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The Hidden Dangers of Land Disputes: Why Proof of Ownership Matters in Civil Lawsuits

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Abstract

One of the legal issues regarding civil lawsuits related to land and building rights is "whether or not the description of evidence of ownership of land and building rights is mandatory in the description of the lawsuit". This still causes dualism because there is a legal vacuum in this regard. The objectives of this article are: 1) Analyze the position of the description of proof of ownership in a lawsuit regarding land and building rights issues; and 2) Analyze the ratio decedendi regarding the parsing of proof of ownership in a lawsuit regarding land and building rights issues. This research is doctrinal research with statute, conceptual, and case approaches. The results of this study are, first, related to the description of evidence of ownership of land rights in the lawsuit as a formal requirement of the lawsuit in the issue of disputes over land and building rights is an obligation then the lawsuit can be qualified as an obscure lawsuit (obscuur libel), and of course the juridical consequence is that the lawsuit cannot be accepted (niet ontvankelijke verklaard). Second, from the consideration of the panel of judges in the Cibinong District Court Decision Number 216/Pdt.G/2023/PN Cbi. and District Court Decision 15/PDT.G/2011/PN. GORONTALO, it can be concluded that according to the Panel of Judges, the description of evidence of ownership of land rights in the lawsuit is a formal requirement that must be fulfilled.

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A. INTRODUCTION

In law, there is an adage: "*jus civile est quod sibi populous constituit*" which translates means; "the evil law is what a people has established for itself" (Kamello, 2022). From this legal adage, it can be understood that civil law is one of the laws established by the community to regulate ownership of goods. This is in accordance with the opinion of Cathleen Lie et.al. related to civil law: "Civil law is a branch of law that regulates relationships between individuals or legal entities in terms of their interests. It involves rules and principles governing individual rights and obligations, legal responsibilities, property ownership, contracts, agreements, inheritance, and various disputes between the parties involved. The main objectives of civil law are to protect the rights of individuals, facilitate the resolution of disputes, and uphold justice in interactions between individuals" (Lie et al., 2023).

One of the repressive legal protections established in civil law is through legal remedies in the form of civil lawsuits. (Hussy, 2024). This legal remedy in the

form of a civil lawsuit was formed so that legal subjects who feel that other legal subjects have harmed their civil rights, then these legal subjects can prosecute their civil rights. (Mantili & Sutanto, 2019). This legal remedy, in the form of a civil lawsuit, is qualified as repressive legal protection in civil law, because this remedy is used after a civil rights violation against a legal subject (Scientific & Sumriyah, 2024).

Civil lawsuits are generally qualified into 2 (two): 1) tort; and 2) breach of contract (Zhang, 2023). The fundamental difference between the two is that in tort, the basis of the lawsuit is the existence of an unlawful act committed by the defendant. In contrast, in breach of contract, the basis of the lawsuit is the existence of a breach of agreement committed by the defendant. (Abidin & Kahpi, 2021). This can be seen from the construction of tort and breach of contract arrangements in various countries, among others:

1. Indonesia:
   a. Tort: generally regulated in Article 1365 of the Indonesian Civil Code: "Every unlawful act that causes damage to another person obliges the wrongdoer to compensate such damage" (Purwadi et al., 2019).
   b. Breach of Contract: generally set out in 1) Article 1238 Indonesian Civil Code: "The debtor shall be deemed in default, either by an order or other similar deed, or pursuant to the obligation itself, where such obligation stipulates that the debtor shall be in default, upon failure to deliver within the stipulated time period"; 2) Article 1243 Indonesian Civil Code: "Compensation for costs, damages and interests for the breach of an obligation only becomes obligatory, if the debtor, after having been declared to be in default, remains in default, or in the case of obligations where he must give or produce something, is only given after the lapse of a period of time"; and 3) Article 1244 of the Indonesian Civil Code: "If there is any reason for such, the debtor is compensated for costs, damages and interests if he cannot prove, that the non-performance or the late performance of such obligation, is caused by an unforeseen event, for which he is not responsible and he was not acting in bad faith" (Nurhayati et al., 2022).
2. Netherlands:
   a. Tort: generally regulated in Article 6:162 of the Dutch Civil Code: 1) A person who commits a tortious act (unlawful act) against another person that can be attributed to him, must repair the damage that this other person has suffered as a result thereof; 2) As a tortious act is regarded a violation of someone else's right (entitlement) and an act or omission in violation of a duty imposed by law or of what according to unwritten law has to be regarded as proper social conduct, always as far as there was no justification for this behavior; and 3) A tortious act can be attributed to the tortfeasor [the person committing the tortious act] if it results from his fault or from a cause

for which he is accountable by virtue of law or generally accepted principles (common opinion) (Wijntjens, 2023).

b. Breach of Contract: generally regulated in Article 6:265 of the Dutch Civil Code: 1) Every failure of a party in the performance of one of his obligations, gives the opposite party the right to rescind the mutual agreement in full or in part, unless the failure, given its specific nature or minor importance, does not justify this rescission and its legal effects; and 2) As far as performance is not permanently or temporarily impossible, the right to rescind the mutual agreement only arises when the debtor is in default (Schelhaas, 2023).

