JUDGES' UNDERSTANDING OF OATH OF TERMINATION AS A TOOL OF EVIDENCE IN CIVIL PROCEDURE LAW

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ABSTRACT

In the process of examining civil cases, one of the judge's duties is to investigate whether a legal relationship that forms the basis of a lawsuit really exists or not. It is this legal relationship that must be proven, if the plaintiff fails to prove the arguments on which the lawsuit is based, then the lawsuit will be rejected, whereas if it is successful, the lawsuit will be granted. The problem in this research is when to use the decisoir oath.

This study uses empirical legal research, namely empirical methods by conducting field research with interview techniques to obtain data that is expected to broaden the author's insight into civil law, especially regarding the importance of using a decisoir oath.

The use of the Termination Oath as a Evidence Tool in Civil Procedure Law In the Indonesian Civil Procedure Code system, the Termination Oath is valid according to law as an oath that has fulfilled the requirements mandated by the Civil Procedure Code and other provisions governing legal issues in the civil field that apply in Indonesia. and the judge's understanding of the breaking oath as a means of evidence in civil procedural law, this understanding then gave birth to a different interpretation of the provisions of Article 156 HIR/183 RBG which regulates the breaking oath. The last is the cultural factor (culture) of the litigants, who are accustomed to oaths as an alternative in resolving problems that arise between them.

Keywords*: Civil Procedure Law, Oath, Evidence*

1. INTRODUCTION

To implement material civil law, especially in the event of a violation or to maintain the continuity of the material civil law, with the existence of demands for the necessary rights in other legal regulations besides the material civil law itself. This legal regulation is what is referred to as formal law "According to Ridwan Halim what is meant by formal law is a group of legal regulations that regulate how the implementation and application of civil material law in daily court practice (H. Salim HS, 2019: 76). In civil cases the initiative comes from interested parties, meaning that whether or not a case is brought to court depends entirely on the willingness of the interested parties. In this case the judge is waiting (azes iudex ne procedet ex offi cio). Because judges are waiting for the demands for rights to be submitted to them, the examination of cases only occurs when interested parties submit their cases to court. If the case has been submitted to the court, the judge may not refuse a case in accordance with Article 14 paragraph (1) of Law Number 14 of 1970 concerning Basic Provisions for Judicial Power.) who live in society or look for it in Jurisprudence (Handri Raharjo; 2016: 68). Claims of rights in this case are nothing but actions aimed at obtaining legal protection granted by the court to prevent "Eigenrechting" or self-judgment. Vigilance is basically a retaliation that originates from the concept of personal justice which views crime as a personal or family matter without the intervention of the authorities. Individuals who feel they

are victims of the actions of other people will seek revenge against the perpetrators of the crime or the family of the perpetrators of the crime (Fathul Achmadi Abby, 2019: 19). Therefore this act of judging oneself is not justified in the case that we want to fight for or exercise that right. There is no provision in the civil procedural law that strictly prohibits self-judgment, except that self-judgment is an unlawful act as stated in Articles 167 and 406 Paragraph (1) of the Criminal Code (M Yahya Harahap; 2017; 2). The disputing parties will submit a lawsuit to the District Court. A lawsuit is a claim for rights that contains a dispute, where there are at least two parties, namely the plaintiff and the defendant (Sudikno Mertokusumo; 2019: 13).

Civil procedural law also regulates how to defend the rights possessed by a person, of course, through the mediation of courts and judges. In fighting for their rights, there are two kinds of legal remedies. Civil procedural law that can be carried out are ordinary legal remedies and extraordinary legal remedies. The term legal remedy is an effort provided by legislation or legal entities to in certain cases against a judge's decision (Sutantio and Iskandar Oeripkartawinata; 2019: 142

Civil procedural law is not just a complement, but has an important position in implementing or enforcing civil material law, civil material law cannot stand alone apart from civil procedural law. Civil material law becomes useless if it cannot be implemented or realized and to implement it requires civil procedural law. On the other hand, civil procedural law is used as an effort to guarantee the implementation of civil material law and cannot possibly stand alone without the existence of civil material law. The procedural law that is declared officially applies in the HIR for the Java and Madura regions, while the RBg is for areas outside Java and Madura (. M Yahya Harahap; 2017: 11).

To prove means to give certainty to the judge about the existence of certain events. In order to obtain certainty that the event or legal relationship has actually occurred, the judge needs evidence to convince himself so that he can apply the law appropriately, therefore the parties are obliged to provide information accompanied by clear evidence and the relationship according to law regarding the event. or in other words there is juridical evidence. Juridical proof is to provide sufficient basis for 4 (four) judges who examine the case in question to provide certainty about the truth of the events proposed. (Sudikno Mertokusumo, 2019: 127).

