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# PROOF CONCEPT IN THE CONCEPT OF THE LEGAL STATE

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**ABSTRACT**

The evidentiary process plays a crucial role in procedural law, particularly in business competition trials. As a fundamental aspect of legal proceedings, evidence must be properly utilized, presented, and maintained to ensure fairness. Ideally, parties involved should have the broadest possible access to present evidence that strengthens their position. In this context, business competition laws and regulations establish evidentiary mechanisms that serve as guidelines for law enforcers, including the Indonesia Competition Commission (KPPU) and the Commercial Court, to uphold justice effectively. This study aims to examine the evidentiary framework in business competition cases, particularly addressing conflicting norms that impose limitations on the use of evidence. Using a normative legal research method, the study employs literature review and case analysis to qualitatively assess the application of evidentiary principles. The findings highlight the concept of proportional proof in business competition cases, emphasizing the principle of due process of law. The study concludes that evidence in both legal science and business competition cases must adhere to the principle of due process to ensure fairness. Evidentiary procedures at the KPPU and in objection proceedings at the Commercial Court rely on legally recognized forms of evidence, including both direct and indirect evidence, in accordance with prevailing regulations.

**Keyword:** Due Process of Law, Evidence, Legal State

**ABSTRAK**

Proses pembuktian memainkan peran krusial dalam hukum acara, terutama dalam persidangan persaingan usaha. Sebagai aspek mendasar dalam proses hukum, pembuktian harus digunakan, disajikan, dan dijaga dengan baik untuk memastikan keadilan. Secara ideal, para pihak harus memiliki akses seluas-luasnya untuk mengajukan bukti yang dapat memperkuat posisi mereka. Dalam konteks ini, hukum dan peraturan terkait persaingan usaha menetapkan mekanisme pembuktian yang menjadi pedoman bagi penegak hukum persaingan usaha, termasuk Komisi Pengawas Persaingan Usaha (KPPU) dan Pengadilan Niaga, agar dapat menegakkan keadilan secara efektif. Penelitian ini bertujuan untuk mengkaji kerangka pembuktian dalam perkara persaingan usaha, khususnya terkait norma-norma yang bertentangan dan membatasi penggunaan alat bukti. Dengan menggunakan metode penelitian hukum normatif, studi ini menerapkan tinjauan literatur dan pendekatan kasus untuk menilai penerapan prinsip pembuktian secara kualitatif. Temuan penelitian menyoroti konsep pembuktian yang proporsional dalam perkara persaingan usaha, dengan menekankan prinsip due process of law. Penelitian ini menyimpulkan bahwa pembuktian dalam ilmu hukum dan perkara persaingan usaha harus berlandaskan prinsip due process of law untuk menjamin keadilan. Prosedur pembuktian di KPPU dan dalam upaya keberatan di Pengadilan Niaga menggunakan alat bukti yang sah sesuai dengan peraturan yang berlaku, termasuk bukti langsung dan tidak langsung.

**Kata Kunci:** Due Process of Law, Negara Hukum, Pembuktian


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## 1. Introduction

Indonesia as a country of law which in principle must prioritize due process of law (Fuady, 2024) in the instrument of evidence. That the principle of due process of law is what will guarantee the purity and

essence of the law itself (Yunas, 2018). The court is expected to be a court that truly examines and carries out the mechanism of evidence in a truthful manner which then through its decision can accommodate justice, certainty, and the benefits of law. This is the point that will be discussed in this article about how the ideal evidence that in essence must be implemented in a country of law. Therefore, the existence of the evidence itself and its position in a country of law will be discussed holistically.

Evidence is a problem that plays an important role in the trial process. Evidence is a process of how existing evidence is used, submitted or maintained, and the process of applicable procedural law. However, what needs to be noted later is that in using evidence, it must not be contrary to the law. Evidence is the presentation of legally valid evidence by the parties to the case to the judge in a trial, with the aim of strengthening the truth of the argument about the legal facts that are the subject of the dispute, so that the judge obtains a basis for certainty to make a decision (Effendie, Tasmin, & Chodari, 2018).

