

# Application of the Principle of Truth to Judiciary Institutions: Discourse of Judges at the Makassar Religious High Court, Indonesia

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**Application of the Principle of Truth to Judiciary Institutions:  
Discourse of Judges at the Makassar Religious High Court, Indonesia**

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**Abstract:** The application of the formal truth concept in civil courts, particularly religious courts, ought to have been abandoned. In several civil disputes, judges are guided by the pursuit of formal truth, resulting in unjust verdicts. This study examines the situation of the principle of formal truth in the investigation of civil matters in the Religious Courts and the view of the Makassar Religious High Court Judge regarding its application. This study is a legal-empirical investigation informed by legal philosophy. Techniques for data collecting consisting of in-depth interviews with key informants and research of court decisions and relevant literature. The findings of the study indicate that, first, the principle of formal truth that is applied to religious courts is still legitimate today, just as the HIR/RBg approach of proving civil cases in Indonesian civil courts is still valid. Second, the opinion of the judges of the Makassar Religious High Court regarding the application of the formal truth principle in the environmental courts of the religious courts demonstrates that, in general, the Makassar PTA judges believe that this principle must be applied as a trial process provision. In their opinion, the formal principle of truth serves as a guide for parties and judges when reviewing cases. Several other judges, however, believe that the formal truth principle should be substituted by the material truth.

**Keywords:** Formal truth, material truth, judge, religious court, Islamic legal philosophy

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**Abstrak:** Penerapan asas kebenaran formil pada pengadilan perdata khususnya di lingkungan Peradilan Agama mestinya sudah ditinggalkan. Banyak kasus perdata yang oleh hakimnya berpedoman mencari kebenaran formil saja justru melahirkan putusan yang tidak adil. Masalah utama yang dikaji dalam penelitian ini adalah kedudukan asas kebenaran formil dalam pemeriksaan perkara perdata di lingkungan Peradilan Agama dan pendapat Hakim Pengadilan Tinggi Agama Makassar tentang penerapan asas kebenaran formil tersebut. Kajian ini merupakan penelitian yuridis-empiris dengan pendekatan filsafat hukum. Teknik pengumpulan data melalui wawancara mendalam kepada informan kunci dan studi literatur pada putusan pengadilan dan literatur yang terkait dengan pembahasan. Hasil penelitian ditemukan bahwa: Pertama, Asas kebenaran formil yang diterapkan pada peradilan agama masih berlaku hingga saat ini, sebagaimana masih berlakunya pula HIR/RBg dalam sistem pembuktian perkara perdata di lingkungan pengadilan perdata di Indonesia. Kedua, Pendapat hakim Pengadilan Tinggi Agama Makassar mengenai penerapan asas kebenaran formil pada pengadilan lingkungan peradilan agama menunjukkan bahwa pada umumnya hakim PTA Makassar berpendapat bahwa penerapan asas tersebut harus dilakukan sebagai sebuah ketentuan dalam proses persidangan. Mereka memandang bahwa asas kebenaran formil tersebut berfungsi sebagai patron bagi para pihak dan hakim dalam pemeriksaan perkara. Namun demikian, terdapat beberapa hakim lainnya berpendapat bahwa hendaknya asas kebenaran formil tersebut diganti dengan kebenaran materil.

**Kata Kunci:** Kebenaran formil, kebenaran materil, hakim, pengadilan agama, filsafat hukum Islam

### Introduction

Formal truth and material truth are two terms frequently used in procedural law studies and discussions, particularly when discussing case and showing evidence. Both are the focus of law enforcement, particularly judges when reviewing cases and rendering rulings. According to some legal experts, formal truth is the objective of civil law enforcement, while material truth is the objective of criminal law enforcement. Formal truth is the legal truth that must be pursued by judges in civil proceedings.<sup>1</sup>

The principle of formal truth states that a judge is obliged by the information or evidence offered by the parties in a court proceeding. The judge

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<sup>1</sup> Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Cahaya Atma Pustaka, 2013). Ahmad Rofiq, *Hukum Acara Perdata Islam*, (Jakarta: Rajawali Pres, 2013). Sulaikin Lubis, et.al., *Hukum Acara Perdata Peradilan Agama di Indonesia*, (Jakarta: Prenada, 2018).

is bound by the acknowledged or disputed occurrences.<sup>2</sup> With this principle, the judge decides a case with sufficient evidence without having to be required to have a judge's conviction. This is consistent with the Supreme Court's 3 August 1974 jurisprudence, which confirmed the High Court's view that a judge's conviction is not required under civil procedural rules.

