International Journal of Innovation, Creativity and Change. www.ijicc.net
Volume 10, Issue 2, 2019

Effectiveness of Field Training in Complete Dispute Settlement

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This research, entitled "Effectiveness of Field Court Implementation in the Settlement of Civil Disputes", is motivated by the many disputes, specifically about land, which concern immovable objects. The ruling of a local examination (descente), the examination of a case by a judge, is carried out outside the place of court, so the judge himself must receive information that provides certainty about the events in dispute. In court practice, the supporting elements of the Local Examination, as a form of Article 153 HIR or 180 RBg, are the Panel of Judges, who will examine and process the object of the case; the Registrar, who takes the minutes about the local inspection and its results; the acting parties, including those who are equivalent to the land; the guardian of the nagari or the representative of the object of the local examination; the National Land Agency; and the security apparatus. In proving the civil procedural law, besides the five evidences, there are also two other evidentiary systems. Local Examination (descente/plaatselijke opneming en onderzoek, site visit investigation) and Expert Information (expertise). Although, based on Article 164 HIR, 284 R.Bg. or Article 1866 of the Civil Code, these two institutions do not include evidence and are instead based on various arguments which will be raised later, both of them have significant aspects. This study is devoted to investigating the effectiveness of Local Examinations. Among them are, first, the certainty of size, boundaries, and objects; second, the confiscation stage; third, the execution or auction event; and fourth, the socio-psychic aspects of society. Sometimes, over time, the object of the dispute changes, either due to natural factors or social factors. Abrasion, the emergence of deltas, and exposure to tides are all examples of natural factors. Social factors include development, eviction, diversion, and so on. Confiscation, without neglecting other aspects, is easy to carry out when the confiscated object has a clear location, size, and boundary. Confiscation without a Local Inspection

can lead to the possibility of the objects of confiscation not being found or confiscation not being able to be carried out. As a result, the principle of fast proceedings is simple, and the low cost cannot be enforced.

Key words: *Field Session, Dispute, Settlement of Disputes, Confiscation laying.*

Introduction

Land disputes are regulated in Article 1 of the Regulation of the Minister of Agrarian Affairs/Head of National Land Agency Number 1 of 1999 concerning Procedures for Handling Land Disputes, hereinafter referred to as PMNA/KBPN 1/1999, namely: "Differences of opinion between interested parties regarding the validity of a right, granting land rights, registration of land rights, including the transfer and issuance of proof of rights, interested parties who feel they have a legal relationship, and other interested parties affected by the legal status of the land." According to Sarjita, land disputes are "disputes that occur between two or more parties who feel or are harmed by these parties for the use and control of their land rights, which are resolved through deliberation or through the courts" (Sarjita, 2005). The problem in a dispute can be of several types: (Rusmadi, 1991)

1. Issues concerning the establishment of the legal holders of rights to land.
2. Rebuttal to any basis of rights/evidence of acquisition used as a basis for granting rights.
3. Mistakes/errors in granting rights due to the application of regulations that are less correct/incorrect.
4. Disputes/other problems that contain practical social aspects (strategic nature).

From the above, it can be seen that land disputes include the main issues of:

1. Allotment and/or use and control of land rights;
2. The validity of a land right;
3. Procedure for granting land rights; and
4. Registration of land rights, including transfer and issuance of proof of rights.

While the typology of issues regarding registration of rights includes:

1. Double certificate;
2. Fake certificates;
3. Converting rights that are legally flawed;
4. Transfer of rights that are legally flawed and/or administratively flawed;
5. Request for blocking/suspension.

The cause of the certificate in question originates from the applicant's dishonesty in providing technical or juridical data. This phenomenon shows the low legal awareness of landowners and officials' limited access to the truth of data and information submitted by the applicant at the time of land registration.

Other potential causes of a problematic certificate can be the inaccuracy of the apparatus in the land registration process, either due to inaccurate data from the applicant or incomplete collection of technical data in the field; and/or limited access to verification of ownership evidence. Furthermore, the ignorance of landowners and officials regarding the location and boundaries of land can also be a cause of disputes.