According to M. Yahya Harahap quoted from Abd. Rasyid's writing, that proof is the ability of parties to utilize the law of proof to support and justify the legal relationship and events that are argued or denied in the legal relationship being litigated (As'ad, 2022). Subekti, former Chief Justice of the Supreme Court of the Republic of Indonesia and professor of civil law at the University of Indonesia, is of the opinion that proof is a process of how evidence is used, submitted or maintained in the applicable procedural law (Subekti, 2019). According to Sudikno Mertokusumo, proving has several meanings, namely (Mertokusumo, 2022):

a. Proving in a logical sense means providing absolute certainty, because it applies to everyone and does not allow for counter-evidence.
b. Proving in the conventional sense means providing certainty, but not absolute certainty, but rather relative certainty which has the following levels:
    i. Certainty that is based only on feelings, so it is intuitive,
    ii. Certainty based on rational considerations,
    iii. Proving in the legal sense (in civil procedure law) means nothing other than providing sufficient grounds to the judge examining the case in order to provide certainty about the truth of the events presented.

On the other hand, the law of evidence is a set of legal rules that regulate evidence, namely all processes using valid evidence and actions carried out with special procedures to find out the legal facts in court (Samudra, 2018). At the proof stage, other parties can also use their rights to deny the arguments submitted by the party filing the case/claim. Through proof using these evidences, the judge will obtain the basis for making a decision in resolving a case. The law of evidence in litigation is a very complex part of the litigation process. The complexity will be even more complicated because the proof is related to the ability to reconstruct past events or incidents (past events) as a truth (truth).

## 2. Method

A research method is a method used to achieve a certain result through collecting, processing, analyzing and presenting data carried out systematically and objectively. The type of research in this study is normative legal research carried out through library research (Sari, 2020). This is done by researching literature or secondary data related to the writing being discussed (Sunggono, 2011). This information is then combined to obtain a holistic understanding. This research uses secondary data as the main material. The data analysis method used by the author is a qualitative method by drawing conclusions deductively.

## 3. Result and Discussion

### *3.1. Proof Theory in The Concept of The Legal State*

The law of evidence is held as an effort to achieve justice and certainty in the judicial process (Triyani, 2017). Basically, the law of evidence that will reveal the facts will actually produce a fair decision (Nurhayati, 2011). However, it is also necessary to pay attention to justice itself. Justice is not the goal of the law. The law does not aim at justice. If the law aims at justice, it means that the law does not have a nuance of justice, because it is still intended to be aimed at (Wasitaatmadja, 2020). Ideally, what is studied seriously in legal studies is how the mechanism of evidence will lead to a condition of "justice" as a social order and as an

inseparable part, that justice must be felt in the pulse of community life, as well as the order of legal certainty (Sidharta, 2020). This will automatically make the law a living instrument to achieve an ideal mechanism of evidence in a state of law, both as written and unwritten law and which is coercive for human behavior in society and between countries (Prasetyo & Barakatullah, 2022).

The law of evidence then comes to provide a bright spot and become a guide to achieve the essence of a law in the legal area (Tanya, 2020). The law of evidence actually regulates and involves humans. So there are always adjustments in efforts to create harmony in life that is intended to be realized by the greatness of the legal nature. Because in practice the law of evidence is even very dynamic (Soemarmi, 2019). A judge, for example, will decide based on the circumstances (the felt necessities of the time) even though it is based on the legal text. Deciding the law is not done by reading the text, but by digging into the morals behind it (Rahardjo, Arinandto, & Triyanti, 2022). This moral is what can then also be interpreted as existing sociological evidence that can strengthen the law of evidence itself which will then create a neutral position in resolving cases in court (Bakhri, 2019). This neutral or impartial position is what then becomes an indirect affirmation that in essence the court must independently decide a case in court as fairly as possible through a series of legal evidence instruments (Novita, 2023). However, it cannot be denied that it is still hindered by many factors. For example; Countries that have just emerged from authoritarian rule are always faced with the demands of resolving complex domestic political, legal and human rights problems as a legacy of the authoritarian regime (Marzuki, 2021).

Law and evidence are a unity that is difficult to separate, both are like two sides of a coin. If a legal structure is built without using the principles of essential evidence, then the law can become just a game of interested parties (abuse of power). On the other hand, if evidence is built without being based on a clear legal commitment, then the evidence will be fragile and easy to deviate from (Akhyat, 2018). Evidence that is in accordance with the concept of due process of law should be upheld to achieve certainty and justice as two partners in the legal struggle. The necessity of a balance between certainty and justice brings justice closer to society, whose search occurs at all times, places, and in all corners of the world.