3. Thailand:

a. Tort: generally regulated in: 1) Section 420 Thailand Civil and Commercial Code: "A person who, willfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore"; and 2) Section 421 Thailand Civil and Commercial Code: "The exercise of a right which can only have the purpose of causing injury to another person is unlawful."(Reekie & Reekie, 2018)

b. Breach of Contract: generally regulated in: 1) Section 203 Thailand Civil and Commercial Code: "If a time for performance is neither fixed nor to be inferred from the circumstances, the creditor may demand the performance forthwith, and the debtor may perform his part forthwith. If a time is fixed, it is to be presumed, in case of doubt, that the creditor may not demand the performance before that time; the debtor, however, may perform earlier"; 2) Section 207 Thailand Civil and Commercial Code: "a creditor is in default if, without legal ground, he does not accept the performance tendered to him"; 3) Section 213 Thailand Civil and Commercial Code: "If a debtor fails to perform his obligation, the creditor may make a demand to the court for compulsory performance, except where the nature of the obligation does not permit it. When the nature of an obligation does not permit compulsory performance, if the subject of the obligation is the doing of an act, the creditor may apply to the court to have it done by a third person at the debtor's expense; but if the subject of the obligation is the doing of a juristic act, a judgment may be substituted for a declaration of intention by the debtor. As to an obligation whose subject is the performance of an act, the creditor may demand the removal of what has been done at the expense of the debtor and have proper measures adopted for the future. The provisions of the foregoing paragraphs do not affect the right to claim damages"; and 4) Section 222 Thailand Civil and Commercial Code: "The claim of damages is for compensation for all such damage as usually arises from nonperformance. The creditor may demand compensation even for suchdamage as has arisen

from special circumstances, if theparty concerned foresaw or ought to have foreseen such circumstances." (Wisuttisak, 2018)

In civil lawsuits, one of the most frequently encountered problem areas is land and building rights disputes (Saranani, 2022). This is because land and building rights are one of the civil objects of very high value. After all, at least it is needed as a person's residence (Rongalaha & Yoseph Palenewen, 2022). Not to mention, today, the rapid development of human demographics makes land, which cannot increase in number, certainly an increasingly scarce commodity (Rachma, 2019). The frequency of civil lawsuits related to land and building rights issues does not parallel the complete regulation of civil lawsuits related to land and building rights. There are still many vacant rules (*leemten in het recht*), vague laws, and even conflicts of law. This condition is actually in accordance with the legal adage: "*het recht hink achter de feiten aan*" which means, that (the law) always lags behind the events it regulates (Silubun & Alputila, 2021).

One of the countries whose regulations still have many legal problems (*in casu*: rule vacuum, vague of law, and/or conflict of law) regarding civil lawsuits related to land and building rights issues with is Indonesia (Nafan, 2022). In Indonesia, there are still many civil lawsuit problems regarding land and building rights issues, especially many lacunae in the procedural law related to this matter (Makalew et al., 2023).For example, whether or not a local examination (*descente*) is required in the examination of land and building rights disputes, whether or not the boundaries of land and buildings must be described in the lawsuit, whether or not evidence of ownership of land and buildings must be described in the lawsuit description, and so on.

One of the legal issues regarding civil lawsuits related to land and building rights is "whether or not the description of evidence of ownership of land and building rights is mandatory in the description of the lawsuit". In a lawsuit, it is often found that the plaintiff describes issues related to land and building rights that are argued by the plaintiff to be related to the land and building rights of the defendant. However, the plaintiff does not describe evidence of the defendant's ownership of land and building rights in his lawsuit. For example, the plaintiff wanted to claim that the defendants' sale and purchase of land and buildings was invalid. However, the plaintiff only described that the object of the invalid sale and purchase of land and buildings was related to land and buildings on a certain road, without describing evidence of ownership of the land and buildings that were argued to be invalid.

