

**LOCAL LAND EXAMINATION (*GERECHTELIJKE PLAATSOPNEMING*)  
AS A STRATEGY ON LAND OWNERSHIP DISPUTE SETTLEMENT IN COURT**

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**I. LAND OWNERSHIP DISPUTE**

We can almost find the land ownership dispute in every island in Indonesia. Correct, it is uncontested that the land will not be produced again, therefore the land prices getting higher along with the decreasing of existing lands, and the increasing of land value can increase the percentage of conflicts possibilities of such land ownership. The ownership legal rights of land in Indonesia based on Article 16 Indonesian Regulation Number 5 years 1960 regarding Land Law ("**Indonesian Land Law**") divided into: the right of ownership (Hak milik), the right of exploitation (Hak guna usaha) , the right of building (Hak guna bangunan), the right of use (Hak pakai); the right of lease (Hak sewa), the right of opening-up land (Hak membuka tanah ), the right of collecting forest product (Hak memungut hasil hutan), and other right not included in the above mentioned right which shall be regulated by law and rights of a temporary nature as mentioned Article 53. Each of these land rights is different and has its own classification and designation. Such land legal rights is the trigger of conflict between 2 (two) parties or more.

Land dispute is a legal matter between two or more parties arising as a result of injustice felt by a party with regards to the interest and legal right to the land ownership. Several cases of land disputes that occurred in Indonesia, among others, in the form of lawsuits filed by the local community against companies that own the land and buildings of high value on it, in such local community's territory. For example, people in one city in Indonesia are suing a company that owns a dock and / or factory on a plot of land that they claims to belong to them and has never been transferred (the land) to anyone.

In the case of such land rights suit, the local court will perform its function by appointing the panel of judges to examine and decide upon the case. After the panel of judges is elected, the next stage is mediation. This mediation must be carried out because the judge in civil cases is obliged to reconcile the parties before the outbreak of battle in the hearing, because after all in the battle the victorious party becomes charcoal and the loser party becomes ash. If the mediation is not enforced, it will result in the court's decision on the land dispute case to be null and void, which

means whatever the verdict is, it's unexecutable by the parties because the ruling becomes no longer binding on the parties.

However, if the reconciliation is not successfully reached by the parties, the next step is the examination of the case by the panel of judges in which the parties will submit their legal argument to each other, verification and examination of the witness. The crucial evidence to be filed by the defendant as a party that retains its position as a legitimate land owner is the land certificate because in accordance with the provisions of Article 1868 *Burgerlijk Wetboek* Jo. Article 1 point 23 of Government Regulation no. 24 Year 1997 on Land Registration ("**Government Regulation No. 24/1997**") Jo. Article 1 number 1 Government Regulation No. 24/1997 Jo. Article 1 number 20 Government Regulation No. 24/1997, evidence of land ownership is the land certificate which is an Authentic Deed created and issued by the Indonesian National Land Agency ("**BPN**") as the authorized institution. With the submission of the land certificate, it is irrefutable that the company is a legitimate owner of the land. This is because under the provisions of Article 1868 *Burgerlijk Wetboek* Jo. 1870 *Burgerlijk Wetboek* Jo. 285 *Rechtsreglement Buitengewesten* ("**RBg**") can not be denied again the certificate is an Authentic Deed that has the value of perfect evidentiatioon (*volledig*) and binding (*bindinde*).

Other evidence that is important to be presented in the hearing are documents related to the acquisition of the land, among others: the checking stage of the locale and coordination with the BPN to find out who owns the land to be purchased or released by the company, coordination and land acquisition process with the owner land, followed by the application for the issuance of land certificate to BPN including the announcement of the application for building rights in the newspaper with regards that if there is any objection or refutation on the application for the right to use the object, the objectant may file his objection to the local Land Office or Land Office.

The most important strategy to further convince the judges of the legality of land ownership by companies is to conduct a local examination (*Gerechtelijke Plaatsopneming*) which may be applied to the judges by the parties or one of the parties to the land dispute in the hearing.

## II. LOCAL EXAMINATION (**GERECHTELIJKE PLAATSOPNEMING**)

According to Prof. Dr. Sudikno Mertokusumo, S.H. in his book entitled *Criminal Procedure* of the Seventh edition of Indonesia, the Liberty of Yogyakarta, 2006, page 194 The local examination or descente is the examination of a case by a judge ex

officio, outside the building or place of court, in order the judge able to see by himself and obtaining a definite picture or explanation of the disputed events.

