

CHAPTER I

INTRODUCTION

A. Background of study

In the Indonesian legal system, civil procedural law pays great attention to the principles underlying decision making by judges in civil cases. One of the principles regulated in civil law is the principle of *negativa non sunt probanda*, which is often understood as the principle that states that "what is not proven is what does not need to be proven." This principle plays an important role in regulating the burden of proof in a civil dispute. This principle regulates who has the obligation to prove a claim made in a lawsuit. In this thesis, the author will discuss the application of this principle in private lawsuits, with a case study of Civil Case Decision Number: 109/PDT/2022/PT BTN.¹

The principle of *negativa non sunt probanda* comes from a Latin term meaning something that does not exist or did not happen, its not required to prove it.² In simple terms, this principle states that if a statement or claim cannot be proven to be true, then the claim does not need to be proven further. This principle refers to the obligation of the party filing a lawsuit to prove its claim, while the opposing party only needs to prove if

¹ Indriati Amarini, "Penyelesaian Sengketa yang Efektif dan Efisien Melalui Optimalisasi Mediasi di Pengadilan Kosmik Hukum", *Jurnal Ilmu Hukum*, Edisi No. 2, Vol. 16, 2016, Page. 89

² Sri Wardah, *Hukum Acara Perdata dan Perkembangannya di Indonesia*, Yogyakarta, Gama Media, 2007, Page.132

the claim is proven to be untrue. In legal practice, this principle is an important basis in the evidentiary process.³

The main function of the principle of *negativa non sunt probanda* is to determine who bears the burden of proof in a case. Usually, the burden of proof is on the party filing the claim or lawsuit. In this context, this principle also functions to protect parties who do not file a claim or lawsuit from being burdened with unnecessary evidentiary obligations.⁴ The aim of applying this principle is to ensure that the law is enforced fairly, by giving plaintiffs the opportunity to prove their claims, while defendants are not burdened with the obligation to prove things they have never stated.

The principle of *negativa non sunt probanda* is not explicitly regulated in the Civil Code (KUHPerdata) or the Civil Procedure Code (KUHAPerdata), but this principle has developed in legal practice through jurisprudence and legal theory.⁵ In Indonesian civil procedural law, this principle can be found in the articles that regulate evidence, for example in Article 163 HIR and Article 285 RBg, which provide the basis that the burden of proof lies on the party making the claim.

In civil cases, the principle of *negativa non sunt probanda* is very relevant to determine whether a claim can be accepted or not. The party filing the lawsuit must prove the statement submitted. In this case, if the plaintiff cannot prove the claim he submitted, then the claim can be

³ Mertokusumo, S, *Hukum Acara Perdata Indonesia*, Jakarta, Sinar Grafika, 2011, Page.34

⁴ Kartasmita, H, *Prinsip-Prinsip Dasar Hukum Acara Perdata Indonesia*, Bandung, Mandar Maju, 2011, Page.56

⁵ R. Subekti, *Hukum Pembuktian*, Jakarta, Pradnya Paramita, 2007, Page.

considered unproven and does not need to be proven further.⁶ On the other hand, the defendant does not need to prove things that are not claimed by the plaintiff.

Civil Case Number: 109/PDT/2022/PT BTN is an example of the application of the principle of *negativa non sunt probanda* in practice. In this case, the plaintiff filed a lawsuit against the defendant regarding an agreement dispute. In the evidentiary process, the plaintiff failed to prove the claims submitted. On the other hand, the defendant is not required to prove things that are not charged to him. The application of this principle in this decision will be analyzed further to see whether this principle is actually applied by the judge.

Another important aspect in applying this principle is how the judge assesses the evidence presented by the plaintiff. In case 109/PDT/2022/PT BTN, the judge must consider all available evidence, including statements, documents and other relevant evidence. The judge's decision must be based on objective analysis, so as to guarantee that the decision taken reflects the principles of justice. The facts in this case show that the plaintiff cannot ably prove his claim. This indicates that the judge has applied the negative principle of *non sunt probanda* correctly. The decisions taken reflect the principles of justice and legal certainty. The application of this principle also

⁶ Tata Wijayanta, dkk, Prinsip Penerapan Hakim Pasif dan Aktif Serta Relevansinya Terhadap Konsep Kebenaran Formal, *Journal of law*, Vol.22 No.3, October 2010.

sends a signal to the public that the court will not accept claims that are not supported by strong evidence.

