



JUDICIAL CONSIDERATION OF ERROR IN PERSONA AND OBSCUR LIBEL IN DECISION No. 46/Pdt.Sus-PHI/2023/PN Sby

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ABSTRACT

This study aims to analyze the judges' considerations regarding the defendant's exceptions in a civil case through a case study of Decision No. 46/Pdt.Sus-PHI/2023/PN Sby. Therefore, the author raises a legal issue concerning the impact of errors in stating the identities of the parties in a lawsuit, as well as the status of the land and building under SHM No. 352 as an object of conservatory attachment. This research employs a normative juridical method using a statutory and case approach. The findings indicate that the panel of judges consistency with Indonesian civil procedural law by granting several exceptions raised by the defendant, namely error in persona and obscur libel. The court determined that the plaintiff's claim contained formal defects. Consequently, the claim was declared inadmissible (niet ontvankelijk verklaard). This decision is consistent with the Supreme Court jurisprudence No. 601 K/Sip/1975 concerning the misidentification of a defendant and No. 81 K/Sip/1971 concerning the clarity of the object of a land dispute. The study demonstrates that, within the framework of civil procedural law, exceptions play an essential role as an initial mechanism for determining whether a claim is sufficiently proper to proceed to further judicial examination. Furthermore, the findings emphasize the importance of exercising greater precision when drafting a statement of claim, particularly with regard to the identities of the parties and the subject matter of the dispute, so that a claim is not dismissed merely due to formal defects.

Keywords: *Exceptions, Judges' Considerations, Inadmissible*



A. PENDAHULUAN

The law exists to resolve various problems, as a facilitator for various people who want their problems resolved. The division of several types of law in Indonesia is a step towards resolving problems in the right way. There is criminal law, civil law, constitutional law, environmental law, and many other types of law. Civil law is provided as a solution specifically for resolving personal problems between individuals. There are many types of personal problems that can be resolved through civil law. Civil law has existed since 1848 and will continue to be used as long as it remains relevant to the conditions of society. In civil law, several special issues are further separated and resolved in a special manner, for example, labour rights issues, which have a special resolution in a special court, namely the Industrial Relations Court (PHI).¹

From what can be seen, civil law is indeed something that is quite complex compared to criminal law or constitutional law. The complexity of civil law often causes many people to make mistakes in the proceedings. As is well known, civil law uses a system of naming the parties as the plaintiff and the defendant, and it is the plaintiff who files a statement of claim so that the claim can be granted in the judge's decision. In the statement of claim, the judge not only considers the material content stated, but also the formal aspects. This is what is often overlooked by the plaintiff when making a statement of claim. It is truly unfortunate if it turns out that the statement of claim is good in material terms and has a high percentage chance of winning, but an error in formal terms will immediately make the statement of claim inadmissible.

Such errors in formal matters are often referred to as formal defects, which fall within the realm of civil procedural law, and there are many types of them. It is very important to know what needs to be considered when drafting a statement of claim. When

¹ Eko Saputra et al., *Hukum Acara Perdata Di Indonesia: Dasar, Asas, Perkara Dan Mediasi*, 2025.



the defendant becomes aware of a formal defect, they can file a plea (Article 136 Herzien Indonesisch Reglement/HIR), and when the plea is accepted by the judge, the decision will immediately state that the matter is inadmissible. This will certainly harm the principal plaintiff, and it is embarrassing because they have lost before the real battle. Therefore, a study entitled “Analysis of the Judge's Consideration of the Defendant's Objection in the Decision No.46/Pdt.Sus-PHI/2023/PN Sby” was conducted to analyse the judge's policy in deciding the Decision No.46/Pdt.Sus-PHI/2023/PN Sby, which had several formal defects in the drafting of the statement of claim.

Based on the following background description, the author raises the legal issue of the impact of errors in listing the identities of the parties in the statement of claim and the status of land. The literature review for this paper is as follows: according to Prof. Dr. Sudikno Mertokusumo S.H., civil procedure law is the body of legal rules governing how compliance with substantive civil law is ensured through the intervention of judges. Civil procedural law is a set of legal rules that determine how to ensure the implementation of substantive civil law, governing how to bring claims, examine and decide cases, and enforce the resulting judgements. Civil procedural law not only governs the process of examining a case until a judgement is handed down but also sets out the requirements that must be met by the parties from the moment the case is filed. Civil procedural law plays a vital role because substantive law cannot, in essence, be effectively enforced without procedural mechanisms governing how those rights are defended and upheld. Consequently, any party bringing a claim before the court must comply with both formal and substantive requirements so that the claim can be examined and adjudicated by a judge. One way of exercising the right to seek a resolution through the courts is by filing a statement of claim.²

² Giovani, Cindy Jhodya, and Love Virny Tanielle Nyemore Tanuwijaya, “Analisis Yuridis Penerapan Eksepsi Dalam Perkara Perdata Serta Implikasinya Terhadap Pemeriksaan Pokok Perkara : Studi Putusan



A statement of claim is a legal claim filed through the courts by a party who feels that their rights have been infringed or that they have suffered loss at the hands of another party. When drafted, a statement of claim must fulfil certain elements in order to provide a clear picture of the legal relationship between the parties, the events forming the basis of the claim, and the relief sought from the judge. Generally, a statement of claim contains the identities of the parties, the *posita* or *fundamentum petendi*, and the *petitum*. These three elements have interrelated functions: the identities of the parties determine who is a party to the case; the *posita* sets out the factual and legal basis of the claim; whilst the *petitum* sets out the relief sought from the judge.

