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Proof Approach to Civil Procedures through Judge's Knowledge of Literature Review Study

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ABSTRACT

Proof in the legal discovery process is a very important stage. If concrete events have been proven, the judge will obtain the truth regarding the disputed event. Then, the judge will qualify the incident as a legal incident by looking for relevant legal regulations to apply. The main aim of this research is to provide a comprehensive overview of the development of research, theories and concepts in the field of literature review studies of civil procedural law evidence through the knowledge of judges by analyzing the results of empirical studies. This research uses a bibliographic method originating from reputable journals, by focusing the search through a search string through direct science, with the search focused on literature studies related to Civil Procedural Law Evidence in review articles. The results of the literature analysis in the Empirical Study include a lack of depth of discussion, a focus that is too general, not supported by relevant theory so that the theory is explained regarding legal norms governing the evidentiary process, also in the empirical study all the variables in the research are not built based on applicable theory, a lack of case analysis, a lack of in depth analysis of specific civil law cases, so it does not provide real examples of how civil law works and is not supported by research that strengthens the research results.

Keywords: Evidence, Civil Procedure Law, Judge Knowledge

INTRODUCTION

In general, the issue of legal discovery is predominantly concerned with the roles of judges and legislators. Judges, as the key figures in resolving disputes, are often tasked with legal discovery since they are confronted with real life conflicts and situations. According to Article 11, paragraph (3) of Law No. 48 of 2009 on Judicial Power (hereinafter referred to as the Judicial Power Law), judges are assisted by clerks in examining, trying, and deciding cases. This provision highlights that the primary duty of judges is to examine, try, and resolve cases. In line with Article 10, paragraph (1) of the same law, courts cannot refuse to examine or decide a case on the grounds of an unclear or non existent law. This principle, known as the prohibition against case rejection (rechtsweigering), mandates judges to proceed with cases even if the

applicable law is vague or incomplete. The prohibition stems from the belief that judges are presumed to know the law in its entirety (ius curia novit). Therefore, if a judge cannot find a law within the written statutes, they are required to seek the law outside of these sources. This duty is further underscored by Article 5, paragraph (1) of the Judicial Power Law, which obligates judges to explore, follow, and understand the legal values prevalent in society. Thus, these provisions provide the legal foundation for judicial law discovery, facilitating the role of judges in identifying applicable law through interpretative efforts. (References: Patiwael, 2021; Hendra, 2023).

Legal discovery by civil judges is inherently integrated into the process of examining cases in court. To understand how legal discovery is carried out, one must look at the procedural stages of civil case examination. In adjudicating a dispute, there are two essential components a judge must address: the facts of the case and the applicable legal norms. As noted by Paul Scholten (1934), "he knows that he needs two things: knowledge of the facts and of the rule; applying the rule to the facts provides the answer." This statement underscores the fundamental judicial function of applying law to fact. In the litigation process, it is the responsibility of the disputing parties to present the facts or events; the law, on the other hand, is not something they are required to argue, because judges are expected by virtue of the ius curia novit principle to know and apply the law ex officio. Recent scholarship reaffirms that this principle is critical in civil adjudication, where judges must go beyond procedural formalities and engage in active legal reasoning to bridge the gap between abstract norms and concrete facts (Siregar, 2020; Mulyadi, 2022). Thus, legal discovery is not merely a technical act but a judicial obligation rooted in a combination of factual understanding and normative interpretation.

Civil law plays a crucial role in providing legal protection against vigilantism and fostering an orderly society. One of the key responsibilities of a judge in resolving civil cases is to determine whether a legal relationship exists based on the plaintiff’s claim. Additionally, the judge must ascertain the truth of the disputed facts through evidence, which serves the purpose of uncovering the facts and establishing the legal relationship between the parties. Evidence is central to proving the facts and forming the foundation for the court’s decision. In civil procedural law, the law of evidence holds significant importance, but it is also a complex and intricate area of the litigation process. This

complexity arises from the fact that evidence is closely tied to reconstructing past events to uncover the truth. While the truth sought in civil litigation is not an absolute truth, but rather a relative or probable truth, the process of uncovering it remains fraught with challenges. As noted by Yahya Harahap (2015), the pursuit of such truth is often difficult, as it involves subjective interpretations and the limitations of available evidence. Recent studies continue to highlight the evolving challenges of legal discovery in the context of evidence and truth in civil cases (Susanto, 2021; Wicaksono, 2023).