As already explained, the purpose of issuing land rights is to provide proof of legal ownership; however, considering that the land registration system used is a negative system that is based on evidence of land ownership without material testing, the ownership rights still contain legal uncertainty. Because the truth of the data is not fully guaranteed by the government, it can be questioned by others and even acted on through institutional Justice.

Thus, the certificate of ownership of land, which is a product of land registration, can have legal certainty only after obtaining the decision of a judge of the State Administrative Court or the General Court that has legal force and that declares the certificate to be legally issued.

If deliberation efforts are unsuccessful and if the unilateral settlement of the Head of the National Land Agency, in their review of the State Administration Decree that has been issued, cannot be accepted by the disputing party, then the settlement must go through the Court.

Settlement of land disputes through the courts often takes a long time. The duration of litigation is mostly due to the possibility of its going through at least 3 (three) to 4 (four) stages.

Firstly, at the district court level, which will take place relatively quickly now because of the Supreme Court (MA) instruction below (that litigation must be limited to approximately 6 (six) months); however, in practice it can take months, sometimes a year. Second, at the high court level. As in the district court, cases often last for a long time. In addition, the investigation of cases through the court is often haunted by the notion that the court is more concerned with its own interests, a notion better known as the judicial mafia. Thirdly, at the cassation level, there are often delays in the examination. This is due to the long queue of examinations at the cassation program that is caused by the large number of cassation cases being handled. Fourth, the review, which also takes a very long time to complete its

examination.

Various stages of proceedings must be carried out to achieve justice: making a lawsuit, attending court, submitting evidence, and submitting a request for execution. The most crucial is of course the proof stage, where each party tries to convince the judge that he was in the right and deserves a winning ruling.

Procedural law is set down by various evidences, minimum limits, and strengths of proof. Article 164 HIR, 284 R.Bg and 1866 Civil Code states the categories of evidence in civil procedural law, namely written evidence, witness evidence, allegations, confessions, and oaths.[1]

Besides the five categories of evidence, there are also two other institutions: Local Examination (descente/plaatselijke opneming en onderzoek, site visit investigation) and Expert Information (expertise).[2] (Sudikno, 2006), (Mukti, 2007) Although, based on Article 164 HIR, 284 R.Bg. or Article 1866 of the Civil Code, these two institutions do not include evidence and are instead based on various arguments which will be raised later, both of them have significant aspects. This study is devoted to the institution Local Examination.

Every person who indicts his rights over an item must prove his claim. Likewise, those who deny the rights of others must also prove their rebuttal. Article 163 HIR and 283 R.Bg. state: "Whoever argues a right, or proposes an event (feit) to confirm his rights or to deny the rights of others must prove the existence of the right or event."

According to **Sudikno Mertokusumo**, “proving” means logically considering why certain events are considered true, which demonstrates that the procedural law is juridical. In the science of law, a logical and absolute proof that applies to everyone and closes all possibilities for evidence of the opponent is not possible.[3] Whereas **Soebekti** states that "proving" is convincing the judge of the truth of the arguments presented in a dispute (Soebekti).

Mukti Arto defines “proof” as logically considering the truth of a fact or event based on valid evidence and according to the applicable evidentiary law (Mukti, 2007). Valid evidence means that it is determined in the legislation, while applicable evidentiary law refers to the presence of a regulatory system.

[1] These details are hierarchical. That is, in civil matters the main thing is writing. On the contrary, the criminal is a witness.
[2] Sudikno added Local Examinations and Expert Information to the civil evidence. So that there are seven.. While Mukti Arto breaks it into nine, by adding Bookkeeping (Article 167 HIR / Article 296 R .Bg.), And Judge Knowledge Article 178 paragraph (1) HIR.
[3] *Ibid*, p. 137.

