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Description: Description: image4 Juridical Review of Niet Ontvankelijke Verklaard's Decision in the Less-Party Lawsuit Case (Decision Study:361/Pdt.G/2017/PN JKT.PST)

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| **ARTICLE INFO** | **ABSTRACT** |
| ***Keywords:*** *Argentina; Customary International Law;*  *Economic Development; ICSID Awards; Investment.*  ***How to cite :*** *Kadir,M.Y.A., and Farsia. L. (2020). The*  *Inconsistency of ICSID Awards Over Argentina Cases. Hasanudin Law Review. 6(1): 1-24*  ***DOI :***  *10.20956/halrev.v6il.1844* | *Lawsuit is a letter submitted by the plaintiff against the defendant to the District Court which contains a claim for rights which contains a dispute and forms the basis for examining a case and proving the truth of a right. This legal research aims to find out and analyze civil cases that were sued through the District Court, how to fulfill the requirements in making a lawsuit so that it was not rejected by the Panel of Judges and the reasons that resulted in a lawsuit from the plaintiff in the case decision case Number. 361/Pdt.G/2017/PN JKT PST Niet Ontvankelijke Verklaard. The method used in this research is normative juridical research where the author collects data in the form of basic legal materials and additional legal materials. In this journal research, it can be concluded that a lawsuit submitted to the Court must meet the formal requirements as stipulated in Article 118 HIR, the plaintiff must also be more careful and careful in making a claim based on existing legal facts so that it can produce a positive judge's decision with a sense of justice for each party to the litigation.*  *Copyright © 2020 JURNAL HUKUM UNISSULA. All rights reserved.* |

# INTRODUCTION

# The law has provided a dispute settlement mechanism in the form of a judicial system. This dispute resolution mechanism is organized by a state power, namely the judicial power which is in the judiciary bodies. So that it is these judges who will later have the authority to examine, try and decide on any disputes that are brought before them, and judges are obliged to try as fairly as possible according to applicable law.[[1]](#footnote-1)

# Parties who feel their civil rights have been harmed can submit their case to the court to obtain a proper settlement, namely by filing a lawsuit against the party who is felt to have harmed them.[[2]](#footnote-2)

# Basically, both the HIR (Het Herziene Indonesisch Reglement) and the RBg (Rechtsreglement Buitengewesten), there are no provisions governing the terms and contents of a lawsuit, the methods and forms or how a lawsuit must be filed. Articles 118 and 120 of the HIR do not stipulate the requirements for the formulation or contents of a claim. However, in accordance with developments in practice, there is a tendency to demand a clear formulation of a claim that is fundamental to the petition (posita) and petitum.[[3]](#footnote-3)

# Lawsuits that are correct and have concrete grounds regarding the existence of a legal connection are very important, the necessity to fulfill these conditions is absolute because if a claim is formally flawed it results in a decision being passed by the Panel of Judges with an Unacceptable decision (niet ontvankelijke verklaard) . Formal defects in an ordinary lawsuit are identified by the defendant, which is stated in the exception. If the exception is acceptable, it means that the panel of judges will not examine the principal case because the lawsuit already contains formal defects.[[4]](#footnote-4)

With the imposition of the Niet Ontvankelijke Verklaard decision, of course it is very detrimental to the plaintiff because various sacrifices to obtain his rights have been made, both material and time sacrifices have been wasted due to an error in formulating a lawsuit, if the case is handled by a lawyer, he will feel ashamed because it was considered unprofessional even though the conditions referred to were not expressly formulated in the statutory provisions governing Civil Procedure Code. If there is a lack of legal knowledge in the community, then the law will also be difficult to enforce.[[5]](#footnote-5)

Starting from the description above, the authors are interested in conducting an assessment of the decision on case number 361/Pdt.G/2017/PN JKT.PST which stated that the plaintiff's claim was unacceptable, so the formulation of the problem in this research is first, what is the legal procedure for filing civil action? Second, what was the consideration of the Panel of Judges so that this case was declared Niet Ontvankelijke Verklaard in decision no. 361/Pdt.G/2017/PN JKT.PST? and third, what are the legal remedies taken by the parties against the case which was decided by Niet Ontvankelijke Verklaard