The identification of the parties is a key element of a statement of claim, as it relates directly to the legal entities involved in a case. The inclusion of such identification serves not only to provide details of the parties' names or addresses, but also to ensure that the defendant is the correct legal entity and has a legal connection to the subject matter of the dispute. Any inaccuracy in stating the identity or legal status of a party may give rise to issues regarding the correctness of the party being sued. In civil procedure law, such a situation may relate to the concepts of 'error in persona' or 'discharge of the defendant'. Therefore, accuracy in determining and stating the identities of the parties is a crucial factor in determining whether or not a claim can be examined further.³

A procedural defect is one of the issues that may result in a claim being dismissed by the court. Formal defects relate to the failure to meet the formal requirements that should be present in a claim. Forms of formal defects may include errors in identifying the parties, a claim that is unclear or an 'obscure libel', a claim brought by a party who does not have the proper legal standing, or other forms of formal non-compliance. The

Nomor 66/Pdt.G/2023/Pn Amb," *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 5, no. 3 (2026): 678.

³ Saputra et al., *Hukum Acara Perdata Di Indonesia: Dasar, Asas, Perkara Dan Mediasi*.



existence of a formal defect has significant consequences, as the judge may declare the claim inadmissible without having to examine the merits of the case. Consequently, a formal defect may result in a case being concluded before the substance of the parties' rights and obligations is examined in further detail. One form of formal defect relating to legal persons is 'error in persona'.

An error in persona essentially relates to a mistake in identifying the parties involved in a case. Such an error may occur when the defendant is not the party who should be held liable in the legal relationship at issue, there is a mistake regarding the identity of a party, or the party brought into the case does not have the legal standing as alleged by the claimant. This concept demonstrates that accuracy in identifying the parties is an integral part of drafting a claim. If such an error is fundamental and results in the claim being directed at the wrong legal entity, this may form the basis for the defendant to raise a plea of exception.

A plea is a legal instrument granted to the Defendant to raise objections to the claim brought by the Plaintiff. In principle, a plea is not intended to refute the substance of the Plaintiff's claim, but may be used to challenge certain aspects relating to the claim or the proceedings. In the context of procedural defects, the Defendant may raise objections if there are issues regarding jurisdiction, the standing of the parties, the clarity of the claim, or other formal requirements. The filing of an exception provides the Defendant with the opportunity to request that the judge first assess whether the claim has met the necessary requirements before the proceedings move on to the merits of the case. The granting of an objection relating to a procedural defect may result in the claim being declared inadmissible or 'niet ontvankelijke verklaard'.

A judgment of non-admissibility differs from a judgment dismissing a claim, as the former does not, in essence, state that the claimant lacks substantive rights, but rather indicates the existence of a procedural obstacle preventing the court from examining and



ruling on the substance of the dispute. Therefore, a judgment of non-admissibility is closely linked to the application of procedural law, as it demonstrates that compliance with procedural requirements is a decisive factor in the process of examining a claim. In industrial relations disputes, the provisions concerning procedural law have their own distinct characteristics, as cases are heard by the Industrial Relations Court pursuant to Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes. The Industrial Relations Court is a specialised court within the general judicial system that has the authority to hear and adjudicate industrial relations disputes. This specialised nature means that the examination of industrial relations cases must take into account the specific provisions contained in Law No. 2 of 2004, in addition to the principles of procedural law applicable within the general court system, insofar as they are relevant and do not conflict with those specific provisions.⁴

A judge's reasoning is a vital part of a judgement, as it reveals the legal basis and grounds on which the judge has decided the case. When deciding a case, a judge must not only consider the facts that have come to light during the trial, but must also relate them to the relevant legal provisions. In cases relating to procedural defects, the judge must consider whether the error alleged by the Defendant truly qualifies as a procedural defect and whether that defect is sufficiently fundamental to render the claim inadmissible. Therefore, an analysis of the judge's reasoning is essential to assess whether the application of procedural law in a judgment has been carried out correctly. Based on a review of the concepts of civil procedural law, the statement of claim, the identity of the parties, formal defects, error in persona, disqualification in person, defences, and the '*niet ontvankelijke verklaard*' ruling, it can be seen that every element in the statement of claim has legal consequences for the continuation of the proceedings.

⁴ Saputra et al.



Accuracy in stating the identity and legal status of the parties is a fundamental aspect, as errors in this regard may affect the formal validity of the claim. These concepts are subsequently used as a theoretical and conceptual basis for analysing the Panel of Judges' reasoning in Judgment No. 46/Pdt.Sus-PHI/2023/PN Sby, particularly in assessing the error in the statement of the Defendant's identity, the grounds for granting the plea of disqualification in person, and its conformity with the principles of civil procedure. Previously, there have been several studies discussing the granting of defences, namely the study by Biyanda Rizky and Muriani entitled "A Legal Analysis of the Judge's Ruling Granting the Defendant's Defence (Case Study of Judgment No. 74/PDT. G/2021/PN.BKS) which discussed the defendant's defence that was upheld by the Panel of Judges at the Bekasi District Court in that case, is inconsistent with the applicable legislation. The judges failed to carefully consider PERMA No. 2/2019 and disregarded SEMA No. 2/2019, resulting in the case being discontinued before proceeding to the examination of the merits. SEMA No. 2/2019 essentially states that civil claims arising from unlawful acts committed by government bodies and/or officials fall within the jurisdiction of the general courts to examine and adjudicate such cases, and are no longer within the jurisdiction of the Administrative Court (PTUN).⁵

