

LEGAL PRINCIPLES OF EVIDENCE ON CIVIL CASES IN PUBLIC JUDICIARY

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Abstract

Legal principles in civil procedure law apply to the process of evidence as well, including '*Audit et alteram partem*' principle which mentions that litigants' testimony must be presented in hearing session. Based on article 163 HIR/283 RBg, the plaintiff proves with evidence. The judge will make a judgment and through this evidence proceeding, the judge needs to seek for the real evidence disputed both parties in order to make a fair and impartial judgment as the mandate of '*Audi et alteram partem*' principle. Comparison between the process and the system of evidence on private cases in Anglo-Saxon country (Singapore) is quite similar in the processes. Compared with Indonesia, however, the system of evidence in Singapore seems more 'open', while the system in Indonesia is 'closed' in its nature. The openness is on broader submission of evidence (not limited to what has been set on the constitution). In the contrary, the system of evidence in Indonesia is restricted by the law (article 164 HIR/284 RBg) and judges only engage on what both parties have submit. This research tries to identify the similarity and the difference on legal principles of evidence among Indonesia, Netherlands and Singapore.

Keywords

legal principles, civil, comparative study

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Introduction

A civil/private case in a court can be solved through procedural phases which one of those includes the process of evidence considered as the most important phase to seek for the truth of whether a case, legal relationship or title as the base of accusation filed by the plaintiff. Through the process of evidence, the judge may appraise the evidence filed by both parties by considering the principles of law applied in civil procedure law in order to make a fair judgment or known as *procedural fairness*.

Legal principles of civil procedure law applied for evidence proceeding is *Audi et Alteram Partem* (i.e., the judge hears the both parties); *Ius Curia Novit* (i.e., the judge is considered as expert on law); *Nemo Testis Idoneus in Propria Causa* (i.e., none can be witness for their own case); *Ultra ne Petita* (i.e., the judge is only allowed to accede based on the case); *de Gustibus non est Disputandum* (i.e., the principle on taste cannot be disputed, means that the law of evidence provide the truth of admission to the defendant as long as it is not in contradiction with other principles. For instance, the defendant admitted the he in arrears, in fact, however, he is not), and *Nemo plus Juris Transferre Potest Quam Ipse Habet* (the principle that none can shift much rights from what they actually have) (Achmad Ali & Wiwi Heryani, 2012).

This article will discuss a comparative study on the legal principles of civil case evidence applied in countries with Continental European legal system (Indonesia and Netherlands) and Anglo-Saxon (Singapore). It aims to see the similarities and differences between them in terms of the resolution process of civil case.

Both Netherlands, one of Continental European countries, and Indonesia indeed following Civil Law system (Statute Law), their private law (civil law) are not quite different, since both them apply *Burgerlijke Wetboek* (BW)/Civil Code. BW is a substantive law (law that rules individual rights and obligation), and formal law (civil procedure law) referring to law that rules how to implement/enforce substantive law through judiciary. In other word, it regulates the way to file the demand of rights. In its development, Dutch's BW has substantially changed into a new BW/*The Civil Code of the Netherlands*.

Historically, before reaching its independence, Indonesia was colonized by the Dutch for years which also transmitted several regulations applied up to recent days through the principle of '*concordance*', including: BW, *Wetboek van Koophandel* (WvK/Trade Code) along with article II the transitional rule of the Constitution 1945 as the legal

basis of those regulations. Furthermore, in order to perform substantive law, Sudikno argued that it needed formal law (civil procedure law) (Sudikno Mertokusumo, 2006). Thus, law currently applied in Indonesia partially derives from Dutch's patrimony, including civil law as both substantive and formal (procedural) law. In the context of evidence law, however, Netherlands' legal system seems more evolve compared with Indonesia which still relies on a civil procedure law based on *Het Herziene Indonesisch Reglement (HIR) for Java-Madura* or *Het Rechts-reglement voor de Buitengewesten (RBG)* for outside of Java-Madura, and *Reglement op de Burgerlijke Rechtsvordering voor Europeanen (RV)* for European/Netherlands.