Unlike the material reality supported by criminal judges. Article 183 of the Criminal Process Code states that "no one may be convicted of a crime unless the court is convinced, based on legally valid means of proof, that the alleged perpetrator committed the act in question." This section demands the presence of at least two valid pieces of evidence in every criminal judge's decision, as well as the judge's belief in the veracity of the prosecutor's indictment and the defendant's guilt.<sup>3</sup> In the framework of discovering the truth, judges exert their greatest effort in pursuit of material truth by traversing procedural truth and substantial truth.<sup>4</sup>

The concept of formal truth emphasizes fraudulent confessions, such as a husband or wife's admission of adultery during a trial before the Religious Courts, accompanied by a petition for divorce (with talak divorce) or a claim for divorce (divorce sued). Despite the recognition being a cover for an ulterior goal, this has persuaded the judge to recognize the request or lawsuit as one of the acceptable grounds for divorce.<sup>5</sup>

Likewise, the prerequisites for establishing a valid proof. The judge will accept the contents of a legitimate document as factual until it is proven otherwise that against the earlier evidence. In this case, the judge is obligated to accept the contents of the evidence. A lawful deed is binding and is good evidence<sup>6</sup>. The judge must believe the contents of the deed; that is, they must be acknowledged as genuine. During the inspection, it is possible to present an authentic deed in the form of a derivative or a quotation, which could have been forged or made inconsistently with the original. Such as the sale and purchase of

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<sup>2</sup> Bambang Sutiyoso, *Aktualita Hukum Dalam Era Reformasi*, (Jakarta: Raja Grafindo Persada, 2017).

<sup>3</sup> Bambang Waluyo, *Sistem Pembuktian Dalam Peradilan Indonesia*, (Jakarta: Sinar Grafika, 2013). Asep Saefullah, "Peranan Alat Bukti dalam Hukum Acara Peradilan," *Mahkamah: Jurnal Kajian Hukum Islam* 3, No. 1 (2018).

<sup>4</sup> Johari "Kebenaran Materil Dalam Kajian Hukum Pidana," *Reusam: Jurnal Ilmu Hukum* 8, No. 2 (2020), p. 118.

<sup>5</sup> Roihan A. Rasyid, *Hukum Acara Peradilan Agama*, (Jakarta: Rajawali Press, 2016).

<sup>6</sup> M. Yahya Harahap, *Hukum Acara Perdata (Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan)*, (Jakarta: Sinar Grafika, 2014).

counterfeit divorce certificates on an online marketplace where the party's name and case number match those of the Soreang Religious Court.<sup>7</sup>

If this is used in Religious Courts, it is likely that justice will not be served in a community that seeks Islamic justice, and Islamic material law may even be sacrificed. Religious Courts are responsible for upholding Islamic civil law in the areas of marriage, inheritance, wills, grants, endowments, zakat, infaq, sadaqah, and sharia economics.<sup>8</sup>

Many studies have examined the factors that Religious Courts judges take into account when making decisions. For instance, district court judges prioritize aspects of legal certainty over juridical factors, whereas religious court judges prioritize both characteristics of legal certainty and religious considerations.<sup>9</sup>

Gender disparities can also have an effect on religious court judges. The gender sensitivity of female judges, for instance, surpasses that of male judges, even when their competence and abilities are equivalent. This sensitivity of female judges is visible in cases regarding the rights of women. For example, financial compensation during *iddah* and *mut'ah*, financial compensation for children, and shared property.

The court also assesses the essence of Islamic law, primarily for the benefit of the parties, as in the case of *isbath nikah*.<sup>10</sup> In addition to referring to legislation, government regulations, the Compilation of Islamic Law, and other legally recognized legal principles, the judge will also consider additional factors.<sup>11</sup> Yet, benefit and societal concerns are considered, making a judge's sense of justice and equality quite relevant.

Nonetheless, judges are occasionally torn between pragmatic, conservative, and progressive paradigms. Cases involving legal reasoning to ascertain the ancestry of biological children. Yet, judges are sometimes pulled between pragmatic, conservative, and progressive perspectives. Instances when legal reasoning is used to determine the ancestry of biological offspring. Yet, it is hoped that judges will utilize progressive reasoning to provide proportional

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<sup>7</sup> Berita, "Jual Beli Akta Cerai Palsu Di Marketplace," *Portal Majalengka. Pikiran Rakyat.Com*, 2020.

<sup>8</sup> Neni Sri Imaniyati dan Panji Adam, *Pengantar Hukum Indonesia Sejarah Dan Pokok-Pokok Hukum Indonesia* (Jakarta: Sinar Grafika, 2019).

<sup>9</sup> Dodon Alfiander, "Disparity in the Considerations of Judges in Deciding Divorce," *Juris (Jurnal Ilmu Syariah)* 21, No. 1 (2021).

<sup>10</sup> Aulia Mubarak, et.al., "Implementation of Marriage Istbat in Aceh," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 21, No. 1 (2021).

<sup>11</sup> Naskur Bilalu, et.al., "Compilation of Islamic Law Judge's Concideration at a Religious Cuort in North Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, No. 2 (2022).

legal protection to biological children, so that these children can enjoy legal certainty and justice.<sup>12</sup>

None of the aforementioned studies have specifically addressed the application of formal and material truth standards by judges while resolving cases. The use of these two principles by the justices of the Makassar Religious High Court is thus pertinent to this study.

