



## Legal Certainty for Local Investigations of Land Disputes in Civil Cases

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### ABSTRACT

The mechanism for resolving land rights disputes in the District Court is always handled by a judge, and before reaching an examination with an evidentiary agenda, the parties to the case will carry out efforts at peace or mediation. The judge/judicial panel, clerk/substitute clerk, and bailiff/substitute bailiff together with the parties present go to the location of the object to be inspected and carry out the inspection. The first thing that is asked for information is from the plaintiff in accordance with the contents of the lawsuit. The local inspection carried out by the judge has the function of assisting the judge in making his decision. The problems that arise are related to the role and function of the local inspection of the disputed object in the form of land if it is related to the construction of evidence in civil cases. The problem formulation in this research is (1) Has the local examination of the object of a land dispute in a civil case provided legal certainty? (2) What are the legal implications of a local examination of a civil case object? and (3) What is legal certainty in future arrangements for local inspections of land objects in civil cases. From the results of the research carried out, it was found that local inspections were based on Article 153 HIR, Article 180 RBg and Articles 211 – 214 Rv and SEMA No. 7 of 2001 does not yet reflect legal certainty because it does not regulate in detail the local inspection mechanisms in the field, giving rise to multiple interpretations. Apart from that, the local examination is still ambiguous as to whether it is evidence whose evidentiary value is left to the judge or whether the local examination is not included in the category of evidence, it is an examination tool or method to obtain evidence. The results obtained in the local inspection are valid evidence. The legal implications of a local examination of a civil case object are (1) on the costs of the case if the judge desires a local examination, (2) on the evidentiary strength of the local examination. These two things contain legal consequences that need to be clarified in future regulatory aspects. Legal certainty in the future regulation of local inspections of land objects in civil cases is that all cases involving immovable objects such as land must be carried out locally and preferably carried out after further examination of evidence to overcome differences in the practice of carrying out local inspections. Uniformity of these arrangements is very important to create legal certainty regarding local inspections. Regulations regarding local examinations must be established at the statutory level so that they have strong binding power on all parties involved in the case, including judges, clerks and all.

#### Keyword:

Disputes, Land, Legal Certainty, Local Inspections, Panel of judges,

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## INTRODUCTION

Soil is part of the earth and the source of various natural resources. Soil also plays a role as a habitat and production of plants, food, building materials, and others. Apart from that, land is very valuable for humans as a place to live, for food needs, and even for burial. This shows how important land is, so that humans' need for land increases day by day and affects their social interactions. As an agricultural country, land plays an important role in the lives of Indonesian people, especially some people who work as farmers. Land has a function as a place for people to live, and land provides a livelihood for them (Scoones, 2013).

The mechanism for resolving land rights disputes in the District Court is always handled by the judge, and before reaching an examination with an evidentiary agenda, the parties to the case will carry out efforts at peace or mediation (Ibrahim et al., 2022). If mediation with the aim of resolving the parties' dispute turns out to not achieve peace, then the case examination will continue in accordance with the sequence that applies in civil procedural law. At the hearing of a land dispute case in district court after efforts to reconcile have not been achieved, the Plaintiff is obliged to provide evidence of the arguments or reasons for his claim, meanwhile the Defendant will deny and reject the Plaintiff's arguments when the Defendant submits an answer to the lawsuit.

Problems in law exist in civil criminal law and others and the solutions are different (Huneus, 2013). To resolve civil cases in court of course requires evidence in the form of written or letter evidence, witnesses, allegations, confessions and oaths, expert reports or information (Panjaitan & Puryanto, 2022). Therefore, in order to ensure that the judge approaches justice in evaluating

other evidence, so that the judge in drawing conclusions on the local examination evidence has the strength of the evidence according to his decision.