# METHODE

A. Types and Nature of Research

In examining the issues to be discussed, this research uses this type of research through normative juridical methods, where this method examines the law in writing from all kinds of aspects, for example aspects of history, comparison, theory, philosophy, scope and content of material, explanation of article by article. , the legal language used as well as the formality and binding power of a law.[[6]](#footnote-6)

Regarding the nature of the research used, namely analytical descriptive. This nature is a study that describes, analyzes, elaborates, and explains the meaning of a legal regulation.

B. Sources of Legal Materials

This research uses sources where the data used are secondary data, namely library materials which include books, laws and also scientific works.

a. Basic Legal Materials, namely legal materials which in terms of legal force are binding on one another. In this study, the main legal materials used came from statutory regulations and decisions. The laws and regulations used are:

- Decision on Case Number 361/Pdt.G/2017/PN JKT PST.

- Code of Civil law

- Jurisprudence

- HIR/RBg/Rv

b. Additional Legal Materials are materials obtained from library materials which have the nature of supporting information and can help analyze in this research, such as law books, scientific works of scholars and journals.[[7]](#footnote-7)

C. Data Collection Techniques

In this study, the data collection technique was carried out using library research where the literature study was taken from references to legal books, writings on the internet that were relevant to the object of research and taking a copy of the decision Number 361/Pdt.G/2017/ PN JKT PST.

D. Data Analysis Techniques

The data analysis technique used to examine the data that has been obtained is a qualitative technique, which means that the results of the research will be described and explained in the form of sentences. In addition, this research will be described descriptively..

# FORMULATION OF LETTERS OF LAW

Lawsuit is a letter submitted by the plaintiff against the defendant to the District Court which contains a claim for rights which contains a dispute and forms the basis for examining a case and proving the truth of a right.

In Herziene Inlandsch Regement (HIR) is known for 2 kinds of forms of lawsuits (Lanny Lasama, 2018), namely lawsuits that can be submitted in written form are the most important (Article 118 HIR / Article 142 Rbg) and verbal (Article 120 HIR / Article 144 RBg). An oral lawsuit is filed if the plaintiff is illiterate, so the lawsuit can be entered orally to the head of the District Court that records the lawsuit, as described in Article 120 HIR. The current article states that oral lawsuits are no longer common, even according to the Supreme Court Jurisprudence dated 4-12-1975 number 369 K/SIP/1973 the person receiving the power of attorney is not allowed to file a lawsuit verbally. (Yulia, 2018) The lawsuit must be filed by those who have an interest, claims for rights in lawsuits are claims for rights that have legal interests, which can be granted if the truth can be proven in an examination hearing. [[8]](#footnote-8)

Conventionally, the filing mechanism is carried out in the following steps: The first step is submitted to the Court based on the place of residence. The second step, proceedings and litigation, of course, require costs which include: clerkship fees, summons, notification of the parties and stamp duty, the entire fee is paid by the plaintiff. The third step is, numbering the case register against the lawsuit into the Case Register Book in this case to obtain the claim number according to the date the lawsuit was registered.[[9]](#footnote-9) Furthermore, the head of the court will determine a panel of judges to examine and decide on a case consisting of three people, namely the presiding judge and two member judges, this decision is made no later than seven days after receiving the files. Then, finally, the plaintiff and the defendant were summoned to attend the trial that had been determined. [[10]](#footnote-10)

The formulation or formulation of a claim letter is the making of a lawsuit formulation in accordance with the formal requirements based on the legal provisions and applicable laws and regulations. [[11]](#footnote-11) In this description, various formal provisions will be set forth that must be contained and listed in the lawsuit. The following are things that must be included in the lawsuit:

1. Addressed to PN according to Relative competence

A lawsuit must be submitted to a judicial body that is truly authorized to try this matter. Relative competence relates to the authority to try/examine cases from a District Court based on the division of jurisdictions. For District Courts, the jurisdiction covers the district/city level where the District Court is located.[[12]](#footnote-12)

If the plaintiff resides in Pematangsiantar, while the defendant resides in Medan, the lawsuit shall be filed with the District Court in Medan. Presumably it is not appropriate if the defendant must appear before the District Court where the plaintiff lives. The defendant cannot be forced to appear before the District Court where the plaintiff resides, just because he is being sued by the plaintiff, whose claim has not been clearly proven.

