

# ANALYSIS OF IMPORTANT, CAREFUL, CERTAIN AND MUTUALLY AGREEABLE CRITERIA IN THE REGULATION OF ARTICLE 173 OF THE HERZIEN INLANDSCH REGLEMENT REGARDING EVIDENCE OF JUDGES' SUSPECTS

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## Abstract

The sentence in Article 173 HIR which states "important, thorough, certain and mutually agreeable" is a regulation that is still abstract and can be interpreted in many ways, where this is like what category of important or very important circumstances are, then what is thorough or precise, how to assess certain conditions, and whether they correspond to each other whether they should be applied to 2 (two) types of evidence or what. The purpose of this study is to analyze the criteria contained in the sentence important, thorough, certain and mutually agreeable in the regulation of Article 173 HIR. The research method used is legal research with a statutory regulatory approach, a conceptual approach, and a case approach. Based on the research that has been carried out, it is known that normatively the criteria "important, thorough, certain and mutually agreeable" in Article 173 HIR are not explained completely, then after a theoretical analysis through the doctrines of legal experts and linguistically, namely Indonesian and legal language, the meaning contained therein is obtained. The "important" criterion contains relevant and logical boundaries directly related to the subject matter of the case, the "thorough" criterion contains methodological boundaries for the application of caution, the "certain" criterion contains specific boundaries and the strength of the evidence is not questioned, and the "mutually agreed" criterion contains for consistency and mutually corroborating evidence.

**Keywords:** *Judge's Allegation, Important; Thorough; certain; Mutually Agreeable.*

## A. INTRODUCTION

Truth is the fundamental objective a judge seeks to discover in resolving a case. Finding the truth in a case serves as a guide for the judge's future decision. The resulting decision determines whether a legal objective has been achieved. The way a judge achieves truth in resolving a case during a trial is through the presentation of evidence. According to R. Subekti, proof is defined as providing a judge with confidence in the truth of a proposition or argument presented in a dispute. Meanwhile, according to Sudikno Mertokusumo, proof has the following meanings: logical, conventional, and juridical. Logical means proof can provide absolute certainty. Conventional means proof implies certainty, but not absolute certainty. Juridical means proof provides a sufficient basis for a judge examining the case in question to provide certainty regarding the truth of the events presented.

In the process of settling a civil case, a Judge examines the evidence submitted by the Parties in claiming their legal rights and interests. In the process of proof, the Parties can submit evidence to strengthen their arguments. As in Article 1865 of the Civil Code which states "everyone who claims that he has a right, or, in order to confirm his own right or deny the rights of another person, points to an event, is required to prove the existence of that right or event." In addition to what is stated in the Civil Code, Article 163 HIR / 283 RBG also explains that "anyone who claims to have a right or an event, he must prove the existence of that right or event." Until now, proof in civil law in Indonesia refers to the provisions regulated in Article 1865 - Article 1945 of the Civil Code, Article 162 - 165 HIR, Article 167 HIR, Article 169 - Article 177 HIR, and Article 282 - Article 314 RBG. In proving a civil case, the parties can submit several pieces of evidence as regulated in the HIR/RBG. Evidence included in Article 164 HIR and Article 284 Rbg are letters, witnesses, allegations, confessions and oaths. Apart from the evidence contained in Article 164 HIR and Article 284 Rbg, there is still other evidence

such as expert testimony and local examinations. In practice, a judge's knowledge can also be categorized as evidence, even though the disputed event has been submitted for evidence by the parties involved in the case. In assessing evidence, the judge can act freely or be bound by law. Among the various forms of civil evidence, there is one that is rarely used in practice, namely, suspicion. Suspicion is a form of evidence in civil law regulated by Article 1915 of the Civil Code, Article 173 of the HIR, and Article 310 of the RBG. Suspicion is considered indirect evidence because it is not physically presented by the parties, but rather obtained by inferring or drawing conclusions from legal events that occur during the trial. The definition of suspicion itself is contained in Article 1915 of the Civil Code which reads "Suspect is a conclusion drawn by law or by a judge from an event that is publicly known to an event that is not generally known." From this definition, it can be seen that estimates are divided into statutory estimates and judges' estimates. The judge's allegations are further regulated in Article 173 HIR and Article 310 Rbg regarding its implementation. Article 173 of the HIR states "Presumptions that are not based on a specific legal regulation must only be taken into account by the judge when making a decision if the allegations are important, accurate, certain and mutually agree." Then, Article 310 RGB reads "Mere suspicions/conjectures which are not based on statutory regulations may only be used by judges in deciding a case if they are very important, accurate, certain and in accordance with one another."

The discussion regarding estimates by judges has explained that a judge can make estimates by concluding from the facts revealed at trial. The facts obtained came from evidence during the trial. As is known, evidence in civil cases is based on evidence in Article 164 HIR which consists of letters, witnesses, allegations, confessions and oaths. The judge's assumption is independent because the evidence is dependent on other evidence (it cannot stand alone). However, the question arises as to what criteria must be present, whether cumulatively or with just one of them. The difference in the judge's understanding of the provisions of Article 173 HIR/310 Rbg is the initial factor in this problem. The sentence in Article 173 HIR which states "important, thorough, certain and mutually agreeable" and Article 310 RBg which states "very important, careful, certain and consistent with each other" are regulations that are still abstract and can be interpreted in multiple ways. In this case, what is the category of important or very important circumstances, then what is careful or precise, how is the assessment of certain conditions, and whether they are consistent with each other should be applied to 2 (two) types of evidence or what.