Compared with an Anglo-Saxon country/America such as Singapore which applies the legal system of Civil Law, this country historically has adopted Britain's law which refers to the customary law of the country, not common law applied by Westminster royal court. Significantly, assembly institutions involving judges, both in criminal or private case, are enthusiastically adopted (Narulita Yusron, 2013).

A comparative study involves (Narulita Yusron, 2013): (a) comparing between a foreign system and a domestic system in order to identify their similarity and difference; (b) objectively and systematically analyzing various solutions offered by different legal systems for particular case; (c) investigating the causal relationship among different legal systems; (d) comparing the various procedures of different legal systems; and (e) seeking to find and examine an evolution of law in general manner based on the system and periods.

When comparing one legal principle of evidence, *Audi et alteram partem* principle of another country with Anglo-Saxon legal system, such as Singapore, relies on a standard procedural principle of *Audi et alteram partem* considered as the provision of justice and it is often labeled as the principles of natural justice in England and American (Khozim, 2011). In addition, Singapore also applies Britain law. By its development in Indonesia, *Audi et alteram partem* is applied by judges in judiciary processes in order to make a fair and impartial judgment of private cases. Thus, this principle contains a concept of equality and impartiality for both parties' testimony to be heard in judiciary process, beginning with mediation hearing process, assembly proceedings, hearing session, evidence proceedings (involving appraisal and allotment of burden of proof), up to judgment. The implementation of this principle is apparent in *ratio decidendi* or legal consideration of judgment.

A problem rises. In one hand, the legal principles must be implemented by judges to overcome a conflict between parties, on the other hand, many practical irrelevances happen, given that the nature of legal principles itself is abstract and general. For instance, in the process of allotting the burden of proof in which the implementation goes disproportionately (MARI verdict No. 2951K/Pdt/2009). Is the implementation of legal principles increasingly robust, or instead irrelevant? What is the essence of legal principles in evidence proceedings of civil case applied in Indonesia, Netherlands, and Singapore (a comparative study).

Review of Legal Systems Applied in Several Countries

Continental European Legal System

Historically, Indonesia has ever been colonized by the Dutch for three and half centuries. Thus, it needs to firstly describe how Dutch's legal system is, since Indonesia has it as the patrimony from the Dutch, thus, it makes Indonesia follow Continental European legal system.

Legal System in Netherlands

In Netherlands, law initially applied was custom law (Ancient Dutch Law), but due to French colonialism (1806-1813) a merger happened between Ancient Dutch Law and Civil Code. In accordance to Kemper (1814), the concept of Dutch's legal code tended to Ancient Dutch Law. However, many Belgian legal experts (at that moment, Belgium was part of Netherlands) did not agree with that argument. They preferred to *Napoleon Code* as the basis of that concept. As Kemper died (1824) the Dutch's legal code was mostly based on *Napoleon Code* rather than Ancient Dutch Law, although the system was much more like an institutionary system in *Corpus Juris Civilis* (comprising four volumes) rather than the system in *Napoleon Code*. Furthermore, codification aims to seek for legal assurance, but, in fact, it is always left behind the people development due to the lack of many problems solved. The problems are then resolved by jurisprudence and teleological interpretation.

Netherlands did not follow the principle of *stare decisses*, and the jurisprudence could still be assured due to control from higher court to subordinate court. It was contrast with the legal development that happened in Britain/ America following common law system. That is, the legal system in Netherland follows codification system as like Indonesia which recognized several codes including Civil Code (BW) and Trade Code (WvK). BW is a codification of almost entire regulation dealing with the relationship

between individuals/privates/civil. BW as established based on concordance system since Napoleon's governance in France. Before conducting codification, each region in Netherlands had their own rules which mostly referred to Rome's regulation. In 1531, a codification of existing laws was conducted to create a legal unification. This order was the beginning of establishing BW that took much longer period of time before finally ratified by the Dutch parliament in 1838. As it was established in 1838, BW had already had many amendments and significant reformation in 1992, known as New BW (NBW).

Indonesia relies on the principle of concordance, while still holding BW established in 1838 (except revocation on mortgage rules and some amendments in articles as the consequence of establishing the Law No. 1/1974 on marriage and the Law No. 5/1960 on Agrarian subjects). Each article in BW discussed about regulations restricting every relationship among individuals in detail. Although it was open (It could establish a new regulation as long as it was not in conflict with law, common order, and morality, such as article 1338). BW assured individual relationships even in smallest things.