According to the provisions of civil procedural law in examining and deciding on a civil case, judges are bound by valid evidence, which means that judges may only make decisions based on evidence determined by law only. Article 284 RBG, or Article 164 HIR, what is meant by evidence is: "Letter, Witness, Presumption, Confession and Oath" Evidence of oath is regulated in Articles 155 to 158 and Article 177 HIR, while in RBG it is regulated in Articles 182 to 158 Article 185 and Article 314 RBG. In contrast to criminal cases which do not recognize oaths as evidence, in civil procedural law oaths are quite important and even decisive in resolving cases.

2. RESEARCH METODOLOGY

The type of research that the authors use in this study is legal research with empirical aspects related to the judge's understanding of the breaker's oath as evidence in civil procedural law.

3. RESULTS AND DISCUSSION

3.1. The Use of the Termination Oath as Evidence in Civil Procedure Law

Documentary evidence is regulated in articles 165, 167 HIR and Stb. 1867-29, Article 285 to Article 305 RBG. Written evidence or letters are anything that contains punctuation marks that are intended to pour out one's feelings or to convey one's thoughts and be used as evidence. In evidence with witnesses, it is generally permissible in all respects, unless the law determines otherwise, for example regarding the union of assets in marriage which can only be proven by a marriage agreement (Article 150 BW), coverage agreements can only be proven by a policy (Article 258 of the Commercial Code) and others. In civil procedural law evidence with witnesses is very important where this is generally because there is a sense of mutual trust not made or written on paper. Due to the absence of evidence in the form of letters, the parties will try to present witnesses who can justify or corroborate the arguments put forward in court. If other evidence is not available, new evidence is considered perfect if there are two or more witnesses. However, in the presence of two or several witnesses, an incident cannot be said to be convincing, if the judge does not believe the honesty of the witnesses, as is the case when the testimony of one witness is contradictory or different from another witness. Evidence of oath is regulated in Articles 155-158 and 177 HIR, 182-185 and 314 RBG. HIR and RBG mention three types of oaths as evidence, namely: supplementary oaths (supletoir), decisoir oaths, and appraisal oaths (aestimatoir, chat eed).

In contrast to criminal cases which do not recognize oaths as evidence, in civil procedural law oaths are quite important pieces of evidence. In criminal cases according to the provisions of Article 184 Paragraph 1 of the Criminal Procedure Code (KUHP), valid evidence is: 1. Witness testimony. 2. Expert testimony, 3. Letter, 4. Instructions 5. Defendant's statement (Martiman Prodjohamidjojo: 1982: 115) The purpose of the cause of evidence is in the first place in the witness statement, then the defendant's statement in the last order, shows that in bewijsvoering in criminal procedural law priority is given to testimony . It is different when compared to bewijavoering in civil procedural law, the emphasis is on letters or written evidence (Article 164 HIR, 1866 BW, 283 Regulation of the opposite region). The one who is sworn in is one of the plaintiffs or the defendant, therefore the evidence is the statement of one of the parties corroborated by oath and not the oath itself. Supletoir Oath Article 155 HIR, 182 RBG, 1940 BW states that a supletoir or complementary oath is an oath ordered by a judge because of his position to one of the parties to complete the evidence of the incident that occurred in the dispute as the basis for his decision. The interpretation oath (sestimatoir, schattingseed) stated in Article 155 HIR/182 RBG, also regulates the interpretation oath. This is as contained in the final sentence of the Article, which reads (and to determine by oath the amount of money to be granted). Usually it is the plaintiff who demands a certain amount of money. To determine whether the amount demanded by the plaintiff was appropriate or not, an assessment was held. The interpretation alone is seen as not being proven convincingly enough. Then the judge ordered the plaintiff to swear that the estimated amount of money was appropriate, so the judge could make a decision. The Decisoir oath in Article 156 HIR, 183 RBG, 1930 BW states that a decisoir oath or termination is an oath imposed at the request of one of the parties to the opponent. If there is no statement or other evidence at all to support his claim, one of the parties may ask his opponent to swear an oath before the court so that with this oath the case can be decided.

