International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 7, Issue 3
April, 2020
Pages: 94-104

# Juridical Analysis of the Implementation of Proof in Verstek Decision on Land Disputes in Padang District Court

Trysia Faradita; Yulia Mirwati; Rembrandt

Faculty of Law, Andalas University, Padang, Indonesia

http://dx.doi.org/10.18415/ijmmu.v7i3.1517

## *Abstract*

Land is part of the territory of a country that has a very important function. Therefore, land disputes often occur in communities which are finally resolved in the District Court. The formulation of the problem in this paper was to see what evidence is used by the Plaintiff in Verstek Decision and the judges' considerations in applying proof in Verstek Decision. To answer this problem, the author utilized the normative juridical method. The results of the discussion showed that the evidence used by the Plaintiff was included in the type of evidence as specified in Article 164 HIR jo. 284 RBg. As an important point, the judge's consideration in applying proof in the Verstek Decision was to gain confidence in the formal truth through the evidence presented by the Plaintiff. Furthermore, the application of this proof was a form of the application of the theory of justice and the theory of expediency. For future works, as an attempt to get the certainty, the Supreme Court as the highest judicial institution should make clear rules regarding civil cases in which the defendant is never present at the trial, and whether the proof shall be done or not. It is also to avoid condusion of the plaintiffs who undergo the trial process.

***Keywords:*** *Land, Dispute; Verstek; Verstek Decision*

## *Introduction*

For Indonesia, as an agrarian or archipelago country, land has a very important position in the administration of life and human life (Maria, 2009). It is indicated in Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia which states that: The land, the waters and the natural riches contained therein shall be controlled by the State and exploited to the greatest benefit of the people (Sutedi, 2007).

Problems that arise between right-holders are usually resolved through litigation, that is through the Court. In this case, it is the District Court under the General Court.[1] The District Court, which is the executor of the judicial authority, acts as the last resort of the justice seeker to solve the problem. The District Court utilizes the provisions of formal law or civil procedural law in examining, deciding, and settling land disputes which are part of civil cases. Civil Procedure Law is a series of regulations that

[1]See Article 3 paragraph (1) of Law Number 2 of 1986 concerning General Justice

contain how people must act to each other to implement civil law regulations (Prodjodikoro, 1975). According to Sudikno Mertokusumo, Civil Procedure Law is a legal regulation that regulates how to ensure compliance with material civil law with the intermediary of a judge (Mertokusumo, 2006). It is also called formal civil law, which is all the legal rules that determine and regulate how to implement civil rights and obligations as stipulated in material civil law.

The application of HIR (*Herzien Inlandsch Reglement*) and RBG (*Rechtreglement voor de Buitengewesten*) in court proceedings is an attempt to find the truth of a civil case. Therefore, the presence of the parties in the trial and the Plaintiff who filed the lawsuit is very important. Moreover, the Defendant must also be present to respond to the claim filed by the Plaintiff.

For the presence of the parties in the trial, an official summons is made for the parties through a summons or in the Court called *Relaas panggilan* (court summons). *Relaas* contains the time of the trial and its agenda so that the parties can prepare for the trial. Penyampaian *Relaas* kepada para pihak akan dilakukan oleh Jurusita Pengadilan.[2] After the official summons has been legally received by the parties: Plaintiff and Defendant, both parties must attend the trial in accordance with what has been stipulated in the *Relaas*. However, although they have been legally called through the *Relaas*, it is still often found that many parties have never been present at the trial. The absence of these parties will have different consequences.

If the Plaintiff is not present at the trial despite being properly summoned, based on the provisions of Article 124 HIR jo. 148 RBg, the lawsuit will be declared null and void. In addition, the Plaintiff is charged with court fees. After paying the court fee, the Plaintiff has the right to file the lawsuit again.

