the nature of public law, to prove with evidence. This obligation must be accompanied by criminal sanctions.

Theory of Procedure Law

The principle of *auditu et alteram partem* or the principle of the same processual position before the judge is the principle of sharing the burden of proof. The judge must divide the burden of proof on the basis of the position of the parties. The principle of the same processual position of the parties ensures that the possibility of winning must be the same for the parties.

The provisions of Article 164 HIR and Article 1866 BW explicitly regulate what constitutes evidence in civil cases, as written evidence; witness evidence estimates; recognition and oath. Judges are given the freedom to judge each piece of evidence presented by the parties who litigate in court.

The Principle of Seeking of Formal Truth (Formeel Waarheid) in Civil Procedure Law

In order to find the truth about an incident, the principle of proof of law is used, that is the principle of seeking formal truth applied in a civil case, and the principle of finding material truth that is applied in a criminal case.

In civil cases in Indonesian courts, the principle of proof of law is applied, the principle of seeking formal truth (*formeel waarheid*). In the provisions of civil procedural law in Indonesia, the *Het Herziene Indonesisch Reglement (HIR)*, does not explain what is meant by the principle of seeking formal truth in civil cases. However, this principle has been practiced or applied in civil cases in the District Court.

In civil cases, the 'judge's duty is to conquer, qualify and subsequently constitute (Mertokusumo, 2013). The point is that the judge in examining and taking account of a civil case submitted to him or her, must consult about whether an event is based on evidence.

Furthermore, the judge's task is to qualify events that have been determined or proven, by finding legal relations or in other words finding the law for events that have been conferred. Then, during the next phase the judge must confirm or determine the law to the parties concerned. Thus, the judge must find and determine the event or legal relationship of the event, then treat or apply the law to the event that has been determined.

In accordance with the above opinion, Prodjodikoro, (1988) explains that the task of a judge in civil case is as follows:

"First, Affirmation of the particular Law that must be implemented and the interpretation of that Law. Second, affirmation of certain events or circumstances to which the Law must be enforced.

Likewise, Subekti (1982) states that the duty of a judge"" "... to establish a law or statute specifically or to apply a law or statute, determine "what "s" la" "between the two parties concerned"."

Based on the above views, it can be concluded that the duties of the judge in the examination of civil cases are as follows: (1) Determine legal events (2) establish the legal relationship between these events (3) determine the legal interpretation of the rules or laws of legal events that have a legal relationship and (4) decide on the law for disputed legal events.

In order to carry out '' duties, the judge applies the principle of seeking formal truth carried out in civil cases. As a result, , there are several teachings or theories of proof (Samudera, 2004):

a. Negatief Wettelijk Bewijsleer / Bewijs Theorie:

According to this theory, the evidence is recognised according to the law added with the judge's conviction. This theory is adhered to in procedural law, which requires that judges decide based on two pieces of evidence, as well as the judge's conviction.

b. Positief Wettelijk Bewijsleer / Bewijs Theorie:

The evidence recognised based on the provisions of the law alone is sufficient, so that judges no longer need faith. This theory is adopted in Indonesian civil procedural law.

c. Conviction in Time (Bloot Gemoedelijkke Overtuiging);

In ruling that the judge's ruling is only based on his or her conviction, and no other means of evidence is needed.

d. Conviction in Raissonnee (Beredeneerde Overtuiging / De Vrij Bewijsleer);

In in ruling 'hat a judge's conviction is needed, ' the judge's conviction must be explained regarding the conviction of a legal person , and these reasons are binding based on the provisions of the law and the evidence outside the law .

On the other hand, based on the explanation of the above theories, it is clear that the Indonesian civil procedural law is a positive theory of Bewijsleer so the judge seeks the truth solely based on evidence that has been formally determined by law. Therefore, if a dispute case is brought before the judge, the judge must seek formal truth based on the evidence presented by the parties, which has been formally determined by law. Based on the evidence, the judge must be convinced of the truth of an event presented to him or her.