The unclear classification of what evidence can be used as material for a judge's suspicions has resulted in a blurring of norms which has resulted in differences regarding their application and there is no definite reference. Firstly, regarding the decision in case number 16/Pdt.P/2015/PN Pmk which contains elements of the judge's suspicions based on documentary evidence and witnesses which are compatible with each other so that they become cumulative material for obtaining the judge's suspicions. Second, regarding the decision in case number 44/Pdt.G/2018/PN Mll which contains elements of the judge's presumption based on the evidence of the witness testimonium de auditu only. Third, regarding the decision in case number 811/Pdt.G/2019/PN Dps which contains elements of the judge's suspicions based on documentary evidence alone. The problems of setting judges' estimates need to be reviewed further so that there is legal certainty for judges when issuing estimates. Is the judge's evidence only a letter and witnesses, without being able to add any other evidence? And the evidence of letters and witnesses needs to be applied cumulatively or can stand alone. Based on the explanation that has been explained above, the researcher is interested in conducting further legal research on the evidence of the judge's suspicion entitled "Analysis of Important, Careful, Certain and Mutually Agreeable Criteria in the Regulation of Article 173 of the Herzien Inlandsch Reglement Regarding the Evidence of the Judge's Suspect".

## **B. RESEARCH METHODS**

The author conducted legal research in this paper. Legal research is a scientific activity aimed at discovering, developing, or testing legal knowledge. In the context of normative legal research, research focuses on applicable positive legal norms. In this study, the researcher used 3 (three) approaches to conduct research on the normative study of evidence of judges' suspicions, namely the statute approach, the conceptual approach, and the case approach. The statute approach is one of the methods used in normative legal research to examine various laws and regulations related to the legal issue being studied. The conceptual approach in legal research is a perspective used by researchers by starting from the concepts, principles, and legal doctrines that have developed in legal science. The case approach is carried out by examining court decisions as primary legal materials to see the application of legal norms in practice. Data collection techniques involve legal materials searches. Legal materials searches are methods or means used by legal researchers to obtain, identify, and classify legal sources relevant to the research problem. This process involves systematic efforts to locate primary legal materials (such

as laws, court decisions, treaties) and secondary legal materials (books, journals, scientific articles, research findings) to support the analysis. The legal material analysis technique that the researcher will use is the prescriptive analysis method. In the context of normative legal research, prescriptive analysis is a technique used to formulate legal arguments to provide solutions to the legal issues being discussed.

## **C. RESEARCH RESULTS AND DISCUSSION**

Presumption (vermoeden) is one of the forms of evidence recognized in Indonesian civil procedure law. Both the HIR and RBg stipulate that presumption can be derived from proven facts and point to other facts that are closely related and relevant to the case. Normatively, this can be found in Article 173 of the HIR and Article 310 of the RBg, which state that presumption can only be used if it is important, precise, specific, and consistent with each other.<sup>1</sup> Such an assumption is known as a judge's assumption because its formation is the judge's authority through logical and critical assessment of the evidence presented in court.

From the perspective of resolving civil cases through litigation, the judge's presumption plays a significant role. Civil litigation positions the judge as a passive party, yet still has the authority to assess the formal truth of the parties' arguments.<sup>2</sup> Therefore, judges do not only rely on written evidence or witness statements, but can also draw suspicions from the circumstances revealed in the trial. In this way, the suspicion functions as a bridge to complete imperfect evidence and help the judge achieve legal conviction (judicial conviction). Evidence in civil cases aims to provide a basis for judges in rendering decisions. Article 1865 of the Civil Code stipulates that any party asserting a right or asserting an event must prove its case. Valid evidence is regulated in Article 164 HIR and Article 284 RBg, namely written evidence, witnesses, allegations, confessions, and oaths. Of these five forms of evidence, allegations hold a unique position. They are not absolute stand-alone evidence, but depend on the judge's ability to draw conclusions from proven facts.

The judge's power of conjecture can only be used if it meets the four main conditions, namely important, accurate, certain, and mutually agreeing with each other. First, important means that the estimate must be relevant and significant in determining the subject matter of the case. Second, accuracy shows that drawing conclusions must be done with caution, and must not be based on mere conjecture. Third, certain emphasizes that estimates must relate directly to proven facts, not be general or speculative. Fourth, they are in harmony with each other, emphasizing that the facts used to form estimates must be in harmony and not contradict each other.<sup>3</sup> Thus, the judge's presumption in the context of civil evidence serves as both a complement and a reinforcement to other evidence. Its existence reflects that Indonesian civil procedural law emphasizes not only formal truth but also allows judges to use logic, reasoning, and judicial experience in achieving justice.