On the other hand, if the Defendant is not present, the consequences will be different. This is as regulated in Article 125 paragraph (1) HIR jo. 148 paragraph (1) of the RBg which determines that: If the defendant, even though he has been legally called, does not come on the specified day, and does not ask anyone else to represent him, then the claim is accepted by a decision without the presence (verstek), except if for the district court clearly states that the claim is against the right or has no grounds. This law has no further explanation regarding the definition of the claim from the Plaintiff which is against the right or has no ground. However, in terms of grammatical or linguistic terms of the provision, the understanding against the right can be understood that the claim filed by the Plaintiff is a claim that is against the rights as stipulated in the provisions of Article 1365 of the Civil Code which reads A party who commits an unlawful act which causes damage and/or loss to another party shall be obliged to compensate therefore. Additionally, the aforementioned "no ground" can be understood that the claim requested by the Plaintiff was not described in the *posita* of the lawsuit, so it could not be granted.

The court immediately accepts the claim filed by the Plaintiff if the Defendant is never present. It is supported by one of the Decisions in the Padang District Court obtained from the Website Directory of Indonesian Supreme Court Decisions, that is the Decision Number 118/PDT.G/2013/PN.PDG concerning land disputes. One of the arguments explicitly states that "If the Defendant is legally called and not present", then the Plaintiff's Lawsuit is granted in full with verstek. The legal considerations contained in the decision also show that the Panel of Judges only considers the Plaintiff's arguments without any evidence and considers that the Plaintiff's arguments do not oppose rights and are not groundless as regulated in the provisions of the Article 125 paragraph (1) HIR jo. 148 paragraph (1) RBg, so the Plaintiff's Lawsuit is granted for the whole.

The absence of the Defendant will not always result in the Plaintiff's claim being granted. If the Plaintiff's claim is against the right or is groundless, the Court will declare that the Plaintiff's claim cannot

[2]See the provisions of Article 390 of HIR

be accepted. It is regulated in Decision Number 182/PDT.G/2013/PN.PDG. The verdict confirms that the Court states that the Plaintiff's Lawsuit is not accepted since the Petitum submitted by the Plaintiff is not in line with Posita in its lawsuit by which there are formal defects and the Plaintiff's claim is declared unacceptable.

However, currently there has been a paradigm shift regarding the absence of the Defendant. The court will not immediately grant a lawsuit from the Plaintiff. but the Court will examine the evidence presented by the Plaintiff. It shows the use of evidence by the Court in the absence of the Defendant; although the provisions of Article 125 paragraph (1) HIR jo. 148 paragraph (1) RBg determines that if the Defendant is absent, the Plaintiff's Claim must be declared granted in a verstek manner without the need for proof. Thus, it can be seen in general that the District Court has deviated from the specified procedural law. The use of evidence in the event that the Defendant is absent can be seen from several decisions of the Padang District Court in the field of land obtained from the Directory Website of the Decisions of the Indonesian Supreme Court as in Decision Number 103/PDT.G/2013/PN.PDG, Decision Number 186/PDT.G/2013/PN.PDG, Decision Number 3/PDT.G/2014/PN.PDG, Decision Number 100/PDT.G/2015/PN.PDG, Decision Number 87/PDT.G/2014/PN.JMB, Decision Number 64/PDT.G/ 2015/PN.SDA, Decision Number 22/PDT.G/ 2017/PN.TRG and various District Court Decisions in the field of land.

## *Method*

The method is the main procedure used to achieve a goal, to achieve the level of accuracy, number and type encountered. The method is carried out by carrying out classifications based on experience, can be determined regularly and think that is coherent and good to achieve a purpose (Surakhmat, 1982). This research is a legal research based on a certain method, systematic and thinking, which aims to study one or several specific legal phenomena by analyzing them (Sunggono, 2010).