At the Religious Courts of South Sulawesi, the concepts of formal and material truth are not only in the form of discourse, but have also been implemented in an applicative manner. For instance, a decision based on formal correctness, such as Decision No. 202/Pdt.G/2021/PA.Pwl regarding joint property issues. One of the plaintiff's claims in this case involved the imposition of school expenditures for the two neglected children of the plaintiff and the defendant. The plaintiff cannot afford to pay the education of her two children, therefore she was compelled to incur debt in order to pay for her son's continuance and completion of his undergraduate studies. 87,840,000 (eighty-seven million eight hundred and forty thousand) was not regarded a common burden and duty between the plaintiff and the defendant. This consideration is based on the principle (*Unus testis nullus testis*, one witness is not a witness) outlined in Article 308 R.Bg in conjunction with Article 1905 of the Civil Code. Whereas the witness proposed by the plaintiff (the mother who bears the debt for her two children's tuition fees) was the only witness whose testimony was accepted, and the second witness was not accepted because she did not meet the formal elements of the testimony, the assembly was of the opinion that the witness proposed by the plaintiff did not meet the minimum requirements for proof. The Makassar Religious High Court subsequently reversed this verdict.<sup>13</sup>

Similarly, ruling number 202/Pdt.G/2021/PA.Sgm of the Sungguminasa religious Court about divorce and dowry claims. The assembly deems the dowry claim in the form of 150 square meters of dry land, as stated in the Marriage certificate, which is the defendant (husband) has not submitted to the plaintiff (wife) to be forfeited because the location is not specified in the Marriage certificate. The panel of judges ruled that the value of the unpaid dowry, which is a required present from the husband to the wife, is based on the norms of society as a whole. The consideration of the panel of judges is extremely

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<sup>12</sup> Rohmawati and Ahmad Rofiq, "Legal Reasonings of Religious Court Judges in Deciding the Origin of Children: A Study on the Protection of Biological Children's Civil Rights", *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 21, No. 1 (2021). Suci Ramadhan and JM Muslimin, "Indonesian Religious Court Decisions on Child Custody Cases: Between Positivism and Progressive Legal Thought," *Juris (Jurnal Ilmu Syariah)* 21, No. 1 (2022).

<sup>13</sup> Putusan Pengadilan Agama Nomor 641/Pdt.G/2021/PA.Pwl" (2021).

harmful to the petitioner, who is entitled to a dowry equal to 150 square meters of dry land. This verdict was sustained by a court of appeals.<sup>14</sup>

The consideration of the panel of judges is very detrimental to the plaintiff, who should receive a dowry equivalent to dry land with an area of 150 square meters. This decision was upheld by an appeal court decision.

Allegedly, efforts to resolve civil cases based on formal truth cannot ensure the emergence of a fair and accurate judgement. If this condition persists, the Religious Courts cannot fulfill their role as enforcers of Islamic material civil law.

This study highlights an issue about the implementation of the formal truth principle in the Makassar Religious High Court. In order to narrow the research's scope, two aspects are targeted: the position of the principle of truth in religious courts and the perspective of judges in applying the concept. The objective of this study is to comprehend the position of the principle of formal truth in examining cases at courts within the Religious Courts and to determine the opinion of the Judges of the Makassar Religious High Court regarding the application of the principle of formal truth in examining cases at courts within the Religious Courts.

The results of this study are anticipated to be able to contribute ideas to law enforcers, particularly Religious Court Judges, in understanding the position of the formal truth principle in resolving Islamic civil disputes, which are under their jurisdiction; and develop legal thought on the future development of legal science, particularly the Civil Procedure Code of the Religious Courts; As well as being able to add/enrich the collection of scientific works which pertain to the Religious Courts.

This study is a legal-empirical investigation using legal philosophy approach. The data were collected through in-depth interviews and literature reviews. There are two types of data: primary data, obtained directly from the first source in the field, particularly from key informants such as judges, and secondary data, obtained from court decisions, laws and regulations, journal articles, books, research results, legal dictionaries, and other scientific references. The processing of research data is based on normative legal features connected to the formal truth principle, supported by legal theory studies and field-specific empirical facts.

### **Formal Truth Principles' Legal Standing in Religious Courts**

It is well known that procedural law is equally as significant as material law, and thus procedural law regulates the systems, processes, and procedures,

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<sup>14</sup> Putusan Pengadilan. Agama Nomor 202/Pdt.G/2022/PA.Sgm" (2022)..

as well as the terms and conditions for all parties (judges, plaintiffs, defendants, attorneys) in court case resolution. Civil procedural law plays a critical role in enforcing substantive civil law through the courts. The enforcement of substantive law is impossible without the assistance of procedural law.<sup>15</sup> The procedural law is a means or effort to defend the rights of legal subjects through courts with legal certainty; therefore, procedural law functions as a medium and method of enforcing material law, as stated that "ubi jus ibi remedium," which means that where there are rights, there is of course a means to uphold them.<sup>16</sup>

This procedural law is also known as process law or formal law since it regulates the procedure of resolving disputes through the courts in accordance with norms that have been legally established. In addition to controlling the processes for parties to proceed in court, this procedural law also controls how the court examines, tries, and decides matters in order to achieve justice and public order<sup>17</sup>. Thus, procedural law is extremely crucial in judicial processes. All parties must consistently apply procedural law, as failure to do so can result in deadly repercussions, i.e. nullity of the decision.