Thus, the application of the negative principle in civil cases undoubtedly has a significant impact on the way courts handle cases. This principle helps create a fairer and more transparent legal process, and encourages parties to act responsibly in filing claims. This is important to maintain the integrity of the legal system and give people confidence that their rights will be protected.

In a broader context, the application of this principle also reflects the legal commitment to protect individual rights and prevent legal proceedings. With the negative principle of *non sunt probanda*, it is hoped that the public will better understand that every claim submitted must be supported by strong evidence. This also serves to increase awareness of the importance of evidence in every legal process, so that people are more careful when filing a lawsuit.

It is important to note that even though it is negative and may not provide protection for the defendant, this does not mean that the plaintiff does not have the right to obtain justice. On the contrary, this principle actually encourages plaintiffs to be more serious in collecting evidence before filing a claim. Therefore, this principle serves as a reminder for all parties to act with integrity and responsibility in the legal process.

In practice, the application of this principle can also vary depending on the context and type of case. For example, in cases involving consumer

rights or consumer protection, courts may give greater consideration to the position of consumers who are often in a weaker position. In this case, the judge can use his discretion to ensure that justice is maintained, although the basic principle of the burden of proof remains in effect.

Thus, the negative principle of *non sunt probanda* not only functions as a guideline in the litigation process, but also reflects the values of justice and protection of human rights. The application of this principle in various legal contexts shows that the legal system tries to create a balance between individual rights and the public interest. This is an important step in building a just and just society.

Apart from that, implementation like this also contributes to the efficiency of the marketing system. By reducing the number of baseless lawsuits, courts can focus more on cases that truly require attention. This not only saves time and resources, but also helps speed up the settlement process. In the long term, this will increase public confidence in the legal and judicial system.

In this case, the plaintiff claimed that the defendant had violated a previously agreed agreement. However, the plaintiff was unable to provide sufficient evidence to support his claim. On the other hand, the defendant is not required to prove that they have not violated the agreement because there is no concrete claim submitted by the plaintiff regarding this matter. This

fact shows that the principle of *negativa non sunt probanda* is applied in this case.⁷

In case 109/PDT/2022/PT BTN, the judge decided to reject the plaintiff's lawsuit because the plaintiff failed to prove his claim. The judge referred to the principle that claims that cannot be proven do not need to be proven further. Thus, the judge does not burden the defendant with proving unclear or unproven claims, in accordance with the principle of *negativa non sunt probanda*. This shows Based on the analysis of decision 109/PDT/2022/PT BTN, the application of the principle of *negativa non sunt probanda* is very clear. The plaintiff as the party making the claim has the obligation to prove the truth of the claim. However, because the plaintiff could not prove his claim, the judge decided to reject the lawsuit without burdening the defendant to prove something that was not proven. In this case, the applicable evidentiary principle is the principle that what is not proven does not need to be proven.

In general, in Indonesian civil procedural law, the burden of proof lies on the party making the claim. In this case, the principle of *negativa non sunt probanda* provides clear guidelines regarding who must prove certain claims. The plaintiff, as the party making the claim, is obliged to provide evidence that supports the claim. Meanwhile, the defendant only needs to

⁷ Tata Wijayanta, dkk, Prinsip Penerapan Hakim Pasif dan Aktif Serta Relevansinya Terhadap Konsep Kebenaran Formal, *Journal of law*, Vol.22 No.3, October 2010.

prove things that are relevant to his defense, without the burden of proving things that the plaintiff does not claim.

The principle of *negativa non sunt probanda* is closely related to the burden of proof. In civil cases, the plaintiff has the burden of proof for the claims he submits. If the plaintiff cannot prove the claim, then the lawsuit cannot be accepted. On the other hand, if the defendant wants to defend themselves, then they only need to prove relevant things to refute the plaintiff's claims. This principle provides legal certainty and avoids injustice in evidence.⁸

Although the principle of *negativa non sunt probanda* provides clear guidance, its application in practice often faces challenges. Some parties may feel that proving proof in a civil case can be too heavy a burden, especially for parties who do not have access to sufficient evidence. However, in the context of the Indonesian legal system, this principle is still important to apply in order to maintain fairness in the legal process.