Proof in the civil field seeks formal truth; no judge's conviction is required. The evidence presented must meet material and formal requirements, as well as requirements regarding who is authorized and how to use that authority (Mukti, 2007).

Proof is only needed in a case in court. If there is no case or dispute regarding a person's civil rights, then the proof does not need to be presented by the person concerned. The parties to the fight are the ones who are obliged to prove the events that they present. The litigants do not need to notify and prove their legal regulations, because judges, according to the principle of civil procedural law, are considered to be aware of the law, both written and unwritten, and the judge is in charge of applying civil law (material) to the case being examined and decided upon. The judge's task is to investigate whether the legal relationship in the case really exists or not. This legal relationship must be proven before the judge, and the task of both parties to the litigation is to provide the evidence needed by the judge.

When the agenda of evidence proceeds, both parties must prove the event or legal relationship from the arguments it conveys. However, not all legal events or relationships must be proven. Not everything that is seen by the judge himself before a court hearing needs to be proven (Riduan, 2013); (Soebekti, 1977).

The ruling of a local examination (descente), the examination of a case by a judge, is carried out outside the place of court, so the judge himself must receive information that provides certainty about the events in dispute (Sudikno, 2006).

This local examination is an examination carried out by the judge that directly relates to a location or place of property, which is the case of the parties. An on-site examination, where the judge (the panel) himself goes to the place or the object of the litigation, is assisted by a Registrar or Substitute Registrar, and in this case, the judge can examine documents, witnesses, and other matters deemed necessary, for example, land boundaries, extent, location, and the conditions of the land. All the facts found by the judge (the panel of judges) at the time the session is held immediately become the judge's own knowledge.

According to Article 164 of HIR, Article 284 R.Bg., or Article 1866 of the Civil Code, there are five categories of evidence within the scope of civil proceedings. In addition to the five categories of evidence, there are also other elements of support: expert information (deskundigenbericht) and local examination (gerechtelijke plaattsopneming or descente) (Lilik and Mohammad, 2012).

Local inspection is regulated in Article 153 HIR, 180 RBG, 211 Rv, and SEMA Number 7 of 2001. Article 153 HIR, 180 R.Bg., reads as follows (Soeroso, 2011):

1. If the view is necessary or useful, then the Chairperson may appoint one or two commissioners from the Assembly, with the assistance of the Registrar, to conduct a local review and examination, which can be used as consideration by the judge;
2. Concerning the implementation of the tasks and the results recorded by the Registrar in the official report or agreement to be signed by him and the commissioners;
3. (R.Bg) If the place to be examined is located outside the jurisdiction of the court, the Chairperson may ask the local government to conduct the examination and send as soon as possible the minutes of the examination."

In court practice, the supporting element of the Local Examination, as a form of Article 153 HIR or 180 RBg, is the Panel of Judges, who will examine and process the object of the case; the Registrar, who take minutes about the local inspection and its results; the acting parties, including those who are equivalent to the land; the guardian of the nagari or his representative of the object of the case to be carried out by the local examination; the National Land Agency; and the security apparatus.[4]

Local Examination is an official court hearing, meaning that the parties must be present during Local Examination; however, if one party is absent without a valid reason, Local Inspection can still take place if the absent party has been officially notified.

In SEMA's consideration No. 7 of 2001, it was stated that due to the many reports from Justice Seekers and from the Supreme Court's observations, civil cases which have legal force remain non-executable. This is because the object of the case for goods is not in accordance with the dictum of the decision, both regarding the location, area, boundaries, and the situation at the time of execution. If there has never been a Local Examination of the object of the case, the Supreme Court will ask the judge who examines the case to hold a Local Inspection of the object of the case. It is necessary for the Panel of Judges to be assisted by a Substitute Registrar at the initiative of the Judge, because they feel the need to obtain more detailed explanations/information on the object of the case, because an expansion is requested, or at the request of one of the litigants. If deemed necessary and with the agreement of the parties to the litigation, measurement, drawing, and situational assessment of the land or object of the case can also be carried out by the Office of the National Land Agency, at a cost agreed by both parties.