In judicial practice, judicial presumption is often used when written evidence or witness testimony is not entirely convincing. For example, in a contract dispute, if one party is proven to have benefited from an agreement, the judge may presume that the party was indeed bound by the agreement, even if the written evidence is incomplete. Thus, judicial presumption helps maintain a balanced evidentiary basis, avoiding reliance solely on formal documents.<sup>4</sup> Furthermore, the use of estimates also shows the flexibility of civil procedural law. Judges do not just act as mouthpieces for laws, but actively interpret evidence and facts to achieve substantive justice. The judge's judgment, in this case, strengthens the function of civil litigation as a means of resolving disputes that not only pursues legal certainty, but is also proportional to the community's sense of justice.

It should be noted that a judge's suspicion can be made when the main requirements, namely, important, thorough, certain, and mutually agreed upon, have been met. This means that until these four criteria are complete, the judge's suspicion cannot be used as evidence. However, the meaning of Article 173 HIR/310 Rbg related to these four criteria needs to be explored further to provide a clearer reference for a judge. An understanding of these criteria needs to be examined both linguistically and in terms of legislation.

1. Normative analysis of important, careful, specific and mutually agreed criteria in the provisions of Article 173 HIR/310 Rbg.

Article 173 HIR / Article 310 RBg explains "Suspicions that are not determined by law are up to the judge's careful consideration, with the condition that the allegations may only be considered as evidence, if

<sup>1</sup>R. Subekti, Civil Procedure Law, PT Intermasa, Jakarta, 1982, p. 84.

<sup>2</sup>Sudikno Mertokusumo, Indonesian Civil Procedure Law, Liberty, Yogyakarta, 2009, p. 56.

<sup>3</sup>Retnowulan Sutantio & Iskandar Oeripkartawinata, Civil Procedure Law in Theory and Practice, Mandar Maju, Bandung, 2002, p. 89.

<sup>4</sup>Yahya Harahap, Civil Procedure Law, Sinar Grafika, Jakarta, 2016, p. 394.

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the allegations are important, certain, and agree with each other.<sup>5</sup> This article regulates the judge's allegations, namely allegations that are not regulated in a limited way by law, but which the judge may use as long as they meet the four main criteria, namely Important, Accurate, Certain, and One another agrees. Article 173 HIR / Article 310 RBg itself already contains the four conditions, but does not explain their operational definitions. Explanations of their meaning and application are known to come from the Civil Code (Articles 1915–1922), jurisprudence, doctrine, and language. Before further searching for the meaning of the criteria Important, Fair, Certain, and Mutually agreeable based on doctrine and language, it is necessary to first explore the Civil Code (Articles 1915–1922) and jurisprudence that can help provide an explanation of the criteria of Article 173 HIR / 310 RBg.

a. Based on the Civil Code, it is related to the judge's allegations

- 1) Article 1915 of the Civil Code reads "Suspect is a conclusion drawn by law or by a judge from an event that is publicly known to an event that is not generally known."<sup>6</sup>
- 2) Article 1922 of the Civil Code states "Suspicions which are not based on the law itself are left to the consideration and vigilance of the Judge, who in this case must not pay attention to other allegations. Such allegations may only be taken into account if the law permits proof by witnesses, as well as if an action or deed is objected to on the grounds of bad faith or fraud."<sup>7</sup>

In Article 1915 of the Civil Code, it can be seen that an explanation of a judge's suspicion can be obtained from existing facts, then these facts are drawn from a general nature to a specific nature, but it still does not clearly explain the 4 (four) criteria referred to in Article 173 HIR/310 RBg.

Furthermore, in Article 1922 of the Civil Code, it is known that as long as an allegation is not an allegation based on law as has been clearly regulated in Article 1916 of the Civil Code, then the allegation can be said to be a judge's allegation. Furthermore, in Article 1922 of the Civil Code, it emphasizes that the judge's allegation must be issued with caution, meaning that this article emphasizes that the judge's allegation cannot be issued easily because it must go through careful consideration. In the last sentence of Article 1922 of the Civil Code, it is explained again regarding the evidence of witnesses and deeds that can be used as the basis for the judge's allegation, but there is still no clear explanation of the 4 (four) criteria referred to in Article 173 HIR/310 RBg.

b. Based on Relevant Jurisprudence

- 1) Supreme Court Decision No. 308 K/Pdt/1959

The Supreme Court explained that "testimonium de auditu cannot be used as direct evidence, but this testimony can be used as evidence of suspicion (vermoeden) and this suspicion can be used as a basis for proving something."<sup>8</sup>

- 2) Supreme Court Decision No. 310 K/Sip/1973

The Supreme Court emphasized that "The judge's suspicions must be based on clear and mutually supporting facts. If one of them contradicts the other, it cannot be used as a basis for evidence."<sup>9</sup>

- 3) Supreme Court Decision No. 1237 K/Sip/1975

The Supreme Court stated "The judge's assessment of the allegations must be carried out carefully and carefully, and can only be considered as evidence if it is supported by important and certain facts."<sup>10</sup>

Of the three Jurisprudence relevant to the judge's suspicion, it can be seen that there is less explanation of the technical use of the judge's suspicion. For example, in the Supreme Court Decision No. 308 K/Pdt/1959 which provides an example that testimonium de auditu testimony can be the beginning of suspicion. Then in the Supreme Court Decision No. 310 K/Sip/1973 which implies that the judge's suspicion is built on at least 1 (one) mutually supporting fact, because there needs to be a connection between several pieces of evidence. Finally, in the Supreme Court Decision No. 1237

<sup>5</sup> Article 173 HIR/310 Rbg.