In Indonesia's *ius constitutum* construction, there is still a legal vacuum regarding "whether or not the description of evidence of ownership of land and building rights is mandatory in the lawsuit's description". On this basis, there is a dualism of opinion regarding this matter. Some argue that the description of evidence of ownership of land and building rights in the description of the lawsuit

is a formal legal obligation in the lawsuit, which when not done causes the lawsuit to be formally defective and has the juridical consequence that the lawsuit cannot be accepted (*niet ontvankelijke verklaard*). Some argue because there is nothing in the laws and regulations *expressis verbis* related to the obligation to describe evidence of ownership of land and building rights in the description of the lawsuit, then when it is not done, it does not have any juridical consequences.

Based on the above description, it can be understood that in Indonesia, there are still legal problems in the form of a legal vacuum regarding the obligation to describe evidence of ownership of land and building rights in the lawsuit. For the existence of this legal problem, it is certainly important to conduct further analysis to provide legal certainty regarding whether or not the description of evidence of ownership of land and building rights is mandatory in the lawsuit's description. When this legal problem continues to be ignored, there will be much dualism, and this will lead to legal uncertainty in Indonesia, whereas for matters of formal law or procedural law, which in fact are rules related to procedures in filing civil lawsuits, of course, must reflect legal certainty comprehensively to realize procedural justice for everyone (Prusiński, 2020). The importance of legal procedures that reflect legal certainty to create procedural justice is in accordance with the opinion of Philippe Nonet and Philip Selznick: "Procedure is the heart of law". Regularity and fairness, not substantive justice, are the first ends and the main competence of the legal order" (Sahabuddin & Zulfikar, 2023).

Based on the above description, the problem formulation in this article is: 1) The position of parsing evidence of ownership in a lawsuit regarding land and building rights issues; and 2) *Ratio decedendi* regarding the description of proof of ownership in a lawsuit regarding land and building rights issues. The objectives of this article are: 1) To analyze the position of the parsing of evidence of ownership in a lawsuit concerning land and building rights issues and 2) Analyzing the *ratio decedendi regarding the parsing of evidence of ownership in a lawsuit* regarding land and building rights issues.

Throughout the author's search, there is no article similar to this article, so this article can be qualified as an original article that is novel. However, to ensure that there is novelty in this article, a comparison will be made with articles related to this article. *First*, an article by Clarisa Adelia Tanry and Kartika Anjelina Sembiring Meliala entitled: " Tinjauan Yuridis terhadap Putusan Gugatan yang Tidak Dapat Diterima Oleh Majelis Hakim " published in Syntax Literate: Indonesian Scientific Jurnal, Volume 7 Number 3, in 2022 (Tanry & Meliala, 2022). In the article, the authors analyzed the formal requirements of a lawsuit to not be rejected by the panel of judges and the reasons that resulted in the plaintiff's lawsuit in decision case No. 745/Pdt.G/2016/PN.Mdn not being accepted. The difference with the article is that the focus of this article is to analyze the position of describing proof of ownership in a lawsuit regarding land and building rights

issues as one of the formal requirements of a lawsuit that is not analyzed in the article and the decision analyzed is different from the decision. *Second*, an article by Yulies Tiena Masriani entitled: " Pentingnya Kepemilikan Sertifikat Tanah Melalui Pendaftaran Tanah Sebagai Bukti Hak" published in the USM Law Review Journal, Volume 5 Number 2, in 2022 (Masriani, 2022). In the article, the authors analyze procedures and the importance of certificates as proof of rights. The difference with the article is that the focus of this article is to analyze the position of describing proof of ownership in a lawsuit regarding land and building rights issues as one of the formal requirements of a lawsuit that is not analyzed in the article.

B. RESEARCH METHOD

This research is doctrinal research. Doctrinal research is research that analyzes existing legal issues to answer these legal issues (Nugraha et al., 2019). The legal issue to be analyzed in this article is the position of parsing proof of ownership in a lawsuit regarding land and building rights issues. The approaches used in this research are statute approach, conceptual approach, and case study (Winarsi & Moechtar, 2020). The data used is secondary data, with the legal materials used are primary legal materials in the form of laws and regulations related to the position of parsing proof of ownership in lawsuits regarding land and building rights issues and secondary legal materials in the form of books, articles on the internet, articles in scientific journals, and so on related to the position of parsing proof of ownership in lawsuits regarding land and building rights issues. The legal materials collected from library research

C. RESULTS AND DISCUSSIONS

The Position of Describing Evidence of Ownership in a Lawsuit Regarding Land and Building Rights Issues