Formal truth is an applicable principle in civil procedural law. The formal truth principle is always a concern for all parties in court when resolving disputes. When a court considers a case during the proof phase, formal truth is one of the factors to be considered.

In civil cases, the word formal truth is not clearly defined under the civil procedural law. Yet, the presence of formal truth can be concluded from a number of HIR and RBg articles, notably those controlling the law of evidence (Articles 162-177 HIR/282-314 RBg) and Article 178 HIR/315 RBg on the Duties and Prohibitions of Judges. Article 162 of the HIR states, "Regarding evidence and the acceptance or rejection of evidence in civil matters, the district court should pay respect to the following regulations:" This clause of article 162 covers and directs judges to implement and abide by the provisions of succeeding articles throughout the proof phase of case examinations. Therefore, all legal experts concur that the truth to be sought in civil proceedings is formal truth.

Efforts to seek formal truth in resolving civil cases are exemplified by the use of evidence of confession before a court hearing, as mentioned in article

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<sup>15</sup> Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*, (Jakarta: Kencana, 2016).

<sup>16</sup> V. Harlen Sinaga, *Hukum Acara Perdata Dengan Pemahaman Hukum Materil*, Cet. ke 1 (Jakarta: Erlangga, 2015).

<sup>17</sup> Abdullah Tri Wahyudi, *Hukum Acara Peradilan Agama Dilengkapi Contoh Surat-Surat Dalam Praktik Hukum Acara Di Peradilan Agama*, Edisi Revisi (Bandung: Mandar Maju, 2018).



174 HIR/311 Rbg, which states: "A confession made before a judge is sufficient evidence to incriminate the person who confessed it, whether the confession is said by oneself or by a special person authorized to do so." According to this article, confession is irrefutable evidence of who committed the crime, either alone or in conjunction with the representatives of other individuals who have been granted special authority for this purpose. Hence, if the defendant confesses prior to a court hearing concerning the contents of the plaintiff's lawsuit, the plaintiff is no longer need to submit evidence of the items that the defendant has admitted. This acknowledgement is adequate to establish the occurrence or legal relationship that acknowledge his rights. With the defendant's acknowledgment, the disagreement between the parties is believed to have been settled, even if the defendant's acknowledgment is false. The judge need not further investigate the veracity of the confession<sup>18</sup>.

To create a clear picture of the provisions of article 163 HIR, the following is stated: "Anyone asserts a right or asserts an act to confirm his rights or deny the rights of others must show the existence of that right or action." Article 163's definition of "having a right" is, for instance, that both the plaintiff and the defendant assert that he is entitled to the disputed rice field since he acquired it through a purchase. By "mentioning an act," for instance, it is meant that he has been adopted as the deceased's adopted son. The phrase "to assert their rights" signifies that the plaintiff or defendant who postulates the existence of a right or occurrence is required to establish its reality. For instance, the plaintiff/defendant contends that certain rights exist, whereas the defendant/plaintiff contests this.

The premise stated in Article 163 is "anyone postulates anything must prove it." At first sight, the concept appears to be quite straightforward. In practice, however, it is not as simple as one might seem to establish, for example 'who should have the duty of proving something'. As a standard, it might be claimed that it should not always be one party that is obliged to submit evidence, but that each situation must be evaluated individually. In the meanwhile, article 164 of the HIR specifies the admissible evidence during a trial. Five sorts of evidence are mentioned in Article 164: written evidence, witness testimony, presumption, confession, and oath. Other types of evidence are mentioned in other articles, including: on-site examination (Article 153 HIR), expert witnesses (Article 154 HIR), bookkeeping (Article 167 HIR), judges' knowledge

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<sup>18</sup> M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*, Edisi Revisi (Jakarta: Sinar Grafika, 2014).

(Article 178 (1) HIR)<sup>19</sup> and electronic evidence (Article 5 paragraphs (1) and (2) of Law No. 11 of 2008 pertaining to ITE).<sup>20</sup>

The judge and the parties in court must adhere to both the material and formal aspects of the evidence law. According to the law, the judge must accept acceptable evidence. The judge renders a verdict based on credible evidence. Incorrect or irresponsible application of this evidentiary law could result in the nullification of a judicial decision.<sup>21</sup> The judge and the parties in court must adhere to both the material and formal aspects of the evidence law. According to the law, the judge must accept acceptable evidence. The judge renders a verdict based on credible evidence<sup>22</sup>. Incorrect or irresponsible application of this evidentiary law could result in the nullification of a judicial decision..