<sup>6</sup> Article 1915 of the Civil Code.

<sup>7</sup> Article 1922 of the Civil Code.

<sup>8</sup> Yeni Novitasari and Harjono, The Strength of Testimonium De Auditu Evidence in Proving Divorce Lawsuits, Verstek Journal, Vol. 9, No. 4, Faculty of Law, Sebelas Maret University, 2021, p. 7.

<sup>9</sup> Supreme Court of the Republic of Indonesia, Summary of Jurisprudence of the Supreme Court of the Republic of Indonesia, Second edition, Supreme Court of the Republic of Indonesia, Jakarta, 1993, p. 369.

<sup>10</sup>Ibid., p. 431.

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K/Sip/1975 which emphasizes that the judge's suspicion must be issued carefully and based on previously existing evidence, this is similar to the explanation of Article 1922 of the Civil Code. However, returning to the 4 (four) criteria, namely Important, Thorough, Certain, and Mutually agreeing as Article 173 HIR/310 RBg, it cannot yet be detailed one by one.

As is known in Article 173 HIR/310 RBg, there is no further explanation regarding the 4 (four) criteria, namely Important, Fair, Certain, and Mutually Agreeable in the explanation section of HIR and RBg. This makes the interpretation of each judge and has the potential to have different interpretations. For example, as in the Supreme Court Decision No. 501 K/Sip/1983 in this case the Supreme Court rejected the consideration of the lower level judge because the assumption used had no direct relationship to the subject of the dispute, so it did not meet the important and certain criteria as referred to in Article 173 HIR. In the decision, it does re-emphasize the 4 (four) criteria, namely Important, Fair, Certain, and Mutually Agreeable as Article 173 HIR/310 RBg must be met, but that is the interpretation of the judge at the Supreme Court. Therefore, there should be further explanation to avoid any further differences in interpretation.

2. Theoretical analysis of the important, careful, specific and mutually agreed criteria in the provisions of Article 173 HIR/310 Rbg

Article 173 of the HIR and Article 310 of the RBg regulate the judge's presumption (rechterlijk vermoeden) as a form of evidence in civil procedural law. Presumption is indirect evidence arising from the judge's logical reasoning based on facts proven in court. Due to its inferential nature, its assessment cannot be made freely without a clear theoretical basis. This is where a theoretical analysis of these four criteria is crucial, so that judges have normative and epistemological guidelines in building convictions based on accountable legal logic. A theoretical analysis of important, thorough, specific, and mutually agreed criteria is necessary to avoid subjectivity in the judicial reasoning process. Without a deep understanding of the meaning and function of each criterion, judges can become trapped in arbitrary reasoning, decisions are not based on a clear ratio decidendi, and the value of legal certainty and substantive justice can be compromised. With a strong theoretical foundation, judges' reasoning in drawing conclusions will proceed logically, systematically, and proportionally in accordance with the principle of due process of law.

The criteria in Article 173 HIR/310 RBg are not merely formalities, but normative limits to prevent misuse of presumptions. A theoretical approach allows for the consistent application of these four criteria in judicial practice, ensuring that decisions are not only procedurally valid but also substantively just. Conceptually, the analysis of the criteria in Article 173 HIR/310 RBg is also closely related to the theory of legal discovery (rechtsvinding) and the theory of evidence (bewijsleer). When drawing a presumption, a judge is actually engaging in inferential reasoning, establishing a logical connection between proven and alleged facts. Without in-depth theoretical analysis, this inference process has the potential to produce weak or irrational conclusions. Therefore, the theory of evidence provides a methodological foundation for judges to use epistemically justifiable legal logic. Several experts have provided explanations regarding important, thorough, specific criteria and have agreed with each other in the provisions of Article 173 HIR/310 Rbg to further explain the concept of judicial suspicion as follows:

- a. Subekti's views on the criteria are important, thorough, certain and mutually agreeable in the provisions of Article 173 HIR/310 Rbg

- 1) The "Important" Criteria in Article 173 HIR/310 RBg

From a civil procedural law perspective, the criterion of importance refers to the substance of relevant facts that have a direct relationship to the case being examined. According to Subekti, a statement or allegation can only be considered valid evidence if it contains key elements that influence the judge's considerations in rendering a decision. In other words, "important" means that the presence or absence of the fact will determine the judge's conclusion regarding the parties' arguments. Facts that are not directly related to the subject of the dispute cannot be classified as "important," even if the statement is true.<sup>11</sup>

- 2) The "Fair" Criteria in Article 173 HIR/310 RBg

The due diligence criterion relates to the judge's careful assessment of presumptive evidence. Subekti emphasized that judges should not base their decisions on presumptions without due care

<sup>11</sup>R. Subekti, Law of Evidence, Pradnya Paramitha, Jakarta, 2004, p. 45.

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and attention.<sup>12</sup>This is because suspicion is circumstantial evidence, which is inferential in nature and requires logical analysis. Therefore, "careful" means that the judge must carefully consider the suspicion, pay attention to the consistency between the proven facts and the established suspicion, and avoid conclusions that are too far removed from the facts.