If the place of residence is chosen, the Plaintiff can file a lawsuit with the District Court whose jurisdiction covers the chosen place of residence (Article 11 paragraph 4 HIR, 142 paragraph 4 RBg). The choice of residence by both parties must be done by deed.

However, if there are more than one defendant being sued and they do not live in the same jurisdiction as a district court, then the lawsuit is filed with the district court where one of the defendants lives. The plaintiff can choose the residence of one of the defendants.

If the defendant consists of people who are in debt (debtor) and guarantors, then the lawsuit is filed with the District Court where the person who owes (debtor) lives (Contained in Article 118 paragraph 2 HIR, Article 142 paragraph 2RBg).

Thus, a lawsuit submitted to a court that is not competent, whether in terms of absolute or relative authority, will be decided by that court by declaring that it has no right to try the case or lawsuit. Therefore the lawsuit must be declared Niet Ontvankelijke Verklaard or declared unacceptable.

b. Place and date of making the Letter of Claim.

A letter of claim usually explicitly states the place where the lawsuit was made, for example whether the lawsuit was made at the place of domicile of the plaintiff or the place of domicile of the attorney. Especially for the date in the application for a lawsuit, it must also be stated clearly, what date it was made because it functions to find out certainty about the date the lawsuit was made. [[13]](#footnote-13)

The inclusion of this date is to ensure legal certainty over the drafting and signing of the lawsuit, but if one day a problem arises that is directly related to the lawsuit. The most effective way out is for the Court to order a repair of the lawsuit by including the date. This can be done by the clerk because the correction for including the date of the lawsuit is not considered to change the substance of the lawsuit and is not contrary to the law.

c. Duty stamp

In practice, before being registered with the District Court, a lawsuit must be sufficiently stamped (currently the stamp duty fee for a lawsuit is Rp.10.000

d. Signed by the plaintiff or his attorney.

A lawsuit must be signed by the plaintiff or by a special attorney for that (a power of attorney is not justified in filing a lawsuit orally). A lawsuit signed with a thumbprint must be legalized. [[14]](#footnote-14)

The plaintiff's signature in the lawsuit submitted to the chairman of the court is a form of accountability for the lawsuit filed by the plaintiff against the defendant.[[15]](#footnote-15)

1. Identity of the Parties

The mention of identity in the lawsuit is a formal requirement for the validity of the lawsuit. A lawsuit that does not mention the identities of the parties, let alone the identity of the defendant, causes the lawsuit to be invalid and considered non-existent.[[16]](#footnote-16)

To file a lawsuit, it is first checked whether the parties in the lawsuit are complete or not because of an incomplete lawsuit by the parties, the lawsuit will be declared NO = Niet Ontvankelijke *Verklaard* , likewise if a lawsuit is filed by an unauthorized person it will also terminated by Niet Ontvankelijke Verklaard.

In the identity that must be mentioned, it is enough to include:

1. Full name,
2. Bright name, meaning that this is a bright name including title or alias (if any) serves to distinguish that person from other people who happen to live in the same neighborhood and have the same name.
3. Serious mistake in mentioning the name, a very serious mistake in writing or mentioning the name of the defendant deviating from what it should be, so that it actually changes identity, is considered a violation of formal requirements which results in a letter of claim being formally disabled. [[17]](#footnote-17)(Irene Svinarky, 2019). This means that this raises uncertainty about the person or party in the litigation, so that there is sufficient basis for the lawsuit to later be subject to a lawsuit for *obscuur libel* or *error in persona,* meaning that the plaintiff's lawsuit is not clear or the contents are dark. Therefore, the lawsuit is stated as *Niet Ontvankelijke Verklaard.*
4. Writing the name of the limited liability company must be complete and clear. In the event that the plaintiff or defendant is a legal entity, it must be explicitly stated who has the right to represent him according to the articles of association who is entitled to represent him according to the statutes and applicable regulations, and must also clearly state the identity of the legal entity itself. For example a limited liability company or PT, the party entitled to represent the case in accordance with its articles of association is the director of the PT and for foundations, the party entitled to represent the case in accordance with its articles of association is the chairman of the foundation.[[18]](#footnote-18)
5. Address or Residence

Another identity that is no less important to include is the address or residence of the defendant or the parties.

1. Address, which means the address of the principal residence as well as additional residential addresses, or real residence. This is according to the law in accordance with the procedural rules.
2. Source of Address Legitimacy, meaning that the source of the document that is used as a valid deed, namely for the Company (Legal entity) can be taken from the NPWP, Articles of Association, Business License or from Nameplates while for Individuals it can be taken from KTP, NPW (Compulsory Identification Number Tax), and Family Card (KK). Therefore, a source based on that address cannot be objected to.
3. The change of address of the Defendant after the lawsuit was filed, this cannot result in a formally flawed lawsuit because the change and difference of address does not affect the validity of the lawsuit. Therefore, the defendant cannot use this as a basis for rebuttal or exception so that the lawsuit is declared to be in the wrong address to serve as the basis for the *Niet Ontvankelijke Verklaard lawsuit.* So this is to avoid arbitrary actions from the defendant. Because if the change of address after the lawsuit was filed is justified, it will result in a formal flaw in the lawsuit. Then this will be used by the defendant with bad intentions to play tricks on the plaintiff and the judiciary, so that if this is justified it will result in the destruction of legal certainty.
4. The Defendant's residential address is unknown, in accordance with article 390 paragraph (3) HIR, has anticipated this possibility in the form of a public summons by the Mayor or Regent. By way of the formulation of address identity as follows:

Include the last address or place of residence, the meaning here is in writing the identity of the address, it is sufficient or able to include the last address or place of residence, with the words: last resided or resided at ...., or explicitly stated, no known address or place of residence. In order for this method to be justified, this statement should be supported by a statement letter from the village head where the last defendant resided.

1. Fundamental Petendi

In accordance with Article 1865 of the Civil Code and Article 163 of the HIR which affirms *"everyone who argues for a right, or in order to confirm his rights or refute the rights of others, is obliged to prove that right or event".*

1. Elements of the Fundamentum Petendi must contain the legal relationship between the plaintiff and the defendant relating to the material or object of the dispute and an explanation of facts that are directly related to the legal basis or legal relationship argued by the plaintiff.

2. The arguments for the lawsuit which are deemed to have no legal basis, namely:

1). The acquittal against the defendant's report cannot be used as a legal basis for demanding compensation.

2). The argument for a lawsuit based on an agreement is not lawful.

3). Claims that are not based on a dispute are considered to have no legal basis.

4). A claim for compensation for a result that is not detailed based on facts is considered a lawsuit that has no legal basis.

5). The arguments for the lawsuit contain contradictions.

6). The rights to the object of the lawsuit are unclear.

1. Petition Lawsuit

In order for a lawsuit to be valid and not contain formal defects, it must include a petitum in the form of a clear description. Various petitions that do not meet the requirements that cause formal defects in the lawsuit, namely:

1. Does not state explicitly what is requested or the petitum is general in nature.
2. Petitum claims for compensation but not detailed in the lawsuit are not eligible.
3. Petitum which is negative, cannot be granted.
4. The Petitum is not in line with the lawsuit's argument.