Law of Evidence in Netherlands

System of evidence is open and set in new *Burgerlijke Rechts-vordering* (BRV/Rv/Civil Code Procedure) that has been amended on 1st January 2002. Since 1998, the law of evidence was no longer establishing evidence in limitative manner as mentioned in HIR/RBg, rather it is set in general and open. *Nieuwe Regeling van Bewijsrecht in Burgerlijke Zaken* as a new product of law in Netherlands established several provisions as follows (Efa Laela Fakhriah, 2014).

1. Verification can be conducted through any ways, unless the law establishes otherwise (article 197 RBV)
2. Appraisal of the evidence presented in hearing session is filed to the panel of judges
3. Legality of signature can be conducted through any ways (Article 186 RBV)

Article 152 section (1) Rv: "that basically, any kinds of evidence can be used (filed) as the verification in hearing session, unless the law establishes otherwise." This means that the law of private evidence in Netherlands follows open system, and the evidence not mentioned in constitution is allowed to be filed.

Evidence may have restricting evidence power (*bewijskracht*) for judges or free evidence

power (*vrije bewijs*) in case that the strength of evidence is fully assigned to judges, as mentioned in article 152 section (2) Rv. Thus, proof used in the evidence proceeding in Netherlands' civil procedure law is no longer appointed in limitative and consecutive manner, rather, it is open (open evidence system) in which all things that may be used as evidence are considered as evidence that can be filed to hearing season as long as the judge has agreed and admitted those things as legal evidence.

Legal System in Indonesia

Indonesia applies Civil Law as the legal system. This system puts codification of law as the only legal resource for applying law. It is different from Common Law that puts jurisprudence as its legal resource for applying law.

Without ignoring how varied the legal systems around the world are, a dichotomy of legal system into *Civil Law* and *Common Law* depicts different purposes and social context. In Indonesia and many other West European former colonies, their national legal systems model to European national law. However, *Civil Law* is in contrast to French's custom, which Continental European countries and the latest former colonies have already modeled to. In addition, *Common Law* derived from Britain (Abdul Ficar Hadjar, 2015).

Based on Indonesia jurisdiction, the division of judiciary institution includes: 1) public judiciary; 2) religion judiciary; 3) military/martial judiciary; and 4) administrative judiciary. In addition, along with increasing needs of law and the emerging legal problems among society, thus, by relying on Law No. 48/ 2009 about judicial power (LN.RI No. 157/ 2009) article 18, Supreme Court is considered as the highest judiciary institution and a Constitutional Court. Furthermore, due to the increasing particular cases (special civil cases) in its development, the government established "commercial court" handling bankruptcy issues, intellectual property infringement disputes (HAKI), human resource jurisdiction, and industrial dispute. Thus, the government needs to organize the administration of judiciary system. In accordance to Yahya Harahap, Indonesia judiciary is divided into four judicial contexts, starting from functional aspect based on jurisdiction assigned to each context (Yahya Harahap, 1997).

Determining the jurisdiction of court's relative authority is set under the article 118 HIR (142 RBG) (Hari Sasongko & Ahmad Rifai, 2005). Based on the article, what it means as court's relative authority is the court's authority to investigate cases in defendant's residential area. The court's relative (jurisdiction) authority in Indonesia

has particular similarity and difference with federal court set in American Statute. In addition, courts also have absolute authority in investigating cases.

Law of Evidence on Civil/ Private Case

In the process of evidence, John J. Cound cs., in his book entitled *Civil Procedure: Case & Material* cited by Yahya Harahap, argued that law of evidence on private case is increasingly complex since it related to the capability of constructing past event/evidence as a truth. The truth sought to bring out in a civil/private case is not ultimate. It is relative and even probable (Yahya Harahap, 2007). However, even seeking for such truth remains challenging. The challenge raises due to several reasons. First, adversarial system requires parties to have equal rights to show the truth of their own and deny them in accordance to the adversarial proceeding. Second, the principle of judge standing on adversarial system is weak and passive in seeking for the truth beyond both parties' testimonies as the consequence of the system which does not allow them to step into inquisitorial system. This may restrict judges since they are only bound to evidence the parties filed. Third, the difficulty to seek for and identify the truth is increasing since the evidence filed by the parties is often questionable due to the lack of analysis and appraisal from experts. In America, the evidence proceeding is more thorough since it is analyzed and appraised by experts and adjudicators whose result is considered as the final judgment, and subsequently, the judge will act as a referee blowing whistle.