The burden of proof is a central point in the field of procedural law, even for the sake of science (Salman & Susanto, 2019). Law enforcement is carried out in a judicial process that is based on the principles of court proceedings. The principles in question contain provisions that are fundamental (principle) that must be followed by every jurist in the judicial process. The principle of due process of law is one of the basic and most common principles in judicial practice throughout the world. This principle is embodied in the legal system of each country which prioritizes the realization of justice, benefit, and legal certainty in every judicial process that is carried out (Annas, 2017). Due Process of law basically supports that legal interests are higher than other interests, thus guaranteeing the upholding of legal norms themselves purely.

In terms of evidence, there are also principles that are in line with the due process of law, such as a fair trial which is a judicial process in which the parties are heard by the judge in a balanced manner, there is no bias on the part of the judge either in attitude, speech, or treatment in the trial. The principle of a fair trial prioritizes the disclosure of the truth of the facts comprehensively and massively before a verdict is rendered. The culmination is a verdict that reflects justice, benefit, and legal certainty. Due process of law and also fair trail are basically principles that have been adopted and have been co-opted in almost all countries in the world (Asnawi, 2016).

If viewed further in terms of legal philosophy, legal proof can be described as follows (Bakhri, 2018): Is proof merely an application of law, namely entering or submitting posita facts (minor premise) into regulations/laws (major premise) in a formal syllogism as in legal positivism because it is based on the view that the law is complete and perfect for every legal issue, or is the application of law based on the assumption that the law is not yet complete and perfect but the law is seen as having a logical expansion or a wider reach according to logic. It is important that proof as a compass, soul, and aspiration of society is used as the main source of law. The legal method that has been posited in the form of legislation is an effort to guarantee certainty, but it cannot be rejected either every change that must be made for the sake of legal objectives which include justice, certainty, and the usefulness of law in court. It should be noted that a civilized nation is a nation

that respects and implements law and justice so that its people feel the pulse of justice and maintain common justice for a civilized nation because social justice is a common ideal that must be realized.

### *3.2. Law of Evidence in the Scope of Criminal Law Trials*

#### *3.2.1. Proof System*

The evidentiary system is a regulation of the types of evidence that may be used, the analysis of evidence, and the ways in which the evidence is used and how the judge must form his/her conviction (Sasangka & Rosita, 2020). Proving whether or not the defendant committed the alleged act is the most important part of criminal procedural law. For this reason, criminal procedural law aims to seek material truth, in contrast to civil procedural law which is quite satisfied with formal truth. The history of the development of criminal procedural law shows that there are several systems or theories to prove the alleged act, namely:

1. Positive Legal Proof System or Theory (*Positief Wetterlijk/Bewijstheory*)

   It is said positively, because it is only based on the law. This means that if an act has been proven in accordance with the evidence mentioned by the law, then the judge's belief is not required at all. This system is also called formal proof theory (*formele bewijstheorie*). This system is based on the fact that the judge may only determine the guilt of the accused if there is the minimum evidence required by law. If the evidence exists, the judge is obliged to declare the accused guilty and sentence him, regardless of the judge's conviction.

2. Proof System or Theory ian based on the Judge's Confidence Only

   According to this system, the judge in making a decision is not bound by the available evidence. The judge may only conclude from the available evidence in the trial or ignore the available evidence in the trial (Sasangka & Rosita, 2020). Therefore, it is necessary to have the judge's own conviction. In addition, In this system, there is a big opportunity for arbitrary law enforcement practices based on the reason that the judge is convinced (Chazawi, 2018).

3. System or Theory of Proof Based on the Judge's Belief for Logical Reasons (*Laconviction Reason*)

   As a middle way, a system or theory emerged called evidence based on the judge's conviction to a certain extent (*laconviction raisonnee*). According to this theory, a judge can decide someone is guilty based on his conviction, namely a conviction based on the grounds of evidence accompanied by a conclusion (*conclusie*) based on certain rules of evidence. So the judge's decision is made with a motivation (Chazawi, 2018). This means that the reasons used in forming the judge's conviction are reasonable and can be accepted by the minds of people in general (Chazawi, 2019).