The principle of *negativa non sunt probanda* is also found in various international legal systems. In many countries, this principle is applied to ensure that claimants are responsible for proving their claims. For example, in British and United States law, the burden of proof also lies on the plaintiff, and if the claim cannot be proven, the lawsuit will be rejected. The application of the principle of *negativa non sunt probanda* in civil cases has

⁸ Kumala, Melinda Putri. "Kajian Yuridis Asas Pembalikan Beban Pembuktian Dan Asas *Actori Incubit Probatio*." *AL YASINI: Journal of Islam, Social, Law and Education* 6, no. 2 (2021): 271.

significant practical implications for the parties involved in the lawsuit.

⁹The plaintiff must prepare strong evidence to support their claim, while the defendant does not need to prove something they are not accused of. This creates a fairer balance in the judicial process.

In this context, the High Court Decision Number 109/Pdt.G/2022/PT BTN becomes a very important focal point to analyze. This decision reflects the Implementation of the *Negativa Non Sunt Probanda* principle in cases involving mandatory DNA testing. In this decision, the court ruled that the appellant has the burden of proof to undergo a DNA test as part of the process of proving the biological relationship between parents and children. An in-depth analysis of the Implementation of the *Negativa Non Sunt Probanda* principle in this decision is relevant and meaningful. Research examining how this principle of proof is implemented by the court in the context of DNA testing will provide a better understanding of whether the principle is in accordance with the values of justice in the justice system. In addition, this study can also discuss whether the use of DNA testing as evidence has affected the Implementation of the *Negativa Non Sunt Probanda* principle in the judicial process. Within this framework, research examining the Implementation of the *Negativa Non Sunt Probanda* principle in decision Number 109/Pdt.G/2022/PT BTN will make a significant contribution to our

⁹ Pertiwi, Irma. "Tes DNA (Deoxyribose Nucleid Acid) Sebagai Pembuktian Ayah Biologis Dari Anak Hasil Zina Perspektif Hukum Islam." PhD diss., IAIN Palu, 2017. Page 36.

understanding of how this principle of proof operates in contemporary court practice. According do that, the researchers interested in researching this subject : **“THE IMPLEMENTATION OF NEGATIVA NON SUNT PROBANDA PRINCIPLE IN PRIVATE CASE LAWSUIT”**

B. Problem Formulation

Based on the background described by the researcher, this research will examine the implementation of the principle of proof in civil procedural law in Indonesia. In the civil justice process, evidence plays a very important role in determining the truth of a case. Therefore, this research is focused on answering several main questions, namely :

1. How is the implementation of the Negativa Non Sunt Probanda Principle?
2. It is possible to use Negativa Non Sunt Probanda principle be used in private in Implementation as a jurisdiction?

C. Research objectives

As for the purpose of the researcher conducting the research is to :

1. To analyse how the Implementation of the principle of Negativa Non Sunt Probanda.
2. To analyse how the use of the Principle of Negativa Non Sunt Probanda can be used in the decision Number 109/PDT/2022/PT BTN.

D. Originality of research

Previous research as an effort by the author to compare and as a reference for research conducted and to show the originality of the research. The author includes several previous research results related to the research

problems that the author is studying. The following is previous research that is still related to the topic of the author's research.

No.	Author / Year / Title	Similarity	Difference
1.	Muhammad Zikri / 2022 / Disparitas Putusan Pengakuan Anak Hasil Hubungan diluar Perkawinan ¹⁰	The similarity of the research is that both discuss decision Number 109/PDT/2022/PT BTN	The difference is that this study examines decision Number 109/PDT/2022/PT BTN only, while the study by Muhammad Zikri examines decision Number 109/PDT/2022/PT BTN and decision Number 746/Pdt.G/2021/PN Tng
2.	Safirah Fathin Marini / 2022 / Tinjauan Yuridis Terhadap	The similarity between this research and the	The difference is that this research only focuses on the

¹⁰ Muhammad Zikri, *Disparitas Putusan Pengakuan Anak Hasil Hubungan di Luar Perkawinan* (2022).