The oath of termination when it comes to a reciprocal agreement can be returned, meaning that the defendant, for example, who was asked to make the person concerned take an oath, returns the oath by saying that only the plaintiff is the one who took the oath. Whoever is asked to take an oath is not willing to take an oath and does not return the oath, is not willing to swear it and does not return the oath to his opponent, or whoever orders an oath but the opponent returns the oath and does not want to swear it, he must be defeated. The breaker oath aims to resolve the case being examined. Therefore, the breaker's oath must be decisoir, meaning that it is to break and terminate the case. In this case, the judge needs to really consider whether the oath being requested is already decisoir, so that the oath is finished. If according to the judge it is decisoir, the judge immediately orders the requested party to take an oath. If, according to the judge's consideration, the requested termination oath will not resolve the case, it is better for the judge to simply reject the demand. The breaker oath can be submitted at any time during the course of the case examination, even at the appeal level of the breaker oath can still be submitted (1930 BW). (Abdul Manan: 2005 267).

It is stated in Lontar Pamastu Hari Candani, if the allegations are not proven then the curse of the Termination Oath applies to the third relative, that is, applies to children, younger siblings, older siblings, cousins to mindon (twice cousin) (Pudja, G and Tjokorda Rai Sudharta; 2004: 283). Judging from the juridical aspect, the implementation of the Termination's Oath is legally valid because it has fulfilled the principles of proof to seek formal truth. In the Civil Procedure Code system in Indonesia, the evidence used is not a negative wetellijk stelsel (negative stelsel according to the law) as evidence in the Criminal Procedure Code which is more demanding of seeking material truth according to the law, namely, the existence of witness statements, documentary evidence, expert statements , hints and confessions. In the Civil Procedural Law system in Indonesia, in order to seek formal truth, the panel of judges who hear civil cases (disputes) must adhere to the principles of, among others, the principle of the duties and roles of judges being passive and confessions to end the case examination (Ali, Achmad & Wiwie Heryani , 2004 34). The role of the judge is passive, meaning that the judge is only limited to receiving and examining and adjudicating a dispute over matters raised by the parties (plaintiff and defendant). The passive meaning here is interpreted as, the judge is not limited to accepting and examining what is submitted by the parties, but the judge must play a role and have the authority to assess the truth of the facts presented before the trial. As for one of the bases for applying this principle, Article 165 RBG/139 HIR reads, "one party may ask for assistance from a judge to summon and present a witness through an authorized official so that the witness appears on a predetermined trial day, if the witness concerned is relevant, but the party cannot voluntarily present the witness himself.

Recognition in the Civil Procedure Code system is regulated in the Civil Code Articles 1923, 1924, 1925, 1927 and 1928. Among the confessions which according to the parties have the power and are justified by law are confessions in the form of an oath as explained in Article 1930 of the Civil Code which reads:

"The severing oath can be ordered in any dispute, except in the event that the two parties do not make peace or in cases where their confessions cannot be considered. The severing oath can be ordered at any stage of the case, even in the absence of any attempt to prove demands or counterclaims that require the taking of the oath". If the request for an oath of termination by one of the parties is rejected by the other party, then the panel of judges to the party that refuses to take the oath of termination shall be declared the losing party. The basis for the

decision referred to refers to the original provisions of the 1932 Civil Code which reads: "Whoever is ordered to take an oath but is reluctant to take it and refuses to return it, and whoever orders to take an oath and refuses to take it after the oath has been returned to him, must be defeated in his demands or refusals." Apart from that, the breaker oath is also stipulated in Article 193 Paragraph 2 BW and Article 156 HIR/Article 183 RBG Paragraph 3 and the Supreme Court decision 575K/SIP/1973, which confirms that the application for an oath of termination can only be granted if in a case there is absolutely no evidence evidence. Severance Oath or Decisoir means awakening the honesty of one's conscience. Because of his shrewdness, the criminal might be able to deceive law enforcers but, what conscience and God might be fooled. In the system of Civil Procedure Law in Indonesia, the Termination's Oath is valid according to law as an oath that has fulfilled the requirements as mandated by the Civil Procedure Code and other provisions governing legal issues in the civil field applicable in Indonesia (Subekti, R and R.Tjitrosudibio ; 1992:32).

3.2. Judge's Understanding of the Termination's Oath as Evidence in Civil Procedure Law

The judge's understanding of the breaking oath as a means of evidence in civil procedural law, this understanding then gave rise to a different interpretation of the provisions of Article 156 HIR/183 RBG which regulates the breaking oath. The last is the cultural factor (culture) of the litigants, who are accustomed to oaths as an alternative in resolving problems that arise between them. To determine whether the oath requested can be returned to the party requesting it, what the judge must understand and consider is as follows:

1. If the thing to be pronounced in the oath concerns unilateral actions committed by the party asked to swear (delaat), the oath cannot be reversed to the opposing party (deferent)
2. If the thing to be pronounced in the oath concerns the actions committed by both parties, the party asked to swear (delaat) can reverse it to the opposing party (deferent).