4. Negative Legal Proof System or Theory *(Negative Wetland*)

   According to this system, in terms of proving the defendant's guilt in committing the crime charged to him, the judge does not rely entirely on the evidence and methods determined by law. The activity of proof is based on two things, namely evidence and belief which are an inseparable unity or which do not stand alone. individually (Chazawi, 2019). According to this system, to declare a person guilty and punished there must be confidence in the judge and that confidence must be based on valid evidence, that a prohibited act has indeed been committed and that the accused is the one who committed the act. This is also adopted by Indonesian criminal procedure law.

#### *3.2.2. Principles and Strength of Proof and Types of Evidence*

There are several principles that are regulated in KUHAP (Kitab Undang-Undang Hukum Acara Pidana), which is the Indonesian Code of Criminal Procedure, governing criminal investigations, prosecutions, and trials in Indonesia.

1. What is generally known does not need to be proven.

   This principle is regulated in Article 184 paragraph (2) KUHAP, which is also known as *notoire feiten*, for example:

   A mother who is afraid of being found out that she has given birth to a child does not need to prove that the mother is a woman.

   The defendant lit the victim on fire, causing burns to the victim, so there is no need to prove that the fire was hot.

   *Notoire feiten* is only one piece of evidence or proof, meaning it must be supported by other evidence/proof.

2. One witness is not a witness (*unus testis nullus testis*).

   In fact, the principle of one witness is not a witness is a logical consequence of the evidentiary system adopted by the Criminal Procedure Code. That to clarify a crime that has occurred must be supported by at least two valid pieces of evidence, likewise the Public Prosecutor or Judge may only be sure if at least two valid pieces of evidence have been obtained. And according to the Supreme Court, two witness statements that correspond to each other are considered two valid pieces of evidence.

3. The suspect/defendant's confession alone does not eliminate the investigator/public prosecutor's obligation to prove the suspect/defendant's guilt.

   That the defendant's statement alone is not enough to prove that he is guilty of committing the act he is accused of but must be accompanied by other evidence. On the other hand, the suspect/defendant's denial alone is not enough to prove that he is not guilty unless the investigator/public prosecutor cannot submit other evidence/evidence that refutes the suspect/defendant's denial.

4. The statement of the suspect/defendant is only binding on him/herself.

   This principle means that what is explained by the suspect/defendant may only be accepted and acknowledged as evidence/proof that is valid and binding on the suspect and cannot be used to prove the guilt of another suspect.

5. The suspect/defendant is not burdened with the obligation to provide proof.

   This means that the one who proves the suspect's guilt during the investigation is the investigator, and during the court hearing the one who proves the defendant's guilt is the public prosecutor. That is why the suspect/defendant is examined at the last opportunity after other evidence/evidence has been examined first to give him/her the opportunity to defend himself/herself, including by giving him/her the opportunity to seek witnesses, experts or other evidence that can benefit him/her.

The evidence used to prove a criminal act as regulated in Article 184 paragraph (1) KUHAP is as follows:

1. Witness Statement

   It is a statement given by a witness who is: a person who can provide information for the purposes of investigation, prosecution, and trial regarding a criminal case that he/she heard himself/herself, saw himself/herself, and experienced himself/herself." According to M. Yahya Harahap (As'ad, 2022), in order for a witness's statement to be valid and have binding force as evidence, it must meet the following requirements: (a) Taking an oath or promise, (b) having value as evidence, (c) being given in court, (d) the statement of one witness alone is considered insufficient, (e) the statement of several witnesses standing alone.

2. Expert Statement

   It is information provided by someone who has special expertise about things needed to clarify a criminal case for the purpose of examination". Meanwhile, in Article 186 KUHAP it is explained again that expert testimony is: "what an expert states in court".

From the provisions of this Article it can be seen that expert testimony becomes valid as evidence when stated by the expert in court (Soeparno, 2016).

3. Letter

   Basically, the Criminal Procedure Code itself does not explain what is meant by a letter (Mertokusumo, 2022). The types of letters that can be used as evidence as regulated in Article 187 KUHAP are: First, minutes and other letters in official form made by an authorized public official or made before him, which contain information about events or circumstances that he himself heard, saw or experienced, accompanied by clear and firm reasons for his statement. Second, letters made according to the provisions of laws and regulations or letters made by officials regarding matters included in the procedures that are his responsibility and which are intended for proving something or a situation. Examples: ID Card, Marriage Certificate, etc. Third, a certificate from an expert containing an opinion based on his expertise regarding something or a situation that is officially requested from him. Examples: the results of a post-mortem examination et repertum issued by a doctor. Fourth, Other letters that can only be valid if there is a connection with the contents of other evidence. For example: written evidence submitted by the defendant is related to the information provided by witnesses or experts in the trial.