	Penerapan Ganti Rugi Atas Peristiwa Penelantaran Anak (Studi Putusan Nomor 754/Pdt.G/2020/Pn. Mdn) ¹¹	research that the author is studying is that both examine whether the decision is in accordance with the theory or not.	content of the decision, whereas the research that the author is reviewing is not only the content of the decision, but also focuses on the Implementation of the principles of proof.
3.	Mochamad Faiq Trimusthain / 2018 / Kajian Yuridis Pembuktian Pada Prinsip Tanggung Jawab Mutlak Dalam Tanggung Gugat Sengketa Lingkungan ¹²	The similarity between this research and the research that the author studied is that it examines the Implementation of the principle of proof.	The difference is that this research uses the principle of absolute responsibility, whereas in the author's research the principle of <i>Negativa non sunt probanda</i> is used.

¹¹ Safirah Fathin Marini, *Tinjauan Yuridis Terhadap Penerapan Ganti Rugi Atas Peristiwa Penelantaran Anak (Studi Putusan Nomor 754/Pdt.G/2020/Pn. Mdn)* (2022).

¹² Mochamad Faiq Trimusthain, *Kajian Yuridis Pembuktian Pada Prinsip Tanggung Jawab Mutlak Dalam Tanggung Gugat Sengketa Lingkungan* (2018).

4.	Ahmad Zaini / 2015 / Asas-Asas dalam Hukum Perdata:Teori dan Praktek ¹³	The similarity of this research emphasizes that the Principle of Negativa non Sunt Probanda shows that the Implementation of this principle provides legal certainty and avoids injustice that can occur if the defendant is required to prove his objection.	The difference in this study emphasizes the Negative Non Sunt Probanda Principle in showing the Implementation of the principle, while in the author's research, the negative non sunt probanda principle is used in proving the verdict and helping to balance the burden of proof between the plaintiff and the defendant.
5.	Maria Sari / 2018 / Penerapan Asas Pembuktian dalam	The similarity of this research is how the principle of	The difference in this study explains how the

¹³ Maria Sari, *Penerapan Asas Pembuktian dalam Kasus Perdata di Pengadilan Tinggi* (2018)

	Kasus Perdata di Pengadilan Tinggi ¹⁴	Negativa Non Sunt Probanda is applied in court.	Implementation of the Principle is often ignored in court. While in the author's research, it emphasizes how the Implementation of the Negativa Non Sunt Probanda Principle is based on the Court's Decision.
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E. Literature Review

1) Overview of the principles of proof in Civil Procedure Law

Proof in civil law includes the principles and methods used to prove the truth of a claim or fact in court. In the context of civil law, proof is the process by which parties involved in a legal case must present evidence to support or refute a claim or lawsuit. Proof is not just a tool to respond to claims or responses, but also a complex intellectual process that requires in-depth analysis of each fact presented.¹⁵

¹⁴ Maria Sari, *Penerapan Asas Pembuktian dalam Kasus Perdata di Pengadilan Tinggi* (2018).

¹⁵ Muhammad Irfan Luthfi Damanik, "ARTI PENTINGNYA PEMBUKTIAN DALAM PROSES PENEMUAN HUKUM DI PERADILAN PERDATA", *Jurnal Hukum*, Volume 05, Number 02, Fakultas Syariah dan Hukum Universitas Islam Negeri Sumatera Utara, 2024, page. 75.

The evidentiary procedure in civil procedural law is one of the most important aspects of the judicial system, becoming the main foundation in the administration of justice and dispute resolution.¹⁶Evidence plays a central role as a tool to ensure the truth of the facts that form the basis of court decisions. The principles of evidence in civil law require clarity and certainty in the judicial process.¹⁷

So in civil procedural law, evidence means convincing the judge of the truth of the evidence submitted by the parties in the trial. The purpose of evidence is to reveal material truth in a legitimate manner and in accordance with legal regulations. This process is very important because the decision made by the judge is based on evidence submitted and accepted in court. Therefore, evidence in a trial must be based on applicable legal provisions. In its implementation also uses several legal principles which are then conveyed in the trial. The principles in civil evidence include:

a. Principle of *Probandi Necessitas Incumbit Illi Qui Agit*

This principle explains that the burden of proof is given to the plaintiff. This principle is almost the same as the principle of *actori incumbit probatio*.¹⁸So that the plaintiff has an obligation

¹⁶ Fauziah Lubis, Fahrul Raji Khassa, "PROSEDUR PEMBUKTIAN DALAM HUKUM ACARA PERDATA", *Jurnal Hukum*, Volume 6, Fakultas Hukum Universitas Islam Negeri Sumatera Utara, 2024, page. 357.

