



Received: August 07, 2024

Revised: October 14, 2024

Accepted: October 30, 2024

\*Corresponding author: Abdil Rahman Zaenal, Department of Law Science, Universitas Muslim Indonesia, Makassar, Indonesia.

E-mail: [abdilrahman.zaenal@umi.ac.id](mailto:abdilrahman.zaenal@umi.ac.id)

## DESCRIPTIVE OF QUANTITATIVE DATA | SUPPLEMENTARY

## Land disputes on legal certainty in South Sulawesi South Sulawesi in 2023

Abdil Rahman Zaenal<sup>1</sup>, M. Ibnu Sumarna<sup>2</sup>

<sup>1,2</sup> Department of Law Science, Universitas Muslim Indonesia, Makassar, Indonesia. Email: [abdilrahman.zaenal@umi.ac.id](mailto:abdilrahman.zaenal@umi.ac.id)<sup>1</sup>, [Ibnu.Sumarna@umi.ac.id](mailto:Ibnu.Sumarna@umi.ac.id)<sup>2</sup>

**Abstract:** Objective To begin with, the plaintiff is questioned about the contents of his claim. The judge can make a decision with the help of local examination. When it comes to the construction of evidence in civil cases, the duties and responsibilities of local examination of the object of land dispute is an issue that arises. shows that local examination based on Article 153 HIR, Article 180 R. Bg or Article 211 Rv as well as SEMA No. 7 of 2001 does not reflect legal certainty because it does not regulate the mechanism of local examination in the field thoroughly, which leads to many interpretations. In addition, it is still ambiguous whether local examination is a means of evidence whose value is left to the judge or whether local examination is only an examination tool or method of obtaining evidence. Research Results and Discussion Local inspection results are a valid source of evidence in civil cases, local examinations have the following legal consequences: (1) court costs if the judge requests a local examination; and (2) the evidentiary power of the local examination. Both of these are legal consequences that need to be clarified in future regulations. elements that need to be clarified in future regulations. Conclusion In civil cases, all cases relating to immovable property are required to ensure legal certainty in the future regulation of local inspection of land. to create legal certainty regarding local inspection, the diversity of this regulation is very important. In order to create legal certainty regarding local examination, diversity of regulation is essential. Regulations regarding local examination should be established at the level of a law so that they have strong legal force against all parties involved in the case, including judges, clerks, and all other parties.

**Keywords:** Legal Certainty, Land Disputes, South Sulawesi.

### 1. INTRODUCTION

Soil is part of the Earth and serves as habitat and production of crops, food, building materials, and other materials. Land is also important to humans as a place to live, a source of food, and even a burial place. As an agrarian country, land plays an important role in the lives of Indonesian people, especially for those who work as farmers. This shows how important land is that human needs for land continue to increase and affect social interactions. Land not only serves as a place to live for people, but also provides a livelihood for them. Land rights dispute resolution process: Judges always handle land rights disputes. Prior to the examination with an evidentiary agenda, the litigants make peace efforts or mediation. If mediation efforts to resolve the dispute between the parties do not result in peace, the case examination process will proceed in accordance with the applicable order in the civil procedure law. In the examination of land disputes in the district court after unsuccessful peace efforts, the plaintiff must provide evidence to support his claim. The defendant will refute and reject the evidence.

Legal issues related to civil law, criminal law, and others have different solutions. In order to resolve civil matters in court, evidence must be provided, whether in written form or in writing or letters, as

well as evidence, witnesses, testimony, confessions, oaths, and expert or expert testimony. Therefore, to ensure that the judge evaluates the evidence correctly, the judge must consider various sources.