4. Instruction

   Article 188 paragraph (1) KUHAP defines indicative evidence as an act, incident or condition, which due to its correspondence, either between one and the other or with the crime itself, indicates that a crime has occurred and who the perpetrator is. As evidence, indicative evidence does not stand alone. This means that indicative evidence is obtained from other evidence (Chazawi, 2019). The judge can construct indicative evidence from witness statements, letters, and the defendant's statement. Indicative evidence is different from other evidence. Indicative evidence is not examined in court because in essence indicative evidence is abstract (Prasetyo, 2018). In constructing indicative evidence, the judge's discretion is required. Because the ultimate goal is to find a legal fact that supports the explanation of a legal event. The requirements for indicative evidence as evidence must have correspondence to the incident or act that occurred. In addition, these circumstances must also be related to each other with the legal event that occurred. Even the judge must find common ground between the act, incident, or condition, draw conclusions and combine the consequences and arrive at a decision on whether or not the thing charged against the defendant is proven. In addition, every legal event basically also has its own specific characteristics. In its examination, indicative evidence is the full authority and subjectivity of the judge examining the case. Some opinions state that indicative evidence is evidence formed by the judge whose subjectivity is dominant in forming it. So that the judge's accuracy and conscience in this case are also very necessary to be wise and prudent in finding the indicative evidence.

5. Defendant's Statement

   The Criminal Procedure Code itself defines the defendant's statement as what the defendant conveys in court regarding the actions that the defendant committed or that the defendant did or that the defendant himself knew and experienced. Basically, not all defendant statements contain evidentiary value. The defendant 's statement that can be used as evidence is the statement given by the defendant in court. However, the statement given by the defendant outside the trial, such as the statement given by the defendant during the investigation process, can be used to help find evidence in court, provided that the statement is supported by valid evidence as long as it concerns the matter that is charged to him. Regarding the strength of the evidence itself in proving

a crime, it is free according to the judge's belief and must meet the minimum limit of proof.

*3.3. Law of Evidence in the Scope of Civil Law Trials*

*3.3.1. The Theory of the Evidentiary Power of a Piece of Evidence*

The assessment of the evidentiary power of a piece of evidence is basically the authority of the Judge (Ante, 2013). When assessing evidence, the judge can act freely or be bound by the Law, in this case there is a theory that has previously been explained in the scope of criminal law, namely (Effendie, Tasmin, & Chodari, 2018):

a. Free Proof Theory,
b. Bounded Proof Theory, which is divided into: (1) Negative Proof Theory, (2) Positive Proof Theory, and (3) Combined Proof Theory.

So in assessing the evidence, a judge must also remember the important principles in civil evidence law. Because that is what the judge will use according to the applicable provisions in seeing the evidentiary strength of a piece of evidence.

*3.3.2. Principles of the Law ff Proof*

A legal system is a unity of legal rules that are related to each other, and have been arranged and structured based on principles. Legal principles are basic rules that can no longer be explained further, above which no higher rules are found. The principles in the Law of Evidence are as follows (Effendie, Tasmin, & Chodari, 2018):

a. The principle of *ius curia novi*t; judges are deemed to know the law.
b. The principle of *audi et altera partem*; This principle means that both parties to the dispute must be treated equally (equal justice under law).
c. The principle of *actor sequitur forum rei*; The lawsuit must be filed in the court where the defendant resides. This principle was developed from the principle of presumption of innocence known in criminal law.
d. The principle of *affirmandi incumbit probatio*; This principle means that anyone who claims to have rights must prove it.
e. The principle of *acta publica probant sese ipsa*; This principle relates to the proof of an authentic deed, which means that a deed that appears to be an authentic deed and meets the specified requirements, the deed is valid or considered an authentic deed until proven otherwise. The burden of proof lies on whoever questions the authenticity of the deed (Mertokusumo, 2022).
f. The principle of *testimonium de auditu*; This is a principle in proving by using evidence of testimony, meaning that the information that the witness obtains from another person, the witness did not hear it or experience it himself. In general, testimony based on hearing is not permitted, because the information given is not an event that he himself experienced, so it is not evidence and does not need to be considered anymore (Istiharoh & Tuhana, 2018).
g. The principle of *unus testis nullus testis*; which means one witness is not a witness.