### 3) "Certain" Criteria in Article 173 HIR/310 RBg

Subekti explained that the assumptions that can be used as a basis for a decision are certain ones, namely assumptions that have a clear direction and certainty of the relationship between the facts and their legal consequences.<sup>13</sup>Allegations must not be general, vague, or open to interpretation, but rather must point to specific circumstances that can support or weaken one party's argument. Therefore, the "certain" criterion is intended to ensure that the allegation is not a means of speculation but is truly rooted in concrete facts proven in court.

### 4) Criteria "Agree with Each Other" in Article 173 HIR/310 RBg

The final criterion emphasized in Article 173 HIR/310 RBg is mutual agreement, which means that the allegations used as the basis for the decision must be in accordance with and mutually reinforce each other.<sup>14</sup>According to Subekti, a judge cannot simply find a single allegation; rather, several consistent and harmonious allegations must be present to constitute strong evidence. Conflicting or unsupported allegations cannot be used because they only raise doubt, while the principles of civil procedure require a judge to have sufficient confidence before rendering a verdict.

## b. Sudikno Mertokusumo's views on the criteria of important, thorough, certain and mutually agree in the provisions of Article 173 HIR/310 Rbg

### 1) "Important" Criteria

The "important" criterion means that the facts or circumstances that form the basis of the suspicion must be relevant and directly related to the main issue. According to Sudikno Mertokusumo, not all circumstances can be used as the basis for suspicion, but only those that are significant and have evidentiary value regarding the disputed argument.<sup>15</sup>

### 2) "Thorough" Criteria

The "careful" criterion refers to the way the judge assesses the facts that are used as the basis of the allegations. Judges are obliged to be careful, objective and not hasty in drawing conclusions. According to Sudikno, this caution is important to prevent errors in reasoning that could harm one of the parties.<sup>16</sup>Thus, vague or unclear facts should not be used as the basis for suspicion. Judges must use reasonable measures and rational, acceptable legal logic. The due diligence criterion also requires judges to consider all available evidence, not just a portion.

### 3) "Certain" Criteria

The "certain" criterion means that the facts or circumstances that form the basis of the suspicion must be clear, concrete, and their existence can be determined. According to Sudikno, suspicions must not be based on general assumptions or conjectures without a clear basis.<sup>17</sup>

### 4) "Each Other Agree" Criteria

This criterion emphasizes that the facts forming the basis of the suspicion must support each other and not contradict each other. According to Sudikno, if a condition stands alone without support from other conditions, its evidentiary value is weak. However, if there are several consistent and mutually reinforcing facts, the suspicion can be considered strong.<sup>18</sup>

## c. The views of Retnowulan Sutantio and Iskandar Oeripkartawinata regarding the criteria of important, thorough, certain and mutually agree in the regulation of Article 173 HIR/310 Rbg

### 1) Important Criteria (Belangrijk)

The essential criterion requires that the presumption used by the judge be directly relevant to the subject matter of the case. Presumptions considered essential are those closely related to the disputed

<sup>12</sup>Ibid., p. 46.

<sup>13</sup>Ibid., p. 47

<sup>14</sup>Ibid., p. 48.

<sup>15</sup>Sudikno Mertokusumo, Indonesian Civil Procedure Law, Liberty, Yogyakarta, 1993, p. 124.

<sup>16</sup>Ibid., p. 125.

<sup>17</sup>Ibid., p. 126.

<sup>18</sup>Ibid., p. 127.

subject and can substantially influence the judge's decision. According to Retnowulan & Iskandar, the importance of a presumption is determined by its degree of relevance and contribution to proving the defendant's claims or rebuttals.<sup>19</sup> Thus, allegations that are trivial in nature, unrelated to the main case, or only support side matters, do not fulfill the important requirements as intended in Article 173 HIR/310 RBg.

2) **Saksa Criteria (Nauwkeurig)**

Accuracy criteria relate to the judge's accuracy in assessing the facts on which the allegations are based. Allegations must be born from a careful, critical assessment and based on facts that have been proven at trial. Retnowulan & Iskandar emphasized that accurate estimates are not just the judge's free interpretation, but must be supported by data or circumstances that have been legally tested.<sup>20</sup> This is in line with the principle of caution in proving civil cases, considering that the legal consequences arising from a decision not only affect the parties, but can also have broad social and economic impacts.