The application of the principle of seeking formal truth is based on evidence and does not require the conviction of judges. If the parties in a case submit evidence that is fabricated or falsified ,this must be formally accepted by the judge to protect the civil rights of the party (Harahap, 2006). Here, the judge is not required to believe, in a sense that he or she does not need to seek material truth about the evidence presented by the parties to the dispute, except for evidence that is based on lies or denied by other parties and proven otherwise. As long as the evidence is formally complied with and valid, the judge can decide the case based on the evidence presented.

According to Mertokusumo, (2013), according to the notion of seeking formal truth, judges must not exceed the limits proposed by litigants. In a sense, the judge does not see the weight or content, but rather focuses on the extent 'f the judge's examination. Based on the provisions of Article 178 paragraph (3) HIR [Article 189 paragraph (3) Rbg; Article 50 paragraph (3) Rv], a judge may not decide or make a ruling more than what is demanded or unclaimed by the litigants'

Sudikno's opinion corresponds with ' Soepomo's view (Soepomo, 1993) quoting 'Star Busman's opinion, that in the civil procedural law there is only formal truth, different from criminal cases that require material truth or real truth. This formal truth is not truth that is 'half o' 'verdraaid', but the truth achieved by the judge within the limits set by the parties in the case.

This is the result of the principle that in civil law it is up to people's initiative with an interest or litigation, especially in property law (vermogensrecht). That is, the parties involved (the Plaintiff and the Defendant) are entitled to determine their own will. For

example, if one party allows verstek or does not refute what is said by the opponent even though he or she knows what was raised by the opposing party is not true.

In addition, Sudikno also argues that in seeking formal truth, the judge in civil cases only proves “preponderance of evidence,” whereas in criminal cases the judge has to prove the material truth of his or her event (“beyond reasonable doubt”) (Mertokusumo, 2013).

’What is meant by the term preponderance of evidence based on Sudikno’s view? According to Black (1991), the preponderance of evidence is “defined as "a standard of proof (used) in many “civil suits" which is met ’hen a party's evidence ‘is 'more likely than not' as the party alleges it to be." Calisi, (2015), describes the understanding of preponderance of evidence as “follows:

"Whether or not you meet your burden of proof is up to the opinion of the court. When trying to explain the weight of evidence as it relates to the burden of proof, judges and attorneys often use the following examples:

1. The scales—of justice - At the beginning of a trial, both sides of the scale are equal. At the end, if the weight is assigned by the court, it tips the scale slightly in you’ favor, you've met your burden of proof by a preponderance of evidence.
2. A majority wins - A trial begins with both sides at 50 percent. At the end of the trial, if the court decides the weight of your evidence is 51 percent or more, and the defendant's is 49 percent or less, you win. The preponderance of the evidence is in “our favor. "

Based on the explanation above, preponderance of evidence or in other words dominant evidence, the intention is that if based on the evidence available, the civil judge is convinced ’r the judge's conviction is presented by 51% as correct, and 49% as wrong. This means that with the judge's conviction of 51% , he or she can decide to win one of the parties who succeeded in proving or convincing the judge with 51% or more. Thus, the preponderance of evidence constitutes how the parties convince the judge with the evidence, so that the judge's convictions reach 51% or more, so that the civil claim or claim is granted by the judge.

In addition, according to Aditiawarman (2012), preponderance of evidence is defined as “dominant evidence. Evidence that is greater or more convincing than evidence submitted by other parties. By default, the plaintiff must prove its case in a civil lawsuit.” . From this definition, it can be understood that preponderance of evidence is more dominant or more likely to convince a judge in deciding a case.

From the above description , this is what is meant by looking for formal truth in civil cases as referred to by Sudikno .

On the other hand, in a criminal case, the judge seeks material truth so that the truth of the event must be proven (beyond reasonable doubt). In this sense, if it is presented, the judge's conviction in a criminal case must be 95% true, and 5% false. Therefore, the judge must be convinced based on the available evidence of 95% to be able to sentence a defendant. If the judge cannot be so convinced then the judge will acquit the defendant of all charges. Thus, understanding beyond reasonable doubt is how the Public Prosecutor convinces the judge based on available evidence, so that the judge's conviction reaches 95% or more, so the criminal conviction is proven and the defendant is convicted of a crime.

