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The Position and Development of Photocopy Evidence in the Evidence Process Based on the Jurisprudence of the Indonesian Supreme Court

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Abstract
The process of proof is the most specific and most decisive stage in a civil case. Proof is an effort by the parties to the case to convince the judge of the truth of the events submitted by the parties by using evidence stipulated by law. In practice, it is often found that the use of photocopy evidence is not available in the original document or cannot be matched with the original document, such as in case number 329/Pdt.G/2021/PN.Sby. The author examines the role of judges in examining cases that use photocopy evidence and do not have the original, as well as the position of jurisprudence as a reference in the evidence process in court. This study uses a normative-empirical legal approach, analytical descriptive research specifications, and qualitative normative data analysis. The results of the study and discussion concluded that judges play an important role in examining, assessing the strength, and validity of the evidence submitted by the parties to the case by referring to applicable legal sources. The position of jurisprudence is as one of the sources of law, although jurisprudence is not binding on judges, the existence of jurisprudence is a guideline for judges who aim to maintain consistency and prevent disparities in decisions in similar cases.

Keywords: *Evidence, Proof, Jurisprudence*

1. Introduction

Indonesia as a rule of law country means that all aspects of life in the territory of the Unitary State of the Republic of Indonesia must be based on law and all legislative products and derivatives that apply in the territory of the Republic of Indonesia.[1] According to Abdul Kadir Muhammad, civil procedural law is a legal regulation that regulates the process of resolving civil cases through judges (courts) from the time the lawsuit is filed to the implementation of the judge's decision. Of all the stages of civil trial, evidence is the most specific and most decisive stage. It is said to be specific because at this evidentiary stage the parties are given the opportunity to show the truth of the legal facts that are the subject of the dispute. While it is called the determining stage because the judge in the process of trying and deciding the case depends on the evidence of the parties in the trial.

Evidence, proof, or proving in English Law often uses two terms, namely: proof and evidence. In Dutch law it is called "*bewijs*".[2] Based on Article 1866 of the Civil Code/Article 164 HIR (*Herziene Indonesisch Reglement*), evidence consists of written evidence, witness evidence, allegations, confessions and oaths.[3] Written evidence/letters are placed in the first order. This is in accordance with the fact that in civil cases, letters/documents/deeds play an important role. Proving oneself in a trial is an effort by the parties to the case to convince the judge of the truth of the events or incidents presented by the parties by using evidence stipulated by law. Based on the evidence submitted, the panel of judges examining the case will assess the evidence provided by the parties.

In general, the duties of a judge can be categorized into 2 parts, namely finding and enforcing the law.[4] In making legal discoveries by judges, the legal principles are very important for judges because they help

them in making dogmatic interpretations and applying a law by analogy to real events. In enforcing the law, Article 1 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (Judicial Power Law) states that judicial power is the power of an independent state to carry out trials in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of implementing the rule of law of the Republic of Indonesia.

In making every decision, the judge must base it on evidence regulated in statutory regulations.[5] A good judge's decision must be able to fulfill two requirements, namely fulfilling theoretical and practical needs. What is meant by theoretical needs is that by emphasizing legal facts and their considerations, the decision must be accountable from a legal science perspective, and not infrequently the decision forms jurisprudence that can determine new law (is a source of law). This is in line with Article 5 paragraph (1) of the Judicial Power Law which states that judges and constitutional judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society. Meanwhile, what is meant by practical needs is that with his decision it is hoped that the judge can resolve the existing legal problem/dispute and as far as possible can be accepted by the disputing parties, as well as society in general because it is felt to be fair, correct and based on law. That is why the judge's task becomes more difficult because he will determine the content and face of the law and justice in our society, he is the one who conveys feelings and the mouthpiece, the one who digs up legal values and a sense of justice for society, he is also the one who is expected by society to be the last bastion in upholding law and justice in the country.