The law of evidence in Indonesia is set in volume V, from article 162 HIR (282 RBg) to article 177 HIR (314 RBg) and volume IV BW. What HIR (RBg) set is the formal rule of evidence, and volume IV BW set the substantive rule of evidence. Substantive rule of evidence set about how the evidence may be accepted or objected along with its power, and the formal rule of evidence set about how to do an evidence proceeding (Sudikno Mertokusumo, 2006). Furthermore, article 163 HIR mentioned, "whoever claiming having rights or in order to strengthen their rights or in order to deny other's rights referring to an event are required to prove the rights or evidence." At glance, this basis seems easy. In fact, the practical application is not that easy since it is confusing to decide which party prior required proving evidence. The judge needs to be careful in dividing the burden of proof. As the benchmark, it may be suggested that it ought to not always stake one party only to show evidence, rather, it should consider the case based on the concrete context and the evidence proceeding ought to be appointed to the party with the least disadvantaged (Retnowulan Sutantio, 2005). Based on the

article, it is found that basically, parties postulating accusation must show their evidence in prior. However, for the sake of justice and fairness among parties as mentioned in *Audi et Alteram Partem* principle that the judge needs to consider the principle of fit and proper in establishing judgment of a case to seek for the truth of event through evidence proceeding.

Legal Principles of Evidence

Legal principles of evidence are a basis of applying evidence. Thus, all parties including judges have to firmly cling to the principles that comprise: 1) proving to seek for and reveal a formal truth; 2) avowal to end a case investigation; 3) there are some facts need not to prove; and 4) opponent evidence (*Tegenbewijs*).

Many allotment theories of the burden of proof set as the compass for judges include: (1) theory of subjective law (theory of rights): mentions that whoever claiming or preferring a right, they have to prove it; 2) theory of objective law; mentions that a judge must apply legal rules on facts to seek for the truth of the event filed; 3) theory of procedure law (*Audi et Alteram Partem*); and 4) theory of fit and proper: this theory refers to the same result, that is, the judge ought to rely on properness to allot the burden of proof. The procedure theory (*Audi et Alteram Partem*) is the basis of equal *procession* standing among parties in court session in terms of allotting the burden of proof. The judge has to allot the burden of proof based on equality of the parties. Thus, he has to provide a fair and equal allotment which makes both parties have equal chance to win in assembly. In line with Taufik Makarao, *Audi et Alteram Partem* provides the sense of equality and fairness for both parties and it gives them chance to say their arguments which must be heard in court session (Taufik Makarao, 2004).

Unless the law sets otherwise, the judge is acquitted to appraise the evidence. *Judex facti* judge has an authority to appraise the evidence in the process of evidence. There are three theories of appraising evidence including:

1) Free evidence theory

This theory provides a very broad freedom for judges to appraise the evidence. The judge is not restricted by any particular rule. However, such a broad freedom means trusting the judge to act with responsibility, integrity, impartiality, competence, and strong-minded.

2) Negative evidence theory

This theory requires restricting negative rules which restricts the judge with particular prohibition to do things associated with evidence. Thus, the judge is prohibited with exception (article 169 HIR/306 RBg, article 1905 Civil Code).

3) Positive evidence theory

This theory requires the judge to do things associated with evidence under particular terms of condition (article 165 HIR/285 RBg, article 1870 Civil Code)

Overall, the law of evidence consists of: (1) formal evidence, which sets the ways to enforce proving, as mentioned in RBg/HIR; (2) substantive evidence, which sets whether or not particular evidence is accepted in a court session along with its proving power.

There are several doctrines classifying evidence into categories (Arief Mansur and Elisatris Gultom, 2005). Those doctrines are as follow.

