

# CIVIL LITIGATION



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1. Filing Complaint

Party can file complaint to the court in written or oral.<sup>1</sup> But complaint in oral can be made only when the complaint which deal with small amount of money and the court clerk have to note all of the statement of complainant in the report. Therefore, this report will consider as complaint.<sup>2</sup>

When receiving complaint the receiver or court clerk should ask the complainant to make two copies of the complaint in order to deliver one document to defendant and the receiver shall have duties as follow:

- Checking the complaint whether it comply with article 75 of Code of Civil Procedure. In case it is insufficient complaint, the receiver can ask complainant to fulfill the lack of information of the complaint but the receiver cannot reject to receive that complaint even it is an insufficient complaint.
- Put stamp
- Putting date on the complaint
- Put item number of the complaint

When received the complaint, it shall be delivered to judge on duty which appoint beforehand by final decision of President of the court which set beforehand annually.

2. Review and Transfer Complaint

Judge on duty shall check the complaint<sup>3</sup> and provide appropriate periods for correcting the insufficient complaint and order to pay tax for submission of the complaint if complainant haven't paid when submit the complaint. In case that complainant does not correct the insufficient complaint or pay tax for application or pay for delivery documents fee to defendant, court shall cancel the complaint by issue decision<sup>4</sup>.

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<sup>1</sup> Code of Civil Procedure, Art 75 (1)  
<sup>2</sup> Code of Civil Procedure, Art 225  
<sup>3</sup> Code of Civil Procedure, Art 78 and 75  
<sup>4</sup> Code of Civil Procedure, Art 78 and 79

After checking the complaint, the court shall deliver the complaint to defendant. Through this complaint, defendant can know who is the complainant, what his or her statement is and what the main facts are that complainant uses for reasons to file the complaint, therefore, defendant can prepare statement reply to the complaint and preparing to defense themselves as well and also can submit some documents if they can.

### 3. Argument Preparation Proceeding

There is no limitation that argument preparation proceeding can conduct many times. The court shall determine the date for the first argument preparation proceeding within 30 days after the submission of the complainant.<sup>5</sup> The date shall be set in the present of both parties. Argument preparation proceeding shall not be in public unless in case the court think that it is appropriate for investigators to presence in the hearing.<sup>6</sup> The purposes of the argument preparing proceeding are to prepare the statements, clarify issue of the case and prepare evidences due to the issue of the case.

#### 3.1. Conciliation Process

The first time of argument preparation proceeding, court shall make conciliation process. Conciliation process can be done in argument preparation proceeding and all stage of procedure.<sup>7</sup> In case that the court thinks that it is impossible to make conciliation process then it is not necessary to make the conciliation process. During conciliation process, if parties agree each other to dissolve dispute or give up his or her claims or accept the claimant, therefore, court shall note in report and the report have enforcement as final judgment. In case that there is no implement accordingly, party can file complaint to court for implementation.

#### 3.2. Statement of Parties

The court shall allow complainant to make oral statement on necessary facts to clarify the facts to the court which will use the facts and reasons to rule judgment because the court cannot use the facts which did not mention or submit by party as reasons to rule judgment<sup>8</sup>. After that defendants shall make oral statement response to the content of the judgment which claimed by complainant.

In the proceeding of preparation for argument, all preparation and clarifications of parties does not consider as evident but parties can request court to check only documents evident.

#### 3.3. Right to Clarify From Court<sup>9</sup>

Court have rights to clarify to parties statements if he or she thinks that the statements is not clear enough or lack of evident which lead the court cannot understand of the content of the claimant. This rights can use during both proceeding preparation for argument or oral argument.

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<sup>5</sup> Code of Civil Procedure, Art 80 (2)

<sup>6</sup> Code of Civil Procedure, Art 105

<sup>7</sup> Code of Civil Procedure, Art 97

<sup>8</sup> Code of Civil Procedure, Art 95

<sup>9</sup> Code of Civil Procedure, Art 90

### 3.4. Checking Documents Evident

In general, checking evident can be done by party requests.<sup>10</sup> By doing so, party can submit to court in written or oral.

Application for checking evident can submit to court before proceeding of preparation for argument or before proceeding of oral argument.<sup>11</sup> Court can issue decision related to this application for checking evident. This decision no needs to be in written since at that time both parties are present and must note in the report.<sup>12</sup> Evident that can be checked in this proceeding only document evident which are necessary for preparation of legal issue and evident.<sup>13</sup> Regarding to witnesses, parties can submit application in proceeding of preparation for argument but the law does not allow to inquiring witnesses at that time.

Moreover, for the facts that must be clarified by checking evident, when argue in oral argument, the court must allow party who request for checking to submit application in that proceeding as well because after proceeding of oral argument the court does not allow parties to submit new application for checking evident except in especial case which according to article 108.

Before finish the proceeding of preparation argument, court shall clarify with parties about facts which will be clarified at later time for checking evident and court must set the date for proceeding of oral argument for both parties can be presence.

### 4. Oral Argument Proceeding

Oral argument proceeding shall be done when both parties can present.<sup>14</sup> This proceeding can be done in public or private, it depends on the situation.

When court set the date for oral argument proceeding, court shall invite witness immediately because witness shall be informed at least two weeks before date of inquiring and attach with documents which determined the point that will be inquiring.<sup>15</sup>

During oral argument proceeding, parties shall make statement about result of argument preparation proceeding. After that court shall start to check evident immediately.<sup>16</sup>

The main proceeding regarding to evident in the oral argument proceeding:

- Inquiring witnesses (Article 132)
- Inquiring parties (Article 140)
- Inquiring to experts (Article 143)
- Checking documents evident (Article 148)
- Checking (Article 161)

Checking evident, if possible should be done by all parties at the same time.

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<sup>10</sup> Code of Civil Procedure, Art 124

<sup>11</sup> Code of Civil Procedure, Art 125

<sup>12</sup> Code of Civil Procedure, Art 213

<sup>13</sup> Code of Civil Procedure, Art 106

<sup>14</sup> Code of Civil Procedure, Art 128

<sup>15</sup> Code of Civil Procedure, Art 138

<sup>16</sup> Code of Civil Procedure, Art 127

When checking evident, if the court think that it is necessary, the court can do the argument preparation proceeding again. In this proceeding, if party accepts the fact so that fact no need to proof by evident. Contrary, the facts which are rejected by parties, those facts shall be clarified by evident<sup>17</sup>.

When finish the statement of all parties and checking evident, court will rule judgment based on result of that statement and checking. Therefore, court must finish oral argument of proceeding but before finish of this proceeding, court can permit each party to do the latest argument<sup>18</sup>.

#### 5. Declaration of Judgment

General court should declare judgment within one month start from the date when finish the oral argument proceeding. The declaration of judgment shall be done in public hearing and read the conclusion of decision to public.<sup>19</sup>

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<sup>17</sup> Code of Civil Procedure, Art 123

<sup>18</sup> Code of Civil Procedure, Art 116

<sup>19</sup> Code of Civil Procedure, Art 187