Mertokusumo said that there is a distinction between evidence in criminal cases that requires a judge's belief (beyond a reasonable doubt) and evidence in civil proceedings that does not explicitly demand a judge's belief (preponderance of evidence). Even though, according to Sudikno, in civil disputes the judge must seek the formal truth, this does not imply that the court is searching for a half-truth or a lie. Finding formal truth necessitates that the judge cannot exceed the bounds set out by the litigant. Not considering the quantity or nature, but the scope of the judge's examination. In their pursuit of formal truth, civil judges need simply establish a number of facts (preponderance of evidence).<sup>23</sup>

As stated previously, Retnowulan and Oeripkartawinata's position is consistent with the formal truth concept that does not require a judge's conviction in civil matters. They contend that in civil procedural law, a judge's verdict is not required to win a case. What most important is the existence of valid evidence, and the judge will decide who wins and who loses based on this evidence. In civil procedure law, formal accuracy suffices.<sup>24</sup> Similarly, Hapsono's opinion, as cited by Bambang Sutyaso, that judges seek formal truth in civil procedures. In other words, the judge is not required to delve as deeply into the facts and circumstances as in a criminal proceeding, but is bound by

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<sup>19</sup> H. A. Mukti Arto, *Praktek Perkara Perdata Pada Pengadilan Agama*, (Yogyakarta: Pustaka Pelajar, 2011).

<sup>20</sup> M. Natsir Asnawi, *Hukum Pembuktian Perkara Perdata di Indonesia Kajian Kontekstual Mengenai Sistem, Asas, Prinsip, Pembebanan, dan Standar Pembuktian*, Cet. ke 1 (Yogyakarta: UII Press, 2013).

<sup>21</sup> Mertokusumo, *Hukum Acara Perdata Indonesia*.

<sup>22</sup> Achmd Ali dan Wiwie Heryani, *Asas-Asas Hukum Pembuktian Perdata*, Cet. ke 1 (Jakarta: Kencana, 2012).

<sup>23</sup> Mertokusumo, *Hukum Acara Perdata Indonesia*.

<sup>24</sup> Retnowulan Sutantio dan Iskandar Oeripkartawinata, *Hukum Acara Perdata Dalam Teori Dan Praktek*, Edisi Revi (Bandung: Mandar Maju, 2019).

what the parties present.<sup>25</sup> In a different context, formal truth refers to a fact that, according to formal evidence, can be judged true or accurate.

Waluyo also justifies the presence of the norm of formal truth in civil procedures. He argued that the objective of truth in civil suits is formal truth. About this, his views align with those of Sudikno. After quoting Sudikno's position as described previously, Waluyo stated that Sudikno's opinion is rational and in accordance with the law. According to Waluyo, the objective of evidence is to convince or convey certainty to the judge regarding the truth or falsity of events through the presentation of evidence. So, the judge's judgment is based on this evidence, despite the fact that material truth is not the objective in a civil case.<sup>26</sup> According to Asshiddiqie, the purpose of proof in civil procedural law is to establish formal truth. In other words, the judge relies solely on the information that may be gleaned from formal evidence.<sup>27</sup>

Based on the above explanation and expert opinion, the following can be deduced: First, the applicable civil procedural law requires judges to uphold formal truth. Namely the truth based on valid evidence as stipulated in the applicable laws and regulations; The formal truth that is enforced by judges in civil disputes is the truth that is taken from the legal facts revealed in the trial, both in the form of statements and evidence presented by the parties at the trial. Do not accept any outside statements or evidence. According to Ali and Heryani, the civil procedure system in Indonesia offers the parties (particularly the plaintiff) the complete opportunity to present their case to the judge. The plaintiff is free to develop arguments, hypotheses, and evidence to support his claim.<sup>28</sup> Mukti Arto concluded that the evidentiary law in civil proceedings includes four elements: a) it seeks formal truth, meaning that the judge is limited to examining only the matters presented by the parties; b) proof is not required for the judge to believe the truth; c) the evidence submitted by the parties must meet the material and formal requirements; and d) in proving, the judge must comply with the law of evidence.<sup>29</sup> According to Amiruddin, the application of formal evidence by judges is crucial to the case evaluation process. In his investigation at the Aceh Syar'iyah Court, he determined that all divorce cases at

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<sup>25</sup> Sutiyo, *Aktualita Hukum Dalam Era Reformasi*.

<sup>26</sup> Waluyo, *Sistem Pembuktian Dalam Peradilan Indonesia*.

<sup>27</sup> Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-Undang* (Jakarta: Sekretariat Jenderal Mahkamah Konstitusi RI, 2006).