This oath was made because there was no evidence whatsoever, either a letter or witnesses from the litigants. The breaker oath ends all issues of dispute, the panel of judges has made a decision to take the breaker oath. According to Yahya Harahap, the application of decisive oath evidence (decisoir eed) only fulfills the formal requirements if there is absolutely no other evidence or there are no other efforts. In total, the parties were unable to submit written evidence, witnesses or allegations, and the defendant did not admit the argument for the lawsuit. This means that the trial is stopped in the stage of the evidentiary examination process, because the parties do not submit any evidence, only then are they allowed to apply decisive oath proof (Yahya Harahap; 2005:43). Judges as law enforcers according to Article 5 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power that: "Judges and Constitutional Justices are obliged to explore, follow and understand the legal values and sense of justice that live in society". Freedom in the law of evidence aims to give leeway to judges to really seek the true truth , which will later be used as a basis for making a final decision. This is because the evidence that has been determined in the HIR/R.Bg is no longer in accordance with the development of society. For example, oath evidence, which is currently almost no longer used in court practice. Oath evidence is a double-edged sword because if it is used in court it will determine the victory of a case. Even though at this time certain people would find it easy to pronounce oaths filled with (false) lies. The

judge's knowledge is a matter or situation that the judge himself knows during the trial or when the judge conducts a local inspection (decente) Sudikno Mertokusumo; 2009: 161). Sudikno Mertokusumo in looking at the three principles (purpose of law) argued that in enforcing the law there must be a compromise between these three elements. These three elements must receive proportionally balanced attention. Even though in practice it is not always easy to seek a compromise proportionally balanced between these three elements, you must try in that direction, because those three elements are the goals of law that will be upheld in society. Thus the judge should follow the casuistry priority principle or according to the case at hand (Sudikno Mertokusumo, and Pitlo A,:199:55). An oath in general is a very solemn statement that is uttered or given when giving a promise or statement by remembering the almighty nature of God, and believing that anyone who gives false information or promises will be punished by God. So in essence the oath is a religious act that is used in court (Sudikno, M, 2002:23).

A decisoir oath is an oath imposed at the request of one of the parties to the opponent. The party that asks the opponent to swear is called deferent, while the party that must swear is called delaat. The decisive oath (decissoire eed) is regulated in Article 156 HIR or 183 Rbg which states: "If there is no evidence or other means of evidence, then to confirm his claim, one of the parties can ask his opponent to swear in court so that with that oath the matter can be broken as long as the oath is about an act done by the party who was told to swear" (Elizabeth, N:2015:10). Article 1930 of the Civil Code states that: "An oath-breaker can be ordered in any dispute, except in the case that both parties do not make a reconciliation or in the case that their confessions cannot be observed. The casting oath can be ordered at every level of the matter, even in the event that there is no evidence whatsoever to prove the claim or defense that requires the taking of the oath." Evidence in the law of civil procedure, leaving questions that are in contact with certainty and justice, in the process of its fulfillment. Therefore, as a nation that is independent, it is about proof and certainty in the area of private law, and always avoids the back roads in the path taken, and remains based on justice on the basis of the One and Only God (Syaiful, B, 2018: 21). The use of the Decisional Oath (Decisoir) against the Judge's Decision in that the Judge weighs in on the jurisprudence of the Supreme Court No. 575 K/Sip/1973, states that an application for a decisoir oath can only be granted if there is absolutely no evidence in a matter. which essentially asked the defendant to swear an oath and upon the application the defendant stated that he agreed to be sworn. Thus, the existence of a binding oath in an inheritance dispute is that the aggrieved party is burdened with proof of a binding oath in proving a right or event that he considers to be true.

4. CONCLUSION

1. Use of the Termination Oath as Evidence in Civil Procedure Law In the Indonesian Civil Procedure Code system, the Termination Oath is valid according to law as an oath that has fulfilled the requirements as mandated by the Civil Procedure Code and other provisions governing legal issues in the civil field that applies in Indonesia.
2. The judge's understanding of the breaking oath as a means of evidence in civil procedural law, this understanding then gave birth to a different interpretation of the provisions of Article 156 HIR/183 RBG which regulates the breaking oath. The last is the cultural factor of the litigants, who are used to oaths as an alternative in resolving problems that arise between them.

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