



Legal Study of the Power of Proof in Civil Law (Study of Decision Number: 332/Pdt.G/2024/PN Tnn)

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Abstract: *The purpose of this study is to determine the validity of the sale and purchase acquisition in evidence in decision number 332/Pdt.G/2024/PN Tnn. The method used in this research is Normative Juridical. The results of this study are that the Panel of Judges to decide the case, the Panel of Judges looks at the facts of the trial from the proof of letters, witness evidence and even other legal facts presented at the trial. Especially in deciding this case with number 332/Pdt.G/2024/PN Tnn, the panel of judges considered that the Plaintiff, who was actually burdened with proof, could not prove the truth about the arguments and claims he presented at the trial. Meanwhile, the Defendant was able to prove so accurately in denying every argument postulated by the plaintiff against the plaintiff through presenting accurate letter evidence and also witness testimony showing that the true ownership of the land that was the object of the dispute belonged to the Defendant. So the judge's consideration in looking at the flow of the trial to decide this case focuses on every evidence and fact of the trial presented by the Defendant. As well as in the burden of proof in Article 163 HIR, the plaintiff has the obligation to prove the facts they submit, while the defendant is obliged to prove the rebuttal submitted. The plaintiff is not required to prove the truth of the defendant's rebuttal, and vice versa, there is no need to prove the truth of the rebuttal.*

Keywords : Legal Studies, Evidentiary Power, civil law

Introduction

The law of evidence is one of the areas of law that has existed for a long time. Since ancient times, humans and society, even in primitive conditions, have had an instinct for justice. This instinct will be aroused when there is a judge's decision that convicts an innocent person or acquits a guilty person, and when someone who is not entitled becomes the winner in a dispute. To avoid such erroneous decisions, evidence is very important in every judicial process. Evidence in legal science is a process that occurs in various types of events, be it civil events, criminal events, or other events. This process uses valid evidence and is carried out with special procedures to determine the truth of a fact or statement that is disputed in court. This aims to evaluate whether the facts or statements submitted and stated by one of the parties in the court process are true or not as stated.¹

Every individual who suffers a civil loss has the right to file a claim for the loss through the District Court in his/her area. This claim for loss is prepared in the form of a lawsuit submitted to the Head of the District Court who has the authority to adjudicate based on the applicable relative competence.² Next, the Head of the District Court will determine the Panel of Judges who will try the case. The Panel of Judges is led by the Chief Justice and assisted by at least two Judges. In accordance with Article 11 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, the judge who leads the trial is required to be fair and may not defend one party, so he must be impartial.³

During the course of the evidence in court, the judge must also ensure that all parties are given an equal opportunity to present their respective evidence. This is in line with the principle of the *audietalterapartem* principle which emphasizes the importance of justice in the legal process.⁴

In civil cases, judges act as passive rechter, where they are passive. This means that in a civil trial, the judge waits for the submission of evidence from each party,

¹ Munir Fuady, *Teori Hukum Pembuktian (Pidana dan Perdata)*, P.T. Citra Aditya Bakti, Bandung, 2006, hal. 9.

² Rahardjo, Satjipto, *Pendidikan Hukum sebagai Pendidikan Manusia*. Yogyakarta:Genta Publishing, 2009. hal.180

³ SudknoMertokusumo, *Penemuan Hukum sebuah Pengantar*, Yogyakarta: Liberty, 2009. hal.93

⁴ SudiknoMertokusumo, *Hukum Acara Perdata Indonesia*. Yogyakarta: Liberty, 1993. hal.71

based on the arguments that have been submitted in the lawsuit and the response to the lawsuit.⁵

The lawsuit filed by the Plaintiff contains arguments regarding the violation or non-fulfillment of his rights by another party. Meanwhile, the Defendant files a response to the lawsuit with the aim of refuting the Plaintiff's arguments or to prove otherwise. The truth of the arguments filed by the Plaintiff and Defendant is very dependent on the strength of the evidence presented.

The burden of proof system for the plaintiff is a must. Every statement listed in the claim posita must be proven. If the plaintiff is unable to provide adequate evidence, the judge will tend to reject the claim. Even if the defendant does not submit evidence, the plaintiff's failure to prove the arguments of his claim will still result in the claim being rejected. Therefore, the burden of proof is heavier for the plaintiff than for the defendant. The defendant will study the flow of the claim filed, and if deemed necessary, can submit rebuttal evidence (*tegenbewijs*) based on the arguments in the answer to the claim.⁶

The position of the Plaintiff and Defendant, or Co-Defendant, in terms of the burden of proof is not always in line with what is expected in Article 163 HIR. The article states, "Whoever claims to have a right or puts forward an action or event to strengthen his right, or to deny the rights of others, must be able to prove the existence of the right and the existence of the action or event in question."