Judicial magistrates play a very important role as they have the authority to decide a case. The judge's decision is the most important and final decision in a court hearing. To make a decision, the judge must consider many things other than the articles applied by the parties involved in the case. However, due to his or her legal independence, such considerations must be based on his or her beliefs and discretion. Before making a decision and considering the law, the judge must understand the nature of the case well. In civil cases, the Local Examination judge's consideration may be influenced by the inconsistency between the object of dispute and the evidence and other proofs, as well as the inconsistency between the object of dispute and the reasons for the lawsuit and the defendant's reasons. Therefore, the judge not only needs to accept the testimonies of the parties, but also requires sufficient evidence to support that belief. "Whoever postulates a proposition has the obligation to prove it, and likewise those who dispute the rights of others have the obligation to prove it." From the above explanation, there is a very serious problem related to the practice of evidence in civil procedural law. On the one hand, since the object of dispute being land has historically been based on the provisions of Article 153 HIR/Article 180 R. Bg or Article 211 Rv, local examination is not required due to the alternative nature of those legal regulations. the regulation, which was later amended to SEMA No. 7 of 2001, emphasizes the responsibility to implement local examination hearings. local examination hearings deal with cases relating to land objects; if not implemented, the decision is considered legally void. In accordance with Article 164 HIR/Article 284 R. Bg, the results of the local examination cannot be used as evidence in civil cases. However, as stated by M. Yahya Harahap, the results of the local examination are incorporated into the facts of the trial. After arriving at the location of the hearing, the hearing is conducted by the judge/judge panel, clerk/substitute, and bailiff/substitute bailiff together with the parties present. First, they ask the plaintiff to provide information as mentioned in the lawsuit. Next, information about the location and boundaries of the disputed object was requested from the Village Head, Geushik. Next, the defendant and the two defendants were alternately asked about their opinions on the object of dispute. After all relevant parties have provided their information, the judge or panel of judges decides that enough is enough. After that, the hearing is closed, and the next hearing will determine a topic that is appropriate to the situation of the case, and is notified to both parties.

Based on the information above, local examination is conducted by the judge to help the judge determine whether the lawsuit is admissible or not, or even whether the lawsuit is unclear and inadmissible. The issue of burden of proof is an issue that can determine the course of the examination of the case and determine the outcome of the case. the final outcome of a case, where the proof must be carried out by the parties (not by the parties (not the judge) through the provision of evidence and the judge (according to considerations by taking into account the circumstances and situation of the case or cases observed case by case) who will decide case by case) who will decide which party is obliged to provide evidence and then the truth will be the basis for determining the final decision. The evidence provided to the court is in the form of evidence that must be appropriate to what is to be proven. This insignificant evidence poses a risk to the pursuit of justice, creates unnecessary prejudice and wastes time in assessing the issues raised disproportionately because they exaggerate minor issues or trivialize issues that are actually major problems. These conditions can result in judicial procedures no longer being in accordance with the principles of a speedy, simple, cheap, free, honest and impartial trial.

## 2. RESEARCH DESIGN AND METHOD

Normative legal research, or doctrinal legal research, is legal research designed and developed based on principles that are owned and developed (Wignjosoebroto, 2013). There are three parts of

doctrinal legal research, namely: a. Doctrinal research that examines laws that are considered as natural law principles in a moral system according to the doctrine of natural law; b. Doctrinal research that examines laws that are considered as statutory rules according to the doctrine of positivism; and c. Doctrinal research that examines laws that are considered as concrete judge decisions according to the doctrine of realism.

