

The Status of Local Examination as a Consideration For Judges in the Settlement of Civil Disputes in the Tabanan District Court

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ABSTRACT

Local examination is one of the procedural instruments in civil procedural law that serves as a means for judges to directly observe the disputed object. Although it is not formally classified as evidence under Article 1866 of the Indonesian Civil Code, local examination holds significant value in supporting the judge's conviction regarding material truth. This study aims to analyze the role of local examination and identify the obstacles in its implementation at the Tabanan District Court. The research method used is normative legal research with a statutory, conceptual, and case approach. The results show that local examination plays a vital role in the evidentiary process, especially in land disputes, and often becomes a key judicial consideration in civil case decisions. However, its implementation still faces several challenges, including limited budget, geographical access difficulties, and a lack of legal understanding among the litigating parties. Therefore, there is a need for regulatory reinforcement, increased operational support, and public legal education to ensure that local examination is carried out optimally in upholding justice and legal certainty.

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1. INTRODUCTION

The State of Indonesia is known as a state of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "The State of Indonesia is a state of law." Consequently, all aspects of state life must be based on applicable law and enforced fairly. In the context of civil law, law enforcement efforts are carried out through court mechanisms regulated in civil procedural law. One important aspect of civil procedural law is the evidentiary process, which is the foundation

for judges in making considerations and making decisions.

The process of proof in civil cases is not only based on formal evidence such as evidence of letters, witnesses, testimony, confessions, and oaths, as regulated in Article 1866 of the Civil Code and Article 164 HIR. In judicial practice, there are additional instruments that help strengthen the judge's confidence in the disputed facts, namely local examination (descente). Local examination is an activity of the judge or members of the panel of judges carried out outside the courthouse to directly see the object of dispute in order to obtain a real and objective picture

of the disputed legal facts. Although local examination is not explicitly mentioned as an evidence in the civil evidence system, its existence is recognized and regulated in the provisions of Article 153 HIR, Article 180 R.Bg, and strengthened through the Supreme Court Circular Letter (SEMA) Number 7 of 2001. The purpose of this examination is to provide certainty and clarity to the object of the case, especially in cases involving fixed objects such as land and buildings. This practice is also in line with the principles of simple, fast and low-cost justice.

In the context of Tabanan District Court, local inspection is often used in handling land disputes and other civil cases. However, its implementation is not free from various challenges, such as budget limitations, administrative constraints, and lack of understanding from the litigants. Therefore, it is important to examine in depth how the legal position of local examination as a consideration for judges in resolving cases, as well as how it is applied in judicial practice at the Tabanan District Court. This study aims to determine and analyze the role of local examination in civil procedural law, especially in judicial practice at the Tabanan District Court. In addition, this study also wants to reveal the factors that become obstacles in the implementation of the examination and how it affects the process of evidence and decision making of judges. This study is expected to contribute to the development of civil procedural law, especially in strengthening the status of local examination as one of the means of supporting the achievement of justice and legal certainty.

2. METHODS

This research is a type of normative legal research, namely research that focuses on the study of positive legal norms, both in the form of laws and regulations, legal principles, doctrines, and relevant court decisions. The normative approach is used to analyze the role of local examination in the evidence system of civil cases in Indonesia, especially in the Tabanan District Court. In

practice, this research is also strengthened by a limited empirical approach, namely by examining court decisions and the implementation of local examinations in concrete cases in order to obtain a factual understanding of how the status of local examinations is applied and considered by judges. Thus, this research not only relies on written legal texts, but also considers the legal reality in the field.