<sup>28</sup> Mardian Wibowo, "Problem Penemuan Kebenaran Dalam Putusan Mahkamah Konstitusi The Problems of Truth Discovery in Constitutional Court Decision," *Jurnal Konstitusi* 13, No. 1 (2016), p. 145–70.

<sup>29</sup> Arto, *Praktek Perkara Perdata Pada Pengadilan Agama*.

the Syar'iyah Court utilized witness evidence, specifically witnesses who met formal and material conditions.<sup>30</sup>

Adhering to the principle of formal truth does not imply that judges are indifferent to the quality of the evidence and/or claims presented by the parties. If information or evidence is contested or contradictory by the opposing party, the court has the right and authority to examine the information or evidence further.<sup>31</sup> To uphold justice, judges must be proactive in overcoming any impediments.

*Second*, there is no restriction on judges incorporating their ideas into the formal truth in civil disputes. Judges are permitted to pursue material truth in civil trials, if the truth is supported by admissible evidence. Even if the judge is certain, but the conviction is not supported by sufficient evidence, it is not legal. In contrast, if the petitioner can establish it with sufficient proof, the court must accept it as the truth even if he has his concerns.<sup>32</sup> Lengkong's research on the South Jakarta District Court's Decision No. 198/Pdt.G/2012/PN.Jkt.Sel, dated 11 October 2012, provides evidence of the practice of pursuing material truth in the investigation of civil cases. Lengkong decided that the South Jakarta District Court Judge uses the formal truth concept while considering Case No. 198/Pdt.G/2012/PN.Jkt.Sel. However, the court also attempted to obtain material truth, meaning his belief that it was true that the defendant had received a 7 billion rupiah loan and had broken his promise (defaulted) to repay the amount in accordance with the agreement. Judges who employ this material truth in the framework of applying the formal truth principle will be more able to expose clearer and clearer facts, so enhancing their credibility.<sup>33</sup>

Similarly, Artha's research reveals the decision of the Religious Court of Giri Menang with case number 27/Pdt.G/2013/PA.GM dated August 27, 2013, and the decision of the Samarinda High Religious Court with case number 001/Pdt.G/2011/PTA.Smd dated March 9, 2011.<sup>34</sup> Both of these judgements deemed the deed in the form of a certificate of ownership and a substitute for the deed of pledge of waqf invalid and null and void.

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<sup>30</sup> Amiruddin, "Pertimbangan Hukum Hakim Terhadap Keterangan Saksi (Studi Kasus Pada Mahkamah Syar'iyah Di Aceh)," *Jurnal Syarah* 9, No. 2 (2020), p.160–172.

<sup>31</sup> Retno Supartinah Tata Wijayayanta, Sandra Dini Febri Aristya, Kunthoro Basuki, Herliana, Hasrul Halili, Sutanto, "Penerapan Prinsip Hakim Pasif Dan Aktif Sertarelevansinya Terhadap Konsep Kebenaran formil," *Jurnal Mimbar Hukum* 22, No. 3 (2010), p. 572–87.

<sup>32</sup> Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*.

<sup>33</sup> Lonna Yohanes Lengkong, "Pembuktian Perdata," *Hukum* 3, No. 1 (2017), p. 479–493.

<sup>34</sup> Zulhery Artha, "Pencarian Kebenaran Materiel Dalam Mengadili Sengketa Wakaf," *Tarjih: Jurnal Tarjih Dan Pengembangan Pemikiran* 13, No. 2 (2016), p. 193-206.

### **Judge's Opinion On the Application of the Formal Truth Principle in Case Examination**

After performing research through conducting in-depth interviews with the judges of the Makassar Religious High Court, two opinions of the judges regarding the application of the principle of formal truth in case examinations could be presented. The two types of perspectives are as follows:

#### **1. The Principle of Formal Truth According to the Rule of Law**

The principle of formal truth in civil disputes, according to proponents of this view, is a provision in the applicable laws and regulations. The implementation of the principle of formal truth is required in all processes. Not applying this principle constitutes a violation of the applicable laws. By law, a violation of the appropriate provisions might render a judgement null and void. Anwar Rahman remarked that this formal reality cannot be overlooked in a case examination as a matter of principle. In order to prevent their rulings from being deemed null and void, judges are obliged to comply with this requirement throughout case examinations. Nevertheless, the idea of formal truth in civil conflicts before religious tribunals is consistent with the requirements of justice. Since, according to the law, the formal truth is backed by at least two valid pieces of evidence.