### 3. RESULT AND DISCUSSION

#### 3.1. Examination of Land Dispute Objects in Civil Case legal certainty

In practice, the judiciary does not always have the ability to solve problems in civil cases; instead, they only have the ability to decide. In the Foreword to the book "Seeking Justice and Solutions for Civil Court Practice in Indonesia", Mukti Arto states that some of the reasons for this are as follows: "First, case settlement procedures are often very formal and rigid, lacking flexibility and not covering all aspects of the problem. Secondly, judicial procedures are slow and convoluted, so they are considered time-consuming." To obtain justice, various processes must be followed, starting from making a lawsuit, attending the trial, providing evidence, to filing for execution. At this stage, the most important is the evidentiary stage, where each party tries to convince the judge that they have strong evidence. They attempt to do this in various ways, including the type of evidence and their strength. Evidence that applies in civil procedural law has a limitative or limited nature, according to Article 164 HIR, Article 284 RBg, and Article 1866 of the Civil Code. In practice, a lot of additional evidence is used to support the evidence used to provide certainty about the truth of a disputed case. It is very difficult to understand the ins and outs of a civil dispute, especially if the information provided by the parties to the case is conflicting. Sometimes, issues cannot be explained orally, in writing, or even in pictures (Babcock et al., 2021). The evidence provided by one party and the evidence provided by the other party are conflicting, as the facts are vague and sometimes even uncertain. Although formal formal local inspections are not included in the evidence, they can be used to show the location, size, and boundaries of the disputed object so that the judgment decision has legal force and can be properly executed. Any decision made by a judge. A case-related examination conducted by a judge outside the courthouse or headquarters is known as a local examination. The judge will conduct a local examination to obtain information about the event that is the object of the dispute. The purpose of this local examination is to show that the event that is the object of dispute is clear and clear, as well as its size, location, and boundaries (Rosalina, 2018).

#### 3.2. Legal Implications of Land Disputes as Civil Case Objects

In this research, the term "legal implication" is used rather than "legal impact" or "legal effect" because the word "legal implication" contains indirect or implicit legal consequences or impacts. In addition, the word "legal implication" implies the legal responsibility to conduct regular legal reforms. This is due to the fact that the law is constantly changing to meet modern needs. According to Hadidi (2006), this statement is in line with the role of law as a tool for social change. If someone claims property rights over something, they must prove their belief. In the same way, parties disputing the rights of others must also provide evidence to prove their denial. "Whoever alleges that he has a right, or presents an event (fait) to establish his right or to deny the existence of a right of another, must prove the existence of the right or event," according to Articles 163 HIR and 283 R. Bg. only in court cases is evidence required. One does not need to show evidence if there is no case or conflict relating to their civil rights. The disputing parties must prove what they say. Other than that, they are not subjected to the responsibility of notifying or proving the provisions of the law. Only in court cases is proof required.

A person does not need to present evidence if there is no case or conflict relating to their civil rights. The disputing parties must prove what they say. In addition, since judges are presumed to understand the law both orally and in writing based on the principles of procedural law, they do not need to explain or prove legal provisions. This legal relationship must be proven in front of the judge, and both parties to the dispute must provide the evidence requested by the judge. In SEMA No. 7 of 2001, the Supreme Court ruled that judges hearing land disputes must conduct a local inspection of the object of dispute with the assistance of the Substitute Registrar, either at the initiative of the judge or at the initiative of the judge, to obtain further clarity or information about the object of dispute. Measurements can be taken and drawings of the condition of the land or the object of the case can be made by the local National Land Agency Office if deemed necessary and agreed by the parties to the dispute. In addition, the formulation of the Manual of Procedure for the Religious Chambers No.3/2018 stipulates that "A lawsuit regarding land and/or buildings that have not been registered and/or buildings that have been described in terms of location, area, and boundaries, but if there are differences in data regarding the object of dispute in the lawsuit with the data from the local inspection (descente), then the physical data from the local inspection results shall be used.