Aditiawarman, (2012) also defines the principle of beyond a reasonable doubt as "without doubt, with full conviction, in a criminal case where the accused is considered guilty and has been proven by the jury. This is the highest burden of proof of any party and has been through the" process." In contrast to the definition of preponderance of evidence, in beyond a reasonable doubt the judge must be convinced as certain and without doubt that the defendant has actually committing the criminal act, which refers to the principle of seeking material truth in a criminal case as referred to by Sudikno above.

In applying the principle of seeking formal truth in civil cases, the judge is only bound to prove the truth of what was stated by the parties, including the evidence presented by the parties.

In actual fact, the understanding of the principle of seeking formal truth is not explicitly regulated in the provisions of the legislation, but the principle of seeking formal truth can be concluded from the provisions of articles in the HIR and Rbg, including Article 162 through Article 177 HIR or Articles 282-314 Rbg which creates evidence. In addition, almost all legal experts agree that in civil cases the principle of formal truth is applied. This is also supported by the Supreme Court through the Supreme Court Decision Number 290 K / Sip / 1973 dated August 3, 1974, which states that the civil procedural law does not need the judge's conviction for the consideration of the Court of Appeal

Thus, it is clear that in civil cases, judges should adopt the principle of seeking formal truth (formeel waarheid). Does this mean that in a civil case, a judge may not or is prohibited from applying the principle of seeking material truth? No. According to Harahap (2006), the judge may apply the principle of seeking truth in material nature civil cases provided that it is based on valid evidence on eligibility. This is supported by the Supreme Court Decision Number 1071 K / Pdt / 1984 dated September 28, 1985.

The same thing was recognized in the Indonesian Supreme Court Decision Number 3136 K / Pdt / 1983 dated March 6, 1985 (Harahap, 2006) which states that civil courts are not prohibited from seeking and discovering material truth, but if no material truth is found in civil justice, the law is justified in making decisions based on formal truth.

Based on the opinion of legal experts and strengthened by the decision of the Supreme Court, it can be concluded that in a civil case the judge can apply the principle of seeking material truth (*materiele waarheid*) provided that the conviction is based on legal evidence and meets the boundary conditions of minimum proof.

Application of Material Proof in Civil Cases

For the purposes of analysis, the authors examine the case verdict between Sujito Ng (Plaintiff) against Aeolus Romeo Sibih (Defendant 1) and Gilbert Jo'el Sumendap (Defendant 2), South Jakarta District Court, Number 189/ PDT.G /2012/ PN.JKT. SEL , October 11, 2012. In this case, the plaintiff has submitted 2 pieces of evidence: (1) a letter / written evidence; and (2) witness evidence. Based on the provisions of Article 164 HIR, it is stated that the evidence in a civil case includes written evidence, evidence of witnesses, suspicions, recognitions, and oath. Thus, the evidence submitted by the plaintiff in the case as stated in the Decision of the South Jakarta District Court No. 189/Pdt.G/2012/PN.Jkt.Sel dated October 11, 2012 is in accordance with the provisions of Article 164 HIR.

Ad 1 Letter / Writing Evidence

Subekti (1982) argues that in civil litigation, the most important component is written evidence, as in civil traffic, such as buying and selling, renting and so on, people deliberately create written evidence in connection with the use of written evidence in the future. There are also writings that are intentionally not made for proof but can be used as evidence, such as records, payment receipts, and so forth.

The evidence of this letter / writing is divided into 3 types (Prodjodikoro, 1988), : (1) authentic deed (2) deed under the hand and (3) other letters (under the hand). Authentic deed is a letter that is made with the intent to serve as evidence of authorised officials. These officials are notaries, civil registry employees (*burgerlijk stands*), clerks (*deurwaarders*), Judges, Registrars and others. This authentic deed has the strength of proof which is ideal for those who have rights based on this authentic deed.