Things that could cause the lawsuit to be decided by *Niet Ontvankelijke Verklaard* by the panel of judges because it contains a formal defect, namely *:*

**1). The lawsuit *for error in persona* in the form of disqualification or *plurium litis consortium.***

*1). Disqualification in person,* this occurs if the plaintiff is a person who does not meet the requirements (disqualification) because the plaintiff is in the following conditions:

1. Does not have the right to sue the disputed case, meaning here that a person who does not participate in the agreement acts as a plaintiff demanding the cancellation of the agreement or a father acts to demand the divorce of his child's marriage, so a lawsuit filed by an unauthorized person is a lawsuit that contains a formal error *in persona. In person disqualification* can also occur if the Articles of Association of an association or company stipulates that those who have the right to act for and on behalf of the group are the management collectively. In this case if only one person acts, he is in a *disqualified position.* This was confirmed in the Supreme Court decision no. 3175 K/Pdt/1983. According to this decision contained in article 9 of the articles of association determines who is entitled to act for and or the name of the foundation consists of a group of management units together and simultaneously, therefore it must be the group as a whole who appears as the plaintiff. Thus, if only one person acts without delegating power from the rest, it means that person is in a state of *disqualification in person.*
2. Incapable of taking legal action.

People who are underage or have guardianship, a lawsuit they filed without the help of their parents or guardians contains a formal *error in persona* in the form of *disqualification* because the plaintiff is a person who does not meet the requirements.

2). One of the Targets of the Plaintiff

Another form of error in persona that may occur is a person who is drawn as the wrong defendant (gemis aanhoeda nigheid). For example, the one who borrowed the money is A, but the person who is withdrawn as the defendant to pay off the payment is B. It is clear that such a claim is wrong and wrong because it is not the right person to be positioned as the defendant. If a company that has not received approval is withdrawn as a defendant, then the lawsuit is misdirected because the company does not yet have a position as a persona standi in judicio, so the management must be withdrawn as a defendant. This is in accordance with article 9 paragraph 1 of law number 1 of 1995, a Limited Liability Company that has not been legalized cannot be withdrawn as a legal entity.

3). Less-Party Lawsuit *(Plurium Litis Consortium)*

Another form of error in persona is called the Plurium Litis Consortium. The party acting as plaintiff or withdrawn as defendant is incomplete, meaning that there are still people who must act as plaintiff or withdrawn by the defendant. Therefore the lawsuit contains an error in persona in the form of a plurium litis consortium, in the sense that the lawsuit filed is lacking in parties.

**2). The lawsuit contains defects osbcuur libel, ne bis in idem, or violates absolute or relative jurisdiction (competence).**

a. Libel Osbcuur Exception

Prof. Dr. Sudikno Mertokusumo, SH explained, that the plaintiff must formulate a petitum clearly and firmly. Claims that are unclear or imperfect may result in the claim not being accepted. Similarly, lawsuits that contain statements that contradict each other, which are called "osbcuur libel" (claims that are unclear and cannot be answered easily by the defendant, causing the lawsuit to be rejected) result in a decision by Niet Ontvankelijke Verklaard *.* As the Supreme Court decision No. 582 K/Sip/1973 dated November 11, 1975 which states: " *The lawsuit petition requests: 1) determine the plaintiff's rights to the disputed land, 2) punish the defendant so that he stops taking any action on the land. However, it is not clear what rights the plaintiff is demanding, whether the plaintiff wants to be designated as the owner, collateral holder or tenant. Likewise the next petitum, it is not clear what action the defendant stopped. The Supreme Court is of the opinion, because the petitum of the lawsuit is unclear, the lawsuit must be declared unacceptable."* and Supreme Court Decision No. 1149 K/SIP/1979 dated 17 April 1979 which stated: *"If the boundaries of the disputed land are not clear, then the claim cannot be accepted."*

b. *Nebis in idem*

What is meant by ''nebis in idem'' is a prohibition on filing a lawsuit for the second time in the same case both regarding the subject, the object and the reasons for which have been decided by the same Court. (Sarwono, 2011). This is in line with the provisions of Article 1917 of the Civil Code, if the person being sued has already been prosecuted and the decision has permanent legal force, it cannot be filed again. This is necessary because trying matters that have been decided by the same court will result in a lack of legal certainty, and the loss of the court's authority in the eyes of society.