According to the regulation, the parties responsible for paying the costs of the local examination are: 1. The party seeking the local examination (Plaintiff and/or Defendant) 2. If the local examination is conducted ex officio by the judge, then the judge determines who is responsible for paying the costs. Therefore, it can be concluded that local examination has binding force if accompanied by evidence as stipulated in Article 164 HIR. Therefore, the local examination serves to provide confidence to the judge/judge panel in ascertaining the condition of the object of dispute in the form of land in terms of area, location, and boundaries. Legal Certainty in Regulating the Examination of Land Dispute Objects in Civil Cases in the Future. According to Moeliono (1990), legal certainty means "provision", but legal certainty means "legal instruments of a country's law that can provide guarantees for the rights and obligations of every citizen." as is commonly understood, legal certainty is not a legal product that is automatically produced by the law. As long as the rule of law still exists, legal certainty does not automatically emerge in society. As a result, additional legal procedures are required, such as psychological and political procedures. Montesquieu's idea of separation of powers is historically the source of legal certainty. In addition, he stated that the separation of powers means that lawmakers are responsible for making laws, while judges (the judiciary) are only tasked with delivering the content of the laws (Law, 2017). It is imperative that local examinations have legal certainty that binds the parties, the parties, and the judge. In SEMA No. 7 of 2001 concerning local examination procedures, the Supreme Court stated that this examination was made because of the many reports from justice seekers and the Supreme Court's observation that civil cases that have permanent legal force cannot be executed because of the object of the case. Since SEMA was only established to fill the gap in civil procedural law, particularly regarding the rules of evidence found in Article 164 HIR, Article 284 RBg, and Article 1866 of the Civil Code, the existence of SEMA does not necessarily address the issue of the status of local examination of evidence in the status of evidence in accordance with the provisions of civil procedural law. In a local inquiry, the judge acts as the examiner; however, in principle, the judge may appoint one or two panel commissioners to assess the actual circumstances on the ground. As the task of the local inquiry is to provide independent evidence, judges will be more confident if they can see for themselves what actually happened. This shows that the judge can prove something (Wixted & Wills, 2017). In civil court, if the judge considers that he or she is not convinced by the evidence provided, and the object in dispute, such as land and buildings, cannot be proven to be present at the trial, as befits movable objects, the trial may be conducted at the location of the object. The Chief Justice, who hears the case and presides over the proceedings, is responsible for the practice of local inspection. After the

parties have filed their applications, the examination is conducted by making a decision on acceptance, rejection or refusal.

SEMA No. 7 of 2001 on Local Examination should be considered by judges in this regard. if the results of the trial show that the subject of the lawsuit is unclear. Therefore, SEMA initiates a local examination to reduce problems in the execution of the judgment at a later date. In civil court, if the judge considers that he or she is not convinced by the evidence provided, and the disputed object, such as land and buildings, cannot be proven to exist in court, as befits movable property, the trial may be conducted at the location of the disputed object. The Chief Justice, who hears the case and presides over the trial, is responsible for the practice of local inspection. After the parties have submitted their requests, the hearing is conducted by giving a decision on acceptance, or rejection. In this case, the judge should consider SEMA No. 7 of 2001 on Examination. if the result of the trial shows that the subject of the lawsuit is unclear. The purpose of local examination is to reduce difficulties in the execution of the judgment in the future.

The presence of employees is a crucial component in any business unit, whether formal or informal. According to Law Number 14 of 1969, a worker is defined as any individual capable of performing work, either within or outside an employment relationship, to produce goods or services to meet societal needs. As per the Employment Law Number 13 of 2003, an employee is defined as any person who works and receives compensation from the place of employment and has an employment relationship established through an agreement between the employer and the worker or employee. Employees are a key factor in the success or failure of a company's system in generating something beneficial for both the company and society. Therefore, full commitment to the company is essential, as such commitment and good performance from employees will drive their motivation to achieve the company's shared goals and objectives. (Fajarri, 2011). Employees are a crucial component of a company, as they play various roles that must be fulfilled. Some of the roles and functions of employees include: (Soedarjadi, 2009).

#### 4. CONCLUSION

The Rv and SEMA No.7 of 2001 do not reflect legal certainty because they do not regulate the mechanism of local examination in the field thoroughly, which leads to many interpretations. in addition, local examination is still a matter of debate as to whether it is evidencing whose value is given to the judge or whether local examination is not included in the criteria of evidence because it is an examination method or procedure used to obtain evidence. In civil cases, the legal belief is that any dispute relating to immovable property such as land should be subject to local examination after examination of evidence, then to resolve disagreements, especially in the current practice of local examination. Local examination and local examination regulations should be made at the statutory level so that they have strong legal force against all parties involved in the case, including judges, magistrates, clerks, and everyone else. This diversity of regulation is essential to create legal certainty regarding local vetting and regional vetting.