Article 10 paragraph (1) of the Judicial Power Law states that the court is prohibited from refusing to examine, try and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it. In civil procedural law, there is a principle known as *actori in cumbit probatio*, which literally means that whoever sues is the one who is obliged to prove it. This principle is explicitly regulated in Article 163 HIR/283 RBg (*Rechtsreglemen voor de Buitengesten*). The provisions in these articles stipulate that the party who is responsible for providing evidence is the party who claims that he has the right or to confirm his own rights or to deny the rights of another person who refers to an event.[6] However, there are times when the plaintiff does not have sufficient ability to prove what the defendant did, making it very difficult for the plaintiff to realize his/her claims.

In civil case practice, it is often found that the use of documentary evidence in the form of photocopies does not have the original document or cannot be matched with the original document. For example, in case number 329/Pdt.G/2021/PN.Sby, the plaintiff submitted 14 documentary evidences that were only photocopies and did not have the original document. As emphasized in the considerations of the panel of judges as follows: "considering, that the evidence of the letter has been sufficiently stamped and is in accordance with the original, except for evidence P-4, P-19, P-20, P-21, P-22, P-23, P-24, P-25, P-26, P-27, P-28, P-29 and P-30 which are photocopies of photocopies and P-47 is a photocopy of a printout (the original cannot be shown)". The author collected data through several documents owned by the defendant, including: the defendant's answers and exceptions, duplicates, appeal memorandums, and cassation memorandums. In addition, the author conducted a brief interview with the defendant regarding the chronology of the case and the origin of the photocopies of the evidence of the letter that did not have the original; in essence the defendant believed that the plaintiff had never had the original physical documents.

In its response and exception, the defendant stated that "…the lawsuit did not have authentic evidence or the plaintiffs only based it on photocopies whose contents were legally flawed, resulting in the plaintiffs lawsuit being unclear…". However, the exception was rejected by the panel of judges. In its decision, the panel of judges acknowledged and considered the photocopy of the letter as valid evidence as written in the legal considerations "considering, that in order to prove the arguments of their lawsuit, the plaintiffs submitted written evidence marked as evidence P-1 to P-47 and 2 witnesses, namely witnesses Slamet and witness Suhartono".[7] In the appeal memorandum, the defendant stated "that, the appellees (formerly the plaintiffs) submitted documentary evidence in the form of photocopies of photocopies." However, the decision number 329/Pdt.G/2021/PN.Sby was upheld by the Surabaya High Court through the appeal decision number 228/PDT/2022/PT SBY. In the cassation memorandum, the defendant stated that "*Judex Facti* applied formal civil law incorrectly, because it decided the case based on a letter that did not have an original", but the Supreme Court judge was of the opinion that "after studying the considerations of Judex Facti in connection with the cassation memorandum, the Supreme Court is of the opinion that Judex Facti's decision did not apply the law incorrectly..." and "considering, that based on the above considerations, it turns out that the decision of the *Judex Facti*/Surabaya High Court in this case does not conflict with the law and/or

statutes, therefore the cassation application submitted by the cassation applicants: Liem Budi Santoso Limoseputro and friends must be rejected with improvements", as stated in the cassation decision number 1800 K/Pdt/2023.[8]

Regarding documentary evidence in the form of photocopies, Article 1888 of the Civil Code states that the strength of evidence in writing lies in the original deed. If the original deed exists, then copies and quotations are only reliable as long as the copies and quotations are in accordance with the originals which can always be ordered to be shown. In addition, there is a legal discovery that has become the jurisprudence of Supreme Court Decision Number 701 K/Sip/1974 dated 14 April 1976[9], Supreme Court Decision Number 3609 K/Pdt/1985 dated December 9, 1987, and Supreme Court Decision Number 2191 K/Pdt/2000 dated March 14, 2001, in submitting photocopies of letters as evidence in a civil lawsuit trial in court must be declared to be in accordance (matched) with the original. If not, then the evidence of the letter in the form of a photocopy is invalid evidence in court.[10]

Based on the description of the case examples, provisions of the law, and jurisprudence above, the author will examine how the role of judges in examining cases that use photocopy evidence and no original is related to the development of evidentiary law. Also, how is the position of jurisprudence as one of the sources of law in the evidentiary process?