Judicial judges play an important role because they have the right to decide a case (Glynn & Sen, 2015). The judge's decision is the most important and final thing in a court hearing. In imposing a sentence, the judge needs to pay attention to several considerations other than according to the articles applied by the parties involved in the case, but because the judge has freedom, these considerations should be based on his beliefs and wisdom. Before making a decision and considering the law, the judge first needs to clearly understand the nature of the case, therefore a sufficient understanding of the subject matter or real knowledge is needed. The judge's consideration of the Local Examination in handing down a Decision in a Civil Case is thought to be influenced by the discrepancy between the object of the dispute and other evidence and the inconsistency between the object of the dispute and the arguments of the lawsuit and the defendant's answer. Therefore, the judge cannot accept the statements of the parties, but also requires sufficient evidence to do so. This statement is in line with the principle that "whoever makes an argument has the obligation to prove it, likewise those who dispute other people's rights have the obligation to prove it." (Wiggins, 2013).

From the explanation above, there are very serious problems related to the practice of evidence in civil procedural law, namely, on the one hand, historically referring to the provisions of Article 153 HIR/Article 180 R.Bg or Article 211 Rv, it is necessary to carry out local inspections of disputed objects in the form of land. and it is also not carried out because of the alternative nature of the legal

regulations, but in its development through SEMA No. 7 of 2001 emphasizes the obligation to carry out local examination hearings in handling cases involving land objects, if not implemented, then the decision is said to be null and void. Then normatively, the results of local examinations are not evidence in civil cases in line with Article 164 HIR/Article 284 R.Bg, whereas in later developments referring to the opinion of M. Yahya Harahap who places the position of local examination results as part of the facts of the trial (Harahap, 2017).

The judge/judicial panel, clerk/substitute, and bailiff/substitute simultaneously with the parties present come to the examination location and then carry out the examination. First ask the plaintiff for information as stated in the statement of claim. Next, regarding the location or area of the disputed object and boundaries, information is requested from the Village Head (Geushik), then information is also requested from the defendant/co-defendant in turn regarding their opinion regarding the object of the dispute. After all relevant parties have submitted the information, the judge/panel judge decides that the information is sufficient, the trial will be closed and the next hearing will be determined with a topic that suits the conditions of each case and inform both parties involved in the case to attend the next hearing that has been determined. . Then, all stages of the examination are presented in the trial report by the clerk/substitute clerk (Benu, 2023).

Based on the information above, the local examination held by the judge serves to make it easier for the judge to determine whether the argument can be accepted or not, or even whether the claim is ambiguous and cannot be granted.

The problem of the burden of proof is an issue that can determine the course of the case examination and decide the

outcome of the case, where the proof must be carried out by the parties (not the judge) through the provision of evidence and the judge (according to considerations taking into account the circumstances and situation of the case or observed case by case) who will decide which party is obliged to provide evidence and then the truth will become the basis for determining the final decision. The evidence provided to the court is in the form of proof that must be in accordance with what is to be proven to be true. This insignificant evidence poses a risk to efforts to achieve justice, causing unnecessary presumptions and wasting time in assessing the problems presented disproportionately because they exaggerate small problems or underestimate problems that are actually big problems. These conditions can result in judicial procedures becoming no longer in line with the principles of justice that is fast, simple, cheap, free, honest and impartial (Gélinas et al., 2015).

## **LITERATURE REVIEW**

Several previous studies include research by Baihaqi (2020) entitled *The Urgency of On-Site Examination (Descente) in the Evidence System for Polygamy Permit Applications (A Study of Polygamy Permits at the Agana Tulungagung Court in 2016-2019)*. This research focuses on the legal certainty of on-site examinations of land disputes in civil cases, especially regarding current conditions, legal implications and future legal certainty related to on-site examinations of the object in the form of land in civil cases.

Mappasessu's research (2023) on *The Application of Evidence Theory in the Settlement of Land Ownership Rights Disputes (Case Study of Watansoppeng District Court Decision Number: 6/Pdt.G/2020/Pn.Wsn)* This research focuses on the legal certainty of on-site

examinations of land disputes in civil cases, especially regarding current conditions, legal implications and future legal certainty related to on-site examinations of the object in the form of land in civil cases.