#### REFERENCES

- Babcock, B. A., Massaro, T. M., & Spaulding, N.W. (2021). *Civil Procedure: Cases and Problems*. Aspen Publishing.
- Baihaqi, I. F. (2020). *Urgensi Pemeriksaan Setempat (Descente) Dalam Sistem Pembuktian Perkara Permohonan Izin Poligami (Studi Putusan Izin Poligami Pengadilan Agama Tulungagung Tahun (2016-2019)*. Universitas Islam Negeri Sunan Kalijaga Yogyakarta.

- Benu, M. O. (2023). Tinjauan Yuridis Tentang Pemeriksaan Setempat Terhadap Objek Sengketa Tidak Bergerak Sebagai Alat Bukti Dalam Perkara Perdata Di Wilayah Hukum Pengadilan Negeri Oelamasi. *Jurnal Hukum Online*, 1(4), 77–90.
- Gélinas, F., Camion, C., Bates, K., Anstis, S., Piché, C., Khan, M., & Grant, E. (2015). *Foundations of civil justice*. Springer.
- Glynn, A. N., & Sen, M. (2015). Identifying judicial empathy: does having daughters cause judges to rule for women's issues? *American Journal of Political Science*, 59(1), 37–54.
- Guest, J. W. (2017). Justice as Lawfulness and Equity as a Virtue in Aristotle's *Nicomachean Ethics*. *The Review of Politics*, 79(1), 1–22.
- Hamidi, J. (2006). Makna dan Kedudukan Hukum Naskah Proklamasi 17 Agustus 1945 dalam Sistem Ketatanegaraan Republik Indonesia. *Risalah Hukum*, 68–86.
- Harahap, M. Y. (2017). *Hukum acara perdata: tentang gugatan, persidangan, penyitaan, pembuktian, dan putusan pengadilan*. Sinar Grafika.
- Huneus, A. (2013). International criminal law by other means: the quasi-criminal jurisdiction of the Human Rights Courts. *American Journal of International Law*, 107(1), 1–44.
- Ibrahim, A.-S., Abubakari, M., Akanbang, B. A. A., & Kepe, T. (2022). Resolving land conflicts through alternative dispute resolution: Exploring the motivations and challenges in Ghana. *Land Use Policy*, 120, 106272.
- Law, D. S. (2017). The anatomy of a conservative court: judicial review in Japan. In *Public Law in East Asia* (pp. 3–44). Routledge.
- Mappasessu, M. (2023). Penerapan Teori Pembuktian dalam Sengketa Milik Tanah Agar Putusan Makin Efektif. *Jurnal Pendidikan Tambusai*, 7(2), 18891–18901.
- Marzuki, P. M. (2016). *Legal Research Revised Edition (12th Printing)*. Jakarta: Kencana Prenada Media Group.
- Moeliono, A. M. (1990). *Kamus besar Bahasa Indonesia*. Jakarta: Balai Pustaka.
- Panjaitan, D. S., & Puryanto, P. (2022). Penyelesaian Sengketa Pelayanan Publik Oleh Lembaga Ombudsman Republik Indonesia. *Jurnal Ilmiah Ekotrans & Erudisi*, 2(1), 88–96.
- Robertson, B., Vignaux, G. A., & Berger, C. E. H. (2016). *Interpreting evidence: evaluating forensic science in the courtroom*. John Wiley & Sons.
- Rosalina, M. (2018). Pengaturan pemeriksaan setempat (Decentee) dalam peraturan perundang-undangan di Indonesia. *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat*, 18(1), 1–10.
- Scoones, I. (2013). Livelihoods perspectives and rural development. In *Critical perspectives in rural development studies* (pp. 159–184). Routledge.
- Wiggins, D. (2013). Claims of need. In *Morality and Objectivity (Routledge Revivals)* (pp. 149–202). Routledge.
- Wignjosebroto, S. (2013). *Hukum Konsep dan Metode*.
- Wixted, J. T., & Wells, G. L. (2017). The relationship between eyewitness confidence and identification accuracy: A new synthesis. *Psychological Science in the Public Interest*, 18(1), 10–65.