The evidentiary process is a crucial step in civil procedural law, as a case cannot be resolved by a judge without prior presentation of evidence. However, proof in a legal context is not meant to uncover absolute truth, as the evidence whether in the form of confessions, witness testimonies, or documents submitted by the parties may be inaccurate or even forged. Despite this, the judge's duty is to evaluate the evidence and render a decision that is fair and acceptable to both parties. Ridwan Syahrani (2018) explains that proof involves the presentation of legally valid evidence before the judge to establish the truth and provide certainty regarding the facts of the case. In practice, this process aims to find a balance between the available evidence and the legal requirements to ensure a just resolution. Recent discussions in legal scholarship emphasize the complexity of proof in civil trials, particularly the challenges in assessing the authenticity of evidence and ensuring fairness in the adjudication process (Setiawan, 2021; Prabowo, 2023).

LITERATURE REVIEW

Proof Theory

The Dutch term "proof" (bewijs) carries two distinct meanings: it can refer to the act of establishing certainty or to the outcome of that action, which is the certainty itself (Nasution, 2020). According to Hiariej (2021), quoting Ian Denis, the term "evidence" is more aligned with the concept of evidence as understood in positive law, while "proof" can be interpreted as the process that leads to the establishment of evidence. Max M. Houck (2022) further elaborates that evidence or proof involves providing information through a legitimate investigation of facts, with "proof" being the act of proving. In this sense, proving encompasses presenting evidence, demonstrating the

truth, carrying out actions, indicating facts, and persuading others. The purpose of evidence in criminal procedural law is thus to provide the certainty necessary to assess the facts upon which judicial decisions are based.

In criminal law, the burden of proof is generally placed on the public prosecutor, as explained by Fuady (2023), a principle widely adopted across legal systems. This responsibility underscores the role of the prosecutor in convincing the judge of the defendant's guilt based on the available evidence. Sasangka (2023) outlines that for the public prosecutor, evidence is used to establish the defendant's guilt, aiming to secure a conviction based on the charges. Conversely, the defendant or their legal advisor uses evidence to argue for acquittal or a reduction in sentencing, presenting counter evidence to challenge the prosecutor's claims. The defense may submit evidence that benefits or alleviates the defendant's situation, often referred to as "exonerating" or "mitigating" evidence.

For the judge, evidence serves as the foundation for decision making. Sasangka (2023) further highlights that judges rely on the evidence presented by both parties the prosecution and defense to make informed and fair decisions. This process ensures that the decision is based on a comprehensive understanding of the facts, with the judge's role being to assess the validity and weight of the evidence in order to render a just verdict. The judicial process, therefore, relies heavily on the quality and presentation of evidence, which is crucial for ensuring fairness in criminal trials and delivering justice.

Civil Procedure Law

Civil procedural law refers to the legal framework that ensures the enforcement of material civil law by mediating the process through a judge. In essence, civil procedural law establishes the methods by which material civil law is applied and upheld in legal disputes. It can be described as a set of regulations governing the filing of claims, the examination of those claims, and the final decision making process. Additionally, it outlines how these decisions are implemented to guarantee the enforcement of civil rights and obligations (Adams, 2021).

While material civil law can sometimes be executed privately between parties without official oversight, there are instances when violations occur, leading to disputes and imbalances in the interests of society. When such violations happen, the enforcement of material civil law becomes essential to restore equilibrium and ensure

that the rights of individuals are respected. In these cases, formal legal regulations are needed to address the breach and uphold the principles of material civil law. These regulations, known as civil procedural law, serve as a mechanism to support the enforcement and continuity of material civil law, especially when violations disrupt legal order (Jusuf, 2022).

Civil procedural law, in this context, does not create new rights or obligations as material civil law does; rather, it acts as a tool to implement, maintain, and enforce the established civil laws. Its role is to facilitate the application of material law and protect individual rights, ensuring that any legal claim is resolved fairly and effectively. The purpose of civil procedural law is to provide the necessary procedures and actions for the proper administration of justice, ensuring that legal rights are protected and disputes are resolved according to the principles of fairness and justice (Rizki, 2023).