2. Research Method

2.1 Approach Method

This research uses a normative-empirical juridical approach, namely research that uses case studies in the form of legal behavioral products. Normative-empirical (applied) legal research begins with written positive legal provisions that apply to legal events *in concreto* in society, so that in the research there is always a combination of 2 stages of study, namely:

a. The first stage is a study of the applicable normative law;
b. The second stage is the application to the event *in concreto* in order to achieve the objectives that have been set. The application can be realized through real actions and legal documents. The results of the application will create an understanding of the realization of the implementation of the provisions of normative law that are being studied have been carried out properly or not.

2.2 Research Specifications

The research specifications used in this research are analytical descriptive, namely analyzing the research object by describing the situation and problem to obtain an overview of the situation and circumstances, by presenting the data obtained as it is, which is then analyzed to produce several conclusions.[11] To describe, find legal facts comprehensively, and systematically examine legal sources relating to the evidence process in the form of photocopies of documentary evidence.

2.3 Stages of Research

Stages of research used in this study are:

a. Literature study to obtain secondary data, namely data obtained from the results of a literature review or review of various literature or library materials related to the problem or research material which is often referred to as legal material, consisting of primary legal materials (Civil Code, HIR, Rbg, Judicial Power Law, jurisprudence and court decisions), secondary legal materials (books, scientific papers, and journals), and tertiary legal materials (encyclopedia, news, and internet).
b. Field studies, namely obtaining primary data which is done by conducting observations or collecting data through direct observation of case examples, to obtain information which will be processed and studied based on applicable regulations.

2.4 Data Collection Technique

The data collection techniques used in this research is documentation studies and field studies. Documentation study is a method of collecting information by studying documents to obtain information related to the problem being studied. Documentation study is one way in which qualitative researchers can visualize the perspective of the subject through written materials or other documents produced directly by the people involved. Field studies are conducted by observation to obtain primary data.

2.5 Data Analysis

Analysis of the data used in this study is qualitative normative. Normative legal research is legal research that focuses on written regulations or legislation (law in books) or research based on the rules or norms that apply in society. Normative research can be said to be literature review research where most of the data sources are secondary data sources consisting of primary legal materials, secondary legal materials and tertiary legal materials. Most of the data comes from written laws or regulations that apply in society. Qualitative research is a research method used to research the natural conditions of objects, where the researcher is the key instrument. Based on research procedures that produce descriptive data, which is in the form of written words.

3. Result and Discussion

3.1 Law of Evidence and Evidence

R. Subekti stated that the law of evidence provides rules regarding how a case should proceed before a judge. Meanwhile, according to Achmad Ali, the law of evidence is the entire rule regarding evidence that uses valid evidence as a tool with the aim of obtaining the truth through a judge's decision or determination. The evidentiary system adopted in the civil procedural law system in Indonesia is the positive evidentiary system (*positief wettelijke*), which bases the assessment of evidence on evidence that has been positively determined by law (without the need for a judge's conviction). The purpose of evidence is to obtain certainty that an event or fact submitted actually occurred, in order to obtain a true and fair judge's decision. The evidence in this civil case is regulated in a limited and sequential manner in the HIR/Rbg.[12] Evidence is something to convince of the truth of a proposition or position. Evidence, means of evidence, efforts to prove are tools used to prove a party's arguments in court, for example: written evidence, testimony, allegations, oaths, etc.[13]

