

## Application of Presumptive Evidence in Civil Cases of Divorce Classification (Study of Kupang District Court Decision Number 11/Pdt.G/2022/PN.Kpg)

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### ABSTRACT

**Keywords :**  
*Divorce, Civil,  
Presumption*

Divorce cases are one of the classifications of cases in Civil Law. The process of examining and proving divorce cases is no different from general civil cases. This study aims to analyze the reasons why judges apply presumptive evidence in civil cases classified as divorce, this research uses normative juridical research. As a result of the research, it was found that the reason why the judge applied presumptive evidence was that the judge adhered to the theory of free evidence and there were no witnesses who saw, heard, or experienced the quarrel or dispute between the Plaintiff and the Defendant. The suggestion given by the author is that the process of proof in civil cases must be guided by civil procedural law so as to be able to produce quality and comprehensive decisions.

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### ABSTRAK

**Kata Kunci :**  
*Perceraian,  
Perdata,  
Praduga*

Perkara perceraian merupakan salah satu klasifikasi perkara dalam Hukum Perdata. Proses pemeriksaan dan pembuktian perkara perceraian tidak terdapat perbedaan dengan perkara perdata umumnya. Penelitian ini bertujuan untuk menganalisis alasan hakim menerapkan alat bukti persangkaan dalam perkara perdata klasifikasi perceraian, penelitian ini menggunakan penelitian yuridis normatif. Hasil penelitian, ditemukan bahwa alasan hakim menerapkan alat bukti persangkaan adalah hakim menganut teori pembuktian bebas dan tidak terdapat saksi yang melihat, mendengar, atau mengalami terjadinya perpecahan atau perselisihan antara Penggugat dan Tergugat. Saran yang diberikan oleh Penulis adalah hendaknya proses pembuktian dalam perkara perdata wajib berpedoman

*terhadap hukum acara perdata sehingga mampu menghasilkan putusan yang berkualitas dan komprehensif.*

## 1. INTRODUCTION

Humans are social creatures who tend to always live in groups. Social life requires humans to interact or have relationships with each other in order to fulfill their needs (Wewo dkk., 2018). Each individual has rights and obligations that must be valued and respected by others, so that in this relationship there are reciprocal rights and obligations that must be fulfilled by each individual. (Mantili & Lubis, 2017).

The form of interaction that occurs in community life is the existence of a marital relationship between 2 (two) human beings, but a marriage is not necessarily able to create a happy family but there are also marriages that end in divorce. This problem is a form of complex social problems that often occur in society (Hasanah, 2020; Yusuf Wibisono, 2022).

Divorce cases are one type of case that is often filed in court, both in the District Court and the Religious Court. Typically, before a case is examined through the court, there must first be a lawsuit from the party (Sari & Yudowibowo, 2016). The status of the parties in a divorce case is *mutatis mutandis* a husband and wife who have a marital relationship (Idham & Sukardi, 2020).

The process of examining divorce cases, there are various legal aspects that must be considered, including proof (Fakhriah, 2020). Referring to the provisions of Article 1865 of the Civil Code (hereinafter in this paper abbreviated as the Civil Code), it explicitly and clearly determines the burden of proof on the plaintiff because the plaintiff is obliged to prove the arguments in the plaintiff's lawsuit (Septianingsih dkk., 2020).

The party being sued (Defendant) has also been given the right and authority to prove otherwise in relation to the untruth of the arguments of the claiming party (Plaintiff). One of the concepts of proof that attracts attention is the reverse proof system. The reverse proof system is a concept that determines the burden of proof is shifted from the Plaintiff to the Defendant. In other words, the Defendant must prove that they are innocent or did not commit the alleged act (Simanjuntak dkk., 2024).

Evidence carried out by the parties must be based on evidence (Alexander Wewo & Naatonis, 2023). The existence of evidence as an obligation for litigants

and a determinant for judges to make a decision on a case ([Adlhiyati, 2019](#); [Afriana dkk., 2022](#); [Alexander Wewo, 2023](#)). Evidence is a tool or effort submitted by the litigant which is used by the judge as a basis for deciding the case. From the perspective of the litigant, evidence is a tool or effort used to convince the judge in court. Meanwhile, in terms of the court examining the case, evidence is a tool or effort that can be used by the judge to decide the case ([Maula dkk., 2022](#)).

The provisions of evidence in Civil Procedure Law according to Article 164 HIR / 284 RBG and Article 1866 of the Civil Code have determined that evidence in Civil Cases consists of evidence by letters, witnesses, testimony, confessions and oaths ([Dewanto, 2020](#); [Mualifah dkk., 2022](#); [Rita & Nisa, 2022](#)). Meanwhile, evidence that is outside of Article 168 HIR / 284 RBG is local examination as regulated in Article 153 HIR / 180 RBG and expert testimony which has been regulated in Article 154 HIR / 181 RBG ([Lubis, 2024](#)).