Judge Knowledge

Phenomenology is a philosophical approach that involves temporarily suspending all preconceived theories, opinions, and views in order to directly grasp the pure essence of an experience. The goal is to reach intersubjective truth, which refers to the shared truth of knowledge. By exploring the meaning of the noumenon, the underlying reality behind phenomena, phenomenology aims to move beyond surface level understanding towards deeper insights in metatheory and metascience. This process involves three main steps: phenomenological reduction, which sets aside biases; eidetic reduction, which focuses on the essence of the experience; and transcendental reduction, which examines the conditions that make experience possible (Putra, 2022). These steps are crucial in unveiling the truth that lies beyond appearances, allowing for a more profound understanding of reality.

In the legal context, judges have a unique responsibility compared to other officials, as they must deeply understand the law and its application within the Indonesian legal system. During court hearings, a judge must engage actively by asking questions and ensuring that both the defendant, represented by legal counsel, and the public prosecutor have the opportunity to question witnesses. This process is designed to uncover the material truth, which is the foundation for a just and fair verdict. As noted by Sulaiman (2023), judges are held accountable for their decisions, and their knowledge is critical in ensuring the accuracy and fairness of the judicial process. A

judge's ability to interpret the law, assess evidence, and make decisions based on the facts presented is paramount in achieving justice, making their role essential in the pursuit of truth in the courtroom.

METHOD

Scientific research that reviews and analyzes various literature related to a particular research topic. The main aim of this journal is to provide a comprehensive overview of the development of research, theories and concepts in this field. This research uses a bibliographic method originating from reputable journals, by focusing the search through a search string through direct science, with a focused search on literature studies related to Proving Civil Procedural Law in review articles, research articles, with the publication title: Journal of Proving Civil Procedural Law through Judges' Knowledge. select primary studies to assess their true relevance by establishing criteria for including or excluding studies.

RESULT

Empirical Study

According to research conducted by Marda (2023), the process of proving civil cases in court involves a judge investigating whether the legal relationship, which forms the basis of the lawsuit, actually exists. The plaintiff must prove the existence of this legal relationship if they wish to succeed in the case. If the plaintiff fails to substantiate the claims that support their lawsuit, their case will be dismissed. On the other hand, if the plaintiff successfully proves their arguments, the court will grant their claim. However, not all arguments presented in the lawsuit need to be proven, as those arguments that are not disputed or fully acknowledged by the opposing party do not require further proof. In the process of proof, the responsibility does not always lie with the plaintiff; the judge will determine which party whether the plaintiff or the defendant must provide evidence to support their case (Sutanto, 2021).

In civil litigation, courts recognize five primary types of evidence: documentary evidence, witness testimony, allegations, confessions, and oaths. However, in practical application, a sixth type judicial knowledge is also frequently relied upon. This refers to facts or conditions directly observed by the judge during the course of the trial. For

example, during a site visit, a judge might witness firsthand the extent of damage to a plaintiff's property allegedly caused by the defendant. These personal observations, while not formally submitted as evidence, can significantly influence the judge's evaluation of the case and are treated as supplemental to the presented proof (Simanjuntak, 2023).

The integration of judicial knowledge into the evidentiary framework underscores the importance of contextual and situational understanding in the adjudication process. Each type of evidence contributes uniquely to building a comprehensive picture of the case, and the proper assessment of these forms is critical to reaching a fair and equitable verdict. The ability of the judge to synthesize various sources of evidence, including personal observations, ensures that decisions are not only legally sound but also grounded in factual reality (Hidayat, 2024).

Study Review

The findings from the literature analysis in the empirical study reveal several notable weaknesses. These include a lack of depth in the discussion, an overly broad and unfocused research scope, and insufficient examination of specific civil case examples. Additionally, there is a clear deficiency in the integration of relevant civil law theory and practical references, which weakens the overall legal argumentation. One of the critical issues is that the empirical study does not adequately ground its variables in established legal theory, which results in a gap between theoretical frameworks and the analysis presented. This disconnect limits the study's ability to offer meaningful insights or contribute significantly to academic discourse on civil procedural law (Herlina, 2020; Yuliani, 2021).