Before elaborating on the position of parsing evidence of ownership in a lawsuit regarding land and building rights issues, it will first be briefly described about the regulation of the formal requirements of lawsuits in Indonesia. Before elaborating on the arrangement of the formal requirements of a lawsuit in Indonesia, the position of civil procedural law in Indonesia will also be briefly described to obtain a comprehensive understanding of the formal requirements of a lawsuit in Indonesia, which is part of civil procedural law in Indonesia. In Indonesia, it can be said that civil procedural law has not been comprehensively regulated. This can be seen from at least 3 (three) aspects: *First*, there is no unification of the regulation of civil procedural law in Indonesia (Sujendro, 2020). Currently, for the settlement of civil disputes in court, provisions sourced from the Het Herziene Indonesische Reglement (HIR) and Reglement Buitengewesten (RBG) are still used as sources of civil procedural law in Indonesia based on the principle of concordance (Yuni Priskila et al., 2023). HIR is the procedural law

used in the civil cases trial on Java and Madura islands. This regulation was in effect during the Dutch East Indies era, listed in *Staatblad* 1848 Number 16. Meanwhile, RBG is a procedural law that applies in the trial of civil cases outside Java and Madura, as *Staatblad* 1927 Number 227. This shows that there are different arrangements for civil procedural law, including those related to civil lawsuits, even though they are both in Indonesia.

In comparison with criminal procedure law in Indonesia, it can be seen that there is already a unification or national regulation (Sujarwo, 2021). This can be seen from Law Number 8 of 1981 concerning Criminal Procedure (hereinafter "KUHAP"). Article 286 of KUHAP stipulates: "This Law shall come into force on the date of its promulgation. In order that every person may know it, it is ordered that this law be promulgated by placing it in the State Gazette of the Republic of Indonesia." From Article 286 of KUHAP, it can be understood that this KUHAP applies throughout the territory of Indonesia, not applicable to certain areas, such as HIR and Rbg.

Secondly, many civil procedural law arrangements are regulated not through legislation but through policies (*beleidsregel*) or *pseudo wetgeving*. Article 7 of Law No. 11/2011 on the Establishment of Legislation as amended by Law No. 15/2019 and Law No. 13/2022 stipulates: "(1) Types and hierarchy of Laws and Regulations consist of: a. Constitution of the Republic of Indonesia Year 1945; b. Decree of the People's Consultative Assembly; c. Law / Government Regulation in Lieu of Law; d. Government Regulation; e. Presidential Regulation Government Regulation; e. Presidential Regulation; f. Provincial Regional Regulations; and g. Regency/City Regional Regulations. (2) The legal force of laws and regulations is in accordance with the hierarchy as referred to in paragraph (1)." In addition, Article 8 of Law Number 11 of 2011 concerning the Formation of Legislation as amended by Law Number 15 of 2019 and Law Number 13 of 2022 stipulates: "1) Types of Legislation other than as referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, House of Representatives, Regional Representatives Council, Supreme Court, Constitutional Court, Supreme Audit Agency, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions of the same level established by Law or Government by order of Law, Provincial Regional House of Representatives, Governors, Regency / City Regional House of Representatives, Regents / Mayors, Village Heads or equivalent. (2) The Laws and Regulations as referred to in paragraph (1) shall be recognized and have binding legal force to the extent ordered by higher Laws and Regulations or established based on authority."

In Indonesia, many civil procedural laws are not regulated in laws and regulations, as Article 7 jo. 8 of Law Number 11/2011 on the Formation of Legislation as amended by Law Number 15/2019 and Law Number 13/2022. Many civil procedural laws are regulated in the Supreme Court Circular Letter, which is only

a policy (beleidsregel) or all rules (pseudo wetgeving) and is not qualified as a statutory regulation, as Article 7 jo. 8 of Law Number 11/2011 on the Establishment of Legislation as amended by Law Number 15/2019 and Law Number 13/2022. This arrangement can be found in several Supreme Court Circular Letters unqualified as laws and regulations (Kamil et al., 2020). For example: 1) Supreme Court Circular Letter Number 03 of 2023 dated December 29, 2023 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2023 as Guidelines for the Implementation of Duties for the Courts; 2) Supreme Court Circular Letter Number 01 of 2022 dated December 15, 2022 on the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2022 as Guidelines for the Implementation of Duties for Courts; 3) Supreme Court Circular Letter Number 05 of 2021 dated December 28, 2021 on the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2021 as Guidelines for the Implementation of Duties for Courts; and so on. For example, in Supreme Court Circular Letter Number 01 of 2022 dated December 15, 2022 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2022 as Guidelines for the Implementation of Duties for Courts, it is stipulated: "The statement of claim that describes the legal relationship of the agreement between the plaintiff and the defendant, but the petitum of the claim requests that the defendant be declared to have committed an unlawful act, does not cause the claim to be blurred". This arrangement is qualified as a civil procedural law arrangement that should be regulated in legislation, not just a policy, especially since Indonesia is a civil law system country whose source of law is legislation (Wardhani et al., 2022).