### **Legal Certainty Theory**

Legal certainty is one of the fundamental principles or highest values. In the framework of legal modernity, legal certainty is a medium or means for those who must submit to the law, as a tool to regulate behavior and provide them with protection from the arbitrary use of public power.

### **Theory of Proof**

The law of evidence in a legal case is a very complex part of the investigation stage (Robertson et al., 2016). The complex situation becomes even more complicated because the evidence is associated with expertise in reconstructing past events as the truth. Although the truth desired and achieved in a civil land trial is not absolute truth, but relative or quite possible, the search for the truth still encounters difficulties.

### **Theory of Justice**

The Theory of Justice according to Aristotle states that justice can be found in his work *Nicomachean Ethics*, *Politics*, and *Rhetoric* (Guest, 2017). Specifically, the book is intended for justice based on Aristotle's legal philosophy which must be assessed as the core of his legal philosophy, namely "because law can only be established in relation to justice". In essence, this concept of justice provides equal rights, but not equality. Aristotle distinguishes between equal rights and proportional rights.

## **RESEARCH METHODS**

Based on the problem that will be explained in this paper, namely "Legal

Certainty Regarding Local Examinations of Land Disputes in Civil Cases", therefore this research implies a method that is based on legal analysis. Description of the object of the problem to be studied includes (1) Has the local examination of the object of the land dispute in a civil case provided legal certainty? (2) What are the legal implications of a local examination of a civil case object? and (3) What is the legal certainty in future arrangements for local inspections of land objects in civil cases? Based on this object, this type of research is normative law, which means a procedure for discovering legal rules, principles and doctrines in order to provide answers to legal problems that can obtain the latest assumptions, theories or concepts as prescriptions for solving problems (Marzuki, 2016).

Normative legal research is also known as doctrinal legal research, namely legal research that is designed and then developed based on the doctrines that are owned and developed (Wignjosoebroto, 2013). Doctrinal legal research is divided into 3 parts, including:

- a. Doctrinal research that examines law conceptualized as the principle of natural law in a moral system according to natural law doctrine;
- b. Doctrinal research that examines law conceptualized as statutory rules according to the doctrine of positivism;
- c. Research that examines law conceptualized as a judge's decision in concreto according to the doctrine of realism.

The reason why it is called doctrinal legal research is because it is related to the concept that we want to provide, namely the concept of legal certainty in future arrangements for local examinations of land objects in civil cases. This examination is based only on SEMA No.7 of 2001 concerning Local Examinations, meanwhile SEMA is only

binding within the judicial environment and local examinations involve many components such as the parties and others. This causes its own legal problems.

## **RESULTS AND DISCUSSION**

### **Legal Certainty of Local Examinations of Land Dispute Objects in Civil Cases**

In practice, the judiciary in the context of a debate regarding data cannot always solve a problem, but can only decide. This statement was expressed by Mukti Arto in the Preface to the book entitled "Searching for Critical Justice and Solutions to Civil Justice Practices in Indonesia", among the reasons include: "First, procedures for resolving a case are often very formal and rigid, so they lack flexibility and do not cover all aspects problem. Second, judicial procedures are slow and convoluted, so they are considered time-consuming and expensive, which is very detrimental to those seeking justice. Third, truth and justice are unilaterally measured by the judge's opinions, beliefs and feelings, so that parties cannot understand and accept subjective decisions outside of their opinions, beliefs and feelings. Fourth, the nature of judges tends to be formal because they only pay attention to legal aspects according to doctrine or legal documents without awareness of the law of the parties.

"Various procedures must be carried out in order to obtain justice, starting from making a lawsuit, appearing at the trial, providing evidence to submitting a request for execution. The most important thing at this stage is the evidentiary stage, where each party tries to convince the judge that they have established evidence, starting from the type of evidence and its strength.