Furthermore, methodological shortcomings are evident, particularly in the empirical aspect of the research. The study lacks accurate and reliable empirical data, which undermines the validity of its conclusions. Although the research employs a normative legal method analyzing and interpreting legal norms found in legislation related to the evidentiary process in civil cases the analysis is not sufficiently supported by robust theoretical foundations. As a result, the explanation of legal norms concerning the use of evidence remains superficial. This absence of theoretical alignment means the study fails to construct its research variables based on applicable and authoritative legal

principles, reducing its relevance and effectiveness in addressing real world legal issues (Putri, 2022; Mahendra, 2023).

One of the major shortcomings found in recent empirical legal studies is the lack of depth in their discussions, often due to the overly general or superficial treatment of civil law topics (Simamora, 2022). This shallow approach prevents the analysis from adequately addressing the complexity of legal issues and fails to engage with the intricate legal reasoning required in civil law. For instance, rather than exploring the doctrinal and jurisprudential intricacies of contract law, some studies only provide basic definitions of agreements. Such an approach limits the academic value of the research and does not contribute significantly to the development of civil law scholarship (Nurhidayati, 2020; Wijayanti, 2021).

A specific example of this issue can be observed in empirical studies that examine legal agreements. These studies tend to focus solely on the general concept of agreements without analyzing the various types of contracts recognized in Indonesian civil law, the legal consequences of breach, or how these principles apply in actual court cases. This omission of case based analysis and the lack of engagement with theoretical frameworks result in studies that are not only descriptively weak but also fail to offer practical legal insights. A comprehensive civil law study should include a detailed examination of substantive elements, supported by statutory interpretation, judicial decisions, and relevant doctrinal opinions to enhance its relevance and applicability (Santoso, 2023; Lestari, 2024).

A significant flaw in many empirical studies on civil law is the lack of detailed case analysis, particularly in providing real world examples of how civil law principles are applied in practice. For instance, studies that explore the concept of evidence in civil cases often offer only a general overview of the different types of evidence, without delving into more complex or controversial evidentiary issues. This lack of depth in examining specific, challenging cases limits the study’s ability to demonstrate the nuances of how evidence influences the outcome of legal disputes. Without such case analysis, the research fails to provide practical insights into the functioning of the legal system and how judicial decisions are shaped by the evidence presented in court (Simanungkalit, 2021; Taufik, 2022).

Furthermore, the absence of relevant supporting research and case studies weakens the overall credibility and applicability of these empirical works. By not incorporating detailed discussions of landmark or contentious cases, the studies miss an opportunity to show how legal theory is applied in real world settings, where evidence may be contested or ambiguous. The failure to connect theoretical discussions with actual legal outcomes leaves a gap in understanding, making it harder for scholars and practitioners to relate the findings to actual judicial practices. To enhance the value of empirical studies, it is essential to incorporate in depth analysis of specific cases and support the discussion with relevant legal research and precedent (Hernawan, 2023; Suryani, 2024).

CONCLUSION

The analysis of empirical studies on the evidentiary process in civil cases reveals significant gaps, particularly in terms of depth and focus. One of the key issues is that many studies fail to explore the nuances of the evidentiary process, offering only a broad overview rather than a detailed examination of the various forms of evidence, such as documentary evidence, witness testimony, allegations, confessions, and oaths. Additionally, these studies often lack support from relevant legal theories, which weakens their theoretical foundation and leaves the explanation of legal norms governing evidence incomplete and insufficient. Without grounding the research in established legal theory, the empirical studies fall short in offering comprehensive insights into how these norms function in practice, especially within the context of civil law.

Moreover, the absence of case specific analysis further diminishes the practical relevance of these studies. In many instances, the research fails to present concrete examples or real life applications of civil law principles, particularly regarding the use and evaluation of evidence in actual court cases. This lack of detailed case analysis prevents the studies from showcasing how civil law is applied in practice, leaving the findings theoretical and disconnected from real world judicial processes. Additionally, many studies do not reference or incorporate supporting research that could strengthen their conclusions. Without these critical elements, the empirical research becomes less

valuable for both legal scholars and practitioners who seek practical guidance and in depth understanding of how civil law operates in litigation.

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