[4] Regarding Article 153 HIR and 180 R.Bg. Of this, Wirjono Prodjodikoro said that: at the time this article was formed, the District Court always conducted a civil case examination with three people, namely a Chairperson and two members. Now the District Court conducts such examinations frequently with a judge. In connection with the amendment to the article, it must be interpreted in such a way, that if necessary the Judge himself will go to the place of circumstances to see the situation for himself with his own eyes. Look in the Civil Procedure Code in Indonesia, Cet. VII, Bandung Well, 1978, p. 87. In view, according to Article 11 paragraph (1) of Law Number 48 Year 2009 concerning Judicial Power, it states: other".

Abdul Kadir Muhammad emphasized the role of Local Examinations in the settlement of cases. The results of Local Examinations are used by the judge as official material for consideration of the decision to obtain certainty about the stated event.[5]

The value of Local Examination is not only seen from their results, which are used as material for consideration of decisions; they also plays an important role in various aspects and stages of the trial. Among them are, first, the certainty of size, boundaries, and objects; second, the confiscation stage; third, the execution or auction event; and fourth, the socio-psychic aspects of society.

Sometimes over time, the object of the dispute changes, either due to natural factors or social factors. Abrasion, the emergence of deltas, and exposure to tides are all examples of natural factors. Social factors include development, eviction, diversion, and so on. Confiscation, without neglecting other aspects, is easy to carry out when the confiscated object has a clear location, size, and boundary.

Confiscation without a Local Inspection can lead to the possibility of the objects of confiscation not being found or confiscation not being able to be carried out. As a result, the principle of fast proceedings is simple, and the low cost cannot be enforced.

The significance of Local Inspections is also apparent when the verdict has been handed down. In practice, there are various obstacles to the implementation of a decision (execution), such as land boundaries changing due to tidal water, abrasion, or encroaching mud. Another possibility is that if the amount of land has not been certified, the size of the land can differ from what is written in the decision (Djazuli, 1987).

Responding to this, Yahya Harahap asserted that judges should not be hasty in the determination of a non-executable claim based on land boundaries being unclear. Instead, the court can make an effort by ordering a Local Examination. If this implementation is not successful, then the execution can be declared Non-Executable (Yahya, 2005).

The excursion of the Assembly to see the object of a dispute sends a message and makes a very good impression on the parties and the community. If the state, in this case represented by the judiciary, is serious in resolving disputes, then it can be a channel for resolving chaos and establishing peace. This is only true, of course, if these actions are carried out with knowledge, good faith, and sincerity.

[5] Indonesian Civil Procedure Code, Cet. IX, Citra Aditya Bakti, Bandung, 2012, p. 158. R. Soebekti classifies the results of the local examination as the judge's knowledge. See Civil Procedure Code, op.cit., P. 77.

Theories of Law Enforcement and Justice

Having identified the problems, the next step is to look for theories, concepts, and generalisations that can serve as a theoretical foundation for this research. The theories, concepts, and generalizations referred to are inseparable from the main concept used in the title of the study, namely the **Effectiveness of the Implementation of the Field Session in the Settlement of Civil Disputes**. The main foundation for this study are as follows: the Legal Certainty Theory (legal certainty theory), as the grand theory; the Law Enforcement Theory (law enforcement theory), as the middle theory; and the Theory of Justice (justice theory), as the applied theory.

In enforcing the law, there are three elements that must be considered, namely: legal certainty, expediency, and justice. All three elements must receive proportionally balanced attention, but in practice, it is not always easy to work out a proportionally balanced compromise between the three elements. Without legal certainty, people do not know what to do, and eventually, anxiety arises. If there is too much emphasis placed on legal certainty, the rule of law becomes rigid and too strict to obey, which will cause a sense of injustice.