In Civil Case Number: 332/Pdt. G/2024/PN Tnn, which was decided by the Tondano District Court on March 7, 2025, the Plaintiff was unable to prove the claims filed in his lawsuit. On the other hand, the Defendant, known as Alias HJN, managed to provide evidence that justified his position. Therefore, the Burden of Proof System regulated in Article 163 HIR cannot be fulfilled by the Plaintiff, because the Plaintiff was unable to show evidence that supported the arguments of his lawsuit. On the other hand, the arguments of the Plaintiff's lawsuit have been successfully proven by the

⁵ Makarao, Mohammad Taufik, *Pokok-Pokok Hukum Acara Perdata*, Jakarta: Rineka Cipta, 2009. hal.8

⁶ Achmad Ali, *Asas-Asas Hukum Pembuktian Perdata*, Jakarta: Kencana, 2012.hal. 81

Defendant. The main purpose of the law is to realize justice, provide benefits, and ensure legal certainty.⁷

Based on this background, the author raises the following problems:

1. How did the judge consider the main points of the lawsuit proven by the Defendant in Decision Number 332/Pdt.G/2024/PN Tnn?
2. What is the burden of proof in civil cases in court?

This research is a normative legal research. According to Soerjono Soekanto and Sri Mamudji, in normative legal research, library materials function as basic data which is categorized as secondary data in research science.⁸ Zainuddin Ali explained that normative legal research is often known as normative legal research.⁹

In this study, there are several approaches applied, including the legislative approach, conceptual approach, and case approach. The secondary data sources used come from literature and collections in the Postgraduate Program Library of the Law Study Program, Sam Ratulangi University, Manado. The data that was successfully DISCUSSIONcollected was then processed by utilizing various types of legal materials, namely primary, secondary, and tertiary legal materials.

Discussion

Judge's Considerations Through the Main Claim Proven by the Defendant In Decision Number 332/Pdt.G/2024/Pn Tnn

Civil dispute in Case Number: 332/Pdt.G/2024/PN Tnn with the case position, namely:

Position Case:

- 1) That the Plaintiff's grandfather and grandmother, namely Herling Worang (deceased) and Miriam Tamboto (deceased) were a legitimate husband and wife who lived in Woloan Satu Utara (formerly part of Woloan Dua Village), in the marriage the Plaintiff's grandfather and grandmother only had one daughter, namely Martje Worang (the Plaintiff's biological mother);

⁷ Marfono, Asas Keadilan, Kemanfaatan & Kepastian Hukum dalam Putusan Hakim, Jakarta Timur: Sinar Grafika, 2019. hal.27

⁸ Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif. Suatu Tinjauan Singkat, RajaGrafindo Persada, Jakarta, 2001, hal. 24

⁹ Zainuddin Ali, Metode Penelitian Hukum, Sinar Grafika, Jakarta, 2014, hal. 12

2) That in addition to only having one child, the Plaintiff's grandfather and grandmother also have a plot of rice field land located in a place called Pamotpoten, Woloan Satu Utara Police area, West Tomohon District, Tomohon City; with an area of $\pm 8,368\text{M}^2$ and boundaries:

- North: Drainage Channel
- East: Rita Setiowati and Alex Cang
- South: Cliff;
- West: Honky Nantung;

hereinafter referred to as the Object of Dispute

3) That Martje Worang then married Sigar Jacob Sewow and had 2 (two) children, namely:

3.1 Steven Jantje Sewow (Plaintiff)

3.2 Silvana Nova Sewow;

- 4) That currently, Mama Martje Worang and Papa Sigar Jacob Sewow have passed away;
- 5) Article 830 of the Civil Code states that new inheritance assets are opened (can be inherited by other parties) if a death occurs; According to Article 832 of the Civil Code, those who have the right to be heirs are blood relatives, both those who are legitimate according to the law and those outside of marriage, and the husband and wife who have lived the longest.
- 6) That the Plaintiff's younger sibling, Silvana Nova Sewow, has handed over ownership of the rice field above, located in a place called Pamotpoten, to the Plaintiff because the Plaintiff is only 2 (two) siblings, so that currently the Plaintiff is the LEGAL owner of the rice field;
- 7) That according to Article 354 of the Civil Code regarding ownership rights over an object cannot be obtained in any other way than by ownership, because of attachment, because of expiration, because of inheritance, either according to law or a will and because of appointment or transfer based on a civil event to transfer ownership rights is carried out by a person who acts freely over the object;