In our judicial system in Indonesia, the only party that assesses the evidence is the judge. This is different from the Anglo Saks judicial system in common law countries, where in addition to the judge who assesses the legal aspect, there is also a jury who assesses the factual or event aspect. In assessing this evidence, the judge in the civil process is solely bound by valid evidence, so as the author has repeatedly written in the front section, it is only "properence evidence", it does not have to be "Beyond Reasonable Doubt" as in criminal cases. The principle that requires the judge to evaluate the evidence, and not the parties is a principle "*Unter Buchungs Maxime*", namely the principle that requires judges to collect evidence and assess it. The evidence collected is evidence submitted by the parties to the case. If the plaintiff does not have the ability to prove, it would be considered fairer if the judge applied a reversal of the burden of evidence, where the plaintiff had to prove first, to the defendant having to prove first that he did not do what the plaintiff accused him of or that what the plaintiff accused him of was not the result of his actions. In order to realize truth and justice, the function and role of judges must actively seek and assess the truth submitted by the parties by eliminating facts or evidence that contain lies and falsehoods and rejecting evidence that contains abstract facts as the basis for assessment in making decisions. In the civil trial process, judges are not prohibited from seeking and finding material truth because the purpose of evidence is to convince the judge or provide certainty to the judge about the existence of certain events so that the judge can constitutively, qualify and constitute and make decisions based on this evidence, so that formal truth and material truth must be sought and realized simultaneously in the examination of a case.[14] However, if the material truth is not found, of course a decision must be made based on formal truth.[15]

Article 50 paragraph (1) of the Judicial Power Law states that court decisions must not only contain the reasons and basis for the decision, but also contain certain articles of the relevant legislation or unwritten legal sources which are used as the basis for trying the case. Therefore, judges can make legal discoveries on a case. Legal discoveries are mainly carried out by judges because the main task of a judge is to find the law in trying and deciding a case, and to form the law through his decision (jurisprudence). The discovery of law by a judge is considered authoritative, because the result of the discovery of law by a judge is law. Discovery of law in civil proceedings may be carried out but must not violate or set aside the correct theory of discovery of law. The method of legal discovery is only used in legal practice, especially by judges in order to try a case. In conducting legal discovery, judges can interpret the law to fill in the gaps in the law. The judge's decision must not only contain legal norms as its basis (principle of legality), but must also be able to become a rule for resolving conflicts in the cases/cases it faces. Because written legal norms (statutory regulations) are not always complete, because once they are given written form, they will lag

behind the development of society which is always faster and which always requires "up to date" legal solutions.[16] In Islamic religious rules relating to the duties of judges in upholding justice and witness testimony, it is stated in Surah An-Nisa Verse 135 which means: "O you who believe, be you people who truly uphold justice, be witnesses for Allah, even if it is against yourselves, or your parents and your relatives, whether they are rich or poor, then Allah knows better what is good for them. So don't follow your desires because you want to deviate from the truth. And if you distort (the words) or are reluctant to be witnesses, then indeed Allah is All-Knowing of everything you do."[17]

At the time of submission of evidence, all letters, whether in the form of deeds or not, which are used as written evidence in the examination of a case in court, must be photocopied and then stamped (*nazegelen*) to the post office to be valid as evidence. In front of the judge, the photocopy of the evidence letter must be compared with the original, which is then validated by the judge as evidence by stating that it is in accordance with the original and then initialed on the photocopy of the evidence letter. This is in accordance with the provisions of Article 3 paragraph (1) of the Republic of Indonesia Law Number 10 of 2020 concerning Stamp Duty (Stamp Duty Law) which stipulates that stamp duty is imposed on: a. documents created as a tool to explain an incident of a civil nature; and b. documents used as evidence in court. Documentary evidence has binding evidentiary power for the judge and the parties.

The electronic civil trial process is one of the impacts of technological advances. Therefore, the Supreme Court issued Supreme Court Regulation Number 1 of 2019 concerning Electronic Administration of Cases and Trials in Court (Perma 1/2019), Article 9 paragraph (2) stipulates that the lawsuit as referred to in paragraph (1) must be accompanied by evidence in the form of a letter in the form of an electronic document. And in Article 25 of Perma 1/2019 it is emphasized that the evidentiary hearing is carried out in accordance with applicable procedural law. This means that the evidence process in electronic trials still refers to the HIR. In civil law, judges have an important role in assessing and accepting the evidence submitted. Judges are tasked with assessing the strength and validity of the evidence submitted by the disputing parties.[18] Therefore, the judge is obliged to match the photocopy of the written evidence with the original in order to assess the quality of the evidence.