In this study, the approach taken by the author is the statute approach and conceptual approach. The statute approach is carried out by examining the laws and regulations related to the legal issues being handled, namely judicial analysis of the application of evidence in the Verstek Decision on land disputes in the District Court. Besides, the type of research used in this study is normative legal research. It examines the principles of law, legal systematics, legal history, the extent of legal synchronization, and legal comparison.

The nature of the research used is descriptive. It describes the results of research based on the problems raised in the juridical analysis of the application of evidence in the Verstek Decision on land disputes in the District Court as a form of renewal in civil law.

In this study which is a normative study, the material studied is only secondary data or library materials. Secondary data is data in the form or content that has been formed and filled in by previous researchers, so that the researchers then have no control over the collection, processing, analysis and construction of data.[3] Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials. This tertiary legal material can be in the form of dictionaries, both legal dictionaries and other dictionaries related to research material and so on.

Basically, the documentation technique in normative legal research only uses data collection tools in the form of document studies/library studies. Document study is a technique of collecting legal material

[3] Soerjono Soekanto, Op.Cit., page 12

which is done through written legal material using content analysis, namely by analyzing documents that the author has obtained in the field related to the problem under study.[4]

In this research, the data obtained was processed by the editing process, where this activity was carried out by re-examining and correcting or checking the results of the research from which the data were arranged systematically and finally a conclusion was obtained. All data that had been collected both primary and secondary legal materials were processed qualitatively. Here, the data analysis was conducted by analyzing, interpreting, drawing conclusions and pouring in sentences. The use of sentences was the view of experts and statutory regulations.

*Evidence Used in Verstek Decision that Applies Proof*

There must be evidence that is charged to prove an event. The general guideline is the provisions of Article 163 HIR jo. Article 283 RBg. In general, based on the above provisions, the plaintiff proves what has been argued in his lawsuit, while the defendant is burdened to prove the arguments of the rebuttal in the answer. The plaintiff is not required to prove the truth of the defendant's rebuttal, and vice versa where the defendant is not obliged to prove the truth of the event submitted by the plaintiff.

In proving, not everything is easy to prove, especially a *negatie*, a negative thing. Negative things are generally impossible (*negative non sunt probanda)*: proving that a person does not owe, does not receive money, and other negative things stating 'not' are generally impossible or difficult. Therefore, proof of a *negatie*: *should not be forced on a person.* The Supreme Court in its decision dated March 15, 1972 no. 547 K/Sip/1971 decides that the evidence placed on those who has to prove something negative is heavier than the burden of proof on those who has to prove something positive. The latter includes those who are better able to prove it.[5]

In the event of the defendant who is never present and in the end the judge hands down the Verstek Decision which applies proof, the burden of proof during the trial only rests with the plaintiff. The plaintiff will prove the arguments he put forward through evidence which he considers justifies his arguments. The plaintiff does not need to find evidence to refute the defendant's argument or the defendant's evidence since the defendant is basically absent, so there is no answer that contains a rebuttal including evidence from the defendant.

In the event that there is an event which has to be carried out in a negative manner which must be proven by the Plaintiff, it will be increasingly difficult. It is because the parties in the Verstek case are only the Plaintiff himself and the judge who can justify the evidence to the parties cannot impose the burden of proof on the defendant since the defendant is not in the trial. To prove it, the Plaintiff can strive by submitting evidence in the form of a witness whose statement may prove the negative thing.

In verifying the judge, the plaintiff will use the evidence available to him. To see what evidence is submitted by the Plaintiff during the verification in the Verstek Decision, the Judge will see and explain this kind of matter in the decision.