Typically, in Civil Procedure Law, judges more often use 2 (two) evidence as stipulated in Article 164 HIR / 284 RBG, namely evidence by letters and witnesses as well as evidence outside of Article 164 HIR / 284 RBG, namely local inspection and expert testimony to make a decision on a civil case ([Heriyanti, 2020](#)). However, referring to the results of the author's search for court decisions in the Supreme Court Directory, it was found that there were judge decisions that used or applied presumptive evidence as a basis for consideration and ruling on civil cases classified as divorce cases, namely the Decision of the Kupang District Court Number 11/Pdt.G/2022/PN.Kpg.

Therefore, with the application of presumptive evidence in the Kupang District Court Decision Number 11/Pdt.G/2022/PN.Kpg, it is interesting for the author to analyze the decision by focusing on the reasons why judges apply presumptive evidence in civil cases classified as divorce.

## **2. RESEARCH METHODS**

The research method used in discussing and analyzing this research is the normative juridical research method ([Alexander Wewo & Wewo, 2023](#)). Research is conducted by examining library materials or secondary data ([Alexander Wewo, Jeremia, 2023](#)). The secondary data is obtained by examining library materials, including a review of laws and regulations and legal concepts or theories ([Benuf & Azhar, 2020](#)).

This research uses several approaches ([Nurhayati dkk., 2021](#)), namely 1) Statute approach, namely by examining and analyzing laws and regulations

consisting of the Civil Code, HIR / RBG, and the Judicial Power Act, 2) Conceptual approach, namely by examining and analyzing legal concepts or principles related to research problems regarding evidence of suspicion applied by judges, 3) Case approach, namely by examining and analyzing legal cases that have actually occurred in the form of a Class 1A Kupang District Court Decision on Divorce.

The collection of legal materials in this research is carried out on library legal materials in the form of the Civil Code, HIR / RBG, the Law on Judicial Power and the Decision of the Kupang District Court Number 11 / Pdt.G / 2022 / PN.Kpg in order to obtain conceptions in the form of theories, opinions, conceptual thoughts related to the application of presumptive evidence. In addition, there are also books, scientific journals that are used as a foothold or reference in analyzing research problems. Based on the collection of legal materials through literature materials, it is then analyzed in a prescriptive juridical manner.

### **3. RESULTS AND DISCUSSION**

#### **3.1 Case Position**

This case was filed and registered as a divorce suit by the Plaintiff against the Defendant at the Kupang District Court Class IA Case Number 11/Pdt.G/2022/PN.Kpg dated January 21, 2022. The Plaintiff's basic reason for filing the lawsuit was that there were frequent quarrels and arguments between the Plaintiff and the Defendant which continued on an ongoing basis so that the marital relationship could not be maintained. Then, despite the mediation process, it turned out to be unsuccessful on the grounds that the parties maintained their respective arguments so that the case proceeded to the stages of reading the Lawsuit, Answer, Evidence, Conclusion and Judge's Decision. Specifically, for the opening agenda, the Plaintiff presented 8 (eight) proof letters and 3 (three) witnesses while the Defendant presented 21 (twenty-one) proof letters and 3 (three) witnesses. In principle, the judge's decision in the case a quo has stated that the marriage between the Plaintiff and the Defendant is broken due to divorce and the custody of the child is determined for the Plaintiff and the Defendant to be raised together.

#### **3.2 Reasons for Judges Applying Presumptive Evidence in Civil Cases of Divorce Classification**

Judges in civil law procedures are very much bound by evidence, so their role is very decisive. In Europe, especially England in ancient times until 1833, evidence still used oaths that were associated with trust. This was done because of the court judge's concern over offenses that destroyed the interests of the community through his decision. If someone commits perjury then the responsibility is to God. Along with the times, the judicial world has progressed, especially regarding evidence. Oath evidence is no longer submitted to God, but rather submitted to human effectiveness and other objects such as written evidence, human evidence (witnesses) and human logic began to be used. When other evidence is difficult to find information, it is known by presumptions (Busyro, 2022).

Evidence is a statement about rights or events in court when denied by the opposing party in a case. According to Soepomo, proof in a broad sense is to strengthen the judge's conclusion with the requirements of valid evidence. Whereas in a limited sense proof is only needed if what is stated by the plaintiff is denied by the defendant, if there is no rebuttal, then there is no need to prove it. In the event that the evidence submitted still requires further research by the judge (Juanda, 2016).

In practice, there are three theories commonly used in civil procedure law, namely: (1) negative evidentiary theory, this theory wants provisions that bind judges or limit the freedom of judges in proof; (2) positive evidentiary theory, this theory has provisions that bind judges, in addition to prohibitions in the form of orders; and (3) free evidentiary theory, this theory wants judges not to be bound by positive law, but judgment is entirely left to the discretion of judges. If these three theories are conditioned with the world of justice in Indonesia today, then most of them prefer free evidence. Freedom of proof aims to provide leeway for judges to find the true truth. Then, later it will be used as a basis for making a decision (Pitriyantini dkk., 2018).