In relation to the case example, the trial was conducted face to face (not electronically) and in decision number 329/Pdt.G/2021/PN.Sby, the panel of judges has accommodated and acknowledged the validity of the evidence in the form of a photocopy of the letter that cannot be matched with the original as written in the legal considerations, which states "considering, that evidence P-6 to P-26 proves that Liem Boedi Oetomo Limoseputro and his heirs have paid their land and building tax obligations to the state from 1983 to 2009". The author checked the list of evidence submitted by the plaintiff, evidence P-19 to P-26 are photocopies of land and building tax receipts in the name of Gunardi. While in the case there is not a single party named Gunardi, which should be questioned, who is Gunardi? Regarding the photocopy of the letter which did not have the original, the panel of judges did not check it with the original letter and did not initial and validate the evidence by stating that it was in accordance with the original.

3.2 The Jurisprudence of the Supreme Court of the Republic of Indonesia as a Source of Law in Photocopy Evidence

In examining and deciding cases, judges often face a situation where written law is not always able to resolve the problems faced. In fact, judges often have to find the law themselves and/or create it to complement existing law. In deciding a case, judges must have their own initiative in finding the law, because judges may not reject a case on the grounds that the law does not exist, is incomplete or the law is vague.[19] The discovery of the law is known as jurisprudence. Literally, the origin of the word jurisprudence comes from the Latin term *"iuris prudential"* which means legal science. In Dutch, the term "jurisprudentie" is used, which in the legal dictionary written by Fockema Andrea is referred to as "jurisprudence, the judiciary (in the general sense), especially the legal doctrines established and defended by the judiciary (as opposed to the legal doctrines of eminent authors), and the systematic collection of Supreme Court and High Court decisions (on record) followed by judges in giving their decisions on similar matters". The definition of jurisprudence is a Supreme Court decision that contains legal breakthroughs so that it is continuously followed by courts under the Supreme Court hierarchy, even normatively there are provisions that regulate that the collection of jurisprudence is the exclusive authority of the Supreme Court.[20]

In Indonesia there are various formal laws such as statutes, customs, treaties, jurisprudence and doctrine.[21] In one of the legal studies on improving jurisprudence as a source of law conducted by the National Legal Development Agency (BPHN) In 1991/1992, several definitions of jurisprudence were collected, including:

a. Jurisprudence is permanent justice or judicial law (Purnadi Purbacaraka and Soerjono Soekanto);
b. Jurisprudence is a systematic collection of Supreme Court decisions and High Court decisions followed by other judges in making decisions on the same matter (Andrea Pockema Dictionary);
c. Jurisprudence is defined as legal teachings that are formed and maintained by the Courts (Koenen Endepols Dictionary);
d. Jurisprudence is defined as a systematic collection of Supreme Court decisions and High Court decisions (which are recorded) which are followed by judges in giving their decisions on similar matters (Van Dale Dictionary);
e. R. Subekti's opinion, jurisprudence is the decisions of a judge or court which are permanent and confirmed by the Supreme Court as a cassation court, or the decisions of the Supreme Court itself which remain permanent (constant).

In relation to this, the sources of law in countries that adopt the common law system are only jurisprudence, which in England is called *judge made law* or in America it is called case law and legislation (*statute law*). Meanwhile, in the civil law system, the main source of law is the law made by the government with parliament. In addition to written regulations, in the civil law tradition, customs and jurisprudence are other formal sources of law. The term "source of law" is different from the term "legal basis", the source of law refers to the meaning of the place where a certain value or norm originates, while the legal basis or legal foundation is a legal norm that underlies a certain legal action or deed so that it can be considered valid, or can be legally justified. Sources of law can be divided into two meanings, namely formal or *formele zin* (*sources of law in its formal sense*) or in *materiele zin* (*source of law in material sense*). The source of law in the formal sense can be defined as a formal place in written form from which a legal rule is taken, while the source of law in the material sense is the place from which the norm originates, whether in a written or unwritten sense.[22] In other words, a formal source of law is a formulation that has a certain form, as a basis for being obeyed, and can be enforced by law enforcers.