- 8) That precisely in 2024 the Plaintiff became aware that part of the rice field land had been taken over by the Defendant by starting to build on the Plaintiff's rice field land with an area of approximately 378M2;
- 9) That then the Plaintiff came to the Co-Defendant to report the Defendant's actions in having taken control of part of the Plaintiff's rice field without any rights and had even started building on it, however the Plaintiff's report did not reach a common ground because the Defendant in bad faith did not want to meet with the Plaintiff; instead the Plaintiff found that the Defendant had a measurement letter issued by the Co-Defendant;
- 10) That the Defendant's actions in taking control without rights and in an unlawful manner and refusing to hand over the land but instead starting to build on the Plaintiff's agricultural rice fields are clearly an unlawful act;
- 11) That the Defendant's actions in starting to build on the Plaintiff's rice fields were very detrimental to the Plaintiff because the rice fields were the Plaintiff's place of business which was temporarily closed for renovation;
- 12) That in accordance with Article 1365 of the Civil Code STATES that every act that violates the law and causes loss to another person requires the person who caused the loss due to his/her fault to compensate for the loss; therefore the Plaintiff requests compensation for material and immaterial losses due to the unlawful and unlawful control of the Defendants;
- 13) That all efforts have been made by the Plaintiffs through peaceful means with the Defendants so that the Defendants can hand over the Plaintiff's garden land, but the efforts of the Plaintiff and his family were in vain, the Defendants still control the disputed object and even started building on the disputed garden land; That the actions carried out by the Defendants are very detrimental to the Plaintiff, for which the Plaintiff states his objection to it;
- 14) That because this lawsuit is based on evidence that can be legally accounted for, it is very legally justified that the Panel of Judges examining this case can immediately issue a decision (Uit Voerbaar bij Voorraad) even though there is a Verzet for Appeal or Cassation.

Based on all the considerations above that have been put forward by the Plaintiff, the Chairman of the Tondano District Court cq the Panel of Judges who examined and tried this case are pleased to decide as follows:

1. Grant the Plaintiff's Claim in its entirety;
2. Declare that the Defendant's actions in illegally and unlawfully controlling part of the disputed rice fields belonging to the Plaintiff are an Unlawful Act;
3. Declare that the Plaintiff's rice field is located in a place called Pamotpoten, Woloan Satu Utara Police area, West Tomohon sub-district, Tomohon City; with an area of $\pm 8,368\text{M}^2$ and boundaries:
 - North: Drainage Channel
 - East: Rita Setiowati and Alex Cang
 - South: Cliff;
 - West: Honky Nantung;

Hereinafter referred to as the Object of the Dispute is LEGALLY the property of the Plaintiff;

4. Order the Defendant to hand over and vacate part of the rice field land which is the object of the dispute belonging to the Plaintiff;
5. Declare that all evidence of ownership from any party that will be submitted based on the Defendants' application is INVALID, not binding and null and void by law along with all of its Claims;
6. Declare that all letters arising from the Defendant's legal actions are INVALID and not binding and have no evidentiary force;
7. Placing a Security Encumbrance on the Object of Dispute;
8. Punish the Co-Defendants to submit and submit to the Decision;
9. To sentence the Defendants to pay material and immaterial losses amounting to Rp. 1,000,000,000.00 (One Billion Rupiah);
10. Sentencing the Defendants to pay compensation (dwangsom) of Rp. 1,000,000.00 (One Million Rupiah) per day starting from the date the verdict is issued if the Defendants do not hand over the disputed object belonging to the Plaintiff;
11. Stating according to the law that this decision can be executed first/immediately (Uit Voerbaarr Bij Voorraad) even though there is a Verzet, Appeal or Cassation;

12. Sentence the Defendant to pay the costs of the case;

The description above is the Plaintiff's *posita* and according to the panel of judges, the Plaintiff is burdened with providing evidence to prove whether it is true that the Plaintiff is the owner of the disputed land with an area of $\pm 8,368\text{M}^2$ (eight thousand three hundred and sixty eight square meters) located in Pamotpoten, Police area, Woloan Satu Utara Subdistrict, West Tomohon District, Tomohon City?