This authentic deed has power in the form of official statements (*ambtelijk relaas*), which are not contained in the deed . Therefore, the official explains that what he or she wrote in an authentic deed is the truth as he/she experienced him or herself and considered as truth (Prodjodikoro, 1988).

Furthermore, the notion of (2) a deed under the hand is a deed intentionally made for proof by parties without official assistance (Mertokusumo, 2013). This means that letters are only made by interested parties and do not involve officials. The power of proof of the deed under the hand applies to the person making it and for the benefit of the person for whom the



statement was made. That is, the power of the deed under the hand is almost the same as an authentic deed, but if it is denied by the person who made it, the person who denies it must prove its rebuttal. (3) other letters (under the hand), i.e. letters under the hand such as notes that are affixed by a creditor, or without payment receipt and others. Strength of Proof of these other documents submitted to the judge's consideration in assessing other documents (Article 1881 BW).

The South Jakarta District Court Judges in their decision (Sujito Ng against Aeolus Romeo Sibih dan Gilbert Jo'el Sumendap, 2012), in their consideration state that from Exhibit P-1 in the form of a Notarial Deed on the Agreement between the Plaintiff and the Defendants, an agreement has occurred where Defendant I borrowed money from the Plaintiff by guaranteeing a Certificate of Property Rights over a parcel of land, covering 2,725 m² owned by Defendant II. The loan from the Plaintiff must be paid in full by Defendant I no later than six months after the date of the loan disbursement.

The Judges also state that based on Evidence P-2a and P-2b in the form of evidence of money transfers through Standard Chartered Bank twice, on June 15, 2007 to the account of PT Telepoin Nusantara, it was proven that there was a transfer of money from the Plaintiff to the Defendant I as the owner of PT Telepoin Nusantara.

Furthermore, against Exhibit P-3 in the form of a notification letter from Defendant I to the Plaintiff regarding their willingness to pay their debts by selling the Defendant II's houses and land as Guarantees, the Judges state in their consideration that they had proven that Defendant I admitted to the plaintiff that they had debts. With regards to Exhibit P-4 in the form of Ownership Certificate, the Judges maintain that there has been a transfer of name on behalf of the Plaintiff since April 27, 2009 based on the Sale and Purchase Deed made by PPAT Haryanto.

Based on the Judges' considerations, it can be concluded that, both for authentic deeds and non-deed documents, the Panel of Judges formally has judged that a legal event was proven in the form of an agreement to borrow money between the Plaintiff and the Defendants, and it must be paid in full by Defendant I within six months after the disbursement date, which is due on December 15, 2007.

This means that the letter / written evidence has been formally accepted by the Judges as a truth, so the Plaintiff's claim must be granted by the Panel of Judges. Thus, the judges in South Jakarta's Court have implemented the principle of seeking truth in assessing evidence formal documentary evidence / article submitted by the plaintiff.

Ad 2 Evidence of Witness Information

In the decision stated, the plaintiff has presented two witnesses, a former employees of the Plaintiffs who have worked in other companies at the time as a witness in the trial. Both witnesses are sworn by oath, then give testimony in court.

Sudikno maintains that the testimony was "... the certainty given to the judge at the trial regarding the disputed event by means of verbal and personal notification by a person who was not one of the parties to the case, was summoned at the trial (Sujito Ng melawan Aeolus Romeo Sibih dan Gilbert Jo'el Sumendap, 2012)." Based on Sudikno's explanation, a witness must verbally explain in front of the judge in a hearing about an event that forms a legal dispute by the plaintiff and defendant.

Who can hear the testimony as a witness in a civil case? Based on the provisions of Article 145 paragraph (1) HIR :

"Those who must not be heard as witnesses include:

- 1e. Blood relatives or family members according to the straight descendants of one party;
- 2e. Wife or husband of one party, even if divorced;
- 3e. Children whose age cannot be properly determined, under fifteen years of age;
- 4e. Mentally ill person , even if occasionally demonstrating sanity ."