1. *Oral Evidence*: a) private/civil (witness' testimony, confession, and oath); b) criminal/common (witness' testimony, expert's testimony, and defendant's testimony)
2. *Documentary Evidence*: a) private/civil (document and presupposition); b) criminal/common (document and instruction)
3. *Material Evidence*: a) private/civil (not recognized); b) criminal/common (things used to commit a crime, things that help to commit a crime, things considered as the result of a crime, things gained from a crime and the information in specific meaning).
4. *Electronic Evidence*.

Another argument on the classification of evidence, according to Dennis, is classified into: 1) *Testimony*; 2) *Documentary evidence*; 3) *Real evidence*; 4) *Format admissions*; 5) *Presumptions* and 6) *Judicial Notice* (Ian Dennis, 2007).

Furthermore, Article 164 HIR/284 RBg. Classified evidence into: 1) written evidence, 2) testimony, 3) presupposition, 4) confession, and 5) oath. In addition, other evidence is set as well in article 164 HIR, including:

a. Local investigation

In formal jurisdiction, the result of local investigation is not considered as evidence

since it is neither mentioned in article 164 HIR (284 RBg) nor in article 1886 Civil Code. Thus, it is not valid due to the lack of evidence power. However, article 153 section (1) HIR/180 RBg asserted that the strength value attached to local investigation could be considered as information for the judge to see the certainty of object being disputed, thereby, it is only considered as *information*. When definitive and clear information is considered as the base of consideration, it actually proves the existence and the condition of the object. Therefore, the result of local investigation is seen as information, as well as the facts found in court session and restricted judges, but it is not absolute which means that it has “free evidence power.”

b. Expert’s testimony

Neither Article 164 HIR/284 RBg nor article 1866 Civil Code mentioned expert’s testimony as evidence. Thus, in formal context, experts’ testimony is excluded from evidence and it has no strength of evidence. However, based on article 154 HIR (181 RBg) mentioning that if based on the judge’s consideration, investigating an expert might provide clearness over a case, he might take an expert whether or not at the request of the parties due to his function, in which the judge does not have to follow the testimony when it against his faith, or, when it is in line with his faith, he may follow the testimony. In this case, when the judge decides to follow the testimony, he takes over the testimony as his own argument and taken into consideration for judgment. However, when it comes to the otherwise, it needs to be excluded and not considered exist. In short, experts’ testimony has “free evidence power.”

Anglo-Saxon Legal System (Singapore)

Anglo-Saxon legal system originally developed in Britain and was popular with its terms including *Common Law* or *Unwritten Law*. This legal system was followed by British Commonwealth countries, North America, Canada, and United State. It is also followed by South Asian countries such as Singapore and Malaysia.

As the comparison, Singapore follows *Common Law* system by solving civil/private cases through litigation. The procedures include arranging and discussing legal motives or basic motives of a lawsuit to be filed (legal proceeding), pleading (Indonesia recognizes this proceeding as hearing session), discovery of documents (evidence proceeding), direction by the court, and the final step is seeking for reconciliation as the resolution of the lawsuit (*interlocutory applications for interim or final relief*). If the lawsuit cannot be solved with reconciliation, it may file to the court.

a. Court Session

The process of investigating a civil case through court session begins with a subpoena, whether in direct manner or with written formal petition to the court from the plaintiff. Most of civil cases deal with tort issue.

Direct (oral) convocation is conducted in minor cases. Compared to subpoena, the process of direct convocation is much cheaper, fast, and short. Written formal petition from the plaintiff to the court is conducted based on judicial rules or other written regulation. A lawsuit has to be completely investigated and judged in a given period of time. In general, lawsuits on contract and violation of law/tort issue have six years period of time to be completely judged, while cases of personal injury have three years as the period of time for assembly. In addition, cases of compensation over land and execution of judge's decision have 12 years to be completed.⁹

Before filing the lawsuit, the plaintiff has to consider which *forum* best for handling his/her case. Court must be able to convince that the forum chosen has an actual and robust association with the case filed. The plaintiff may also consider that Singapore is the best forum to investigate a case in court session or, otherwise, improper selection of forum may turn the case into suspension.

b. Subpoena

Court session may begin with a subpoena. The parties note/register their lawsuit to Supreme Court, which provide ratification through signature. Registered and signed subpoena must be delivered to both litigants/parties disputed. *Subpoena is commonly considered valid for sex months. If it is delivered to outside related court jurisdiction, it will be valid for 12 months.* The plaintiff may request to prolong the validity of subpoena up to six months length.