The approach used in this research includes several main approaches, namely the statute approach, conceptual approach, and case approach. The statutory approach is used to examine the legal provisions governing local examination, such as those contained in Article 153 HIR, Article 180 R.Bg, and Supreme Court Circular Letter No. 7/2001. Meanwhile, the conceptual approach is used to understand the status of local examination from the perspective of legal theory of evidence and the principle of the rule of law, as well as how the instrument can be scientifically justified as part of the evidentiary process. The case approach is used to analyze the application of local examination in civil case decisions, especially Decision Number 304/Pdt.G/2022/PN Tab, which is an important part of this research discussion. These three approaches complement each other in providing a comprehensive analysis of the topic under study.

The data sources in this research are obtained from primary, secondary, and tertiary legal materials. Primary legal materials consist of laws and regulations that directly regulate judicial power and civil procedural law. Secondary legal materials include literature, doctrines, and scientific articles from legal experts that discuss the concept of proof and local examination practices. Tertiary legal materials include legal dictionaries and encyclopedias used to strengthen the understanding of technical terms. Data collection techniques are carried out through document studies, while data analysis is carried out descriptively qualitatively, namely by organizing legal materials, classifying, and connecting them

logically based on the theoretical framework used. This analysis aims to provide a comprehensive understanding of how local examination is positioned in civil procedural law and how it affects the judge's confidence in deciding disputes, especially in civil cases at the Tabanan District Court.

3. RESULTS AND DISCUSSION

3.1 The Role of Local Examination in Civil Proceedings at Tabanan District Court

Local examination (*descente*) is an important instrument in civil procedural law that serves to provide a real picture for the judge regarding the object of dispute disputed by the parties. Although not explicitly listed as evidence in Article 164 HIR or Article 1866 of the Civil Code, the practice of local examination is recognized in Article 153 HIR and confirmed by Supreme Court Circular Letter Number 7 of 2001 concerning Local Examination. In its implementation, a local examination is conducted by a judge or panel of judges to the location of the object of dispute to directly observe the condition and location of the object, such as the area, land boundaries, and other physical evidence relevant to the case. The results of this inspection are recorded in the Local Inspection Report and can be used as a consideration in deciding the case by the judge, so that even though it is not categorized as the main evidence, its juridical strength remains significant in the evidentiary process.

In judicial practice at the Tabanan District Court, local inspection is often used in cases involving land rights disputes, property collateral loans, and other civil conflicts relating to immovable objects. One concrete example of the application of local inspection is in case No. 304/Pdt.G/2022/PN Tab, where an inspection of the location of the object was carried out by the judge to ensure that the evidence of letters, credit agreements, and confessions of the parties actually match the field conditions. In this case, the judge decided by stating that the defendant had defaulted after going through the evidentiary process, including the results of the local inspection which became the main

consideration in the decision. This proves that local examination is not just an administrative complement, but has an important position in supporting the judge's belief in the disputed legal facts.

The role of local examination in evidence is also closely related to the principles of the rule of law and the principle of substantive justice. In a state of law that upholds the rule of law and due process of law, judges are required not only to rely on formal evidence, but also to explore material truths from the facts of the trial. By directly seeing the object of the case, the judge can obtain a more comprehensive belief and not only fixate on written statements or witness testimony. According to Sudikno Mertokusumo, local examination is one way for judges to ascertain the actual situation themselves, so that it can be used as a basis for consideration in making a fair and proportional decision. Therefore, local examination is not only a technical implementation of procedural law, but also a manifestation of judicial ethics in seeking and upholding justice.

In the context of civil justice in Tabanan District Court, local examination has two main functions, namely as an evidentiary tool that strengthens the validity of other evidence, and as a basis for consideration for judges in forming a belief in material truth. Although in procedural law local examination does not stand alone as the main evidence, its evidentiary power can be significant if supported by other valid evidence, such as letters or witness testimony. Therefore, the existence of local examination cannot be ignored in the civil evidence system, especially in cases that require direct validation of physical objects. This strategic position shows that in practice, local examination plays a major role in realizing the principles of fast, simple and low-cost justice as mandated in the Judicial Power Law.