A The lawsuit has expired (expired)

The related lawsuit has passed the limit or deadline according to the statutory provisions that regulate it.

B. Premature Lawsuit

It is not yet time for the lawsuit to be filed because there are several things that have not been fulfilled but have been submitted by the Plaintiff.

**3). Lawsuit signed by a power of attorney based on a power of attorney that does not meet the requirements outlined in Article 123 paragraph (1) HIR.**

*Article 123 paragraph (1) HIR only mentions the basic requirements. In its development, there have been improvements regarding the distinction between a special power of attorney and a general power of attorney by the Supreme Court. Through a Supreme Court Circular Letter (SEMA), including among others:* (i) SEMA Number 2 of 1959, uf u dated January 19, 1959; (ii) SEMA Number 5 of 1962, dated 30 July 1962; (iii) SEMA Number 01 of 1971, dated January 23, 1971; and (iv) SEMA Number 6 of 1994, dated October 14, 1994.

Based on the 4 SEMAs mentioned above, in outline the terms and formulation of a Special Power of Attorney are:

1. State clearly and specifically the power of attorney, to play a role in court;

2. Stating the relative competence, at which District Court the power of attorney is used to represent the interests of the person giving the power of attorney;

3. State the identity and position of the parties (as plaintiff and defendant);

4. State briefly and concretely the principal and object of the dispute being filed between the litigants. At the very least, state the type of problem in the case

**4.Position case**

Against the lawsuit filed by the plaintiff *in casu* Susanto Hartanto, S, H as Plaintiff I and Kornelis Kurniadi as Plaintiff II against the Provincial Government of the Special Capital Region of Jakarta as the defendant and PT. Aksara Andalan Prima as co-defendant who has been registered with the Central Jakarta District Court Registrar on July 12 2017.

That the plaintiffs are valid Shareholders as stated in the Deed of Statement of Resolutions of the General Meeting of Shareholders of PT Aksara Andalan Prima number 46 dated 25 October 2011 drawn up before Notary Risbert SH then all shares belonging to the Plaintiffs were transferred to PT Jakarta Utilitas Propertindo as stated in the agreement conditional sale and purchase of shares on April 8 2015. Furthermore, the plaintiffs sold all of their shares to the co-defendant followed by the obligation to settle land lease issues with the defendant. Furthermore, between the co-defendants (in this case the plaintiffs as management and controlling shareholders of the co-defendant) and the defendant signed a lease agreement regarding the utilization of part of the Kampung Rambutan bus terminal land and part of the Ex Pool PPD land Depo H Kramat Jati East Jakarta administrative city, as well as part of Tanah Merdeka Clincing container terminal area, North Jakarta administrative city for a gas refueling station (SPBG). Whereas until the signing of the deed of sale and purchase of shares between the plaintiffs and the co-defendants, the land lease issue had not been resolved, due to bills for fines for late payment of land lease from the defendant to the co-defendant in the amount of Rp. 6.168.259.212,- (six billion one hundred sixty eight million two hundred fifty nine thousand two hundred and twelve rupiah) based on Article 5 of the land lease agreement also stated in point (3) If the second party is late in carrying out the payment of the rental value as referred to in paragraph (1) and (2) are subject to a fine of 1% (1 per mile) for each day of delay calculated from the amount of the rental value per year.

Whereas the background for the birth of the land lease agreement was due to the "blue sky" program launched by the defendant, namely the program for using gas fuel for vehicles in Jakarta to reduce air pollution. That in order to realize the program on July 8 2005 the Defendant, PT. Pertamina (Persero), PT. Perusahaan Gas Negara (Persero) Tbk signed an Agreement on the Supply of Natural Gas to fuel public busway corridors II and III in DKI Jakarta Province called the "Cooperation Agreement for the Supply of Natural Gas" with their respective obligations, namely: Respondent's obligation to provide SPBG locations, PT's obligations . Pertamina (Persero), namely guaranteeing the supply of natural gas to fuel busway vehicles and PT PGN (Persero) Tbk's obligation to distribute natural gas through a pipeline network to SPBGs.