One of the verstek cases that applies evidence in land disputes in the Padang District Court is in case 103/PDT.G/2013/PN.PDG. In the verdict in the case, the types of evidence presented by the Plaintiff are as follows;

[4]*Ibid*., page 25
[5]*Ibid*., page 21

1. Letters, consisting of:

    a. Photocopy of Power of Attorney Number: 140, dated August 7, 2002, marked P.1
    b. Photocopy of Certificate of Building Rights on Land 1844 / Padang Sarai Letter of Measurement dated 3 June 2000, Number: 307/ PS/ 2000 with an area of 140 M2, changed to Rights of Ownership No.2846/ Padang Sarai, marked P.2
    c. Photocopy of original Receipt of Certificate of Building Rights on Land 1844/ Padang Sarai Letter of Measurement dated 3 June 2000 Number 307/ PS/ 2000 with an area of 140 M2, changed to Rights of Ownership Number 2846/ Padang Sarai, marked P.3.
    d. Photocopy of Proof of Repayment of Credit Installments from the *Tabungan Negara Padang* Bank, dated October 24, 2012, marked P.4
    e. Photocopy of Engagement Letter for Sale and Purchase number 139 dated August 7, 2002 made by Dasrizal, SH., Notary in Padang, marked with P.5.

2. Witness, involving:
    a. MAHYUDDIN
    b. AIDA
    c. RIRI
    d. DASRIZAL[6]

The witness testimony in the above Decision is not elaborated in the decision but it is stated that the witness testimony is contained in the Official Report on the Trial at the time of the witness examination and is not a separate part of the decision. Furthermore, in the case of vertsek with evidence on land disputes in the Padang District Court in Decision Number 100/G.PDT/2015/PN.PDG, the evidence presented by the Plaintiff is as follows:

1. Letters, consisting of:

    a. Photocopy of Deposit Form through BTN Bank Padang on March 23, 2004, which has been stamped sufficiently and has been adjusted to the original, marked P.1;
    b. Photocopy of Details of the Accelerated Repayment of KPR Griya Inti (A) through BTN Bank Padang on March 23, 2004 which has been stamped sufficiently, and has been adjusted to the original, marked P.2;
    c. Photocopy of Copy of Current Account (*Rekening Koran*) of KPR through BTN Padang dated March 23, 2004 which has been stamped sufficiently, and the original cannot be shown, marked P.3;
    d. Photocopy of Sales and Purchase Agreement from Drs.Mansyurdin Usman to Nurhayati on September 17, 1997 which has been stamped sufficiently and in accordance with the original, marked P.4;
    e. Photocopy of Receipt of cash from Nurhayati dated June 14, 1997 which has been stamped sufficiently, and in accordance with the original, marked P.5;
    f. Photocopy of National Land Agency Land Book, Building Rights on Land No.338 of Kubu Dalam in the Name of Rights Holder Drs.Mansyurdin Usman, which has been stamped sufficiently and there is no originals, marked P.6;
    g. Photocopy of Letter No.021/05/P/DP3K/IMB/1995 from Mayor Head of Level II Region Padang grants permission to Drs.Mansyurdin to build the building, which has been stamped sufficiently and there is no originals, marked P.7;

[6]*Ibid*., page 144

h. Original Certificate of Domicile of the Plaintiff No.470.692/KDP-VIII/2015 dated August 25, 2015, in which the Plaintiff has been domiciled in Kubu Dalam, Parak Karakah since 1997 until now, the letter has been stamped sufficiently, marked P. 8;

2. Witness, involving:
   a. YANTI KOMALA SARI
   b. WARIAH

Decision Number 100/G.PDT/2015/PN.PDG contains the main points of witness statements.[7]

The distinction between witness statements contained in decisions or statements that are only in the minutes of the trial depends on the Panel of Judges and this is basically not something at issue. The most important thing is how the judge's judgment of the witness's statement is related to the case being examined to find out the truth.[8]

From the two Verstek Decision examples that use the above proof, the evidence used by the Plaintiff to convince the Judge is a letter and a witness. Based on the provisions of 164 HIR and 284 RBg governing the types of evidence in civil cases, the evidence submitted by the Plaintiff is part of the five types of evidence set out in provisions of 164 HIR and 284 RBg. It is difficult to use other evidences in verstek cases such as oath evidence, especially *decisoir eed*. This kind of oath is also referred to as *beslissende eed* (*sumpah pemutus*) which is an oath taken by one of the parties at the command or request of the opposing party. The *decisoir eed* cannot be used verstek only consists of the plaintiff and it would not be possible for the plaintiff to take a *decisoir eed* without the defendant asking for it.