Third, there is no comprehensive regulation related to the formal lawsuit requirements in the legislation and the legal consequences when it does not meet the formal requirements. In Indonesia, the formal requirements of a lawsuit in the laws and regulations and the legal consequences when they are not met are not comprehensively regulated. Indeed, in the HIR and Rbg, there are arrangements related to several formal requirements of the lawsuit, but these are not regulated in a special chapter, and there are very few arrangements. For example, relative competence is regulated in Article 118 HIR and Article 142 Rbg (Judge, 2023).

The fact that the formal requirements of the lawsuit are not regulated in the laws and regulations does not mean that the formal requirements of the lawsuit do not apply in Indonesia. The formal requirements of the lawsuit that are not regulated in the legislation have formal legal sources from doctrine and jurisprudence. Some examples of these formal requirements include:

1. Completeness of the party being sued. The parties that need to be drawn for a lawsuit to qualify as a lawsuit that is not formally defective are not regulated in the legislation. This is even though it has an important role in

constructing a lawsuit. For example, related to the need to withdraw third parties when in a land rights lawsuit when the land rights have been transferred, the legal source is based on the Permanent Jurisprudence of the Supreme Court, namely Supreme Court Decision Number 621 K / Sip / 1975 (Rafiqi et al., 2023).

2. Clarity of the legal basis of the lawsuit. In the Posita or *fundamentum petendii of the lawsuit*, the Plaintiff should describe the legal basis of the lawsuit. However, there are times when the Plaintiff does not explain the legal basis (*rechts grond*) and the events or events underlying the lawsuit (Harahap, 2017). Such a lawsuit argument does not meet the formal requirements. The lawsuit is considered unclear and uncertain (*een duideljke en bepaalde conclusie*). (Harahap, 2017). This formal requirement can be seen in the Supreme Court's Permanent Jurisprudence, namely Supreme Court Decision Number 250 K/Pdt/1984 (Shirley et al., 2022).

From the description above, it can be understood that the formal requirements of the lawsuit, which is one of the qualifications of civil procedural law in Indonesia, has not been comprehensively regulated. This certainly has juridical logical consequences as well, that the formal requirements of the lawsuit in the issue of disputes over land and building rights have also not been comprehensively regulated. Therefore, the formal requirements of the lawsuit in disputes over land and building rights are still based on doctrine and jurisprudence, so often, a formal requirement for the formal requirements of the lawsuit in disputes over land and building rights becomes a dualism.

One of the formal requirements of a lawsuit in disputes over land and building rights is related to the obligation to describe evidence of ownership of land rights in the lawsuit. Article 32 of Government Regulation Number 24 of 1997 concerning Land Registration stipulates: "A certificate is a proof of right that serves as strong evidence of the physical and juridical data contained therein, provided that the physical and juridical data are in accordance with the data contained in the measurement certificate and land book of the right concerned." In addition to certificates, Article 24 of Government Regulation No. 24/1997 on Land Registration regulates several old proof rights, such as "grosse akta hak eigendom", "petuk" and so on. Thus, proof of ownership of land rights in a lawsuit does not have to be a certificate.

There is dualism related to the formal requirements of the lawsuit in the issue of disputes over land and building rights regarding the elaboration of evidence of ownership of land rights in the lawsuit namely some argue that the elaboration of evidence of ownership of land and building rights in the description of the lawsuit is a formal legal obligation in the lawsuit which when not done causes the lawsuit to be formally defective and the juridical consequences of the lawsuit cannot be accepted (*niet ontvankelijke verklaard*). Some argue that because there is nothing in

the laws and regulations *expressis verbis* related to the obligation to describe evidence of ownership of land and building rights in the description of the lawsuit, then when it is not done, it does not have any juridical consequences.

In the author's opinion, related to the description of evidence of ownership of land rights in the lawsuit as a formal requirement of the lawsuit in the issue of disputes over land and building rights is an obligation. The basis for this opinion: *First*, to ensure that the lawsuit is not non-executable. In a lawsuit related to land and building rights issues, generally what the Plaintiff wants is related to the transfer of ownership of the land and building rights. Therefore, when there is no evidence of ownership of land and building rights in the land dispute, the question arises as to what ownership object or ownership object with what number was transferred to the Plaintiff. When the Plaintiff does not describe the proof of ownership at issue, then even if the Plaintiff wins, because there is no description of what ownership object or ownership object with what number was transferred to the Plaintiff, then administratively when a transfer is made at the Indonesian National Land Office, it cannot be done. This will actually make the lawsuit non-executable and harm the Plaintiff himself.