There is also a study by Cindy Jhodya Giovanni and Love Virny Tanielle Nyemora Tanuwijaya entitled "A Legal Analysis of the Application of Defences in Civil Cases and Their Implications for the Examination of the Merits of the Case: A Study of Judgment No. 66/PDT. G/2023/PN AMB", which discusses the application of procedural law by the Panel of Judges, deemed to be appropriate and systematic in assessing all the defences raised by the Defendants. All defences—whether relating to absolute jurisdiction, error in persona, legal standing, prematurity, or *ne bis in idem*—were

⁵ Biyanda Rizky, "Analisis Yuridis Terhadap Putusan Hakim Yang Mengabulkan Eksepsi Tergugat (Studi Kasus Putusan No. 74/PDT.G/2021/PN.BKS)," *Reformasi Hukum Trisakti* 4, no. 2 (2022).



dismissed as there was no evidence of any formal defect in the Plaintiff's claim. This dismissal demonstrates that the Ambon District Court has jurisdiction to hear the case, that the parties are correctly identified as legal subjects, and that the Plaintiff has a valid legal interest (legal standing) to bring the claim. Furthermore, the Panel of Judges also found that a dispute had clearly arisen, meaning that the claim was not premature and that there were no elements of similarity in the subject matter, object, or basis of the case that could give rise to *ne bis in idem*. The implication of the rejection of this objection is that the case proceeded to the stage of examining the merits, during which the Plaintiff successfully proved their case through documentary evidence and witness testimony that were consistent with one another, whilst the Defendant's evidence was deemed inconsistent. As can be seen, although previous research has analysed the granting of defences, it has not addressed Judgment No. 46/Pdt.Sus-PHI/2023/PN Sby; this therefore represents a new development. Through this study, it has been established that the judge's reasoning behind a judgment requiring the rejection or acceptance of a defence may lead to different outcomes; there is a possibility that similar cases may yield different outcomes because the judge's reasoning is based on different perspectives.

The research method employed in this study is normative legal research using the statutory approach. This approach involves examining all legislation and regulations relevant to the legal issue under discussion (under investigation) through a review of the Civil Code (KUHP) and the *Herzien Inlandsch Reglement* (HIR). In addition, this study employs a case-based approach. This approach involves an examination of Judgment No. 46/Pdt.Sus-PHI/2023/PN Sby, analysing the judge's reasoning regarding the defendant's plea, examining court's *ratio decidendi* that is identified and evaluated against the applicable legal rules.⁶ The legal materials used consist of primary legal sources in the form of legislation relating to the customary land rights of indigenous communities, as

⁶ Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).



well as secondary legal sources such as books, academic journals, research findings and relevant expert opinions. The legal materials were collected through library research. They were then analysed qualitatively through the stages of description, interpretation and legal argumentation to identify the judge's considerations regarding the defendant's defence, by examining the statement of claim, the defence and the replies and rejoinders, which it is hoped will provide new insights for the reader.

B. PEMBAHASAN

1. Procedural Background of The Disputer

a. Chronology of the Industrial Relations Dispute

The industrial relations case, registered under No. 46/Pdt.Sus-PHI/2023/PN Sby, arose from a long-standing employment relationship between Fatkur Rohman and a bus company operating under the trade name AKAS. The claimant stated that he had worked as a bus driver since 1996. However, at the end of 2021, he was no longer given a driving schedule or paid wages. Since he had never received an official termination notice, he considered himself still an employee who had been denied his employment rights. The dispute was initially addressed through bipartite negotiations, but no agreement was reached. The claimant then brought the matter to tripartite mediation at the Probolinggo City Labour Office. During mediation, the employer offered Rp7.5 million in compensation, while the claimant demanded a higher amount based on his more than 25 years of service. The offer was rejected, and the mediation failed.

Following the unsuccessful mediation, the claimant filed a lawsuit before the Industrial Relations Court at the Surabaya District Court through the e-Court system on 4 May 2023. The case was registered as No. 46/Pdt.Sus-PHI/2023/PN Sby. The claimant requested the termination of his employment relationship and payment of severance pay, long-service compensation, damages, and wages during the



proceedings, with a total claim exceeding Rp90 million. He also requested a conservatory attachment of land and a building covered by SHM No. 352, measuring 2,630 square metres and located in Dadapan Village, Kabat Sub-district, Banyuwangi Regency. At the first hearing in June 2023, the defendant raised several objections. First, the defendant argued that the claimant had sued the wrong legal entity. The company's official name was PT. TERRY AKAS ASRI, not PT. AKAS ASRI as stated in the claim. The defendant supported this argument with the company's deed of incorporation, the Minister of Law and Human Rights' approval, and its transport business licence. According to the defendant, PT. AKAS ASRI did not legally exist, making the claim inadmissible. Second, the defendant argued that the claimant's employment relationship had ended in 2018. BPJS Ketenagakerjaan records were submitted to show that the claimant's membership was no longer active. According to the defendant, after 2018, the relationship continued only as a partnership with the claimant working as a freelance driver. Third, the defendant challenged the application for conservatory attachment. The defendant argued that SHM No. 352 was not owned by the company but was registered in the name of PT Hartoyo/Hartoyo Karman Amat. Therefore, the property could not be attached and its inclusion also made the claim unclear.