According to Article 164 HIR, Article 284 RBg, and Article 1866 of the Civil Code, there are five means of

evidence that apply in civil procedural law that have a limitative nature or have limitations. In practice, many other pieces of evidence are used to support evidence to provide certainty regarding the truth of a disputed case.

Understanding the ins and outs of civil disputes is not easy, especially if the information provided by the parties in the case is contradictory and sometimes the problem cannot be easily explained in writing, orally or even in pictures (Babcock et al., 2021). The differences in facts are blurry and sometimes even uncertain, the evidence provided by one party to another is contradictory.

Even though formal local inspections are not included in evidence, they can be used to show clarity and certainty regarding the location, size and boundaries of the disputed object, so that the decision will have legal force and can still be executed properly. Every judge's decision must be implemented correctly or taking into account the reasons why the judge made that decision. This consideration is the judge's responsibility to society.

Local examinations are defined as examinations related to cases by judges carried out outside the court building or head office. By implementing this action, the judge will receive information or an overview and certainty regarding the event that is the object of the dispute. A local inspection by a judge is intended to show clarity and certainty regarding the location, size and boundaries of the object of the dispute (Rosalina, 2018).

### **Legal Implications of Local Examination of a Civil Case Object**

In the context of this research, the term legal implication is used rather than the term legal impact or legal consequence because the word legal implication contains indirect (implicit) legal impact or consequences. Furthermore, the term

legal implication contains the meaning of legal responsibility to carry out continuous legal reform. This is because the law continues to develop in line with the reform needs of the times. This statement is in accordance with one of the functions of law, namely as a means of social change (Hamidi, 2006).

Anyone who claims title to goods must prove their claim. Likewise, parties who dispute the rights of other individuals are also obliged to provide evidence for their denial. Article 163 HIR and 283 R.Bg. states: "Anyone who postulates that he has a right, or proposes an event (feit) to confirm his right or to deny the existence of another person's right must prove the existence of that right or event. "Proof is only needed in court cases. If there is no case or conflict relating to an individual's civil rights, then the person does not need to show evidence. The parties to the dispute must prove the events they convey. Apart from that, they also do not have to inform or prove the legal provisions because judges, based on the principles of procedural law, are deemed to understand the law, both verbally and in writing. This legal relationship needs to be proven before a judge and it is the duty of both parties to the dispute to provide the evidence requested by the judge.

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Specifically for land disputes, the Supreme Court in SEMA No. 7 of 2001 ordered the judge examining the dispute to carry out a local inspection of the object of the case by a panel of judges with the assistance of a Substitute Registrar, either at the judge's initiative because he assessed the need to receive clarity or further information regarding the object who are in dispute. If deemed necessary and based on the agreement of the parties to the dispute, it can be measured and then a description of the condition of the land or object of the case carried out by the Local National Land Agency Office can be made.

Furthermore, it is regulated in SEMA No.3 of 2018, Formulation of the Chamber of Religion which states "Claims regarding unregistered land and/or buildings which have outlined the location, size and boundaries, however there are differences in the data on the object of dispute in the lawsuit with the results of the local inspection (descente), then what is used is physical data from local examination results (descente)". Because the results of local examinations carried out by the Panel of Judges are in the form of truth at trial, the results also become the basis for strengthening the judge's confidence in the case being examined in deciding a case.

From these regulations, it is intended that those who pay for local inspections are:

1. The party who wants a local inspection (Plaintiff and/or Defendant)
2. If the local inspection is carried out on an *ex officio* basis by a judge, the payment burden is determined by the judge.

Thus, it can be concluded that a local inspection has binding force if it is accompanied by evidence as intended in Article 164 HIR. Therefore, it can be explained that local inspections function to provide confidence for the judge/panel

of judges in ascertaining the condition of the disputed object in the form of land regarding its area, location and boundaries. Therefore, the judge/panel of judges when deciding is based on trust, because the evidence provided by the parties is in line with the results of the examination carried out.