Second, by analogy, describing the boundaries of the disputed object, which is the identity of the object of land rights, is an obligation, so of course, describing proof of ownership, which is the identity of the object of land rights, is also an obligation. In Supreme Court Circular Letter No. 03/2018 dated November 16, 2018 on the Implementation of the Formulation of the Results of the 2018 Plenary Meeting of the Supreme Court Chambers as Guidelines for the Implementation of Duties for Courts, it is basically stipulated that a lawsuit regarding uncertified land and/or buildings that does not describe the location, size, and boundaries must be declared unacceptable (Kandou et al., 2023). Related to this obligation, it was also emphasized at the National Working Meeting of the Supreme Court in Makassar in 2007". At the time of execution, the President of the District Court asked the Court of Appeal for an opinion with the question of whether execution could be carried out, while the object of dispute in the evidence of PK I, PK II and PK III was not mentioned either the object of dispute, the area, location and boundaries of the land. The Court of Appeal gave instructions that the verdict was non-executable.

An object of execution is determined by the boundaries mentioned in the judgment derived from the object mentioned in the lawsuit. This is also in accordance with the Permanent Jurisprudence of the Supreme Court, namely Supreme Court Decision Number 1149 K / Sip / 1975 dated April 17, 1979 whose legal rules: "because the lawsuit letter does not clearly state the location/boundaries of the disputed land, the lawsuit cannot be accepted" (Shirley et al., 2022).

From the description above, it can be understood that describing the boundaries of the disputed object in the lawsuit is essential, so it should be

qualified as an obligation in the lawsuit because it is an obligation to identify the object of land rights and to ensure that the lawsuit is not non-executable. On this basis, when describing the boundaries of the disputed object, which is the identity of the object of land rights is an obligation in the lawsuit. By analogy, it can be said that describing the proof of ownership of land rights which is the identity of the object of land rights is also an obligation.

Third, to ensure that another party does not own the object. When the Plaintiff does not describe the proof of ownership of the rights to the building, then if it is true that the lawsuit is granted by the Panel of Judges and the object will be executed through the Indonesian National Land Office, there is a possibility that the object is not the intended object and is even an object belonging to another party. This will certainly make the lawsuit non-executable, as Book II of the 2007 Edition of the Supreme Court on Administrative and Technical Guidelines for General Civil and Special Civil Courts enacted based on the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: KMA/032 / SK /IV /2006 Regarding the Application of Book II Guidelines for the Implementation of Duties and Court Administration affirmed: "A decision that has permanent legal force can be declared non-executable by the Chairman of the District Court, if: ..b. The goods to be executed are not in the hands of the Defendant I Respondent of the execution;". Even if the Plaintiff enforces it, then this has the potential to cause a new dispute between the Plaintiff and the other party and the judge as the legal adage: "*boni judicis est lites dirimere, ne lis ex liteoriatur*" which basically means, that a good Judge must prevent litigations, that suit may not grow out of suit (Veech & Moon, 1947).

Fourth, the absence of evidence of ownership of land rights has the juridical consequence that the basis of the Plaintiff's rights in relation to land rights in the lawsuit is unclear. As described above, in a lawsuit related to land and building rights issues, generally what the Plaintiff wants is related to the transfer of ownership of the land and building rights and usually the Plaintiff is entitled to the rights to the land. When the Plaintiff does not elaborate in the lawsuit, the basis of the Plaintiff's rights related to land rights in the lawsuit becomes unclear. This is in accordance with the Supreme Court's Permanent Jurisprudence, namely Supreme Court Decision Number 565 K/Sip/1973 whose legal rules are: "The lawsuit must be declared inadmissible because the basis of the lawsuit is imperfect, in this case because the plaintiff's rights to the disputed land are unclear" (Sari et al., 2020).

Based on these 4 (four) arguments, it is the author's opinion that the description of evidence of ownership of land rights in the lawsuit as a formal requirement of the lawsuit in the issue of disputes over land and building rights is an obligation. Therefore, when evidence of ownership of land rights is not described in the lawsuit by the Plaintiff, the lawsuit can be qualified as an *obscure*

lawsuit (*obscuur libel*). When the lawsuit is qualified as an *obscuur libel*, the juridical consequence is that the lawsuit becomes unacceptable (*niet ontvankelijke verklaard*) (Tarigan et al., 2023)As the Supreme Court's Permanent Jurisprudence, namely Supreme Court Decision Number 194 K/Pdt/1996, dated December 28, 1998, the rule of law is: "The lawsuit cannot be accepted because the arguments of the lawsuit have confused default with tort, which results in the lawsuit containing *obscuur libel*".