Through the Circular Letter of the Supreme Court Number 2 of 1972 concerning the Collection of Jurisprudence (SEMA 2/1972), it was emphasized that "collection of jurisprudence is only carried out by the Supreme Court, other bodies, both private and government, cannot collect jurisprudence. Unless this has been discussed in advance. Based on the law, the Supreme Court holds *eenheid in de recht-spraak*, Therefore, the Supreme Court is the only constitutional institution responsible for conducting the collection which is a *richt-lijn* which must be followed by the judge who hears the case. Cases that become *richt-lijn* are primarily cases where the law has been confirmed in cassation, either by adjudicating itself or rejecting the cassation. Cases that already have definite force without going through cassation do not have *richt-lijn* characteristics. Thus, if another party collects jurisprudence regarding decisions that have gone through cassation or regarding decisions of the High Court and District Court that have final force without going through cassation, this will be disruptive *eenheid in de recht-spraak*". By paying attention to the contents or substance of SEMA 2/1972, the aspects that need attention are:[23]

a. The constitutional authority and responsibility to collect jurisprudence lies only with the Supreme Court, institutions outside the Supreme Court, whether government or private, do not have the authority, unless it has been discussed beforehand;
b. The purpose of these constitutional powers and responsibilities is to safeguard *eenheid in de recht-spraak* (unity/uniformity in the judiciary);
c. A new decision has the nature of *richt-lijn* (guidelines/instructions that must be followed by the judge in trying a case) which are cases whose law has been confirmed at the cassation level either by trying it themselves or by rejecting the cassation;
d. Decisions that have obtained permanent legal force without going through cassation do not have the nature of *richt-lijn*.

Mahadi explains that the meaning of jurisprudence is not the decisions of judges, nor is it a series of decisions, but rather law that is formed from the decisions of judges. Mahadi stated that jurisprudence is generally intended as a series of decisions by judges that have the same meaning regarding similar problems. He further equates jurisprudence with the term "*ijma*" in Islamic law.[24] As stated by Juynboll (1930), "*ijma*" namely "*de overeenstemmende meening van alle in zaker tijdperk levende moslimssche geleerden*",

which means the same opinion among experts who exist at a certain time. Surojo Wignjodipuro stated that if a judge's decision on a particular legal issue becomes the basis for decisions by other judges, so that this decision becomes a permanent judge's decision on the particular legal issue/event in question, then the law contained in such a decision is called jurisprudential law. Soebekti, who defines jurisprudence as decisions of judges or courts that are final and confirmed by the Supreme Court as a cassation court, or decisions of the Supreme Court itself that are final. The use of jurisprudence can be used to limit the interpretation of judges as one approach to the formulation of unclear laws. This is based on the position of jurisprudence as one of the sources of law in the Indonesian legal system, but jurisprudence in the Indonesian legal system is not binding. This is different from countries that adhere to the common law tradition which are bound by the principle of binding precedent.[25]

In this context, the role of the judge's decision which contains rules for resolving certain cases as a "formula" can become a reference and source of reference for resolving similar cases in the future, if there is a legal vacuum caused by the absence of regulations. Thus, this jurisprudence actually provides contribution and participation in the development of law. In terms of judicial independence, this jurisprudence does not injure the values of judicial independence. Jurisprudence as a consequence that it is a refinement of the law, in it are contained legal norms that bind judges, so that judges cannot be said to be not independent when judges decide considering jurisprudence. Then jurisprudence is used as a guideline for judges to decide a case. With the existence of guidelines or guidelines in the jurisprudence, there will be consistency in the attitude of the judiciary and avoidance of controversial decisions, which in turn will provide a guarantee of legal certainty and trust in the judiciary and its law enforcement, both in national forums and especially at the international level.[26]

Apart from its position as a source of law, the role of jurisprudence in the world of justice can be said to be that jurisprudence essentially has various functions, namely:

a. With the existence of the same decisions in similar cases, the same legal standards can be upheld, in cases where the law does not regulate or has not yet regulated the resolution of the case in question.
b. With the existence of the same legal standards, it can create a sense of legal certainty in society.
c. By creating a sense of legal certainty and equality of law for the same case, the judge's decision will be predictable and there will be transparency.
d. With the existence of legal standards, the possibility of disparities in various decisions of different judges in the same case can be prevented. Even if there are differences in decisions between one judge and another in the same case, then this should not cause disparities but only be in the form of variables on a case-by-case basis.