3) **Certain Criteria (Bepaald)**

Certain criteria mean that the presumption must be clear, specific, and not open to multiple interpretations. Presumptions that are too general or merely vague assumptions cannot be used as the basis for a decision. According to Retnowulan & Iskandar, this provision is intended to prevent judges from constructing decisions based on vague assumptions, so that a valid presumption must point to a concrete event that has a causal relationship to the disputed case.<sup>21</sup>

4) **Mutually Agreeable Criteria (Overeenstemmen)**

The mutually agreeable criteria indicate that the presumptions used by judges should not stand alone, but rather must support and not contradict each other. Retnowulan & Iskandar emphasize that the strength of the presumption lies in the consistency between the presumptions built from proven facts.<sup>22</sup> If two contradictory allegations exist, this weakens the evidentiary value. Therefore, the judge must ensure that all the allegations considered create a logical unity that reinforces each other in proving the material truth.

d. Yahya Harahap's views on important, precise, certain and mutually agreed criteria in the regulation of Article 173 HIR/310 Rbg

1) **Important Criteria**

According to Yahya Harahap, the important criteria emphasize that the circumstances or facts used as the basis for the suspicion must not be trivial, insignificant, or irrelevant to the main issue. These facts must have legal significance in proving a disputed legal relationship or event.<sup>23</sup> In other words, important means that the fact must be directly relevant to confirm the argument of the interested party or negate the argument of the opposing party. If the facts are only peripheral, then they do not meet the important requirements for building a judge's opinion.

2) **Careful Criteria**

Accuracy criteria require judges to be careful and cautious in drawing estimates from existing facts. Yahya Harahap emphasized that estimates should not be based on vague conjectures or haphazard estimates. The facts used must be clear, detailed and can be examined objectively so as not to open opportunities for wild interpretation.<sup>24</sup> This caution is necessary so that the judge's estimates remain within the corridor of legal certainty and do not turn into speculation which could be detrimental to the litigants.

3) **Certain Criteria**

Suspicion must also be based on specific facts, namely facts that have a clear form and content. Yahya Harahap stated that this criterion rejects the use of facts that are general, vague, or open to

<sup>19</sup> Retnowulan Sutantio & Iskandar Oeripkartawinata, Civil Procedure Law in Theory and Practice, Op.Cit., p. 73.

<sup>20</sup>Ibid., p. 74.

<sup>21</sup>Ibid., p. 75.

<sup>22</sup>Ibid., p. 76.

<sup>23</sup>Yahya Harahap, Civil Procedure Law: Concerning Lawsuits, Trials, Confiscation, Evidence, and Court Decisions, Sinar Grafika, Jakarta, 2005, p. 660.

<sup>24</sup>Ibid., p. 661.

multiple interpretations.<sup>25</sup> A specific fact is a fact that has concrete boundaries, both in space and time, so that it can serve as a rational foundation for a judge to draw logical conclusions about the truth of other events being proven. For example, specific financial records on specific dates and transactions, not just a general statement about "business losses."

4) Each Other's Criteria Agree

This criterion means that the facts used as a basis for estimates must support each other and be consistent, not contradict each other. According to Yahya Harahap, judges should not draw estimates from independent or even contradictory facts, because this will only produce weak conclusions and cannot be legally justified.<sup>26</sup> One situation with another must form a logically connected pattern that strengthens the judge's belief in the truth of the event in question.

e. Synthesis of important, careful, specific and mutually agreed criteria in the regulation of Article 173 HIR/310 Rbg according to Subekti, Sudikno Mertokusumo, Yahya Harahap, Retnowulan Sutantio and Iskandar Oeripkartawinata

In general, the four experts agreed that these four criteria function as limits and guidelines for judges in assessing and using allegations as evidence. Estimates can only have legal value if they fulfill all the elements of "important, accurate, certain, and agree with each other." These criteria aim to maintain objectivity, rationality and legal certainty in the process of proving civil cases.

1) "Important" Criteria

Subekti emphasized that "important" means facts that have a direct influence on the main point of the case and determine the direction of the judge's considerations.

Sudikno Mertokusumo views it as a fact that is relevant and significant to the disputed argument, not a side fact.

Retnowulan & Iskandar stated that the importance of an allegation is measured by its relevance and contribution to proving the main points of the case.

Yahya Harahap emphasized that important facts must have direct legal significance, not be trivial or irrelevant.

The conclusion from the "important" criteria means relevance and legal significance, namely that only facts that are directly related to the subject of the dispute can be the basis for allegations.

2) "Thorough" Criteria

Subekti emphasized the importance of caution and logic in assessing circumstantial evidence.

Sudikno Mertokusumo highlighted the need for objective and rational assessment to avoid legal reasoning errors.

Retnowulan & Iskandar emphasized that suspicions must arise from careful assessments, based on proven facts, and not the judge's free interpretation.

Yahya Harahap demands precision so that judges do not build their estimates from vague or speculative allegations.

The conclusion of the "careful" criterion means judicial caution and thoroughness. Where the judge is obliged to assess the facts logically, objectively and carefully so that the estimates do not turn into speculation.

3) "Certain" Criteria

Subekti interprets "certain" as the existence of clear direction and legal relationship between facts and their legal consequences.

Sudikno Mertokusumo emphasized that suspicions must be based on concrete facts and their existence can be determined.

Retnowulan & Iskandar emphasized that valid assumptions must refer to concrete events, not general assumptions or multiple interpretations.

Yahya Harahap added that "certain" means that the facts must have clear spatial and temporal boundaries and not be general in nature.

Conclusions from "certain" criteria mean clarity and concretization of facts—presumptions must be based on specific real circumstances, not abstract or general assumptions.

4) "Each Other Agree" Criteria

<sup>25</sup>Ibid., p. 662.

<sup>26</sup>Ibid., p. 663.

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Subekti stated that the allegations must be mutually reinforcing and harmonious in order to instill confidence in the judge.