Ratio Decedendi Regarding the Description of Evidence of Ownership in a Lawsuit Regarding Land and Building Rights Issues

In law there is an adage: "*cursus curiae est lex curiae*" which basically means that the practice of the court is the law (Endang et al., 2022). Related to the description of proof of ownership of land rights in the lawsuit as a formal requirement of the lawsuit in the issue of disputes over land and building rights as an obligation, this can also be seen in the Cibinong District Court Decision Number 216/Pdt.G/2023/PN Cbi. and District Court Decision 15/PDT.G/2011/PN. GORONTALO. The following will describe the two decisions.

First, in the Decision of the Cibinong District Court Number 216/Pdt.G/2023/PN Cbi, the Plaintiff is Ir. Drs. H. R. Darodjat Atas Noto Siswojo, the Defendant is Budiyana, Co-Defendant I Bank Tabungan Negara (BTN) Bogor Branch. That the matter summarises that the Plaintiff has purchased on credit a house type 36/113 m2 of Griya Kenari Mas Block E-2 Number 12 A RT.03/RW.11 Cileungsi Sub-district, Bogor Regency on behalf of Budiyana, from the Defendant on January 4, 1993, based on a receipt in the amount of Rp6,500,000.00 (six million five hundred thousand rupiah). Every month the Plaintiff has paid dues on behalf of the Defendant to the 1st Defendant from 1993 until 2008, as evidenced by proof of payment to the 1st Defendant. That when the Plaintiff wanted to collect the certificate for the type 36/113 m2 house in the Griya Kenari Mas Block E-2 Number 12 A project on behalf of the Defendant from the Defendant I, the Defendant I said that a decision from the Cibinong District Court was required, therefore the Plaintiff filed a lawsuit.

That, as for the points of legal consideration, the panel of judges:

1. Considering, that based on petitum number 2 of the Plaintiff's lawsuit, the Plaintiff basically requests the Judge to "declare that the Plaintiff is the legal owner of the certificate of the type 36/113 m2 house in the Griya Kenari Mas Block E-2 Number 12 A RT 03/RW 11 Cileungsi District, Bogor Regency, in the name of Budiyana". Petition number 3 reads "ordering the 1st Defendant to immediately provide the certificate of the house type 36/113 m2 of the Griya Kenari Mas Block E-2 Number 12 A project in the name of Budiyana to the Plaintiff". From the two petitions, the Plaintiff did not mention the certificate number of the house *a quo*;

2. In the statement of claim, the Plaintiff also did not mention the house certificate number requested in the petitum of his lawsuit;
3. Therefore, the Panel of Judges is of the opinion that by not mentioning the house certificate number requested in the petitum of the lawsuit makes the Plaintiff's lawsuit vague and unclear (*obscuur libel*) because every certificate of ownership rights must have a number.
4. This (*in casu*: not describing the certificate number) will cause difficulties during the implementation of a legally binding decision, so the Plaintiff's claim must be declared unacceptable.

Based on these considerations, the Panel of Judges rendered a verdict:

JUDGE:

1. Stating that the Defendant and Co-Defendant I have been legally and properly summoned but did not appear;
2. Declare the Plaintiff's claim inadmissible by way of a verdict;
3. Punish the Plaintiff to pay court costs in the amount of Rp3,668,000.00 (three million six hundred sixty eight thousand rupiah);

Second, District Court Decision 15/PDT.G/2011/PN. GORONTALO. The plaintiffs are Djaurin Abas, Riki Helingo, Eton Helingo, Deno Helingo. The first defendant is Suryanti Helingo, the second defendant is Uki Setiawan, the third defendant is BTPN Bank Limboto. Co-Defendant I is Lisa Nento, S.H., M.kn. and the Government of the Republic of Indonesia cq. Minister of Home Affairs Cq. Head of Land Office of Gorontalo Municipality as Co-Defendant II. That the summary of the matter is that the Plaintiffs own a house and land at Jalan Andalas No. 32 Paguyaman Village, Kota Tengah Sub-District, Gorontalo City, based on inheritance from their husband/father, the late HASYIM HELINGO. Initially, Plaintiff I wanted to borrow money to increase the capital of his furniture business, with only the certificate of the house and shop located at Jalan Andalas No. 32, Paguyaman Village, Central City Sub-District, Gorontalo City. And the house and land certificates were with Muamalat Bank. Plaintiff I had entrusted the management of the credit pass to Defendant I and Defendant II. However, Defendant I and Defendant II secretly had bad intentions, by fabricating the house and land certificates as if they had been purchased by Defendant II, with the involvement of Co-Defendant I Notary LISA NENTO, S.H., M. Kn. Whereas the Plaintiffs had trusted Defendant I and Defendant II because they were related to the deceased husband and father of the Plaintiffs. In actual fact, the sale of the house and land never took place. Because Defendant I and Defendant II had no capital and also the Plaintiffs only borrowed the name of Defendant II as collateral from the bank. On this basis, the Plaintiffs strongly objected and were severely disadvantaged, because the actions of Defendant I and Defendant II were unlawful, and to further hurt the Plaintiffs, Defendant I and Defendant II claimed and stated that the land and house located at Jalan Andalas No. 32, Paguyaman Village, Kota Tengah Sub-District, Gorontalo City had been purchased by the Defendants, by