Likewise, regarding the provisions of Article 146 paragraph (1) HIR : "(1) persons who may request to resign rather than give testimony:

- 1e. Brother and sister, and brother-in-law of one party;
- 2e. Blood relatives according to righteous descent and brothers and sisters from the wife or wife of one of the parties;
- 3e. All individuals who, because of their dignity, occupation or legal position, are required to keep a secret; however, only concerning the matter, which was communicated to him or her due to importance of his or her position."

Based on the provisions of Article 145 paragraph (1) and Article 146 paragraph (1) of the HIR, the witnesses submitted by the Plaintiff, including their former employees who knew about the Plaintiff's events lent money to Defendant I, which must be paid in full within a period of 6 months after the disbursement date, as well as collateral for the loan, the certificate of ownership of Defendant II shall be submitted, in none- violation of the provisions of Article 145 paragraph (1) and Article 146 paragraph (1) of HIR. Consequently,



the witness legally has proof of value in the trial. Thus, the two witnesses presented by the plaintiff can be considered by the judge as valid evidence according to HIR provisions.

The Judge's Legal Considerations basically state that the judge considered witness statements related to other evidence, i.e. the proof of letters / written material which is marked with P2a and P-2b in the form of proof of money transfer of PT Telepoin Nusantara's account on June 15, 2007. So, based on witness statements added with evidence of letters / written material P2a and P-2b, the Judge believes that the fact that there has been a transfer of loan money to the PT Telepoin Nusantara account has been proven.

Interestingly, there is a legal fact according to which PT Telepoin Nusantara is not a party to this case or a party to the Notarial Deed regarding the Loan and Loan Agreement between the Plaintiffs and the Defendants. However, the loan money from Sujito Ng (Plaintiff) to Romeo Aelous Sibih was transferred through Standard Chartered Bank by the witness to PT Telepoin Nusantara's account on June 15, 2007.

The judge in the trial with the agenda of the examination of other witnesses tried to explore the truth of who was the owner of PT Telepoin Nusantara who received the Plaintiff's transfer money. Subsequently, the witness explained that PT Telepoin Nusantara was owned by Defendant 1, whereas Defendant 1 was also the Managing Director of PT Telepoin Nusantara. This witness statement was accompanied by the reason that this was known from the deed of the decision of the meeting of PT Telepoin Nusantara. Based on the witness' statement, the judge became convinced that the legal facts about the loan money from the Plaintiff to Defendant 1 had been transferred by the Plaintiff's employee who became a witness in this case by transferring through Standard Chartered Bank on June 15, 2007 to PT Telepoin Nusantara's account, where PT Telepoin Nusantara is owned by Defendant I based on witness testimony.

According to the author's analysis, the formal evidence presented has been fulfilled in accordance with the provisions of Article 164 HIR. However, it is evident due to the legal facts of the loan money that was transferred to PT Telepoin Nusantara's company account and not to Defendant 1's personal account, so the judge tried to find material truths about the owner of the PT Telepoin Nusantara company, by examining witnesses. This proves that it was not enough for the Judges to apply the principle of seeking Formal Truth, but the principle of seeking truth material in the examination of civil cases must also be applied. Thus, the application of the principle of seeking material truth is very helpful for judges to analyse and put legal issues in their proper place.

In addition, the judge also saw the link between one piece of evidence and another, that is a letter / written and witness evidence, in order to find material truth in civil litigation. Also, Judges tend to prioritise the application of the principle of seeking formal truth, which can be

seen from the legal considerations of judges who assess whether the arguments or events proposed by the plaintiff are proven true in a trial based on the evidence presented by the plaintiff. Based on the evidence presented by the plaintiff, according to the judge the plaintiff can prove the event of his or her legal arguments.

At the same time, if we analyse the judge's consideration, the judge applies the formal principle of truth, that is, based on the available evidence that has proven the truth of the event or legal facts presented by the plaintiff, so the judge concludes that Defendant I and Defendant II have broken their promises (breach of contract). Thus, there are sufficient legal reasons for the judge to grant the plaintiff's petition in numbers 2, 3, and 4.