### **Legal Certainty in Future Arrangements for Local Inspections of Land Objects in Civil Cases**

Legal certainty means "provisions, provisions", while if the word certainty is combined with the word law, it becomes legal certainty which means "the legal instrument of a country that can provide guarantees for the rights and obligations of all citizens (Moeliono, 1990).

Legal certainty, as people often understand, is not an automatic legal product. As long as there is legal supremacy, legal certainty does not immediately appear in society, so other legal procedures are needed, for example psychological and political. Historically, legal certainty was born from the idea of separation of powers conveyed by Montesquieu. He also stated that the separation of powers means that the task of making laws is then in the hands of the legislators, while judges (judiciary) only play the role of expressing the contents of the law (Law, 2017).

Legal certainty in local examination provisions is very much needed, so that it is legally binding for the parties and the judge. The position of this examination by the Supreme Court is contained in SEMA No. 7 of 2001 concerning local examinations, where one of the considerations for issuing SEMA is due to the many reports from justice seekers and the Supreme Court's observation that civil cases which have the force of law still cannot be executed because the object of the case is goods. immovable areas such as rice fields, land, yards, etc. are not in

line with decisions regarding the location, area, boundaries and conditions during the execution because there has never been a local inspection of the object of the case.

The existence of SEMA does not necessarily address the issue of the status of local examinations of evidence in the status of evidence in accordance with the provisions of civil procedural law, because its presence is only a step to fill the gap in procedural law, especially regarding the rules regarding evidence contained in Article 164 HIR, Article 284 RBg, and Article 1866 Civil Code.

In local examinations, the judge's role is that of the examiner, although in principle the judge can appoint one or two commissioners from the panel whose job is to consider the actual situation in the field. Of course, the judge will have more confidence if he can observe for himself what actually happened because the function of the local examination is to provide independent evidence. This means that the power of proof is given to the judge (Wixted & Wells, 2017).

In civil justice, if the judge considers that he does not have certainty regarding the evidence provided, while the object in dispute, such as fixed property (land, buildings, etc.), cannot be proven to exist at trial, as movable objects should, so that the trial can be held at the location of the object. Local examination practices are carried out by the Chief Judge who investigates the case and leads the trial. The examination is carried out by providing a decision regarding acceptance or rejection after a request from the parties.

In this regard, judges should pay attention to SEMA No. 7 of 2001 concerning Local Examinations. If the results of the trial give the impression or indication that the object of the lawsuit is still unclear. Therefore, the application of SEMA regulations to carry out local

inspections aims to minimize difficulties in carrying out the execution of decisions in the future.

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## CONCLUSION

1. Local inspections based on Article 153 HIR, Article 180 RBg and Articles 211 – 214 Rv and SEMA No.7 of 2001 do not reflect legal certainty because they do not regulate in detail the local inspection mechanism in the field, giving rise to multiple interpretations. Apart from that, the local examination is still ambiguous as to whether the evidence is in the form of evidence whose probative value is given to the judge or whether the local examination is not included in the criteria for evidence because it is an instrument or method of examination to obtain evidence.
2. The legal implications of a local examination of an object in a civil case are (1) on the costs of the case if the judge desires a local examination, (2) on the evidentiary strength of the local examination. These two things contain

legal consequences that need to be clarified in future regulatory aspects.

3. Legal certainty in future arrangements for local inspections of land objects in civil cases is that all disputes with immovable objects such as land need to have a local inspection carried out after examining the evidence, then to deal with differences, especially in local inspection practices. Uniformity of these arrangements is very important to create legal certainty regarding local inspections. Regulations regarding local examinations must be established at the statutory level so that they have strong binding power on all parties involved in the case, including judges, clerks and everyone else.

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