making a Sale and Purchase Deed and fabricating a Letter of Ownership. Whereas the Plaintiffs only borrowed the name of Defendant II to increase the capital of the furniture business, but was misused by Defendant I and Defendant II. That, as for the points of legal consideration, the panel of judges:

1. That indeed the Plaintiff does not clearly state the right number of the certificate either in the Posita or in the Petitum
2. Considering, that based on the aforementioned considerations, the Plaintiff's claim is unclear or vague, therefore the exception is reasonable according to law.
3. Considering, that because the exception is declared reasonable according to law, the Plaintiff's claim must be declared unacceptable;

Based on these considerations, the Panel of Judges rendered a verdict:

IN EXCEPTION.

1. Stating that the exception of Defendant II is accepted;
2. Declare the Plaintiff's lawsuit inadmissible;
3. Punish the Plaintiff to pay court costs in the amount of Rp. 1,091,000.- (one million nine one thousand) Rupiah

From these 2 (two) examples of decisions, it can be understood that the panel of judges considered that because evidence of ownership of land and building rights was not mentioned, especially related to the certificate number, in a civil lawsuit related to land rights disputes, the lawsuit was qualified as an obscure lawsuit (*obscuur libel)*. Because it is qualified as obscure, the Panel of Judges declares the lawsuit as inadmissible (*niet ontvankelijke verklaard*). Thus, it can be concluded from these two examples of decisions that the judges qualified the description of proof of ownership in civil lawsuits related to land and building rights disputes as a formal requirement that must be fulfilled.

Based on the above description, in the construction of *ius constituendum*, at least 2 (two) things can be done based on the existing timeframe. In the short term, the Supreme Court affirmed in the Supreme Court Circular Letter, that the description of proof of ownership of land rights in the lawsuit as a formal requirement of the lawsuit in the matter of disputes over land and building rights as an obligation with juridical consequences when not done is that the lawsuit can be qualified as an *obscure lawsuit (obscuur libel*) and the Panel of Judges can declare the lawsuit inadmissible (*niet ontvankelijke verklaard*). In the long term, related to proof of ownership of land rights in the lawsuit as a formal requirement of the lawsuit in the issue of disputes over land and building rights as an obligation is regulated in the Draft Law on Civil Procedure.

D. CONCLUSION

There are 4 (four) arguments related to the description of evidence of ownership of land rights in the lawsuit as a formal requirement of a lawsuit in the issue of disputes over land and building rights is an obligation, namely to ensure

that the lawsuit is not non-executable, analogously; describing the boundaries of the disputed object which is the identity of the object of land rights is an obligation, so, of course, describing the proof of ownership which is the identity of the object of land rights is also an obligation, to ensure that the object in question is not another party, and *by* not describing the proof of ownership of land rights, the juridical consequences are not clear the basis of the Plaintiff's rights related to land rights in the lawsuit Therefore, when the proof of ownership of land rights is not described in the lawsuit by the Plaintiff, the lawsuit can be qualified as an *obscure lawsuit* (*obscuur libel*). When the lawsuit is qualified as an *obscure libel*, then of course the juridical consequence is that the lawsuit cannot be accepted (*niet ontvankelijke verklaard*). This is as considered by the panel of judges in the Cibinong District Court Decision Number 216/Pdt.G/2023/PN Cbi. and District Court Decision 15/PDT.G/2011/PN. GORONTALO.

In the short term, the Supreme Court emphasized in the Supreme Court Circular Letter, that the description of proof of ownership of land rights in a lawsuit as a formal requirement of a lawsuit in the issue of disputes over land and building rights as an obligation with juridical consequences when not done is that the lawsuit can be qualified as an *obscure lawsuit (obscuur libel*) and the Panel of Judges can declare the lawsuit inadmissible (*niet ontvankelijke verklaard*). In the long term, related to proof of ownership of land rights in the lawsuit as a formal requirement of the lawsuit in the issue of disputes over land and building rights as an obligation is regulated in the Draft Law on Civil Procedure.

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We declare that there are no competing interests among the authors regarding this research article.

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