Based on the trial facts in the written evidence in P-6 which only states that the Plaintiff requested a measurement based on a statement letter and statement of the heirs dated December 18, 2022 and then the Plaintiff based his ownership on a plot of land located on land called Pamotpoten in the Police area of Woloan Satu Utara Village, West Tomohon District, Tomohon City with an area of $\pm 8,368\text{M}^2$ (eight thousand three hundred and sixty eight square meters) without showing any proof of ownership of the land. Meanwhile, the Land Measurement Report Number: 642/1006/68/XII/2022 (vide evidence P-6) in 2022 made by the Wuloan Satu Utara Village is not a form of proof of ownership but is only a deed made by a local government official to explain that the land named Pamotpoten in the Woloan Satu Utara Village Police area, West Tomohon District, Tomohon City has been measured and it turns out that the area is $\pm 8,368\text{M}^2$ (eight thousand three hundred and sixty eight square meters) at the request of the Plaintiff who is the heir of Sigar Jacob Sewow.

Meanwhile, the Defendant through the testimony of witness Yuberth Moningka explained that he obtained the land that is currently the object of the dispute from Mr. Martin Runtu in 2003, after the land was purchased it was managed by witness Yuberth Moningka as a goldfish pond until 2006, then in the same year it was sold back to witness Andrie Ferry Tololiu (evidence T-1, and T-2), and while owned by witness Andrie Ferry Tololiu until 2011, the land was sold back to the Defendant in the same year for Rp45,000,000.00 (forty five million rupiah) (evidence T-3). Based on the testimony of witness Yuberth Moningka, the Panel of Judges obtained the suspicion that Mr. Martin Runtu had previously obtained the land by buying it from the late Sigar Jacob Sewow who is known to be the Plaintiff's biological father (evidence P-7 and T-4).

Furthermore, Hongky Jeffry Nantung/Defendant obtained a plot of land located in a place called Pamotpoten, Woloan Satu Utara Police area, West Tomohon sub-

district, Tomohon City, which borders East Markus Notulo, South Sigar Jacob Sewow, West Hongky Jeffry Nantung and North Water channel/road through a sale and purchase with Andrie F. Tololiu as per the sales and purchase receipt dated June 8, 2011 (see evidence T-3) in which the sales and purchase receipt has been signed by Andrie F. Tololiu so that the affixing of the signature is a form of approval and agreement by Andrie F. Tololiu who binds himself in the sale and purchase with Hongky Jeffry Nantung/Defendant, In addition, in the trial there was no apparent reason for cancellation of the agreement due to a defect in will, namely coercion (dwang), error (dwaling), and fraud (bedrog). Thus, the Panel of Judges is of the opinion that the valid requirements for an agreement, namely agreement, have been fulfilled.

The facts of the trial above can be described that in terms of the burden of proof that should be imposed on the plaintiff, they are unable to prove legitimate ownership based on the disputed object that is argued. And in reality, through the evidence available from the Defendant, it is the Defendant who can prove legitimate ownership through written evidence presented at the trial.

In conclusion, in making the decision of the Panel of Judges to decide the case, the Panel of Judges looked at the trial facts from written evidence, witness evidence and even other legal facts presented in the trial. Especially in deciding this case with number 332/Pdt.G/2024/PN Tnn, the Panel of Judges considered that the Plaintiff who was actually burdened with Proof could not prove the truth of the arguments and claims that he presented in the trial. Meanwhile, the Defendant was able to prove so accurately in denying every argument argued by the plaintiff against the plaintiff by presenting accurate written evidence and also witness statements showing that it was true that the ownership of the land that was the object of the dispute belonged to the Defendant. So the judge's consideration in looking at the flow of the trial to decide this case focused on every piece of evidence and trial fact presented by the Defendant.

Burden of Proof in Civil Cases in Court

Evidence in civil cases in the District Court is part of a series of processes aimed at examining, trying, and deciding civil cases in the General Court environment. The examination, trial, and case decision processes are very closely related to each other. Through the examination, we can trace various aspects, including the completeness

of the administration related to the granting of power of attorney with a special power of attorney (*bijzondere schriftelijke machtiging*). This power of attorney is basically an agreement between the party granting the power of attorney and the party receiving the power of attorney. The definition of granting power of attorney is generally regulated and formulated in Article 1792 of the Civil Code, which explains that "Granting power of attorney is an agreement in which a person grants power to another party, who receives it, to take care of something on his behalf."¹⁰

Based on the understanding of the granting of power of attorney in the provisions of Article 1792 of the Civil Code, the legal relationship between the principal and the recipient of the power of attorney can be understood as a legal relationship that is in the nature of an agreement. This agreement can be made either verbally or in writing, with the aim of and on behalf of the principal in fighting for his interests in facing certain cases.