In accordance with the preceding ruling, a judge reasoned that the formal truth concept is still applicable to religious court judges because they become patrons when determining cases. This idea serves as the regulations and a guide for judges reviewing cases. And if the judge has no indications or is otherwise unrestricted during the proceedings, there will be doubt. If the event is hazardous without attendees or signage. The judge will have complete discretion in rendering a verdict.<sup>35</sup>

The Civil Procedure Law of the Religious Courts is the statute that regulates the flow of case examinations within Religious Courts tribunals. By utilizing this procedural law, the disputing parties can regain their rights that have been violated by other parties through the courts, rather than by taking the law into their own hands. Before a court hearing, the law of civil procedure defines the rights and obligations that must be carried out by each party in a case. Unquestionably, the primary purpose of filing a lawsuit in court is to uphold the law. However, procedural law and formal law cannot be disregarded. All elements involved in the enforcement of substantive law must adhere to

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<sup>35</sup>Interview with Mame Sadapal, Vice Chairman of the Makassar Religious High Court, in Makassar, July 20, 2022.

procedural law provisions. Court personnel and judges are compelled and obligated to consistently apply procedural law when carrying out their primary judicial functions. Negligence or error in the application of procedural law during case examinations may result in the cancellation of the entire trial procedure. Similarly, the parties and the plaintiff who files a lawsuit in court must adhere to the procedures and rules specified by procedural law. For instance, if a plaintiff files a lawsuit, the suit must satisfy formal and substantive standards. Before filing a case with the court, the parties must understand the legal basis. A case without a legal basis will be dismissed by the court. According to procedural law, the defendant who opposes the plaintiff's claim in his response must be accompanied by evidence.

Article 30, paragraph 1, of Law No. 5 of 2004 pertaining to the Supreme Court emphasizes the requirement to comply with procedural legislation. This article states: "The Supreme Court at the cassation level cancels decisions or decisions of courts from all jurisdictions for the following reasons: a. is not authorized or exceeds the limits of authority; b. misapplying or violating applicable laws; c. failure to comply with the conditions required by applicable laws and regulations that threaten such negligence with cancellation of the decision in question.

In light of the aforementioned regulations, this initial opinion holds that judges must adhere to the formal truth concept in every civil case examination.

## 2. The formal truth principle should no longer apply

The adherents of this view believe that the discourse on the notion of formal truth is no longer relevant and has been argued for quite some time. To provide legal certainty for civil courts in their decision-making, the concept must be used in accordance with the circumstances. Ahmad Nur indicated that he agrees with the application of the principle of material truth in religious tribunals. He reasoned that the pursuit of material truth is necessary in both criminal and civil proceedings. In reality, it is not uncommon for civil issues to precede criminal proceedings.

According to Islamic law as explained in the Qur'an, there is no distinction between criminal and civil cases when it comes to rendering a just verdict. QS. al-Nisa/4:65 is next:

فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِي مَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجاً مِمَّا قَضَيْتَ  
وَيُسَلِّمُوا تَسْلِيماً

Meaning: But no, by your Lord, they will not [truly] believe until they make you, [O Muḥammad], judge concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in [full, willing] submission.

The clause “فِيمَا شَجَرَ بَيْنَهُمْ” (over which they dispute) refer to general issues, and this viewpoint is confirmed by the manner in which the Holy Prophet and his handled cases presented to him.

The judge of the High Religious Court remarked that he agreed that material truth will likewise be applied to civil disputes in the Religious Courts, in agreement with the aforementioned opinion. In his opinion, the decisions he has taken thus far are consistent with his values, notably his belief in the correctness of his decisions based on trial evidence.<sup>36</sup> For instance, the ruling in case number 75/Pdt.G/2022/PTA Mks involving appeals relating conflicts over shared property, which was rendered by the Polewali Religious Court in case number 641/Pdt.G/2021 PA.Pwl. Decision number 75/Pdt.G/2022/PTA. The MKs at the convention affirmed the judgment 641/Pdt.G/2021/PA.Pwl, which was subsequently overturned in the reconvention. In its analysis, the PTA Makassar High Court of Justice determined that the evidence of the plaintiff's and defendant's kid might be admissible in a marriage dispute. This second witness said that his parents were responsible for his and his younger sibling's tuition fees, as well as real work tuition fees in Thailand.<sup>37</sup>

Every matter investigated by a judge, whether criminal or civil, demands integrity and professionalism on the part of the judge. Ibn Qayyim claimed that a judge should be someone who is knowledgeable and able to comprehend signs, instructions on situations and conditions, and the consequences of the cases presented to him, both in the form of deeds and words, in addition to his legal knowledge and scientific ability.<sup>38</sup> judge's knowledge of the indictment/lawsuit was occasionally gained by personal observation, accurate information, or strong suspicions gleaned from the admissions of the defendant and impartial witnesses.<sup>39</sup>

A. Rasyid noted that, according to HIR/RBg, the civil procedural law system is founded on formal truth. This means that courts will review and decide civil cases that are strictly governed by particular processes outlined in

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<sup>36</sup> Interview with Abd. Munir S. South Sulawesi Religious High Court Judge, in Makassar, July 21, 2022.

<sup>37</sup> Putusan Pengadilan Tinggi Agama Nomor 75/Pdt.G/2022/PTA.Mks” (2022).