*Analysis of Legal Considerations in the Application of Proof System on Verstek Decision in Land Disputes in Padang District Court*

Verstek Decision is a decision handed down by the Panel of Judges in the event that the Defendant does not come nor does he also represent his attorney to appear before the Court even though he has been properly and legally summoned. It is regulated in the provisions of Article 125 paragraph (1) HIR and 149 paragraph (1) RBG. The provision states that the Judge will grant the Plaintiff's claim if the Plaintiff's claim is reasonable and does not violate the law. The provision does not stipulate that Judges are required to make proof before issuing a decision without the presence of the Defendant. No proof made in the Verstek Decision is shown in the decision of the Padang District Court in case Number 118/PDT.G/2013/PN.PDG.

However, in practice, in cases where the Defendant is absent, the Panel of Judges will not immediately grant the Plaintiff's claim. They will first provide proof of the arguments submitted by the Plaintiff in his lawsuit. At the Padang District Court, it can be seen from several decisions including Decision Number 103/PDT.G/2013/PN.PDG, Decision Number 186/PDT.G/2013/PN.PDG, Decision Number 3/PDT.G/2014/PN/PDG, Decision Number 100/G.PDT/2015/PN.PDG. and various Padang District Court Decisions related to land disputes.

Before conducting proof, the Panel of Judges will first ascertain whether the Defendant has been properly and legally summoned. Properly here means that the Defendant will be summoned not only once to attend the first trial, but he will be called once again to attend the trial by registered letter.[9] Furthermore, in practice, the panel of judges will summon the Defendant up to three times through the registered letters (Harahap, 2010). In addition, Yahya Harahap points out that "Based on the

[7]Padang District Court Decision Number 100/G.PDT/2015/PN.PDG
[8]Padang District Court Decision Number 103/PDT.G/2013/PN.PDG
[9] The results of the interview with Dr. Gustiar, S.H., M.H., Judge at the Padang District Court on Thursday, December 12, 2019.

consideration of the *fair trial* principle in accordance with the *audi alteram partem* (listen to the other side), if the Defendant is not present in the first trial, then it is not feasible to directly punish him with the Verstek Decision. Therefore, a wise judge is not rash emotionally to directly apply the decision text, but he gives the Defendant the opportunity to appear at the court by postponing the trial."[10] To see whether the summons to the Defendant is valid, the Panel of Judges will look at the summons sent by the Substitute Bailiff and check whether the name on the summons is the correct name of the Defendant.[11]

After confirming that the Defendant has been legally and properly summoned, the Panel of Judges in the trial will order the Plaintiff to present evidence supporting the arguments in his claim. Its submission is done by the Panel of Judges after reading the lawsuit. Due to the absence of the Defendant, there is no answer agenda between the parties, so that it is immediately proceeded to the proof (Harahap, 2010).

The Panel of Judges who applies the proof in the event that the Defendant is absent, the decision will show that the Panel of Judges conducts the conclusions of the legal facts based on the evidence presented by the Plaintiff. The form of the constant carried out by the Judge in its legal considerations in the Verstek Decision is as follows:

*Considering, that after the Panel of Judges studied the case file based on documentary evidence, evidence letter P.1 up to evidence letter P.5 associated with witness statements - witnesses before the trial, namely the statements of witness 1 Mahyuddin and especially the statements of witness 4 Notary Dasrizal, the following legal facts were revealed:*