On April 16, 2008 the defendant issued a decision of the Governor of DKI Jakarta province no. 517/2008 regarding the approval of the use of regional goods to PT. Aksara Andalan Prima (co-defendant) to build a Gas Fuel Filling Station (SPBG) as stipulated in DKI Governor Decree No. 517/2008. Furthermore, the land lease agreement is intended for the defendant (PT Aksara Andalan Prima) to build a Gas Fuel Filling Station (SPBG) on the land owned by the defendant (provincial government for the special capital city of Jakarta). In September 2008 the construction of the three SPBGs was nearly 100% complete but could not operate properly, because PT Pertamina was unable to provide natural gas to the three SPBGs, then the plaintiffs tried to obtain gas supply directly from PT PGN (Persero) Tbk, However, PT PGN Tbk was also unable to supply gas to co-defendants on the grounds that there was no PGN gas pipeline installation network at the three SPBG locations which resulted in the blue sky program not working. Thus, that the object of the case in this matter is the land lease agreement made between the Provincial Government of the Special Capital Region of Jakarta as the first party and PT. Aksara Andalan Prima as the second party in which the plaintiff in the petitum asked to cancel article 5 "Land rental agreement" or declared the land lease agreement dated 21 April 2008 to be canceled and waived late payment of land lease fines.

**5. JUDGES' LEGAL CONSIDERATIONS**

In case number 361/Pdt.G/2017/PN JKT.PST, the lawsuit filed by the plaintiff was declared *Niet Ontvankelijke Verklaard* , which in the judge's considerations considered the following:

"Considering, that because the main problem in the Plaintiffs' lawsuit is that the Plaintiffs and or Co-Defendant were late in paying the land rent due to a coercive situation caused by PT. Pertamina and PT. PGN was unable to supply gas to the Co-Defendant, so for the sake of clarity on the case and the problems between the Plaintiffs and the Defendants, according to the Panel of Judges, PT Pertamina and PT. PGN must be withdrawn as a party to the case”

"Considering, that is also the case because based on the Plaintiffs' argument all shares belonging to the Plaintiffs have been transferred to PT. Jakarta Utilitas Propertindo, as the new shareholder of Co-Defendant who still has the obligation to pay fines for late payment of land rent to the Defendant, PT. Jakarta Utilitas Propertindo must be withdrawn as a party in the aquo case.”

"Considering, that based on the above considerations, the exception of the Defendant on the grounds of the Plaintiffs' Claim on the grounds that the Plaintiffs' Claim is lacking in parties (Plurium Litis Consortium) is declared acceptable"

The decision handed down by the Panel of Judges is the *Niet Ontvankelijke Verklaard Decision* or also known as a negative decision [[19]](#footnote-19), meaning that the decision does not bring new legal consequences. So the legal relationship between the parties and the object of the dispute as well as the legal relationship between the litigants certainly has not received legal certainty, so that nothing has changed in its legal position.

Regarding the consideration of the Panel of Judges, it can be concluded that the lawsuit contains several weaknesses, namely: Whereas according to the author, the lawsuit is formally flawed , the plaintiffs' claims are vague and unclear *(Obscuur libels)* because the plaintiff in his petitum cannot determine his lawsuit as a lawsuit against the law or default

Then, as for other reasons, the lawsuit was sentenced to *Niet Ontvankelijke Verklaard* because the plaintiff's lawsuit as considered by the judge that the lawsuit lacked parties *(Plurium Litis Consortium)* , that is, the party acting as plaintiff or withdrawn as a defendant was incomplete, meaning that there were still people who had to participate. act as a plaintiff or be withdrawn by the defendant.