The provisions of Article 123 HIR regulate the granting of power of attorney which can be carried out if desired by the disputing parties. In the context of Indonesia as an independent and sovereign country, the granting of power of attorney or legal assistance is an important part of the guarantee of legal protection. This is also emphasized in Article 28D paragraph (1), which states that "Everyone has the right to recognition, guarantee, protection, and certainty of fair law, as well as equal treatment before the law".¹¹

The parties involved in a case do not always have a deep understanding of the various aspects of the law, especially those related to the legal problems they face. Therefore, by granting power of attorney, they can obtain legal assistance from relevant legal advisors, lawyers, or advocates.

The importance of providing legal aid and the role of legal advisors or advocates in accompanying clients facing legal problems is not limited to the judicial environment, but also has a significant impact outside the courts.

The litigation process in a civil case begins with the submission of a lawsuit letter prepared by a legal advisor based on a power of attorney. In addition, the lawsuit must

¹⁰ R. Subekti dan R. Tjitrosudibio, *Kitab Undang-undang Hukum Perdata*, Pradnya Paramita, Cetakan ke-32, Jakarta, 2002, hal. 457

¹¹ Lihat, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (Pasal 28D ayat (1))*

be made in written form, in accordance with the provisions contained in Article 118 paragraph (1) HIR and Article 142 paragraph (1) RBg. In the event that the client is unable to read and write, especially regarding legal language and material, the legal advisor will play an important role as an intermediary to overcome these limitations.

A general power of attorney is a document that explains that the granting of power is general in nature and covers a wide range of things. Meanwhile, a special power of attorney explicitly explains that the power granted only applies to certain things, such as for the processing of land certificate extensions, house certificates, or vehicle certificates belonging to the grantor of the power of attorney, and so on.

The provisions of Article 1865 of the Civil Code (KUH. Perdata) are similar to Article 163 of the Civil Procedure Code (HIR) and regulate the burden of proof borne by the plaintiff.

The general principles of the burden of proof are as follows:

1. The Plaintiff is Obligated to Prove His Arguments: The party filing the lawsuit, namely the plaintiff, has an obligation to prove the truth of the arguments they present.
2. The Defendant Bears the Burden of Proving His Rebuttal: If the defendant submits a rebuttal or new claim, such as an exception or reconciliation, then the defendant is also responsible for proving this.
3. The Passive Role of Judges: In the context of civil procedural law, judges have a relatively passive role, only evaluating the evidence presented by both parties without seeking evidence independently.
4. The burden of proof is dynamic: In certain situations, the burden of proof can shift from one party to another, depending on the content of the arguments and objections submitted by each party.

According to Achmad Ali and Wiwie Heryani, Article 163 HIR includes two important principles, namely:

- a. The principle of burden of proof, and
- b. The principle of distribution of burden of proof.

Based on the principle of the division of the burden of proof in Article 163 HIR, the plaintiff has an obligation to prove the facts they submit, while the defendant is obliged to prove the objections submitted. The plaintiff is not obliged to prove the truth

of the defendant's objections, and vice versa, there is no need to prove the truth of the events they submit.

Conclusion

Based on the results of the legal study of Decision Number: 332/Pdt.G/2024/PN Tnn, the following can be concluded. The Power of Evidence in Civil Law is based on the principle of "he who asserts must prove where the burden of proof lies with the party submitting the argument. In the context of this case, the panel of judges has carefully examined the evidence submitted by the parties in accordance with the provisions of civil procedure law, especially Article 164 HIR / 284 RBg and Article 1866 of the Civil Code. Delegation Number 332 / Pdt.G / 2024 / PN Tnn shows that judges use a systematic approach in assessing the strength of evidence, especially written documents (authentic deeds and private deeds), witnesses, and confessions of the parties. Judges give primary weight to authentic written evidence as perfect evidence, unless it can be refuted by other evidence that is equal or stronger. In the decision, the judge objectively and proportionally considers each piece of evidence submitted, including testimonium de auditu which legally does not have valid evidentiary force, and sets aside evidence that does not meet formal or material requirements. This study proves that the concept of the power of proof in civil law in Indonesia still relies heavily on formal proof, so that fulfilling the formal requirements of evidence is crucial in winning a lawsuit. Reinforces the importance of caution on the part of the parties in compiling, storing, and presenting evidence in the litigation process. Finally, this decision confirms that judges are not only bound by normative provisions, but are also required to apply legal logic and a sense of justice (*ex aequo et bono*) in assessing the facts revealed in court.

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