The claimant responded on 24 July 2023 by rejecting the defendant's objections and maintaining that he remained a permanent employee who had been dismissed without valid grounds. He submitted several documents, including his identity card, a photograph of an AKAS ASRI bus, a salary envelope bearing the company's mark, an employment contract, and a severance payment receipt. On 31 July 2023, the defendant submitted a rejoinder and reaffirmed its objections concerning the incorrect identity of the defendant, the termination of the employment relationship in 2018, and the improper attachment application. During the evidentiary stage, the claimant submitted six documentary pieces of evidence, while the defendant submitted the company's



deed, legal entity approval, transport licence, vehicle registration documents, and BPJS records. Neither party presented witnesses. After examining the evidence, the panel of judges found that the claim contained a fundamental error in identifying the defendant. The error was not merely a spelling mistake but concerned the legal existence of the entity being sued. Since the claim was directed against an entity that did not legally exist, the court declared the claim inadmissible (*niet ontvankelijk verklaard*). The court also found that the requirements for the conservatory attachment had not been fulfilled because SHM No. 352 did not belong to the defendant. This further contributed to the lack of clarity in the claim (*obscur libel*). Ultimately, the court upheld the defendant's objections, declared the claimant's lawsuit inadmissible, and did not further consider the attachment application. The litigation costs were borne by the state in accordance with the rules applicable to industrial relations disputes.

b. The Plaintiff's Claims and Relief Sought

In civil procedural law, according to Sudikno Mertokusumo, the 'posita' is a statement of the facts and legal grounds underpinning the claim, whilst the 'petitum' is the substance of the legal request addressed to the judge. The two form a single unit, for without the 'posita' the 'petitum' lacks a basis, and without the 'petitum' the 'posita' has no direction. This view is also consistent with Subekti's doctrine, which states that a claim must be clear and consistent, so that the defendant can understand what is being claimed and on what grounds. Thus, the clarity of the posita and the petitum is not merely a technical matter, but an absolute requirement. This is further emphasised in the HIR (*Herziene Indonesisch Reglement*), the code of civil procedure still in force in Indonesia, which explicitly requires this. Article 118(1) of the HIR stipulates that a civil claim must be filed by means of a written petition signed by the claimant or their representative, and that this petition must contain the identities of the parties and the subject matter of the case. Furthermore, Article 119 of the HIR provides that the statement of claim serves as the basis for the judge to summon and examine



the parties. This means that the presence of a clear statement of facts and a clear claim, as well as the correct identification of the parties, are absolute requirements for a claim to be admissible.

In Case No. 46/Pdt.Sus-PHI/2023/PN Sby, the statement of claim submitted by the Claimant explains that he has been working since 1996 as a bus driver for the company AKAS. The employment relationship was never formally terminated, and he therefore considers himself to still be an employee. The issue arose in late 2021 when he was no longer assigned work and ceased to receive wages. In his view, this situation constitutes a form of abandonment, as no letter of termination was issued. The claimant also stated that attempts to resolve the dispute through bipartite channels were unsuccessful, leading to the case being referred to tripartite mediation at the Probolinggo City Labour Office. The mediation also failed because the company offered only Rp7.5 million in compensation, which the claimant rejected. The failure of this mediation served as the formal legal basis for filing a claim with the Industrial Relations Court (PHI) in accordance with Article 4 of Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes.

In their statement of claim, the claimant is seeking statutory entitlements in the form of severance pay, a service award, compensation for lost entitlements, and wages for the duration of the proceedings, as provided for in Law No. 11 of 2020 on Job Creation in conjunction with Government Regulation No. 35 of 2021. They estimate their total entitlements to amount to more than Rp90 million. Furthermore, the claimant requests that the court order the attachment of a plot of land and a building with Certificate of Ownership (SHM) No. 352 in Banyuwangi—which he claims is owned by the defendant—to ensure that the subsequent judgement can be enforced. In line with these facts, the plaintiff's claims are that the panel of judges should grant the claim in full, declare the employment relationship terminated by operation of law, order the



defendant to pay all the employee's entitlements for which the company is liable, and order a security attachment on Land Title Certificate No. 352. In addition, the claimant also requests that a penalty payment (dwangsom) of Rp1 million be imposed for each day of delay by the defendant in complying with the judgment, and that the judgment be enforceable immediately despite any legal appeals (*uitvoerbaar bij voorraad*).

Upon examination, structurally this statement of claim meets the formal requirements as set out in Articles 118–119 of the HIR, as it contains a statement of facts and a statement of claims. However, there is a substantive error in the identification of the defendant. The claimant has listed the name 'PT. Akas Asri', whereas the correct name is 'PT. Terry Akas Asri'. This error in identification has serious implications as it contravenes Article 118 of the HIR, which requires the identity of the parties to be clearly stated in the statement of claim. According to M. Yahya Harahap, if the identity of the parties is unclear, the claim may be declared inadmissible, as the judge cannot adjudicate a case against a non-existent legal entity. Furthermore, the relief sought regarding the application for a security attachment also faces issues. The statement of facts alleges that Land Title Certificate No. 352 belongs to the defendant, yet facts subsequently revealed indicate that the certificate is in the name of another party. This inconsistency between the statement of facts and the relief sought means the claim risks being deemed obscure (*obscuur libel*). This is in line with the doctrine of procedural law, which emphasises consistency between the facts alleged and the relief sought, and is consistent with Article 118 of the HIR, which requires a claim to be drafted clearly and with a specific purpose. Consequently, although the claim structurally fulfilled the requirements for the statement of facts and the relief sought, it was substantively flawed because it did not meet the formal requirements as set out in the HIR. Errors regarding the identity of the parties and the irrelevant subject matter of the attachment meant that the claim failed to meet the



formal requirements. As a result, the relief sought could not be considered further, as the panel of judges subsequently ruled in this case.