1. *it was true that the Defendant on 19 September 2000 had bought a parcel of land along with a house located and commonly known in Padang Sarai Permai AA.17, Padang Sarai, Koto Tangah, Padang with Certificate of Building Rights on Land 1844/Padang Sarai with a Measurement Letter dated 3 June 2000 Number 307/PS/2000 with an area of 140 M2 on credit through PT Bank Tabungan Negara Padang (BTN) from September 19, 2000 to October 1, 2014;*
2. *Because the Defendant was unable to pay the loan installments to BTN Bank Padang, the Plaintiff continued the credit installments and on August 7, 2002 the Defendant had granted the Plaintiffs to the Plaintiff made before Dasrizal, SH., A Notary in Padang with Number 140 to sell or transfer the rights in any way either to the recipient of the attorney himself or to other parties either partially or wholly on a commonly known plot of land located in Komplek Perumahan Padang Sarai Permai Blok AA Number 17. Therefore, from October 2002 to September 2012 the Plaintiff paid the installment of the credit to PT Bank Tabungan Negara Padang, until 24 October 2012 the Plaintiff has paid the credit to PT Bank Tabungan Negara Padang in the amount of IDR 2,310,009 (Two Million Three Hundred Ten Thousand Rupiah);*[12]
3. 

Additionally, against the Verstek Decision which does not apply proof, no *konstantir* was done by the Panel of Judges due to the absence of evidence presented by the Plaintiff. The Panel of Judges seemed to believe directly what was submitted by the Plaintiff in his lawsuit without any evidence presented to corroborate the argument. It was shown in the Legal Consideration of Padang District Court Decision Number 118/PDT.G/2013/PN.PDG that did not conduct proof in the Verstek Decision as follows:

*Considering, by the arguments of the Plaintiffs mentioned above, since in this case the Defendant was absent and the case was examined without the presence of the Defendant, the Panel of Judges would*

[10] See provisions of Article 126 HIR

[11] The results of the interview with Dr. Jonlar Purba, S.H., M.H., Judge at the Padang District Court on Thursday, 12 December 2019.

[12] The results of the interview with Dr. Gustiar, S.H., M.H., the Judge at the Padang District Court on Thursday, December 12, 2019.

*consider the lawsuit filed by the Plaintiff. Thus, this case was adjudicated without the presence of the Defendant (Verstek);*

*Considering, since this case was adjudicated without the presence of the Defendant (Verstek), the claim filed by the Plaintiff could be granted in full as the petition of the plaintiff's claim;*

The consideration for the judge in applying the proof in the case of Verstek is that the judge will have confidence in passing the verdict against the Plaintiff's claim. In practice, there are still many substitute bailiffs who play with the plaintiff, which causes the summons to the defendant to never actually be conveyed. This proof is carried out in order to achieve justice for the parties and also if it is true that the defendant did not come because of a 'game' by an irresponsible person, then the judge's decision made in the presence of the evidence would also give justice to the defendant. With the achievement of justice by applying the proof, in the end the judge's decision would also bring certainty and benefits as the purpose of the law itself.[13]

Moreover, the application of proof by a judge in the Verstek Decision is an implementation of the provisions of article 163 HIR who wants a party who postulates a right to prove his argument through the evidence available to him. By the presence of the proof, the judge is certain whether the claim of the plaintiff is legal or not. It is to avoid speculation in the plaintiff's lawsuit.[14]

In some land disputes that although the Defendant is never present, the Judge may also conduct a local examination.[15] Although the Local Examination is not listed as evidence in Article 164 HIR/Article 283 RBg/Article 1886 of the Civil Code, the results of the local examination are facts found by judges in court. Therefore, they have binding power for the judges. After conducting a local examination, the judge finds matters or circumstances that he knows himself in the trial, for instance at the time of the local examination which found that the plaintiff's items were damaged by the defendant, all of which were considered as evidence in the form of judge's knowledge.[16]

The binding power of local examination can be seen in the following jurisprudence:

a. It can determine the land area of the object of dispute.