The existence of legal certainty is the hope of justice seekers for arbitrary actions from law enforcement officials, who are sometimes arrogant in carrying out their duties as law enforcers. With the existence of legal certainty, the public will have clarity on their rights and obligations according to law. Without legal certainty, people will not know what to do and will not know what is right or wrong, or what is prohibited or not prohibited by law. Legal certainty can be realized through clear naming in a law and clear implementation. In other words, legal certainty means that the law itself, its subjects and objects, and its legal threat are all clear. Legal certainty need not be considered an absolute element at all times; instead, the means used should be in accordance with the situation and conditions by taking into account the principles of benefit and efficiency.

Law enforcement theory (law enforcement theory) and Justice (justice theory) as applied theory. Imanuel Kant stated that the aim of the State was to uphold the law and guarantee the freedom of its citizens, namely their freedom within the limits of the law.[6] Therefore, the operational theory used in this study is "welfare theory and law enforcement theory". This theory is used because the Islamic economics applied to Islamic banks constitutes a certain part of Islamic jurisprudence, within the framework of the welfare of humanity.

Justice is essentially treating someone or another party according to their rights. It is the right of every person to be recognized and treated in accordance with their dignity and status, regardless of ethnicity, ancestry or religion. Plato divides justice into individual justice and

[6] R. Surbekti, *Op.Cit*, p. 160-161.

state justice. According to him, individual justice is one's ability to control oneself by using ratio (Jan, 1991). Also, according to Aristotle, justice is divided into five forms, namely: 1) commutative justice, namely the treatment of a person without looking at the services that he does; 2) distributive justice, namely the treatment of a person in accordance with the services he has performed; 3) natural justice, namely giving something in accordance with what others have given us; 4) conventional justice, that is someone who has obeyed all laws and regulations that have been required; and 5) justice according to the theory of improvement, which is someone who tries to restore the good name of others who have been tainted.

Aristotle described justice as a form of equality based on the principle that the same case should be treated in the same way and different cases should be treated in different ways. This perspective emphasises that justice is proportional, balanced, and impartial. Justice is opposed to (Rapar, 1995):

1. Violations of the law, deviations, inconsistencies, uncertainties, unexpected decisions, not limited by regulations.
2. Taking sides in applying the rules; and
3. Rules that are impartial, arbitrary, or involve discrimination that is not based on irrelevant differences.

Aristotle, in the book Nicomachean Ethics (Aristotle and Djohansjah, 2008), stated that "justice" can be distinguished in two forms, namely:

1. Distributive justice, which states that justice is related to awards (honour) and that the same wealth must be received by the same people in the country.
2. Corrective justice, justice prevailing in a civil relationship. In corrective justice, there is no difference in the meaning of one's position in the State. Each person who causes others to suffer losses must recover (bear) the loss.

Understanding justice is a balance between what should be obtained by the parties, both in the form of profits and losses. In practical language, justice can be interpreted as giving equal rights to each person's capacity, or giving proportional enforcement to each person, but it can also mean giving each person the same amount based on the principle of balance. Law without justice has no meaning at all.

As for this case, the author briefly describes the civil procedural law as follows:

Legal Remedies in Civil Procedure Law

Legal remedies are efforts made by the law to a person or private legal entity to oppose a judge's decision, with the aim of preventing and/or correcting errors in the Judge's decision based on the discovery of new evidence or facts. In civil procedural law, it is known that there are two kinds of legal remedies against decisions, namely the following: (Dadan, 2006)

Ordinary Legal Remedies

Ordinary legal remedies are legal remedies that can be taken by the parties within a period of time determined by the law to suspend the implementation of a decision, except if provisions of the decision have been implemented first (uitvoerbaar bij vorraad). Ordinary law includes resistance (verzet), appeal, and cassation (Dadan, 2006).

Extraordinary Legal Efforts

Extraordinary legal remedies are resistance efforts from third parties. These efforts are legal remedies taken against court decisions that have permanent legal force in matters of the law. Extraordinary legal remedies include third party resistance (Derden Verzet) and reconsideration (Nur Said).