c. The Parties' Pleadings and Responses

In civil proceedings under Article 132 of the HIR, once the defendant has filed a defence (including any defences), the claimant is given the opportunity to submit a response known as a 'replica'.⁷ The defendant is then entitled to submit a reply to that replica, known as a 'duplica'. This exchange of pleadings is a crucial part of the proceedings, as it is through this process that the respective positions of the parties become clearly apparent. In Case No. 46/Pdt.Sus-PHI/2023/PN Sby, following the defendant's submission of a plea, the claimant filed a reply on 24 July 2023. In their reply, the claimant rejected all the grounds of the defence and the defendant's response. They asserted that they retained their status as an employee, as they had never received a letter of termination of employment. According to the claimant, the fact that they were no longer scheduled to drive and were not receiving wages constituted clear evidence of neglect on the part of the company. To strengthen his case, the claimant submitted evidence in the form of his identity card, a photograph of a bus bearing the Akas Asri logo, a salary envelope bearing the company's letterhead, an employment contract, and a receipt for severance pay. With this evidence, the claimant sought to demonstrate that the employment relationship was still ongoing, and that his rights therefore remained intact.⁸

The defendant responded to the reply by submitting a rejoinder on 31 July 2023. In the rejoinder, the defendant reiterated its defence that the claim was brought against

⁷ Putra, Raynaldo Handojo, and Mia Hadiati, "Analisis Dasar Pertimbangan Hakim Dan Akibat Hukum Dalam Menolak Gugatan Cerai Yang Tidak Dapat Diterima (Niet Ontvankelijke Verklaard) Di Pengadilan Dilihat Dari Perspektif Hukum Acara Perdata," *UNNES Law Review* 6, no. 2 (2023): 80.

⁸ Arci Agwan et al., "Analisis Yuridis Normatif Terhadap Pertimbangan Hakim Dalam Penyelesaian Sengketa Perdata," *Jurnal Riset Multidisplin* 2, no. 12 (2025): 90, <https://doi.org/doi.org/10.71282/jurmie.v2i12.1483>.



the wrong party (error in persona) as the correct company name is PT. Terry Akas Asri, not PT. Akas Asri. The defendant also contested the claimant's claims regarding the employment relationship. According to the defendant, the claimant has not been registered as an active employee since 2018, as evidenced by the deactivated records in the BPJS Ketenagakerjaan database. Since that time, the relationship between the claimant and the company has no longer been an employment relationship, but rather a partnership as a bus driver. Furthermore, in its rejoinder, the defendant also rejected the argument regarding the attachment of security. According to the defendant, the subject of the attachment—SHM No. 352 in Banyuwangi—does not belong to the company but to a third party; consequently, the application for attachment lacks a legal basis. Thus, in the defendant's view, the claimant's claim is not only misdirected but also vague (*obscuur libel*). From these reply and rejoinder stages, it is evident that both parties remain steadfast in their respective arguments. The claimant continues to maintain that an employment relationship existed and rejects the defence, whilst the defendant emphasises the misidentification of the party and denies the existence of an employment relationship since 2018. This exchange of arguments clarifies the points of dispute, which are subsequently examined in greater detail during the evidence-presentation stage.

d. The Defendant's Objections and Evidence

Within civil law, civil procedure law is inseparable from civil law and the two will always complement one another. Civil procedure law sets out the procedural rules for the practice of civil law; these rules are laid down in the HIR (*Herzien Inlandsch Reglement*) and the RbG (*Rechtreglement voor de Buitengewesten*). Both regulate the same matters, though they have different jurisdictions in terms of their scope of application. Exceptions are one aspect of civil procedure law regulated in the HIR (*Herzien Inlandsch Reglement*) and the RbG (*Rechtreglement voor de Buitengewesten*). In the HIR, exceptions are regulated under Article 136, which states:



“Exceptions (defences) raised by the defendant, except where the judge lacks jurisdiction, shall not be raised and considered separately, but must be discussed and decided together with the merits of the case.” it can therefore be concluded that an exception is a form of rejection or objection raised by the defendant regarding the manner in which the plaintiff’s claim has been presented. Exceptions usually relate to the formal validity of the claim

In Judgment No. 46/Pdt.Sus-PHI/2023/PN Sby, the Defendant highlighted several points considered to be formal defects in its defence; namely, the first point, the in personam disqualification of the Defendant, namely that the Plaintiff’s Claim, which was directed at “PT. AKAS ASRI as the Defendant”, there was clearly a lack of clarity and legal ambiguity regarding the Defendant’s status and identity as a legal entity. This means that the inclusion of “PT. AKAS ASRI as the Defendant” in the claim constitutes a material error in the claim (rendering the claim defective). Secondly, the Defendant company operates in the business of “passenger transport services by land using a fleet of buses, as a legal entity (limited liability company) established by a Deed of Incorporation drawn up by a Notary and a Land Deed Officer (PPAT), and which holds the necessary licences in accordance with applicable regulations.