*3.3.3. Burden of Proof Theory*

In the division of the burden of proof, there is a principle, namely, whoever alleges something, must prove it. This is stated in Article 163 HIR/283 RBg. At first glance, this is easy to apply. However, in practice, it is difficult to determine exactly who should be burdened with the obligation to prove something (Sutantio & Oeripkartawinata, 2015). According to the Author, the obligation to prove something lies with whoever alleges as in a lawsuit, in this case the plaintiff, but if the defendant submits his rebuttal argument, then he is also burdened with proving his rebuttal argument. In this case, the opportunity to prove his argument is the plaintiff, which is then followed by the defendant. Thus, based on the formulation of Article 163 HIR/283 RBg in conjunction with Article 1865 of the Civil Code, both parties, both the plaintiff and the defendant, can be

burdened with the burden of proof by the judge. If the plaintiff cannot prove the arguments or events he has put forward, he must be defeated, whereas if the defendant cannot prove his objections, he must be defeated (Mertokusumo, 2022).

*3.3.4. Evidence*

The types of evidence consist of:

1) Writing

   Writing is anything that contains understandable reading signs and contains a certain thought. Written evidence consists of deeds and other writings that are not deeds. Where a deed is a writing that is made intentionally to be used as evidence of an event and signed by its maker. Other writings that are not deeds are writings that are not intentionally stated as evidence of an event and or not signed by its maker which are free evidence, meaning that the judge is free to believe them. However, there are some writings that are not deeds but are determined by law as perfect evidence, for example a letter stating a payment that has been received.

2) Witness

   Testimony given by a witness is a certainty given to the judge in court about a disputed event that is not a party to the case, who is called to court. Basically, everyone can be heard as a witness, except those who have blood ties, husband-wife relationships, children under 15 years old and insane people. The reason for this exception is to guarantee the objectivity of evidence, maintain family relationships, and prevent the emergence of mental stress for those witnesses. Witness testimony must be about events that were seen, heard, or experienced themselves, accompanied by reasons why and how the witness knows the events he describes (Fadhilah, 2019).

3) Guess

   A guess is a conclusion drawn from an event that is known or considered proven, so that it is known that there is an unknown event. Because an estimate is a conclusion from other evidence, it is referred to as indirect evidence. For example, the statutory provisions regulated in *Burgerlijk Wetboek* (BW) as the Dutch Civil Code, which serves as the foundation of civil law in the Netherlands and has influenced Indonesia's legal system, are:

   a. For every child born during a marriage, the husband of the woman who gave birth to the child is the father.
   b. Three consecutive rent payment letters give rise to the assumption that the previous payments have been paid in full.

4) Confession

   Confession is a statement, either verbally or in writing, that justifies an event, right or legal relationship stated by the opposing party. Confession can be delivered in court or outside court. Article 1925 BW states that confession in court is perfect evidence against the person who did it, either alone or through another person who has special power to do so. With the confession, the dispute is considered resolved, even though the confession may not be true, the judge does not need to examine the truth of the confession. Meanwhile, confession outside court is independent evidence, not binding evidence and can be revoked.

5) Oath

   An oath is a solemn statement uttered when giving information by remembering the nature of God's power and believing that anyone who gives false information will be punished by Him. Article 1936 of the Civil Code stipulates that if one party has taken an oath, the other party may not try to prove in court that the oath is false. If he

considers the oath to be false, the possible path he may take is the criminal path with the charge of perjury.

*3.4. Law of Evidence in Indonesian Judicial Institutions*

The Indonesian judiciary consists of the District Court, the High Court and the Supreme Court. Judges in the District Court and the High Court act as *judex factie*, while Judges in the Supreme Court at the cassation level act as *judex juris* (Rekarti & Nurhayati, 2019). *Judex factie* has the authority to examine evidence from a case and determine the facts of the case, while *Judex juris* has the authority to examine the application of law from a case that has been carried out by *Judex Factie* (Ali, 2022). After the case is decided by the District Court, the High Court then re-examines the facts de novo, which means that the High Court re-examines the various evidence and facts that have been collected. Then it is the authority of the Supreme Court at the cassation level to examine the application of law from the case.

There are two types of levels of justice in Indonesia based on the method of decision making, namely *Judex Factie* and *Judex Juris* (Marpaung, 2015).