In M. Yahya Harahap's observation, there is still often a lack of awareness and understanding of the function of jurisprudence in the life of a state of law, and there are still many people who do not care about the meaning and role of jurisprudence. Actually, it is necessary to realize how important the role and function of jurisprudence are in the legal life of a country, especially in facing law development in cases of increasingly rapid social change.

From the above description, both expert opinion and according to jurisprudence, it can be concluded that a photocopy is a duplication of writing/letters and can be accepted as written/letter evidence if it has been matched with the original in court. In principle, based on the jurisprudence of the Supreme Court Decision, a photocopy of a letter can only be accepted in court if it has been matched with the original, as in the following legal principle:

a. Jurisprudence number 701 K/Sip/1974, which states: in submitting photocopies of letters as evidence in a lawsuit trial in court, the photocopies of the letters must be declared by an official to be in accordance with the original. If this is not the case, then the evidence of the letter in the form of a photocopy is invalid evidence in the trial. Furthermore, based on the jurisprudence of the Supreme Court Number 701 K/Sip/1974, it states that "because *Judex Factie* based its decision solely on evidence consisting of photocopies that were not legally declared to be in accordance with the original, while some of them were important and were still substantially disputed by both parties, *Judex Factie* has actually decided this case based on invalid evidence.";[27]
b. Jurisprudence number 3609 K/Pdt/1985, with the legal principle: photocopy evidence that was never submitted or the original letter never existed, must be set aside as evidence.

In case number 329/Pdt.G/2021/PN.Sby, it is clear that the legal considerations of the panel of judges (panel of judges of the Surabaya district court) which were further strengthened by the appeal decision of the

Surabaya High Court and the cassation decision of the Supreme Court are contrary to Article 1888 of the Civil Code and not guided by jurisprudence, especially jurisprudence related to the use of documentary evidence in the form of photocopies without the original document. Although jurisprudence is not binding on judges, jurisprudence plays a role as a guideline so that there is no disparity in the various decisions of different judges in the same case.

3.3 Validity of Photocopy Evidence

In the process of providing evidence in court, the panel of judges must match the photocopy of the submitted letter with the original document. Although Article 1888 of the Civil Code states that the power of evidence with a writing lies in the original deed and Supreme Court Jurisprudence number 701 K/Sip/1974 states that documentary evidence in the form of a photocopy that cannot be matched with the original is invalid evidence in court, however, a photocopy of the documentary evidence can be considered valid if the photocopy of the letter is acknowledged and confirmed by the opposing party, as written in Supreme Court decision number 410 K/Pdt/2004 dated April 25, 2005. In the case of the dispute between the Chancellor and the Foundation at Trisakti University, the judge gave the consideration that a letter in the form of a photocopy submitted at trial as evidence by one of the parties, the plaintiff or the defendant, even though the original letter could not be shown. However, because the photocopy of the letter has been acknowledged and confirmed by the opposing party, it can be accepted as valid written evidence in court. In addition, the Supreme Court jurisprudence number 112 K/Pdt/1996 dated September 17, 1998, has a legal principle: a photocopy of a letter is submitted by one of the parties to a civil court trial to be used as written evidence. It turns out that the photocopy of the letter was not accompanied by the original letter to be matched with the original letter or without being supported by witness statements and other evidence.[28] In such circumstances, a photocopy of the letter according to civil procedural evidence law cannot be used as valid evidence in court proceedings. Supreme Court jurisprudence number 112 K/Pdt/1996 also apparently accommodates photocopies of letters that cannot be matched with the original, on condition that they are supported by other evidence. If it cannot be supported by other evidence, then a photocopy of a letter cannot be accepted as valid evidence. For this reason, according to M. Yahya Harahap, a photocopy of a letter submitted in court can be accepted as valid evidence if it can be matched with the original or supported by other evidence.[29]