<sup>38</sup> Ibnu Qayyim Al-Jauziyah, *Al-Turuq Al-Hukmiyah Fi Al-Siyasah Al-Syar'iyah*, Diterjemahkan Oleh Muhammad Jamil Ghazi, (Yogyakarta: Pustaka Pelajar, 2007).

<sup>39</sup> Muhammad Salam Madkur, *Al-Qadha Fi Al-Islam*, Diterjemahkan Oleh Imran AM, (Surabaya: Bina Ilmu, 1993).

the HIR/RBg. So, the proof system is also founded on this formal reality. Roihan stated that this system had been abandoned due to legal requirements and the customary practice of administering justice, so the Civil Procedure Code was utilized, which was not only contained in the HIR/RBg, but also obtained from BW, Rsv (Reglement op de Rechtsvordering), and from Circular Letters and Instructions of the Supreme Court. According to him, formal truth has been replaced by material truth. In other words, even though the formal evidence is sufficient, the judge may not render a verdict if he is uncertain as to whether it has been proven factually accurate. Before the trial of the Religious Courts, he believes that a judge may not render a verdict if he is not certain that he is materially correct according to Islamic law, even though the matter has been legally declared properly demonstrated in accordance with HIR/RBg and others.<sup>40</sup>

### **Between Formal and Actual Veracity**

It is a difficult task to decide matters properly and correctly. It is a position that requires specialized expertise and absolute sincerity. In addition to having knowledge of legal provisions pertaining to contested cases (material law) and case examination techniques/procedures (formal law), a judge must also be honest in his pursuit of Allah's reward in preserving law and justice.

Nowadays, it is quite conceivable for judges who are exclusively guided by the idea of formal truth to provide biased rulings. As a result of the fact that civil evidence allows parties to provide official proof, it also contains substantial flaws.

A judge with extensive knowledge should not treat cases submitted to him lightly. In order to determine the law/decision for a case, judges need always to be diligent and cautious when examining cases. In order to prevent the judge from acting falsely and abusing one or both parties, a judge is prohibited from reviewing a case while in a state of fury. In the same manner, judges cannot be influenced by any party when reviewing a case.

Islam accepts the limitations of human powers, despite the requirement that judges have specialized and in-depth understanding of the area of their authority, as well as sincerity and prudence in offering equitable treatment and a feeling of fairness to the parties in a case. In performing their functions, the judges must render a verdict after hearing the information and evidence presented by the parties. They should also be actively listening to and assess each party's legal arguments. In addition to thoroughly scrutinizing the evidence

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<sup>40</sup> Roihan A. Rasyid, *Hukum Acara....*, p. 145-146.



produced by both sides during the trial, judges are expected to render judgements based on the evidence presented in the case

With his legal education, a judge must be adept at deciphering signs, instructions on situations and conditions, and the consequences of cases presented to him, both in the form of acts and words. Without investigating and considering the indicators and consequences of the parties' circumstances, decisions will be adverse to the parties whose rights should be protected. In order to fulfill the goals of judicial enforcement, every judge should exert their utmost efforts by utilizing their knowledge, abilities, and experiences in reviewing these instances.

Obviously, the limitations of human powers cannot be denied. Judges are tasked with resolving only fact-the seen problems, which are perceptible to the five senses and the human mind. Judges are not permitted to rule on invisible disputes, matters concealed in the human heart, or other abstract considerations. Rasulullah PbuH said: "أمرت أن أحكم بالظاهر والله يتولى على السرائر" (I was instructed to decide the law on the seen cases, while Allah knows all secrets ).<sup>41</sup>

The meaning of the term *zahir* is seen issues or fact, in the form of a real claim or assertion, which is plain and easily understood by the mind. Similarly, reactions in the form of words and acts, gestures, and other signs. All of this information is studied in the form of statistics and data qualification in order to establish the actual issue. This is what it means for a judge to investigate cases to discover material truth.

Using the fact or concrete cases to decide cases does not exempt judges from analyzing, investigating, and interpreting the arguments and facts presented by both parties. In fact, this is the judge's primary responsibility during the trial examination. The Prophet's guidance. for the judge to decide based on the concrete cases is the judge conducting an examination of the concrete data submitted by the parties in the form of words, actions, indicators, and other data by analyzing, investigating, and interpreting the concrete data in order to take and determine a decision on the case at hand.

### Conclusion

The principle of formal truth that is applied to courts in the religious court environment is still in effect today, as is the HIR/RBg evidentiary system in civil proceedings in the civil court environment in Indonesia, despite the fact that it has undergone a number of adjustments. The view of the judges of the Religious High Court regarding the use of the formal truth principle in the environmental courts of the religious courts demonstrates that, in general, the

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<sup>41</sup> Madkur, *Al-Qadha Fi Al-Islam*.

justices believe that this principle must be applied as a trial procedure rule. In their opinion, the formal principle of truth serves as a guide for parties and judges when reviewing cases. Several other judges, however, believe that the formal truth standard should be replaced with the material truth, as in criminal courts.

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