¹⁷ Muhammad Irfan Luthfi Damanik, "ARTI PENTINGNYA PEMBUKTIAN DALAM PROSES PENEMUAN HUKUM DI PERADILANPERDATA", *Jurnal Hukum*, Volume 5, Number 02, Fakultas Syariah dan Hukum Universitas Islam Negeri Sumatera Utara, 2024, page. 74.

¹⁸ Febrian Dirgantara, dkk, "Akibat Hukum Tidak Dilakukannya Pemeriksaan Setempat Dalam Gugatan Dengan Objek Sengketa Tanah: Apakah Ada?", *Jurnal IUS Kajian Hukum dan Keadilan*, Volume 8, Issue 3, Fakultas Hukum Universitas Airlangga, 2020, page. 611.

or burden to prove what is the basis of his lawsuit. While the defendant does not need to prove what is being refuted.

b. Principle of Ius Curia Novit

This principle explains that the judge is considered to have understood or known about the law, so the judge cannot refuse to examine the case on the grounds that there is no law that regulates it.¹⁹

c. Principle of Audi et Alteram Partem

This principle is a principle that means that the judge must hear both parties, namely the plaintiff and the defendant.²⁰ So that in the trial, the judge must hear the lawsuit and also the response regarding the case being tried by both parties.

d. Principle of Ultra ne Petita

This principle relates to the decision given by the judge in deciding a case that is disputed in court. In this principle, the judge only grants or gives a decision from what is demanded or requested based on valid evidence and that is submitted in the trial.²¹ So that in the trial of a civil case, the judge cannot give a

¹⁹ Khoirul Anwar, "Penerapan Asas IUS Curia Novit oleh Hakim Pengadilan Agama di Nusa Tenggara Timur", *Jurnal Pendidikan dan Konseling*, Volume 4, Nomor 5, Universitas Pahlawan Tuanku Tambusai, 2022, hlm. 4021.

²⁰ Iffah Almitra, "Audi Et Alteram Partem Dalam Perspektif Undang-Undang Nomor 49 Tahun 2009 Tentang Peradilan Umum Dan Herziene Inlandsche Reglement (HIR)", *Jurnal Verstek*, Volume 1, Number 3, Universitas Sebelas Maret, 2013, page. 17.

²¹ Muhammad Muhyiddin, "Divorce Due To Wife Nusyuz (Analysis Of Decision Number 286/PDT.G/2022/PA.BRB)", *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, Volume 1, Number 3, 2023, Page. 388.

decision from what is requested. Of course, this is different when the judge examines a criminal case where the judge can give a decision more than the facts that have been revealed in the trial.

2) Overview of the Negative Non Sunt Probanda Principle

This theory is based on the principle of the burden of proof Negative non sunt probanda principle which states that something negative is difficult to prove. Proponents of this principle state that whoever states something must prove it, not the party who denies it. This means that if someone is accused of committing a crime, the burden of proof lies with the public prosecutor, not with the defendant to prove that he did not commit the crime. The Negative Non Sunt Probanda principle has significant relevance in the legal system. In the context of civil law, this principle means that in a civil case, the party who claims that a certain event or fact exists must prove it. Conversely, the party who claims that the event or fact does not exist is not required to prove it. This is important to avoid an unfair burden of proof and to ensure that unprovable claims do not interfere with the judicial process. Thus, adherents of this theory state that whoever states something must prove it, not the party who denies it.²²

3) Overview of the Principle of Incumbit Probatio

²² Achmad Ali, *Asas-asas Hukum Pembuktian Perdata*, Prenadamedia Group, Jakarta, 2013, page. 117.

The principle of Incumbit Probatio is a legal principle derived from Latin and means that the burden of proof lies with the party making the claim. What is meant by "proof" is convincing the Judge of the truth or arguments put forward in a dispute.²³ This principle stipulates that the party filing a claim or demand in a legal case has the responsibility to prove its claim. In other words, the plaintiff or the party making the claim must provide sufficient evidence to support their claim. This principle is important to ensure that claims that are not supported by sufficient evidence cannot be accepted in court. So if we base it on this principle, the Plaintiff has the burden of responsibility to prove what is the basis of his lawsuit.²⁴ If the plaintiff cannot prove what is the basis of his lawsuit by using the evidence that has been regulated in the law, then the lawsuit or Implementation from the plaintiff must be rejected by the panel of judges.