The judge can determine the area of land under the dispute. The matters regarding boundaries are not very relevant, because based on the previous experience, there were often land changes occured due to the transfer of ownership rights to land. (Decision of the Supreme Court No. 1497 K/Sip/ 1983).

b. It can be used as a basis to grant a lawsuit

In the case that the arguments of the claim are disputed by the defendant, but it turns out that based on local inspection the land area of the disputed object is the same as the one in the lawsuit, then it can be used as the basis for granting the suit (Decision of the Supreme Court No. 3197 K/Sip/1983)

[13] The results of the interview with Dr. Jonlar Purba, S.H., M.H., the Judge at the Padang District Court on Thursday, December 12, 2019.

[14] Konstantir means seeing, acknowledging, or justifying the occurrence of the proposed event, in Sudikno Mertokusumo, Indonesian Civil Code, Penerbit Liberty Yogyakarta, page 92.

[15]Legal Consideration Section of Padang District Court Decision Number 103/PDT.G/2013/PN.PDG.

c. It can be used to clarify the object of the dispute

The results of the local examination can be used as a basis to clarify the location, area and boundaries of the disputed object (Decision of the Supreme Court No. 1777 K/Sip/1983)

Conducting a local examination in the land disputes increasingly shows that the judge must obtain the confidence and certainty to decide the lawsuit filed by the Plaintiff and cannot immediately believe the arguments filed by the Plaintiff even though the lawsuit does not violate the rights or reason in the case verses.

The consideration of judges who apply proof in verstek is in line with the theory of justice and the theory of expediency. The theory of justice developed by John Rawls is based on the idea that justice is a virtue of every social institution. Justice must underlie every institution that exists. Besides, truth is a system of thinking. A theory as well as the rule of law and existing legal institutions must be renewed when it is unfair, however efficient and orderly the rules or institutions are.

Furthermore, it was stated that everyone has a desire for justice and even the welfare of society as a whole cannot violate it. By this reason, justice rejects violations of one's welfare for the benefit of others. Therefore, in a just society, freedom and equality of citizens is something that must already exist. The right to obtain guarantees of justice is not subject to political bargaining or calculation of social interests. A society will only be well organized if everyone accepts and knows that other people accept the same principle of justice and community institutions that generally meet and know how to meet the principles of justice.

The application of proof carried out by the Panel of Judges in verstek cases has made Civil Judges who are initially passive to be semi-active. It is because judges are usually just waiting for what is conveyed by the parties, but the evidence ordered by the Panel of Judges to the Plaintiff in the trial has made the judges semi-active. In practice, this is not a problem. Although in civil cases the formal truth is sought, in order to find out the formal truth, the judge cannot just be quiet and just wait,[17] especially with the provisions stipulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power.

The above issues are also in line with the statement made by Yahya Harahap in his book which states that recently a new school that opposes the passive teachings has emerged. The school does not agree with the role and position of the judge who is totally passive, but the judge must be given an argumentative active role. There are several reasons or arguments put forward, including:[18] 1) the judge is not *Aantreanenimes*, 2) the purpose and function of the judiciary is to uphold truth and justice.

However, an active role can recede to passivity in certain cases as described above:

a. Lies and falsehoods are recognized and justified by the opposing party, thus both turn into the truth.
b. The parties make peace, so that the agreed and rectified untruth becomes the truth through agreement.
c. The plaintiff or defendant denies attending the trial without a valid reason. This is considered to be the fact that the plaintiff has dropped his claim, and the defendant has endorsed the truth that the plaintiff argued. In such cases, the judge is justified in dropping the lawsuit on one side and dropping the Verstek Decision on the other side.

[17] The results of the interview with Dr. Gustiar, S.H., M.H., a Judge at the Padang District Court on Thursday, December 12, 2019.
[18] Yahya Harahap, page 572.

