

THE ROLE OF THE VOID OF TERMINATION AS EVIDENCE IN THE SETTLEMENT OF CIVIL JURISDICTION PROCESSES IN STATE COURTS

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Keywords

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Evidence

Abstract. Courts have an important role in implementing the rule of law concept during the democratization process, especially in the transition from an authoritarian political system to a democratic society. In the process of seeking justice in court, the parties try to win the case in their own way, this can be an obstacle for the court in making decisions or in determining the truth of a case. In connection with this, here will try to analyze logically and systematically about the implementation of the oath as evidence in court, for the smooth running of the judicial process in court. The nature of the research used by the author in writing this thesis is descriptive analysis, which describes and describes all the data obtained from the results of the literature study relating to the title of legal writing which is clearly and in detail then analyzed in order to answer the problems studied. The form of the method of this thesis writing research is a normative juridical approach and empirical juridical approach. Regarding the procedure for implementing the severing oath, it is regulated in Articles 1932 and 1933 of the Civil Code, Article 156 HIR, and the legal force of an oath before a court is the most important thing in procedural law because the court in upholding the law and justice is nothing but based on evidence. The breaker oath aims to settle the case being examined. Therefore, the severing oath must be deccisoir, meaning it is severing and ending the root cause.

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1. INTRODUCTION

The Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, which means that all actions must be in accordance with the norms and provisions that have been regulated. Courts have an important role in implementing the rule of law concept during the democratization process, especially in the transition from an authoritarian political system to a democratic society. In the current transition period, the courts are institutions that implement the constitution, protect human rights, justice, and guarantee democratic procedures.

One of the most important processes in a trial is the evidentiary stage, where in this evidentiary process it serves to prove the truth in a dispute which will then be used as one of the judges' foundations in deciding which party will win in the dispute. The evidence recognized by the prevailing laws and regulations in Article 1886 of the Civil Code are as follows: "Evidence consists of: Written evidence; Evidence with witnesses; conjectures; confession; oath. Everything with due observance of the rules laid down in the chapters that follow."

Oath evidence is evidence that is imposed by the judge on the plaintiff and the defendant, because the judge judges with appropriate evidence that he cannot give a decision to the court process, the only way is taking an oath as complementary evidence and strengthening the previous evidence. So the problem in this research is How is the application of the severing oath in the examination of civil cases and its legal force?, What is the purpose of the severance oath as evidence in court? What are the legal consequences if the request for the severance oath is incorrect?

2. METHODS

The type of research used in this research is normative-empirical legal research. The nature of the research used by the author in writing this thesis is descriptive analysis, which describes and describes all the data obtained from the results of the literature study relating to the title of legal writing which is clearly and in detail then analyzed in order to answer the problems studied.

Sources of data needed in this study are primary data and secondary data. The technique used to collect data in this research is through document study with literature search. Secondary data is data obtained through the literature, by reviewing, analyzing and processing literature, laws and regulations, articles or writings related to the problems to be studied.

3. RESULTS AND DISCUSSION

A. Application of the Severing Oath in the Examination of Civil Cases and Its Legal Force

In civil cases, the oath taken by one of the parties is used as evidence. In a criminal case, of course, no oath is imposed on a defendant, because if the defendant is allowed to swear, he will be able to escape punishment too easily. The Civil Code does not explain what is meant by an oath. Legal experts provide understanding, among others, that: an oath is a matter of strengthening a statement by calling on God.

The oath is used to strengthen the evidence that the person who takes the oath proves his truth, declares himself right, and if he does not then he will be cursed. The legal power of an oath before a court is the most important thing in procedural law because Courts in upholding law and justice are nothing but evidence based.

Regarding the procedure for implementing the severing oath, it is regulated in Articles 1932 and 1933 of the Civil Code, Article 156 HIR, based on these articles, if the judge permits the uttering of the severing oath, then the opposing party who is ordered to pronounce it has the option to. And the legal power of an oath before a court is the most important thing in procedural law because the court in upholding law and justice is nothing but evidence based.

B. The Purpose of the Severing Oath as Evidence in Court

The purpose of the oath is to prove the truth of a legal event that is disputed by the litigating parties in a court of law. An oath as evidence is a statement or statement that is corroborated in the name of God, with the aim that the person who swears in giving the statement or statement is afraid of God's wrath, if he lies, on the basis of fear of God's wrath or punishment, is considered a driving force for who vowed to tell the truth. The breaker oath aims to settle the case being examined. Therefore, the severing oath must be decisive in nature, meaning it is severing and ending the root cause. In this case, the judge needs to really consider whether the oath requested is decisive, so that the oath is concluded.

C. The Legal Consequences of If What Is Asked for an Oath is Not True

There are no provisions in the law that explicitly stipulates the strength of the proof of the decisive oath. Even so, the strength of the evidence can be concluded from the formulation of article 183 paragraph (3) RO.Bg / article 156 paragraph. (3) HIR. As stated earlier in the article, it is stipulated: "Whoever is ordered to take an oath, but does not want to take an oath by himself or refuse the oath to his opponent, or whoever orders an oath but the oath is returned to him and does not want to take an oath then He must be defeated.

This is in accordance with R. Subekti's view, that the severance oath is the 'ultimate weapon' or the last weapon for the party proposing evidence. It is a weapon that is easy to use but also dangerous for the wielder. 'If the opposing party takes the oath, the person who ordered the oath will lose.

An oath ordered by one of the litigating parties to the other party has a coercive evidentiary power, if the oath has been taken. The judge must assume that it or the events mentioned in the formulation of the oath have actually occurred, even though the judge himself may not believe in its truth.

4. CONCLUSION

The procedure for implementing the severing oath is regulated in Articles 1932 and 1933 of the Civil Code, Article 156 HIR, based on these articles, if the judge permits the uttering of the severing oath, then the opposing party who is ordered to pronounce it has the option to. And the legal power of an oath before a court is the most important thing in procedural law because the court in upholding law and justice is nothing but evidence based. The breaker oath aims to settle the case being examined. Therefore, the severing oath must be decisive in nature, meaning it is severing and ending the root cause. In this case, the judge needs to really consider whether the oath requested is decisive, so that the oath is concluded. The legal consequence of a severing oath is that if the act for which an oath is requested is not true, then the truth of the event or act for which an oath is requested becomes certain according to law.

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