Subpoena should be delivered in personal to the defendant and it may be more effective If attributing the subpoena with a copy of the case file when the defendant is an individual, or by registering the subpoena at the defendant address when the defendant is a company. The defendant's attorney on behalf of the client has authority to receive the subpoena on behalf of the defendant.

If the plaintiff has received a subpoena, he/she has eight days since it is received/21 days if the subpoena is sent outside the jurisdiction. In case, for attending the court session outside Singapore, the court may provide help for the plaintiff to make subpoena to the defendant outside Singapore. When the court session is held outside

Singapore, the procedure of delivering the subpoena should be adjusted with the legal system of the destination country

In subpoena, it should firmly mention what the content of lawsuit is about, or it may use general terms dealing with the disadvantages suffered and the amount of compensation. If the subpoena solely mention the content in general manner, it should be delivered before the due date in 14 days. If the defendant is outside Singapore, the delivery should be adjusted with the legal system of the destination country.

c. Defendant's testimony

If the defendant has received the subpoena, he/she must arrange and send his/her testimony to the plaintiff in 14 days period of time after he/she receive the subpoena, or after he/she convey his/her pleading/countercharge, or he/she may choose one of them. The defendant may file a counterclaim on the same case, along with his/her testimony (in Indonesia, it is known as reconvention). The plaintiff must provide a replic to respond to the testimony and the counterclaim in 14 days after those are received. In Indonesia, the defendant may respond to the replic by duplic.

d. Participation of the third party

If the defendant recognizes that another party may have disadvantages due to the plaintiff's lawsuit, otherwise, it may be helpful to add/strengthen the plaintiff's argument. Both plaintiff and defendant may put the third party as a party engaged in a case. It seems similar to what is applied in Indonesia.

e. Proving

In this process, it is recognized the term *Pre-Trial Conferences* stage (a pre-trial investigation phase). To make it simple, the registrar set a meeting with the plaintiff to conduct pre-trial investigation). In this meeting, the registrar may check the case file and provide direction to the plaintiff about steps to take in court session. In evidence proceeding, each party must prepare, submit the case documents, exchange (*affidavit*) the evidence filed, and show evidence through witnesses. This needs a written oath statement from the witnesses who may give testimony to the court session when they are investigated. *Affidavit* on evidence filed for the purpose of proving is arranged and exchanged before the session gets started. *Affidavit* is evidence used as a proof in court session.

Both parties may also propose expert witness by providing *affidavit* on the testimony of the expert witness. The expert witness may be appointed by the judge or the parties itself. The expert witness may help the court to seek for the truth based on their expertise. It is compulsory for anyone to be expert witness from whom they get order and paid.

The plaintiff's attorney may start the case (unless the burden of evidence is on the defendant's hand) by filing the lawsuit to the court (via the author's email) and carrying some witnesses with him/her to the court to be investigated. It is possible for every witness to be reinvestigated before the court session ends. After the plaintiff's witnesses gave their testimonies, the investigation continues to the defendant's witnesses. Finally, a cross investigation and reinvestigation on evidence filed are both conducted.

After the defendant's witnesses completely gave their testimonies, all parties may make conclusion. The judge will decide and the registrar will file it into notes containing the judge's decision along with all judgment the judge has considered as compensation.

Regarding to the law of evidence in Singapore, it is open to receive other forms of evidence besides what has been set by the law. It is not solely restricted by the predetermined evidence. Rather, it depends on the base/substance of the case which may be proven at the court. Anything stated for proving is classified into several kinds of evidence, including: (1) *testimony*, (2) *hearsay evidence*, (3) *documentary evidence*, (4) *real evidence*, and (5) *circumstantial evidence* (Efa Laela Fakhriah, 2015)

- (1) *Testimony*. It is a direct statement from witnesses expressed during the court session and it is expressed as evidence dealing with the truth of what is being claimed. Direct testimony derives from the witness's first-hand knowledge, and indirect testimony derives from hearsay.
- (2) *Hearsay evidence*. It is usually used to capture the statement or rumors. In the context of the law of evidence, the terms *hearsay* has broad definition which may be considered as a statement delivered during the court session, the result of listening to others, whether under the oath or condition and can be delivered in oral, written, or sign languages.
- (3) *Documentary evidence*. It is in the form of documents. It is helpful to show the content loads, presence, or the physical form. The content in the form of document is considered as evidence of a truth, or for another purpose, for instance, it is helpful to prove particular file or to express the author's mind.