3.2 Factors Hindering Local Examination in the Process of Handling Civil Disputes at Tabanan District Court

Although local examination is recognized as an important part of the evidentiary process in civil cases, its

implementation in the field often faces various technical and administrative obstacles that have a direct impact on the effectiveness of the trial.

In the Tabanan District Court, local examinations often face obstacles, especially in relation to limited operational budgets. This is because local examination activities require additional costs for transportation of judges, clerks, and related parties, as well as administrative equipment to document the activities. This budget constraint has made the courts more selective in scheduling and conducting local examinations, and in some cases has led to examinations not being conducted even though they are urgently needed.

Other obstacles also come from the administrative side and coordination between parties. The local inspection request process is often poorly prepared by the disputing parties. In some cases, requests are not accompanied by object coordinates, clear location maps, or there is insufficient additional information to support an efficient inspection. The difficult geographical conditions in some areas of Tabanan are also an obstacle. It is not uncommon for the panel of judges to face challenges in the form of narrow access roads, lack of directions to the location, or even the location of the object is in a disputed land that is difficult to access because it is still physically contested by the parties. These limitations make the trial time ineffective and have the potential to cause tension in the field.

The next inhibiting factor is the unpreparedness or lack of legal awareness of the parties in facilitating local inspection. Not all parties understand the importance of this examination as part of the evidentiary process. As a result, there are parties who do not attend or even refuse to participate in the inspection activities because they consider it not mandatory. This makes it difficult for the panel to obtain an objective picture of the object of the dispute, and potentially leads to the judge relying on information from only one party. This obstacle also shows that there are still weaknesses in legal counseling and education on the functions and procedures of

local examination as part of the due process of law mechanism in civil procedural law. Therefore, there needs to be a comprehensive improvement in the aspects of budgeting, technical implementation, and increasing legal understanding for the justice-seeking community, so that local examinations can be carried out optimally and contribute significantly to upholding the principles of justice in civil dispute resolution.

4. CONCLUSIONS

Local examination has an important role in the process of proving civil cases, especially in cases involving immovable objects such as land and buildings, as happened in the Tabanan District Court. Although not categorized as formal evidence in Article 1866 of the Civil Code, local examination still has significant evidentiary power because it can strengthen the judge's confidence through direct observation of the object of dispute. Practice in the field shows that the results of local examinations are often the main consideration in judges' decisions. However, its implementation still faces various obstacles, such as budget constraints, difficulty in accessing the location, and lack of understanding of the parties regarding the importance of the examination, so it is necessary to strengthen regulations, increase operational support, and legal education to the public so that the local examination function can run optimally in supporting the principles of justice and legal certainty.

SUGGESTIONS

Based on the conclusions that have been presented, there are several suggestions that can be submitted as a contribution to the improvement and development of the implementation of local examinations in civil cases:

- 1) There is a need to strengthen regulations regarding local examination in civil procedural law. Although it has been regulated in Article 153 HIR and emphasized through the Supreme Court Circular Letter, the status of local examination is still not equivalent to other

- evidence explicitly. Therefore, it is necessary to formulate implementing regulations or revise the provisions of the civil procedural law to provide a firmer, more structured legal basis and ensure the sustainability of this procedure in the civil justice system.
- 2) Increased budget and logistical support for courts in conducting local examinations. Given that local examinations require human resources, time and operational costs, the Supreme Court and relevant authorities need to ensure that there is an adequate and flexible budget allocation to support their implementation. This is essential so that local examinations are not only conducted in certain cases, but can be implemented fairly and proportionally in every case that requires it.
 - 3) Legal education and counseling to the justice- seeking public also needs to be improved, particularly on the importance of local examination as part of a valid and effective evidentiary process. Litigants need to understand that local examination is not just a formality, but has strategic legal value in determining the direction of the judge's decision. Therefore, judicial institutions and other legal officials need to actively educate the public to be more cooperative and responsive to the trial process, including in facilitating the implementation of local examinations.

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