In the explanation above, the judge must be actively involved. The parties can or have the right to submit concrete or abstract evidence or facts or that is true or untrue, but the judge must actively filter and get rid of evidence and facts in accordance with his authority to determine the opinions and conclusions he will make. Therefore, if the judge knows the facts or the evidence submitted is not true, and it is denied by the opposing party, the judge must remove or reject it as a basis for evaluating the proof.

In verstek cases that the defendant never attended the trial, the judge's activeness was seen starting from the judge ordering the plaintiff to present evidence in which the judge's objective in doing so was to gain confidence in himself regarding the case. Additionally, the judge's activeness can also be seen from the judge who examines and evaluates the evidence submitted by the plaintiff. If it relates to the case, the judge will conduct *konstantir* based on the evidence.

## *Conclusion*

Proof is one of the agendas in the trial where the parties submit evidence to prove their arguments and refute the arguments of opponents and to convince the judge in finding formal truth. In a civil dispute which is decided in a verstek manner which applies evidence, the Plaintiff is the only party that submits evidence only. If the Plaintiff has never come forward in submitting evidence in the case of the defendant, the evidence is in accordance with what is specified in Article 164 HIR jo. 284 RBg.

In the Verstek Decision which applies proof, the judge can conduct the conclusions to find legal facts based on the evidence submitted by the Plaintiff. The consideration for the judge in applying the proof in verstek cases is to ensure that they have confidence in passing the verdict against the Plaintiff's claim. The judge will order the Plaintiff to present evidence at the trial after the reading of the lawsuit. Seeing it further, it has made the civil judge who is passive turn to be semi-active.

## *References*

**Books**

Harahap, Y. (2010). *Civil Procedure Law: regarding Lawsuit, Trial, Confiscation, Evidence and Court Decision*, Ed. 2, Cet.1, Op.Cit, page 750.

Maria S. W. S. (2009), *Land in the Perspective of Economic, Social and Cultural Rights*, Jakarta: Kompas.

Mertokusumo, S. (2006). *Indonesian Civil Procedure Law*, ed. I, Jakarta: Liberty.

Prodjodikoro, W. (1975). *Civil Procedure Law in Indonesia*, cet. IV, Bandung: Sumur Bandung.

Sunggono, B. (2010). *Legal Research Methodology*, Jakarta: PT. Raja Grafindo Persada.

Surakhmat, W. (1982). *Introduction to Scientific Research*, Yogyakarta: Salemba.

Sutedi, A. (2007). *Transition of Land and Its Registration*, Jakarta: Sinar Grafika.

**Legislation**

The 1945 Constitution of the Republic of Indonesia

Indonesian Civil Code

*Reglement* on Legal Procedures for Regions Outside Java and Madura Reglement Tot Regeling Van Het Rechtswezen I De Dewesten Buiten Java En Madura (Rbg) Staatsblad 1927 No.227.

Updated Indonesian *Reglement* (R.I.B) Het Herziene Indonesisch Reglement (H.I.R) Staatsblad 1941 No.44.

Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles.

Law Number 48 of 2009 concerning Judicial Power.

Law No. 2/1986 concerning General Judiciary as Amended by Law No. 8/2004 and Law No. 49/2009 concerning General Justice

Circular of the Supreme Court of the Republic of Indonesia No. 07 of 2012 concerning the Formulation of the Results of the Plenary Meeting of the Supreme Court as a Guideline for the Implementation of Tasks for the Court.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of Land Agency Number 11 of 2016 concerning Settlement of Land Disputes

**Decision**

Padang District Court Decision Number 100/G.PDT/2015/PN.PDG

Padang District Court Decision Number 103/PDT.G/2013/PN.PDG

**Interview**

An Interview with Dr. Gustiar. S.H..M.H., Judge at Padang District Court on Thursday. December 12, 2019.

An Interview with Dr. Jonlar Purba. S.H..M.H.. Judge at Padang District Court on Thursday, December 12, 2019.