*3.4.1. Judex Factie*

Based on the meaning of the word *'judex'* means judge and *'factie'* means fact (Gultom, 2017). So the definition of *judex factie* is a panel of judges at the district court and high court levels that examines the facts of a case in a trial (Ali, 2022). In other words, *judex factie* means a judicial system where the panel of judges acts as the determinant of the actual facts by being required to examine evidence from a case incident and apply other legal rules and provisions to the facts of the case. The decision taken from this judicial system is called a *judex factie* decision. The *judex factie* judicial institutions are the District Court and the High Court. The existence of the High Court as *judex factie* is also further emphasized in Article 238 paragraph 4, which reads:

> *If deemed necessary, the high court will hear the testimony of the defendant or witness or public prosecutor itself by briefly explaining in the summons to them what it wants to know*

Therefore, it can also be said that *judex factie* is more inclined towards the authority of the judge in determining a legal fact in a trial that will be used as a consideration in making a decision. The reason why *judex factie* is authorized to examine the facts and evidence of a case at the district court and high court levels is because in a trial, the examination of evidence only goes up to the stage of the appeal, then the cassation as *judex juris* (Supianto, 2023). The *judex factie* judges examine the evidence of a case and determine the legal value of the facts presented in the case to be used as a basis by the judge in making a decision.

*3.4.2. Judex Juris*

The definition of *judex juris* is a panel of judges at the next level that examines the law of a case and applies the law to the facts of the case. A *judex juris* decision is a decision at the cassation level that only focuses on examining the application of the law. The *judex juris* judicial institution is the Supreme Court. Cassation is the realm of *judex juris*, where cassation means the cancellation of a decision by the Supreme Court. A cassation court is a court that examines whether the *judex factie* was not wrong in carrying out the trial. A cassation legal remedy is an effort to have the *judex factie* decision canceled by the Supreme Court because it was wrong in carrying out the trial (Arto, 2018). The Supreme Court as *judex juris* according to Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, has the authority:

> *The Supreme Court has the authority to try cases at the cassation level, to test statutory regulations against laws and has other powers granted by law*

In addition, in the 1945 Constitution of the Republic of Indonesia, the Supreme Court as the Highest State Court, is a cassation court that has the task of fostering uniformity in the application of law through cassation and judicial review decisions. This aims to ensure that laws and regulations are applied fairly and appropriately. The role of *judex juris* in Article 30 is:

> *The Supreme Court at the cassation level annulled the decisions or rulings of courts from all judicial jurisdictions because:*

a. *Not authorized or exceeding the limits of authority.*
b. *Misapplying or violating applicable laws.*
c. *Negligence in fulfilling the requirements required by statutory regulations threatens that negligence with the annulment of the decision in question.*

From a formal legal perspective, the Supreme Court's authority to adjudicate cassation cases is limited to investigating whether the decision being appealed for is contrary to the application of the law. So, from all the explanations above related to the concept of proof in the concept of a state of law, the author found that Indonesia as a state of law in the process of proof must prioritize the principle of due process of law trying to realize justice, benefit, and legal certainty. Due Process of law basically supports the principle of justice both in criminal and civil law proof in Indonesia. It should also be noted in the application of judicial proof in Indonesia, that in this case there are 2 parts, namely *judex factie* which is authorized to examine evidence from a case and determine the facts of the case and *judex juris* which is authorized to examine the application of the law of a case that has been carried out by *judex factie* (Rozi, 2023).

## 4. Conclusion

Based on the previous discussion, it can be concluded that the concept of proof in the concept of a state of law is proof by prioritizing the principle of due process of law which guarantees justice and balance for the parties through its proof mechanism in both criminal and civil law. Basically, in the application of proof according to due process of law, it must also pay attention to the proof mechanism in the context of the judiciary in Indonesia, namely: *judex factie* which is authorized to examine evidence from a case and determine the facts of the case and *judex juris* which is authorized to examine the application of the law of a case that has been carried out by *judex factie*.

In relation to this writing, there are suggestions that the author can convey, namely in terms of realizing the concept of proof in accordance with the concept of a state of law, the author suggests that the concept of proof in the concept of a state of law must be the main basis in considering the formation of the concept of proof in various laws and regulations. So that in the end the concept of proof still reflects the concept of a state of law. Therefore, both legislators who will make laws, the Supreme Court which will make Supreme Court Regulations related to proof must maintain the existence of the principle of due process of law as a state of law.

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