Thirdly, the Vehicle Registration Certificate (STNK) for the bus driven by the Plaintiff as a business partner is also registered in the name of PT. TERRY AKAS ASRI, and that, from a legal standpoint, there is a clear distinction between (the identity of the Defendant in the claim brought by the Plaintiff) and PT. AKAS ASRI, and there is no connection whatsoever, and that the name in question has never been used at all, as confirmed by the identity and legal standing set out in the Deed of Incorporation of the Defendant’s Limited Liability Company (PT). Fourthly, that Supreme Court of the Republic of Indonesia Case Law No. 296.K / Sip / 1970, dated 9 December 1970: “A claim filed against the wrong party”, such as the claim brought



by the Plaintiff against the Defendant in the present case, must be dismissed or, at the very least, declared inadmissible.

Fifthly, that the Claimant had previously verbally submitted his resignation from his employment with the Defendant and on 24 October 2018 the Defendant had paid out his BPJS Ketenagakerjaan benefits on the basis of a statement drawn up by the Claimant on 24 October 2018, and the HR department at the Defendant's place of business had issued a certificate confirming that the Claimant had been employed from 1996 until October 2018, meaning that the employment relationship between the Claimant and the Defendant had legally ended in 2018; this is further reinforced by the fact that the Plaintiff's personal details and statement of claim state that he was a bus driver at the Defendant's place of business; consequently, the Plaintiff's claim should be dismissed or declared inadmissible (*niet onvankelijk verklaard*).

Furthermore, it is clear that the legal status and relationship between the Defendant and the Plaintiff is that of business partners; there is no employment relationship as an employee. The error regarding the Defendant's 'legal status' in the present action clearly renders the present action formally defective, as it has been established that the Plaintiff's claim is in personam against the Defendant's legal capacity; therefore, the Plaintiff's claim should be dismissed or declared inadmissible (*niet onvankelijk verklaart*).

It is clear that the defence raised by the Defendant is based on an error in persona, often referred to as disqualification in person. The judge may uphold this defence without considering the evidence prepared by the Plaintiff, as a formal defect is already apparent in the procedure for drafting the statement of claim. In this case, the Plaintiff has prepared several pieces of evidence, namely: a photocopy of an Identity Card, marked as Exhibit P-1; a photocopy of a PO. AKAS ASRI, marked as Exhibit P-2; a photocopy of an envelope bearing the AKAS ASRI logo, marked as Exhibit P-3; a



photocopy of the Work Order (SPK), marked as Exhibit P-4; a photocopy of the severance pay receipt, marked as Exhibit P-5; and a photocopy of the Proof of Receipt of Payment (BPU), marked as Exhibit P-6.

This is futile because the case was procedurally flawed from the outset, meaning the judge will not consider the evidence presented; nevertheless, the Defendant responded by submitting evidence in support of their defence, namely: a photocopy of the Decision of the Minister of Human Rights of the Republic of Indonesia, No. AHU-0001395.AH.01.01. 2016 concerning the Ratification of the Establishment of the Limited Liability Company PT. TERRY AKAS ASRI, dated 12 January 2016, marked as Exhibit T1.a; A photocopy of the Deed of Incorporation of the limited liability company PT. TERRY AKAS ASRI, No. 155, dated 30 November 2015, drawn up by a Notary and Land Deed Officer, marked as Exhibit T-1.b; A photocopy of the Minutes of the General Meeting of Shareholders, PT. TERRY AKAS ASRI, No. 35, dated 31 May 2023, marked as evidence T-1.c; Photocopy of the letter from the Ministry of Transport, Directorate General of Land Transport, regarding the Supervision Card for the AKAP Transport Operating Licence issued to PT. TERRY AKAS ASRI, marked as evidence T-1.d; Photocopy of the Motor Vehicle Registration Certificate in the name of the owner of PT. TERRY AKAS ASRI, marked as Exhibit T-1.e; Photocopy of a Certificate dated 24 October 2018, marked as Exhibit T-2.a; A photocopy of the STATEMENT drawn up by the Defendant on 24 October 2018, marked as Exhibit T-2.b; A photocopy of the List of Departing Employees, marked as Exhibit T-2.c; A photocopy of the BPJS Ketenagakerjaan (Social Security for Workers) record, inactive since November 2018, marked as Exhibit T-2.d. These are the items of evidence submitted by the Plaintiff and the Defendant, but they were not taken into consideration by the judge due to a procedural defect in the Plaintiff's claim.

2. Judicial Analysis of The Defendant's Objections



When deciding a case, a judge must consider not only the substantive elements but also the procedural elements, as these form part of the rules of procedure; consequently, if the procedural elements are flawed, the substantive elements must also be called into question. In Judgment No. 46/Pdt.Sus-PHI/2023/PN Sby, there were several formal errors in the Plaintiff's statement of claim, meaning that the Plaintiff's claim could be declared formally defective and inadmissible.

Every claim brought before the court must satisfy not only the substantive requirements but also the formal requirements. The importance of these formal aspects is reflected in Article 136 of the HIR, which explicitly allows the judge to examine defences alongside the merits of the case. However, if a defence is upheld, the final judgement may be delivered solely on the basis of that defence. Thus, the judge may declare the claim inadmissible (*niet ontvankelijk verklaard*) purely on the grounds of a procedural defect, without needing to examine the merits of the case.

Judgment No. 46/Pdt.Sus-PHI/2023/PN Sby is a concrete example of the application of this provision. In this case, the Panel of Judges upheld the Defendant's plea on the grounds of an 'error in persona', namely a sufficiently serious error in the recording of the Defendant's identity. The Plaintiff's claim was brought against PT. AKAS ASRI, whereas authentic evidence in the form of the deed of incorporation and the Decree of the Ministry of Law and Human Rights indicated that the lawful legal entity was PT. TERRY AKAS ASRI. The error in stating the identity cannot be regarded as a mere administrative error, as it concerns the legal standing of the party being sued. Consequently, the Plaintiff's claim was declared to be procedurally defective and inadmissible. This reasoning is consistent with Supreme Court Case Law No. 601 K/Sip/1975, which affirms that a claim containing an error in the spelling of the Defendant's name is inadmissible. That judgement establishes that the identity of the parties is an essential element determining the validity of a claim. Thus, the application of this principle in the present



case demonstrates the judge's consistency in adhering to the long-established principles of case law.

