

## ANALYSIS OF EVIDENCE OATH BREAKER (DECISOIR) IN INHERITANCE LAND DISPUTES

Diniar Hapsari, Pierre Briyan Govantoro

Duta Bangsa University, Surakarta

[202020497@mhs.udb.ac.id](mailto:202020497@mhs.udb.ac.id), [202040352@mhs.udb.ac.id](mailto:202040352@mhs.udb.ac.id)

**ABSTRACT**, *In civil law, there is evidence as stated in Article 1866 KUHPer, which includes letters, witnesses, allegations, confessions, and oaths. If there is no evidence, one of the parties may ask the panel of judges to administer an oath to the opposing party. The problems in this study are how the procedure of oath breaker in inheritance land disputes, whether the legal consequences of oath breaker if the requested oath is not true, and the strength of evidence for oath breaker in inheritance land disputes. This journal's research method uses a normative juridical approach, which emphasizes library data. The data obtained was further analyzed qualitatively. Based on the research, the breaking oath is an oath that is charged at the request of one of the parties to the opponent, which is done if there is no evidence. The legal consequences of breaking oaths are that when the actions requested by the oath are not true, the truth of the events requested by the oath becomes certain according to the law. The power of proof of the oath breaker is to decide the case which has the value of perfect, binding and decisive proof.*

**Keywords:** *oath breaker; dispute; land inheritance*

### INTRODUCTION

The law of evidence in the rules of civil procedure plays an important role in the legal cycle in order to clarify what is happening in order to obtain justice that the defendants can recognize. In the civil procedure known as BW, there are several kinds of evidence as stated in Article 1866 of the Civil Code. The types of evidence include letters, witnesses, allegations, confessions, and oaths.

The definition of oath is interpreted in Article 1929 BW, which contains the meaning of shrewdness affirmation that is conveyed intensively by mentioning the name of God Almighty in accordance with the belief that gives the pledge. Evidence involving oaths only exists in civil courts. This is not entirely determined by the panel of judges in the event that the completion of other evidence is considered important. In situations where there is no evidence, either party may ask a panel of judges to administer an oath to its opposing party.

Public activities can not be distinguished from the course of cooperation between individuals with each other, both between people and associations. This cannot be separated from a dispute or debate. One of the disputes or debates that often occur locally or within the family is the issue

of fighting over inherited land. The land debate occurs when either party feels that their rights have been revoked by individuals who should not have obtained those rights or the division of inheritance is considered off track by the beneficiaries themselves.

Estate arrangement is the arrangement of property in a family, in which due to the death of someone, there is an exchange of property that has been left behind. Inheritance regulations regulate who is eligible to acquire property or an inheritance, the position of heirs, and the fair distribution of inherited property.

Inheritance land disputes occur when one individual feels the rights of another or the division of inheritance is considered unfair. The utilization of this type of current regulation is left to the disputing party. In the settlement of inheritance land disputes locally or within the family, this is done through deliberation among the beneficiaries. Despite this, in the event that there is a division of the inheritance that cannot be resolved through such consideration, the heir can file a lawsuit in court in accordance with his regulatory decision, both in Western civil regulations and in customary law. However, if in the debate the assembly does not have sufficient evidence to show proof, then the assembly may use the evidence by oath of the breaker to prove the rights of the parties.

Based on this background, the study wants to examine the "**Analysis Of Evidence Oath Breaker (Decisoir) In Inheritance Land Disputes.**"

## **Problem**

1. What is the oath breaker procedure in inheritance land disputes?
2. What are the consequences of breaking the oath (decisoir) if the requested oath is not true?
3. How is the oath breaker's strength demonstrated in inheritance land disputes?

## **Research Methods**

The type of research used is normative legal research. Normative legal research is carried out by examining or researching library materials or secondary materials, such as legislation, books, and articles that have relevance and relevance to the problem to be studied, as well as hypotheses and opinions of researchers.