- (4) *Real evidence*. It is commonly in the form of physical things used as evidence which may provide direct/indirect proving. This kind of evidence includes: *Material objects; the appearance of persons and animal; the demeanor of witnesses; documents; tape recordings and pictorial evidence* such as photo, ray, and film; views and demonstrative evidence such as map, diagram, or model.
- (5) *Circumstantial evidence*. It is indirect evidence which can be built based on real evidence, such as motive, plans and preparatory acts, capacity, opportunity, and identity.

Britain law (*Common Law*) relies on equal allotment for the burden of evidence when it has to determine the normal standard of evidence in civil cases (Ian Dennis, 2007).

f. Appraising the amount of loss

The judge may make decision based on the responsibility notion, but he does not provide rules to appropriately measure the amount of loss. Countering this condition, the amount of compensation may be appraised by registrar in investigation proceeding.

g. Implementing the judge's verdict

The judge's verdict can be implemented by various ways including: seizure and auction injunction of movable and immovable objects.

A Comparative Study on *Audi et Alteram Partem* Principle in Proving Civil Cases Between Indonesia and Singapore

One legal principle of evidence studied in this article is *Audi et alteram partem* in proving a civil case. This principle refers to "hearing from another side" which indicates that the judge has to listen to the both litigants in hearing session. The original term of this principle derives from Latin "*auditio*" (hearing), "*et*" (and), "*alterae*" (each other) and "*partem*" (partly/proportional) (Prent et.al., 1969). The judge investigates the case by equally treating the both parties, and equally providing chance to win. In Dutch, it is known as "*horen von beide partijen*", identified as hearing from both sides (Lilik Mulyadi, 2013). Hearing session in Singapore is almost similar to Indonesia, thus, the implementation of the legal principles is similar.

Both Indonesia and Singapore are similar in their concept of public law, that is, they want to provide secure of each party's rights and obligation in order to realize procedural fairness. In the contrary, they are different in their concept of private/civil

law (Abdoel Djamali, 2010). Indonesia applies the concept as coded principles of private and commercial law.

Overall, the following paragraph elaborates upon the differences of principles of evidence between Singapore (*Common Law*) and Indonesia (*Civil Law*).

Both principles are accommodated in various regulations and implemented in many Continental European countries (Netherlands or Indonesia) and Anglo-Saxon countries (Singapore, America, Britain). The differences between both countries include: *First, the systematization*. In Singapore, the systematization is accommodated by the Law of evidence, the rule of natural justice; while in Indonesia, it is accommodated in the Constitution 1945, the Law No. 48, 49, and 50 / 2009, the Law Drt 1/1951, article 132a, 121HIR (Rbg), 163 HIR, and Netherlands applies RV and *Nieuwe Regeling van Bewijsrecht in Burgerlijke zaken*. *Second, precedent tradition*. In Singapore, the judge is bound by the doctrine of the precedent/ *stare decises/ binding force*. In Indonesia, the judge has authority to decide and he is not bound by the prior judge's decision. *Third, the system of evidence of civil cases in Indonesia is close*, in which the provision of evidence filed by the litigants in court session is already given in limitative way in HIR. In Singapore, however, the system of evidence is open provided that all related evidence can only be filed to the court if it is considered valid as evidence. Compared to other Anglo-Saxon countries like America, there is a provision that the evidence used by the parties to prove events being the case should in prior analyzed and appraised by experts.

Conclusion

The nature of legal principles in the process of evidence of civil cases in judiciary field is solving legal problems which rules are still vague and abstract. Thus, judges, as the publisher of concrete law, need to follow the legal principles (in abstract meaning, law publisher here refers to legislator). In order to identify the similarity and the difference on legal principles of evidence among Indonesia, Netherlands, and Singapore, a comparative study is necessary to conduct.

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