In addition to the error in persona, the Plaintiff's claim also contained obscurity or 'obscuur libel'.⁹ This was evident in the relief sought regarding the application for a provisional attachment of a plot of land which, as it turned out, was registered in the name of a third party, not the Defendant. The Plaintiff insists that the land belongs to the Defendant, but has failed to provide authentic evidence to support this claim. This situation gives rise to a contradiction in the structure of the claim: the subject of the claim is incorrect, and the basis for ownership of the property for which attachment is sought is unclear. Supreme Court case law No. 81 K/Sip/1971 affirms that civil claims, particularly those relating to land, must specify in detail the boundaries, area and identity of the landowner. If these elements are not fulfilled, the claim is categorised as vague (obscuur libel) and declared inadmissible. Consequently, the judge's reasoning in this case is entirely grounded in established legal principles. This case also reflects the application of the principle of '*onus probandi incumbit ei qui dicit*', namely that the burden of proof lies with the party making the claim. The claimant alleged that the land subject to the application for attachment as security belonged to the defendant, whereas the title deed indicated the name of another party. The burden of proof rests entirely with the Claimant, and as the evidence submitted failed to convince the judge, the allegation was deemed unproven. This further reinforces the ruling that the claim is inadmissible. The Panel of Judges in Judgment No. 46/Pdt.Sus-PHI/2023/PN Sby delivered its ruling on the basis of a procedural defect, without addressing the merits of the case. This reasoning is consistent

⁹ Anggi Sri Haryati Simarmata, Dzaki Risqullah Ismail, and Rafael Roy Irawan, "Problematika Eksepsi Dan Rekonvensi Dalam Praktek Peradilan Perdata," *Journal of Legal, Political, and Humanistic Inquiry* 1, no. 4 (2026): 176, <https://doi.org/doi.org/10.65310/espctp62>.



with Article 136 of the HIR, the case law of the Supreme Court, and the applicable principles of civil procedure.

a. Error in Persona as a Procedural Defect

An ‘error in persona’ is an error in the identification of the claimant when drafting the statement of claim.¹⁰ This is a serious matter, as the judge may declare the claim to be procedurally defective if the defendant is aware of it and decides to raise a plea of defection. A claim that is procedurally defective will be immediately declared inadmissible without consideration of its substantive elements. In this case, the judge acted correctly in dismissing the claimant’s claim. The claimant committed a fatal error by incorrectly stating the defendant’s identity, thereby creating an opening for the defendant to raise an objection.

The judge had several considerations of his own when deciding to uphold the Defendant’s objection, including the following: Regarding the Plaintiff’s claim for in personam disqualification against the Defendant, the main ground was that the claim concerning the industrial relations dispute with the Defendant, as set out and stated in the Plaintiff’s claim, was against PT. AKAS ASRI, with its registered address at Jl. Soekarno Hatta No. 54, Probolinggo City, whereas the Defendant’s company operates in the business of ‘passenger transport services by land using a fleet of buses’, as a legal entity (Limited Liability Company) pursuant to the Deed of Incorporation drawn up by a Notary and a Land Deed Officer (PPAT) registered in the name of PT. Terry AKAS ASRI; thus, the error regarding the Defendant’s ‘legal subject’ in the present action clearly renders the present action formally defective; consequently, the Plaintiff’s claim is disqualified in person with regard to the Defendant’s legal capacity; therefore, in the interests of legal

¹⁰ Candra Halim, “Alasan Hakim Memberikan Putusan N.O Dalam Praktek Pemeriksaan Perkara Perdata Di Pengadilan Negeri Bantu,” *Prosiding Senapas* 2, no. 1 (2024): 168, <https://doi.org/doi.org/10.24002/senapas.v2i1.9316>.



certainty and correct legal understanding, the Plaintiff's claim should be dismissed or declared inadmissible.

The judge's reasoning in upholding the Defendant's plea is correct; this is also supported by Article 136 of the HIR (pleas), which provides that pleas shall be examined and decided together with the merits of the case. If this defence is upheld, the final judgment shall be delivered on the basis of the defence, stating in the judgment that the Defendant's defence is upheld and the Plaintiff's claim is declared inadmissible (NO/niet ontvankelijk verklaard). Thus, the judgment delivered is based solely on a procedural defect in the claim and does not address the substance of the case. In this case, as there was an error in the identification of the defendant (error in persona) by the claimant, the claim is inadmissible.