By considering decision PN South Jakarta, the judge was bound to the evidence presented by the plaintiff, and was not active. Specifically, evidence consisting of letters / written material in the form of authentic deeds, Exhibit P-1 in the form of Agreement Deed made by Notary Sri Sulastris Anggraini, SH, MH; and Exhibit P -4 in the form of a certificate of ownership issued by the National Land Agency of the Republic of Indonesia the Land Office of the South Jakarta Municipality. Therefore, the authentic deed has perfect proof of power so it does not require further proof, and thus the judge is bound to admit that the authentic deed evidence is true.

However, the judge has the freedom to judge the strength of the evidence for evidence in the form of a deed under hand and other documents under hand. In the South Jakarta District Court decision, the plaintiff submitted a deed under hand and underhanded documents in the form of :

- Proof of P-2a and P-2b, proof of money transfer;
- Proof of P-3, the Notification Letter from Defendant I to the Defendant, which in essence means that Defendant I admitted that he would repay his debt to the Plaintiff by selling the house owned by Defendant II;

Based on the evidence of letters / written material of P-2a, P-2b, and P-3 the judges considered that the transfer of loan money to Defendant 1 on June 15, 2007 was proven as a legal fact, and acknowledged from Defendant I about payable to the Plaintiff.

From the explanation of the evaluation of the evidence of the letter, it can be concluded that the judge adopted the principle of seeking formal truth in the examination of this civil case.

However, based on the Judge's evaluation of the witness testimony presented by the plaintiff, the Judge had tried to apply the principle of seeking material truth, that is looking for the real truth about the true owner of company Telepoin Nusantara.

Telepoin Nusantara has received a transfer of loan money from the plaintiff. Based on analysis, the author concludes that the judge prioritised the application of the principle of seeking formal truth in civil litigation. However, in order to apply the principle of seeking the formal truth, the Judge also applied the hope of seeking material truth, by digging deeper into the ownership of PT Telepoin Nusantara as the recipient of the transfer of money as a loan from Defendant I from the Plaintiff, through the examination of witnesses during the trial.

Conclusion

In this section the following conclusions are made :

1. Understanding civil law in general, i.e. the law of civil procedure aims to enforce civil law material, including the processes involved . Based on the principles of procedural law the principle is passive, the judge listens to both litigants and includes the principle of seeking formal truth. Civil Procedure Law in Indonesia is based on the HIR of the Dutch colonial heritage. HIR itself adheres to the proof theory of Positief Wettelijk Bewijsleer / Bewijs Theorie;
2. The principle of a civil trial is that the judge emphasises the principle of seeking formal truth (formeel waarheid). However, in the context of searching for formal truth, the judge also applies the principle of seeking material truth (materiele waarheid), that is how the judge tried to be convinced based on the evidence set out in the provisions of Article 164 HIR. The application of the principle of seeking truth material (materiele waarheid) is in the trial of civil cases, carried out by way of retaining the context of the application of the principle of seeking formal truth (formeel waarheid) based on statutory evidence . Therefore, the Judge can formally accept all the evidence presented to him or her by the parties, and grant the plaintiff's claim. However, in this case, the Judge still tried to convince him or herself by applying the principle of seeking material truth (materiele waarheid) in evaluating the evidence presented . Judges can be freer to assess and explore material truth in order to clarify a dispute submitted , so that the judge can make fair and accurate decisions for the parties.

After drawing the above conclusions, the following recommendations are made:

1. Judges should use their freedom to find out more deeply and comprehensively about legal disputes submitted to them, by applying the principle of seeking material truth (materiele waarheid) in civil procedure law, in order to make a fair and accurate decision;



2. Judges in civil proceedings should not only apply the principle of seeking formal truth (formeel waarheid), but must be brave in his or her freedom to apply the principle of seeking material truth (materiele waarheid) .



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