Data analysis in this study used qualitative data analysis, which is an analysis of data in the form of a sentence description, which describes the symptoms and answers to the problems studied. The existing problems will be clearly illustrated by the analyzed data, and a conclusion can be drawn from the results of the discussion that has been done.

## **Discussion**

### **1. Oath Breaker Procedure in an Inheritance Land Dispute**

The oath as a whole is a very serious explanation uttered or considered when giving a promise or testimony by recalling the highest idea of God and accepting that any individual who gives a false statement or commitment will be punished by him. So basically, an oath is an act of a religious nature used in the legal executive.

A decision, or breaker oath, is an oath that is imposed on one of the parties at the request of the other. The party who asks that the opponent swear is called a deferent, while the party who needs to swear is called a delaat. The final oath or decissoire eed is regulated in Article 156 HIR or 183 Rbg, which reads: in the absence of data or other evidence, to strengthen the case, one party may ask the opposing party to swear an oath in court so that with the oath the case can be resolved. The oath is pronounced in relation to the activities carried out by the party required to swear.

According to Article 1930 of the KUHPer, the oath breaker can be ordered in any dispute, except those in which the parties are not authorized to make a peace or in which their recognition will not be considered.

In the rules of civil procedure, it is known as evidence by oath of the breaker in general cases and in particular in matters of inheritance land. For example, since the estate of the plaintiff filed a lawsuit against the defendant, the estate was not divided and he asked for his share. The defendant said that the inheritance had been divided. In this circumstance, the defendant is charged with proving that the inherited property has been divided. According To The Jurisprudence Of The Supreme Court, No. 575 K/T/73, states that an application for an oath-breaking decision must be granted if there is indeed no evidence for a circumstance.

### **2. The legal consequences of the Oath Breaker (Decisoir) when requested are not true.**

From the provisions of Article 1936 of the Civil Code and Article 177 of the HIR, it can be concluded that if the oath has been carried out, the opposing party must accept and is not allowed to take the falsity of the breaker's oath because the breaker's oath is an oath that decides a case being examined. The legal consequences of breaking oaths when the actions requested by the oath are not true. The truth of the events or actions requested by the oath becomes certain according to the law. In the case of the truth of the process, not the material truth, it means that although the content of the oath is not true, the process is true where the thing said in the oath is accepted as a true event by the judge who gets a valid decision according to the law.

An oath ordered by one of the litigants to his opponent has a compelling evidentiary force if the oath has been lifted. The judge must consider that this or that event mentioned in the formulation of the oath has indeed taken place, even though it may not believe it to be true.

### 3. The Power of Proof of Oath Breacher in Land Disputes

Evidentiaries are provisions that contain delineation and guidelines on the ways that the law justifies proving the guilt alleged against the defendant. Proof in civil procedural law, leaving issues that come into contact with certainty and justice in the process of its fulfillment. So, as an independent nation, it is about proof and certainty in private law, and always avoiding the back track in the path taken, and remaining based on justice on the basis of the Almighty God.

Thus, if in filing a lawsuit, the plaintiff does not submit any evidence, then with this the proof of the oath breaker is carried out, because the oath breaker can be used as evidence if there is no other evidence. Thus, judging from the indicators of the proof of the oath breaker in inheritance land disputes, namely that inheritance land disputes often occur, the plaintiff submits proof of the oath breaker, because this oath breaker is the last weapon to prove the rights stated. But it should not be indiscriminate in proposing proof of this breaking oath. If you swear a false oath, it is believed that you will get punishment from God.

The provisions of Article 177 HIR/314 RBg and Article 1936 of the Civil Code state that the oath breaker is decisive evidence without providing an opportunity for the opposing party to fight the evidence that states the oath is false. In practice, it is possible for obstacles to occur in which the party burdened by the oath ordered by the opponent to him without ever thinking about the consequences arising from the oath, so that it can result in his being willing to perform the oath ordered by the opponent for the sake of victory and dignity.