Furthermore, there is also the Supreme Court judgement No. 601 K/Sip/1975, which addresses a case where the claimant's claim was deemed inadmissible because, in the statement of claim, the defendant was sued in a personal capacity, whereas the statement of claim identified the defendant as a trustee of the foundation who sold houses belonging to the foundation; the defendant should therefore have been sued in their capacity as a trustee of the foundation. This may also be interpreted to mean that an error in the identification of the defendant (error in persona) in any case—including the incorrect spelling of the name of a limited company (PT)—will result in the claim being dismissed

b. Obscure Libel and the Defective Claim

An 'obscure libel', or what is often referred to as a 'vague claim', is a situation that can arise when the statement of claim drafted by the claimant is unclear. This lack of clarity is often regarded as ambiguous and indicative of problems with its formulation. There are several types of obscure libel, including where the grounds for the claim (*fundamentum petendi*) lack a clear legal basis, the subject matter of the dispute is unclear, the relief sought (*petitum*) is unclear, or the claim contains elements of *ne bis in*



idem. Just like error in persona, obscur libel can result in the statement of claim being declared inadmissible (niet onvankelijk verklaard). In addition to the ‘error in persona’ error, the claimant has also committed an ‘obscur libel’ error in their statement of claim. This makes the statement of claim appear like a joke in the eyes of the defendant.

In this case, the claimant has designated the land and buildings covered by SHM No. 352 as the subject of a security attachment, even though the legal status of the land—whether it belongs to the defendant or not—remains unclear. The Plaintiff argued that the land could be subject to attachment to secure the Defendant’s liability for damages when the judgment is enforced. As set out in Article 227(1) of the HIR, it may be interpreted that the objects of attachment in civil procedure are assets serving as security for the debtor’s personal obligations. This also includes the debtor’s movable and immovable property, whether existing or future.

The purpose of security attachment is to ensure the enforcement of civil judgments and to prevent the property from being misappropriated or removed during the court proceedings. The conditions governing the objects of attachment are set out in Articles 1131–1132 of the Civil Code, which state: “All movable and immovable property belonging to the debtor, whether existing or to be acquired, serves as security for the debtor’s individual obligations” and “Such property shall serve as joint security for all creditors; the proceeds from the sale of such property shall be distributed in proportion to the respective claims, unless there are valid grounds for priority amongst the creditors.” It is evident¹¹ that property cannot be arbitrarily designated as the subject of a security attachment.

¹¹ Khansa Laily Az Zahra et al., “Relevansi Kepentingan Alat-Alat Bukti Dalam Proses Penyelesaian Hukum Perdata,” *Jurnal Ilmu Hukum “The Juris”* 8, no. 21 (2024): 9, <https://doi.org/doi.org/10.56301/juris.v8i1.1185>.



Consequently, the judge's decision to dismiss the Plaintiff's claim was correct. It is clear that the requirement for property to be subject to attachment as security under Article 1131 of the Civil Code states that "All movable and immovable property belonging to the debtor"; in this case, it is evident that only property belonging to the debtor may be subject to attachment as security. However, in this case, there is ambiguity regarding the status of the land designated as the subject of the attachment.¹² The identity of the property subject to attachment is unclear and it is not certain that it belongs to the Defendant. Meanwhile, the Plaintiff, who was required to prove that the land in question is indeed owned by the Defendant, merely stated that it consists of a plot of land and buildings covering an area of 2,630 m², situated in Dadapan Village, Kabat Sub-district, Banyuwangi Regency, with Freehold Title Certificate No. 352, registered in the name of HARTOYO KARMAN AMAT (PT. HARTOYO), is correct as it forms an inseparable single property.

This is a completely unfounded argument and is inconsistent with the principle of *onus probandi*, namely that the party making the claim bears the burden of proof. The Plaintiff stated that they would seek a seizure order against a plot of land believed to belong to the Defendant; however, the land is registered not in the name of the Defendant's company, namely PT. TERRY AKAS ASRI, yet the Plaintiff insists that it is the Defendant's land. Therefore, based on this principle, the Plaintiff must be able to prove that the land is indeed owned by the Defendant; however, the Plaintiff is unable to do so, and consequently the judge's decision to dismiss the claim is correct, as the land cannot be subject to attachment without a clear title. Furthermore, there is case law supporting the judge's decision, namely Supreme Court Judgment No. 81K/Sip/1971,

¹² Gunawan Widjaja and Iriaty Khairul Ummah, "Membangun Gugatan Yang Sah: Analisis Pengaruh Kejelasan Objek Dan Pemenuhan Unsur-Unsur Gugatan Dalam Proses Litigasi Di Pengadilan Negeri Tangerang," *Jurnal Hukum "The Juris"* 9, no. 2 (2025): 80, <https://doi.org/doi.org/10.56301/juris.v9i2.1736>.



which discusses a judge's ruling stating that a claim must specify the boundaries of the land, its area and other details in depth. This can also be interpreted to mean that the identity of the landowner must be clear before bringing a claim. If any of the required elements in a land claim are missing, the claim will be declared vague (*obscuur libel*).



C. PENUTUP

Based on the analysis of Judgment No. 46/Pdt.Sus-PHI/2023/PN Sby, the judges correctly applied civil procedural law by declaring the claim inadmissible (*niet ontvankelijk verklaard*) due to *error in persona* and *obscuur libel*. The *error in persona* resulted from identifying the defendant as PT. AKAS ASRI instead of the legally recognised entity, PT. TERRY AKAS ASRI. Meanwhile, *obscuur libel* arose because the claimant failed to establish that SHM No. 352, proposed as the object of *conservatoir beslag*, belonged to the defendant. The judges' reasoning was therefore legally justified and consistent with Supreme Court Decisions No. 601 K/Sip/1975 and No. 81 K/Sip/1971. However, the formal defects prevented the court from examining the substantive employment dispute. Legal practitioners should therefore verify the defendant's exact legal identity and support any application for *conservatoir beslag* with valid evidence of ownership and its legal connection to the defendant. Such accuracy is essential to prevent formal defects from obstructing examination of the merits of industrial relations disputes.



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