Sudikno Mertokusumo believes that the evidentiary value is only strong if several facts consistently support each other.

Retnowulan & Iskandar emphasized the importance of consistency between assumptions in order to form a logical unity of evidence.

Yahya Harahap stated that contradictory facts weakened the estimates and could not be legally accounted for.

The conclusion from the criterion "mutually agreeing with each other" means consistency and harmony between allegations, where all the facts that form the basis of allegations must strengthen each other to foster complete judicial confidence.

### 5) Final Conclusion

From all the expert views, it can be concluded that valid allegations according to Article 173 HIR/310 RBg are allegations that are relevant to the subject matter (important), assessed with great care (thoroughly), have clarity and certainty regarding (certain) factual relationships, and consistently support each other (each other agrees).

### 3. Linguistic analysis of important, thorough, specific and mutually agreed criteria in the regulation of Article 173 HIR/310 Rbg

Ferdinand de Saussure explained that language is a system of signs (*langue*) consisting of two main elements: the signifier and the signified. The signifier is the sound or written form, while the signified is the concept or meaning it contains. The relationship between the two is arbitrary, meaning there is no natural reason why a particular sign has a particular meaning other than social agreement within the language community.<sup>27</sup> In law, language functions not only as a means of communication but also as a normative instrument that determines the meaning of a norm. Every word chosen by lawmakers carries a specific meaning that must be analyzed linguistically and legally to avoid multiple interpretations.

Article 173 HIR/310 RBg uses the words "important, thorough, certain, and mutually agreed" as valid requirements for a judge's suspicion. Each of these words is a sign (*signifiant*) that refers to a specific legal concept (*signifié*). Therefore, analysis of these words can be conducted through linguistic (based on the KBBI) and legal (based on the context of civil procedural law) approaches. Article 173 HIR and Article 310 RBg regulate the evidence of judges' allegations in civil procedural law. In this provision, it is emphasized that the judge's estimates made during the trial can only be considered valid if they meet certain requirements, such as being important, accurate, certain, and mutually agreeable. This formulation is important because it outlines the limits regarding the validity of a judge's estimate so that it can be used as a basis for consideration in deciding cases.

The judge's suspicions in this context are *rechtsvermoeden* or legal allegations drawn based on facts proven at trial, so these conditions need to be interpreted carefully, both through normative and linguistic approaches, including through the Big Indonesian Dictionary (KBBI) to understand the lexical meaning of words. The phrases used in this article are qualitative and normative, requiring further interpretation by linking them to the legal language, doctrine, and lexical meanings contained in the KBBI. The following is a description of the important, precise, specific, and mutually agreeable criteria according to the KBBI:

#### a. "Important" criteria

The word important in KBBI is defined as "something that is very necessary or of primary value to pay attention to"<sup>28</sup> In the context of Article 173 of the HIR, a crucial requirement emphasizes that the facts used as the basis for the judge's suspicion must be relevant and directly related to the subject matter of the case. Facts lacking urgency for dispute resolution cannot be used as the basis for suspicion, as this will distort the assessment of evidence. Therefore, judges are required to select facts that are truly significant in establishing material truth.

#### b. "Thorough" criteria

<sup>27</sup> Ferdinand de Saussure, Course in General Linguistics, Philosophical Library, New York, 1959, p. 67.

<sup>28</sup> Language Development and Fostering Agency, Big Indonesian Dictionary, Fifth Edition, Ministry of Education, Culture, Research, and Technology, Jakarta, 2016, p. 1154.

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KBBI defines sakseri as "careful, thorough, and careful"<sup>29</sup>. In judicial practice, this requirement requires judges to carry out in-depth reasoning and logical considerations before determining allegations. This is in line with the principle of prudence in deciding cases, so that the judge's suspicions are not the result of purely subjective conjectures, but through a systematic analysis process of existing legal evidence and facts.

c. "Certain" criteria

According to KBBI, the word certain means "already determined, clear, or certain"<sup>30</sup>. In the context of Article 173 HIR, the judge's suspicions must refer to facts that clearly exist, not to matters that are still vague or speculative. For example, causal relationships can be drawn objectively from real facts. Thus, the estimates built by the judge must be able to be tested logically and not open up room for vague interpretations.

d. Criteria "each other agrees"

The phrase "agree with each other" means that the facts used as the basis for the suspicion must support each other and not contradict each other. In the KBBI (Big Indonesian Dictionary), the word "agree" means "to agree, to be of the same opinion, or to be in the same direction."<sup>31</sup> Therefore, this requirement emphasizes the consistency of logic in forming the judge's suspicions, so that the allegations that emerge do not conflict with existing evidence, but rather reinforce each other to produce a reasonable legal belief.