The author cites several considerations of the panel of judges regarding photocopies of documentary evidence that cannot be matched with the original. Quoting the considerations of the panel of judges in the decision of the Commercial Court at the Central Jakarta District Court number 43/Pailit/2011/PN.Niaga.Jkt.Pst regarding documentary evidence that was not shown in the original at the trial, is as follows:

> "Considering, that by observing evidence P-97 A and evidence P-97 B, it turns out that the Applicant could not show the original letter at the trial, so that according to the provisions of Article 1888 of the Civil Code it is expressly stated that the evidentiary force of written evidence is in the original deed, in this case the original evidence could not be shown by the Applicant at the trial, so that the Panel of Judges is of the opinion that based on the provisions of Article 1888 of the Civil Code and the Jurisprudence of the Supreme Court of the Republic of Indonesia as mentioned above, the evidence is not evidence that has perfect evidentiary force, so it must be set aside and does not need to be considered again."[30]

Furthermore, regarding the use of electronic evidence in the form of photocopies of WhatsApp conversations, the considerations of the panel of judges in case number 3424/Pdt.G/2020/PA.Dpk are as follows:

> "Considering, that evidence P-5, P-7, and P-8 are in the form of conversations via WhatsApp messages and photos on social media accounts and then evidence P-6 and P-9 are in the form of evidence of transfers. The written evidence from P-5 to P-9 by the plaintiff did not show the original, this is according to the Supreme Court Jurisprudence Number 112 K/Pdt/1996 and Number 410 K/Pdt/2004 that photocopies of letters that cannot be matched with the original can be accepted as written evidence if they correspond or are supported by other evidence. Furthermore, because all the written evidence submitted by the plaintiff has been acknowledged by the defendant, even though the evidence is electronic evidence, in accordance with Law Number 11 of 2008 concerning Information and Electronic Transactions, the evidence is valid legal evidence, but the contents or news of the

evidence have not been proven to be true, so that it does not meet the minimum limit as evidence and must be supported by other evidence, then it must be declared proven that it is true that there is another ideal woman on the defendant's side, whose life is then financed by the defendant."[31]

From the legal considerations of the panel of judges in case number 3424/Pdt.G/2020/PA.Dpk stated that photocopies of conversations via WhatsApp and photos on social media accounts are electronic evidence that is equated with written evidence. Even though the photocopy of the evidence cannot be matched with the original, the photocopy of the evidence has been acknowledged by the defendant, so the evidence is valid legal evidence.

In case number 329/Pdt.G/2021/PN.Sby, the panel of judges clearly acknowledged and accepted 14 photocopies of documentary evidence without the original documents, even though the photocopies of the documents had been denied/not acknowledged by the defendant through exceptions, appeal memorandums, and cassation memorandums, and were not supported by witness statements. However, the panel of judges still accepted the photocopy of the written evidence and included it in the decision considerations, until finally; this case had permanent legal force (*inkracht van gewijsde*) based on cassation decision 1800 K/Pdt/2023. In this case, the panel of judges did not refer to jurisprudence at all; on the contrary, the panel of judges produced a decision that contradicted jurisprudence number 701 K/Sip/1974 and Supreme Court jurisprudence number 3609 K/Pdt/1985.

4. Conclusion and Suggestions

From the research and discussion conducted by the author, it can be concluded that judges play an important role in examining, assessing the strength and validity of the evidence submitted by the parties to the case by referring to the applicable legal sources. The position of jurisprudence is as one of the sources of law, although jurisprudence is not binding on judges, the existence of jurisprudence is a guideline for judges who aim to maintain consistency and prevent disparities in decisions in similar cases.

The author has several suggestions as follows: first, so that judges can conduct examinations and determine the validity of evidence in accordance with applicable procedures. Second, so that judges are guided by applicable laws and regulations and are guided by jurisprudence in order to produce consistent decisions.

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