M. Yahya Harahap, S.H. in his book regarding *Civil Procedure Law on Claims, Trials, Foreclosures, Verdict and Court Judgments*, Eighth Print, Sinar Grafika Publisher, 2008, page 781 provides the opinion that the local Examination is an official court hearing. Only where the court trial is moving from the courtroom to where the item lies.

Based on the opinion of such 2 (two) legal experts and related to the legal issues that are discussed in this article, it can be concluded that the local examination of land disputes case is an examination conducted by the judge (ex officio) in the location of such land dispute as the object of the case for the judge to get the picture surely about the right to ownership of the land.

Here are the stages of the local examination (*Gerechtelijke Plaatsopneming*) :

1. A local examination (*Gerechtelijke Plaatsopneming*) shall be conducted if the Chief Judge (ex officio) considers it is necessary to carry out a local examination (*Gerechtelijke Plaatsopneming*). In practice, local examination (*Gerechtelijke Plaatsopneming*) are conducted by the Chief Justice of the trial;
2. Local examination (*Gerechtelijke Plaatsopneming*) may also be conducted at the request of the parties. This is as stated in article 211 Reglement of de Rechtvordering (RV). A request made by either party may be filed if the other party has denied the truth of the location, extent or boundaries of the object of the dispute;
3. If the request for a local inspection is based on the order of the Panel of Judges examining the case, then the order shall be set forth in the form of an interlocutor as provided for in Article 153 of *Herzien Indlansch Reglement ("HIR")*, Article 180 RBG, and Article 211 RV;
4. Local Examination ordered by the Judge does not require the consent of the parties, and local examinations may also be attended by principals or legal representatives (the lawyers);
5. For the purposes of the local examination, the Chief Judge appoints one or two commissioners from the panel of judges ("commissioners"). In addition to the commissioners and substitute clerks, local examinations may also be conducted with the assistance of experts but not necessarily. This is as regulated in Article 211 RV.
6. The Commissioner with the help of the court clerks will see the local circumstances and conduct the examination.
7. The judge shall preside over the hearing and to the parties be given equal rights and opportunity to present evidence and facts to strengthen their arguments. The parties are also permitted to present witnesses. If it is necessary, it is allowed to

conduct the land measurement, boundaries checking and make a picture of the land situation.

8. The results of the local examination will then be poured in the minutes of the event. The judge must make a Deed. Minutes containing the results of the local examination may be taken as judges' consideration in deciding the case;
9. If the location of the land is in another district court jurisdiction, then the local examination shall be delegated to the district court whose jurisdiction covers where the object is located.
10. Those who bear local examination fees are charged to the requesting Party or under the provisions of the Judge.

Local examination is one of the crucial strategies in handling cases, because with the local examination the judges can directly examine and question the plaintiff about the location of the land, the land area, and the boundaries of the land. It would be a great suspicion for the panel of judges if the plaintiff's witnesses were unable to explain the details of the location, extent and boundary of the land with the same answer.

Through this local examination, the panel of judges can explore the purpose of the lawsuit. Because by attending directly to the land location, the judges can see what buildings are on it and can estimate how much the increasing of value of the land which has been completed with access road and buildings, compared with the land without buildings and road access. Proverbial, the price of a piece of land only with the price of a plot of land along with access to a large entrance, equipped with a dock building or factory would be very much different. There then the panel of judges can judge whether the filing of this lawsuit is purely to defend the plaintiff's legal rights or just to try their luck because of the increasing price of land after the factories / docks construction and major road access exist there?

Moreover, in the case of the application of certificate to BPN, an announcement has been made to open communication to the parties who has objection. The process of building factories / docks and access roads are not in a shorttime. If the plaintiff has a legal interest in the land, why they file a lawsuit just now? Why don't they submit it since the factory / dock was built?

### **III. CONCLUSION**

Indeed, in fact, this local examination is not set forth as an evidence based on Article 164 HIR (Article 284 Rbg, and Article 1866 BW). However, because the benefit of the local examination is that the judges are able to obtain the certainty about the real condition of the land and the legality of the ownership of the land by the company, the result of the local examination can be used as the basis of consideration by the

judge in giving the decision on the land dispute case, however still it's freedom of judges to consider it or not.

Take the advantage of local examination as a strategy to break the arguments of your opponent. Because if the evidence is only written, for land disputes, is not enough. What's more, today, people with malicious intentions can even "create" written evidence. Do not let companies lose and lose factory or dock assets simply because they do not use the right strategy when handling the case.