It is absolutely necessary for judges to resolve cases (read: disputes) with knowledge, integrity, and carefulness; to understand and be observant; to find formal gaps and suggest remedies to a lawsuit; to be skilled at reconciling and mediating; to help both parties, within certain limits; and to use all instruments of the court to complete a case.

Although the judge decides whether or not evidence is relevant, there are legislative guidelines to prevent these decisions from slowing down the process and/or being misleading, disproportionate, or irrational, but these guidelines are general, so there is plenty of room for judges to be creative (Munir, 2006).

When the parties do not ask for one because of their position, ex officio will take the initiative to determine the implementation of Local Examination to determine if the object of the dispute has a given problem. It was obtained and can be extracted from the trial process. It is none other than for the sake of attaining the principle of law. The Urgency of Local Examinations can be seen from some of the jurisprudence below.

Supreme Court Decision No. Jurisprudence 274 K/Sip/1976, dated April 25, 1979 stressed that because judex facti had not inspected the plaintiff's lands owned by the defendant, the District Court was ordered to conduct a local inspection accompanied by measurement of the

land by Sub. Director District Agraria, which was witnessed by the relevant Judge and the parties (Summary of Indonesian Supreme Court Jurisprudence, 1993).

The results of a Local Examination can be used as facts by judges in court, therefore they have binding power for judges. The power of binding local examination, as seen in the following jurisprudence, is that it can determine the area of land under dispute.

The judge can determine the area of land under dispute, but the boundaries are not typically relevant because, according to experience, land changes often occur as a result of the transfer of ownership rights to land. (Decision of the Supreme Court No. 1497 K/Sip/1983). Second, it can be used as the basis for granting a lawsuit. In the case that the argument of the claim is disputed by the defendant, but it turns out that based on the local inspection the land area of the disputed object is the same as the one in the suit, then this can be used as the basis for the claim (Supreme Court Decree Number 3197 K / Sip / 1983). Third, it can be used to clarify the object of the dispute; the results of the local examination can be used as a basis for clarifying the location, area, and boundaries of the object of the dispute (Supreme Court Decision Number 1777 K / Sip / 1983) (Yahya, 2005).

A Local Examination is not evidence, as in Article 164 HIR, Article 284 R.Bg., and Article 1866 of the Civil Code, but because of the certainty it provides judges over disputed events, a local audit essentially functions as evidence.[7] The power of the proof itself is left to the judge.

Conclusions

In my opinion, the value of local audit evidence can be seen from various studies. First, analogically from the institution of recognition. Acknowledgment in front of the judge at trial is a unilateral statement, both written and oral, that is firmly declared by one of the parties in the trial case. This statement justifies, either in whole or in part of an event, the rights or legal relationship submitted by his opponent, which means that further examination by the judge is no longer needed. Recognition gives the judge certainty about the truth of an event, even though this is intended to be the role of evidence. With the acknowledgment, the dispute is considered over. Second, the necessity of Local Examination results must be stated in the form of a voluntary or official report, which is an authentic deed. Third, Local Examination is evidence because it meets the requirements for it, materially and formally. Determined in the legislation, the following is also the regulatory system. Fourth, doctrinally, some legal experts place the Local Examination in the order of evidence. Finally, it is interesting to note the

[7] Sudikno Mertokusumo enumeratively and sequentially mentioned the five evidences as mentioned in Article 164 HIR, Article 284 R.Bg., and Article 1866 of the Civil Code with the addition of the sixth order and the seventh is the Local Examination and Expert Statement.

arrangement of Local Examination in the Civil Procedure Bill. Local Examinations are regulated in Part Eight under the title of Local Examinations and Expert Information. In Article 145 paragraphs (1) and (2), it is stated: "In view of the need to carry out a local examination so that the case becomes brighter, the Chairperson of the Assembly may appoint one or two members of the assembly, with the assistance of the court clerk, to conduct the local examination. The results of the local inspection referred to in paragraph (1) shall be made into an official report, signed by the judge and the court clerk concerned."

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