Although in fact, the oath is only feigned or made up, this will provide an opportunity for someone to commit perjury to gain an advantage and consequently harm the opponent who is defeated by the oath. If you take the oath, it will be returned to the person who swore the oath. By remembering the almighty nature of God and believing that anyone who gives untrue testimony or promises will be punished by him.

Based on the above, because the nature of the oath is an act or act of a religious nature, the issue of accountability for the truth of the oath is ultimately directly related to God, meaning that people who have strong obedience to their religion and carry out the commands of their Lord, then there is actually no sense of worry or unintended consequences that might occur from the pronouncement of the oath. So basically, for all the consequences arising from the swearing, the responsibility is directly related to God, and for these consequences, regardless of the element of the truth or not, the oath spoken will be borne by the swearing.

Thus, in a case where the judge frequently has doubts about the evidence presented by the plaintiff or defendant, the power of proof of the breaking oath can be said to be a binding power of proof. Then the judge ordered one of the parties to take the oath of the breaker. The oath of the breaker (decisoir) has the power of binding evidence; therefore, the judge is obliged to adjust his decision to the evidence.

## **Conclusion**

The procedure of the oath breaker in inheritance land disputes is that the oath breaker, or oath decisoir, is an oath that is charged at the request of one party to his opponent. In the Hindu community of Bali, the type of oath breaker or oath decisoir can be pocong oath, pulpit oath, temple oath, or cast oath. The oath breaker in inheritance land disputes is that the oath breaker can be done if there is no attempt to prove anything in a case. The legal consequences of breaking oaths when the actions requested by the oath are not true. The truth of the events or actions requested by the oath becomes certain according to the law. In the case of the truth of the process, not the material truth, so that the party who took the oath won. Then, the power of proof oath breaker has the power to decide the case or dispute, which has the value of the power of proof. It is perfect, binding and decisive.

## **References**

- Elizabeth, N. 2015. *Hukum Pembuktian Analisis Terhadap Kemandirian Hakim Sebagai Penegak Hukum Dalam Proses Pembuktian*. Medan: CV Nuansa Aulia.
- Ida Ayu Nara Ambarayani. 2016. *Pembebanan Sumpah Pemutus (Decisoir) Dalam Perkara Perdata (Studi Kasus Perkara Perdata Putusan No. 100/PN.Dps/Pdt/1978.)*. Kertha Wicara: Journal Ilmu Hukum.
- I Gusti Ayu Maha Patni, I Made Suwitra, I Ketut Sukadana. 2020. *Kedudukan Sumpah Pemutus Dalam Pembuktian Sengketa Tanah Waris*. Jurnal Konstruksi Hukum. Vol. 1. No. 2.
- Imron, A., & Iqbal, M. 2019. *Hukum Pembuktian*. (A. D. Harapan & Suhendra, Eds.). Tangerang Selatan: UNPAM Press.
- Mehdiantara. 2013. *Tinjauan Yuridis Tentang Penerapan Sumpah Pemutus Sebagai Alat Bukti Dalam Penyelesaian Perkara Perdata*. Jurnal Ilmu Hukum Legal Opinion. Vol. 1. No. 2.
- Royke Y. J. Kaligis. 2017. *Penggunaan Alat Bukti Sumpah Pemutus (Decisoir) Dalam Proses Pemeriksaan Perkara Perdata Di Pengadilan Menurut Teori Dan Praktek*. Jurnal Hukum Unsrat. Vol. 23. No. 8.
- Sudikno, M. 2002. *Hukum Acara Perdata Indonesia*. Yogyakarta: Liberty.

Syaiful, B. 2018. *Dinamika Hukum Pembuktian dalam Capaian Keadilan (I)*. Jakarta: Rajawali Pers.

Wahyudi. 2015. *Kekuatan Hukum Sumpah Sebagai Alat Bukti Dalam Hukum Acara Di Indonesia*. Skripsi.