The object of the case is the land lease agreement dated 21 April 2008, the legal subject here is PT. Pertamina, PT PGN (Persero) and the Provincial Government of the Special Capital Region of Jakarta. according to the author, it should be the object in question, of course, that objected to PT. Script Andalan Prima, PT. Script Andalan Prima and PT. Jakarta Utilitas Propertindo as the new shareholder, this can be proven in Article 3 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, which stipulates “The shareholders of the Company are not personally responsible for engagements made on behalf of the Company *and are not responsible for the loss of the Company exceeding the shares owned”.* So according to the author, the lawsuit of the plaintiffs who dispute the late payment of rent fines as a result of the agreement between the defendant and the co-defendant is clearly the domain of the co-defendant where PT. Aksara Andalan Prima as a company that is a legal entity, whose authority is only given to the Directors and of course the position of the plaintiffs as old shareholders at PT. Aksara Andalan Prima does not have the capacity to become plaintiffs to represent co-defendants as a company in filing an *a quo* lawsuit because they are not parties to the cooperation agreement dated April 21 2008 as strengthened by the Supreme Court Jurisprudence Number 1270 K/Pdt/1991 stating "who has the right as the plaintiff or defendant in cases that arise in an agreement are limited to the parties directly involved in the agreement *. '.* Thus, if the plaintiff does not withdraw the parties who have legal relations with this matter, the lawsuit will result in unacceptable *(Niet Ontvankelijke Verklaard)* this is in line with the Supreme Court Jurisprudence Number 201/K/SIP/1974 dated January 28, 1976 *"if in the lawsuit the parties are incomplete, meaning that there are still other parties who should have participated in the lawsuit, but were not included, this resulted in the lawsuit being declared unacceptable by the Panel of Judges.*

Whereas according to the author, in order to obtain as many and transparent facts as possible regarding the inability of PT Pertamina and PT PGN to supply gas to the co-defendants, the plaintiffs should also withdraw PT Pertamina and PT PGN as parties to the a quo *case* . In line with Jurisprudence No. 151K/Sip/1975 dated May 13, 1975 which stated "The parties to the dispute must be listed in full, so the claims of the plaintiffs who lack parties must be declared unacceptable *(niet ontvankelijke verklaard).*

**6. Legal Remedies Against the Decision of *Niet Ontvankelijke Verklaard.***

Lawsuits that contain formal defects will receive a *Niet Ontvankelijke Verklaard* decision, so there are two legal remedies that can be taken for litigants whose cases are declared unacceptable by the court of first instance, namely 1) taking appeals, and 2) filing a lawsuit again by correcting errors or disability. If you file a new lawsuit, of course the trial process will be examined from the beginning again.

According to the author, the most effective and efficient way is to correct errors and defects in the lawsuit by determining the parties in filing the lawsuit. By attracting PT. Script Andalan Prima and PT. Jakarta Utilitas Propertindo as plaintiff. So, the old shareholders and the new shareholders jointly filed a lawsuit and withdrew PT. Pertamina and PT. PGN as a party to the case in order to obtain as many and clear facts as possible and then submit the lawsuit back to court .

**7. Conclusion**

The lawsuit is said to lack parties *(Plurium Litis Consurtium),* because the party acting as plaintiff or withdrawn as a defendant is incomplete so the judge decides the case with *Niet Ontvankelijke Verklaard (NO)* . Therefore, when filing a lawsuit, the parties must be based on Jurisprudence No. 151K/Sip/1975 dated May 13, 1975 which states "the parties to the lawsuit must be listed in full, so the plaintiff's claim with less parties must be declared unacceptable" because entitled as a plaintiff or defendant in a case arising in an agreement is limited to the parties directly involved in the agreement.

In making a decision, the panel of judges has certainly considered and studied the reasons given by the parties before the trial and can state the *Niet Ontvankelijke Verklaard decision* . not acceptable.

**Suggestion**

For the Plaintiff or the public, so that the lawsuit is not sentenced to the *Niet Ontvankelijke Verklaard* decision which is detrimental to the plaintiff, before filing a lawsuit to the local District Court it would be better to first study the formal requirements and be more observant in formulating the arguments for the lawsuit in filing a lawsuit so that this leads to problem resolution and obtaining fair verdict.

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