Presumption is taken from the word *sangka-persangkaan* which means conjecture or estimate. Meanwhile, in terms of terms, a presumption is a conclusion drawn from an event that is considered proven, which is known to exist in an event that is not known or has not been proven. If the one who draws the conclusion is the law, then the presumption is called the statutory presumption. Meanwhile, if the one who draws the conclusion is the judge, it is called the judge's presumption.

The provisions of Article 1915 of the Civil Code have determined that a presumption is a conclusion that the law or judge draws a publicly known event towards an event that is not publicly known. Although in the HIR / RBG it is not emphasized what is meant by presumption as contained in Article 1915 of the Civil Code before, it is only in Article 137 HIR / 310 Rbg that there is confirmation of when the presumption is used as evidence.

Referring to Article 1915 of the Civil Code, presumption is divided into 2 (two), namely presumption according to the Law and presumption according to the Judge. Statutory presumption is a presumption based on a special provision of the law relating to a particular event. In other words, it is the law that draws the conclusion that an event is proven or not from an event that has been proven. As stated in Article 1916 of the Civil Code, namely the presumption based on this law is a presumption that there may be opposing evidence or that opposing evidence is not possible. Meanwhile, the presumption according to the judge is a conclusion drawn by the judge based on certain events or events that have been revealed through the evidence submitted by the parties.

Based on the provisions of Article 173 HIR, Article 1922 of the Civil Code, the judge's presumption is a presumption based on the facts or facts proven in the trial as the starting point for compiling the presumption, this is done because the law authorizes the freedom to compile the presumption. The judge can formulate a presumption based on evidence submitted by both the Plaintiff and the Defendant. To reveal unknown facts by drawing conclusions from facts that are already known using the judge's intellect or intellect.

Referring to the legal facts obtained from the evidence of letters and witness testimonies submitted by the Plaintiff and the Defendant as contained in the Decision of the Kupang District Court Class IA Number 11/Pdt.G/2022/PN.Kpg confirmed by the provisions of laws and regulations and legal theories or concepts regarding presumptive evidence, it was found that the reasons why judges apply presumptive evidence in civil cases classified as divorce are:

*First*, there is the freedom of judges in seeking and finding the truth about the existence of quarrels or disputes. To decide a case, judges have independence from interference or intervention from any party, which is known as independent judicial power, or can be interpreted as judicial power that is free from interference from any party. This independent judicial power is an independence or independence possessed by the judiciary in order to create an objective and impartial decision. The purpose of the objective nature of the decision is that in

the process of giving a decision the judge must have an honest stand, have the right view or view. The judge's freedom in searching and finding about the existence of quarrels or conflicts in a divorce civil case adheres to the theory of free evidence in which the judge is not only guided by statutory provisions but the judge sees the undeniable fact that between the Plaintiff and the Defendant there is no harmony in the household as evidenced by not living together for a period of 2 (two) years since before the lawsuit was filed by the Plaintiff.

*Secondly*, there were no witnesses who saw, heard and directly experienced the quarrel or dispute between the Plaintiff and the Defendant. Testimony is certainty given to the judge at trial about the disputed event by means of oral and personal notification by a person who is not one of the parties to the case, who is summoned at the trial. Recognition of the position of witnesses as evidence which states that witness testimony is only valid as evidence of events that witnesses experience. One of the means of evidence confirms the prerequisites for witnesses to be accepted as evidence, namely that they must be experienced events themselves. Then, witness testimony is testimony about things or events and events that are experienced, seen, and heard by themselves regarding the certainty given at trial. In relation to the decision studied and analyzed by the author, it was found that the Plaintiff and Defendant each presented 3 (three) witnesses, but it turned out that there were no witnesses who saw, heard or even experienced firsthand the quarrel or dispute between the Plaintiff and the Defendant, but the witnesses presented only heard stories from the Plaintiff that there had been a quarrel or dispute between the Plaintiff and the Defendant. Witness testimony obtained from the Plaintiff's story is indirect evidence, although it is indirect, but with the existence of compatibility with each other, a presumption is born that explains the truth of the dispute and quarrel between the Plaintiff and the Defendant.

#### **4. CONCLUSIONS**

Based on the descriptions that have been presented by the author, the reason why judges apply presumptive evidence in civil cases classified as divorce is that judges adhere to the theory of free evidence and there are no witnesses who see, hear, or experience the occurrence of quarrels or disputes between the Plaintiff and the Defendant. The suggestion given by the author is that the evidentiary process in civil cases must be guided by civil procedural law so that it can produce quality and comprehensive decisions.

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