In Black's Law Dictionary, the term presumption is defined as "A legal inference or assumption that a fact exists, based on the known or proven existence of some other fact or group of facts".<sup>32</sup> Thus, the judge's suspicion is a form of inference built on the basis of a logical relationship between proven facts and concluded facts.

a. "Important" criteria

The important word in Black's Law Dictionary is relevant to the term material fact, namely "A fact that is significant or essential to the issue or matter at hand."<sup>33</sup> Thus, the word important in Article 173 HIR/310 RBg can be interpreted as a material fact that has a direct influence on the case. Immaterial facts cannot be used as a basis for drawing conclusions.

b. "Thorough" criteria

In Black's Law Dictionary, a close term is due diligence, namely "The diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation."<sup>34</sup> This means that judges must evaluate the evidence with due diligence, not haphazardly, and by considering all aspects thoroughly. The word "saksawat" (careful) indicates a high standard of care in assessing the facts.

c. "Certain" criteria

The equivalent term in Black's Law Dictionary is definite or specific fact, which is defined as "A fact that is clearly identified, distinct, and not left to speculation."<sup>35</sup> This means that the facts used as the basis for the suspicion must be clear, unambiguous, and their existence can be ascertained. Facts that are ambiguous or open to multiple interpretations do not meet these requirements.

d. Criteria "each other agrees"

In Black's Law Dictionary, a similar concept is corroborative evidence, namely "Evidence that differs from but strengthens or confirms what other evidence shows."<sup>36</sup> The phrase "mutually agree" means that the evidence or facts must support each other, thus producing a strong suspicion. Contradictory facts cannot give rise to a valid suspicion.

From the above description, it can be understood that the choice of the words "important, thorough, certain, and mutually agreed" in Article 173 HIR/310 RBg is not accidental, but rather a normative code.

<sup>29</sup>Ibid., p. 1267.

<sup>30</sup>Ibid., p. 1503.

<sup>31</sup>Ibid., p. 1587.

<sup>32</sup>Bryan A. Garner (ed.), Black's Law Dictionary, 11th Edition, Thomson Reuters, St. Paul, 2019, p. 1437.

<sup>33</sup>Ibid., p. 1170.

<sup>34</sup>Ibid., p. 649.

<sup>35</sup> Ibid., p. 525.

<sup>36</sup> Ibid., p. 673.

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These words function as linguistic markers that guide judges in assessing the strength of the suspicion.

Linguistic analysis shows that:

1. "Important" refers to the aspect of relevance.
2. "Thorough" refers to the aspect of methodological rigor.
3. "Certain" refers to the aspect of certainty and clarity of facts.
4. "One another agrees" refers to the aspect of consistency between facts.

Thus, the legal language in Article 173 HIR/310 RBg works as a normative sign system that limits the judge's interpretation space so that allegations do not turn into mere conjectures, but become logical constructions that can be justified legally and linguistically.

4. Synthesis of the explanation of the criteria contained in Article 173 HIR/310 Rbg normatively, theoretically and linguistically

Based on normative, theoretical, and linguistic understanding, it can be concluded that the phrase "important, thorough, certain, and mutually agreed upon" in Article 173 HIR/310 RBg is essentially a cumulative norm package that serves as an epistemic filter as well as an ethical limit for judges before determining suspicion as evidence.

- a. Normatively, positive law (HIR/RBg and the Civil Code) grants judges the authority to form presumptions, but strictly limits this authority with the condition that it may only be used if it meets these four limiting criteria. Supreme Court jurisprudence reinforces that a judge's presumption cannot simply arise from intuition, but must be based on relevant, clear, consistent, and rigorously tested facts.
- b. Theoretically, experts agree that these four criteria guarantee the objectivity of evidence, preventing suspicions from becoming speculation or the judge's personal assumptions. "Important" establishes relevance, "careful" maintains reasoning methodology, "certain" ensures factual clarity, and "mutually agreeable" guarantees logical consistency.
- c. Linguistically, a lexical analysis of the KBBI (Big Indonesian Dictionary) and Black's Law Dictionary confirms that these four terms are not decorative terms, but rather substantive codes containing normative messages. Important means relevant and material; careful means careful and not speculative; certain means clear and unambiguous; and mutually agreeable means mutually reinforcing and not contradictory.

Thus, the final essence of the four criteria of Article 173 HIR/310 RBg is to limit the judge's freedom so that allegations can only be declared valid if they relate directly to the subject matter of the case (important), are built through careful and rational assessment (careful), are based on real and verified facts (certain), and are supported by other facts that are consistent (one agrees with each other). Presumptive evidence can only have legal value if these four elements are fulfilled completely and cumulatively, not an alternative or just one of them. That is the true spirit of Article 173 HIR/310 RBg, namely ensuring that estimates remain scientific, objective, and never become space for wild conjecture.

## D. CONCLUSION

The criteria contained in important, accurate, certain and mutually agreed sentences in the regulation of Article 173 HIR, as in the opinion of legal experts and the theory of language as a sign system from Ferdinand de Saussure, are important in containing relevance and logical boundaries, meaning that the evidence used to build allegations is directly related to the subject matter and is logical to be used as initial facts. Thoroughness contains methodological limitations in the application of prudence, meaning that the judge's estimates are built through careful and rational assessment. Certain limitations contain specific limitations and the strength of the evidence is not questioned, meaning that the judge's estimates are based on real and verified facts. Each agrees to contain limits of consistency and mutual reinforcement, meaning that the evidence used as a judge's opinion must be more than 1 (one) and be supported by other consistent facts. Evidence of a judge's presumption can only have legal value if these four elements are fulfilled completely and cumulatively, not an alternative or just one of them.

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