F. Research method

A method is a way to find an answer to something. The way to find an answer is structured in certain systematic steps. Research is the main means in the development of science, because research aims to reveal the

²³ Maisara Sunge, "BEBAN PEMBUKTIAN DALAM PERKARA PERDATA", *Jurnal Inovasi*, Volume 9, Number 2, Faculty of social science Universitas Negeri Gorontalo, 2012, page. 2.

²⁴ Fachrul Rozi Harfi, Taufik H, "Problematika Pemeriksaan Silang (Cross-Examination) Atas Saksi Dalam Perkara Gugatan Contentiosa Di Pengadilan Agama", *Jurnal Ilmu Hukum, Sosial, dan Humaniora*, Volume 2, Number 7, Universitas Muhammadiyah Sumatera Utara, 2024, page. 228.

truth systematically, methodologically and consistently, by conducting analysis and construction.²⁵

1) Research Typology

The type of research that the author will use in this study is normative legal research or literature, which is a process of finding a legal rule, legal principles, or legal doctrine used to answer a legal issue to be resolved.

2) Research Approach

In conducting normative legal research, several approaches are known, including the case approach and the statute approach. In this study, the author uses the case approach. The case approach is carried out by examining court decisions related to the main problem raised.

3) Research Object

The object of research is a collection of elements in the form of people, organizations, or goods that will be studied. The objects of research in this study are as follows :

- a) How is the implementation of the *Negativa Non Sunt Probanda* Principle?
- b) It is possible to use *Negativa Non Sunt Probanda* principle be used in private in Implementation as a jurisdiction?

4) Research Data Sources

²⁵ Soerjono Soekanto, *Penelitian Hukum Normatif*, Rajawali Press, Jakarta, 2013, page. 1.

To be able to resolve legal issues and at the same time provide prescriptions regarding what is needed, research legal sources. Research data sources are divided into two, namely primary data sources and secondary data sources.²⁶ Primary data sources are data obtained from interviews as the first subject in the study. Secondary data sources are data obtained from library research. The data sources used in this study are secondary data sources consisting of primary legal materials, secondary legal materials and tertiary legal materials. In writing the law, primary and secondary legal materials are used, which are described as follows:

a. Primary Legal Materials

These legal materials consist of legislation, official writings, and official data. The primary legal materials that will be used include the 1945 Constitution of the Republic of Indonesia, the Civil Code, Herziene Indonesich Reglement (HIR), Reglement voor de Buitengewesten (RBg), Reglement op de Rechtsvordering (Rv), laws and court decisions related to the research topic.

b. Secondary Legal Materials

Secondary legal materials consist of supporting legal materials that can support the resolution of problems faced by the

²⁶ Sugiyono, Metode Penelitian Kuantitatif, Kualitatif, dan RnD, Alfabeta, Bandung, 2020, page. 194.

author, secondary legal materials can be in the form of explanations and/or understanding of scientific writing thoughts, scientific publications, and research related to the writing of this law, such as dissertations, theses, undergraduate thesis, or supporting legal journals.

5) Data Collection Techniques

The method of data collection in writing this thesis is by using the literature study method. This method is interpreted as a way of collecting data obtained from documents or notes in the form of transcripts, books, newspapers, articles and others. Websites are also used as material for writing this thesis as long as they contain information relevant to this research. The data is related to the problems in this study.

6) Data Analysis Techniques

Data analysis is the process of sorting and organizing data into patterns, categories, and basic descriptions until a theme can be found which is then formulated as a working hypothesis. The research used in this writing is descriptive qualitative. Descriptive research is intended to provide data that is as accurate as possible about humans, conditions, or other symptoms to strengthen the hypothesis in order to help strengthen old theories or in compiling new theories. Qualitative research is an approach that uses data verbally to understand the phenomena experienced by the subject. This research is described in the

form of words and narratives in a specific natural context and utilizes various scientific methods.²⁷

²⁷ Soerjono Soekanto, Pengantar Penelitian Hukum, UI Press, Jakarta, 2010, page. 28.