

The Burden of Proof in Vietnamese Civil Procedure*

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Abstract

Currently, Vietnam is undergoing a process of judicial reform and refinement, in which civil procedural law plays an increasingly crucial role. In the Vietnamese civil procedural system, the burden of proof borne by legal subjects serves as a core instrument determining the legitimacy of claims and the final outcome of case resolution in court. Proving is a primary procedural obligation that most litigants must fulfill to protect their legitimate rights and interests. Nevertheless, the implementation of the burden of proof in judicial practice continues to face complex challenges and various limitations. Many litigants, as well as law enforcement officials in certain regions, have not yet fully grasped the importance, function, and characteristics of the burden of proof, potentially leading to inaccurate court rulings. This article comprehensively examines the concept, essence, and implementation of the burden of proof in Vietnamese civil procedural law using a combination of legal analysis, comparative law, legal efficiency evaluation, and sociological investigation methods. Based on this analysis, the study formulates several strategic solutions, including enhancing legal education and dissemination through interactive competitions and the utilization of social media networks (such as Facebook, Zalo, and YouTube) in the era of Industry 4.0. Additionally, the article recommends perfecting the civil procedural regulatory framework to improve the effectiveness of proof execution and ensure judicial fairness in Vietnam.

Keywords: Burden of Proof; Court; Facts; Event; Civil Procedure

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A. INTRODUCTION

In Vietnam, the implementation of “the burden of proof is a very important issue for all participants in the procedure” (Nguyen Vinh Hung, 2018, p. 03). According to the provisions of Vietnam's civil procedure law, the subject making a lawsuit claim or the subject of the lawsuit must prove their claims or objections before the Court. In other words, the litigant must “prove that the claim made has a legal basis” (Nguyen Vinh Hung, 2021, p. 123). Even those who conduct the proceedings, to have a basis for making a decision, must also perform the burden of proof. Therefore, “the settlement results of civil cases must be based on the proving activities of the subjects participating in the proceedings” (Nguyen Vinh Hung, 2016_1, p. 44).

From the time that the National Assembly of Vietnam promulgated the first Civil Procedure Code to the moment the Civil Procedure Code is applied currently, “proving” has always been recognized as one of the mandatory principles of Vietnam's civil procedure. In the content of the proof institution, the burden of proof is always a particularly important content and is regulated in detail, strictly, and explicitly by the law. However, the recent practice of solving civil cases in Vietnam shows that the performance of the burden of proof is still quite limited. Moreover, in some localities, people conducting proceedings sometimes do not fully realize the importance of the burden of proof. This reduces the efficiency of proving and significantly affects the results of civil case settlements. Therefore, research on the burden of proof in civil procedure is very necessary, urgent, and important for Vietnam.

Literature Review

The burden of proof is a very important aspect of Vietnamese civil procedure, and the provisions on the burden of proof in civil procedure have existed for a long time. Therefore, there are many pieces of research in Vietnam on this topic. These are some which have contents related to the burden of proof in civil procedure: Nguyen Minh Hang in 2009 with “*Proof activities in Vietnam's civil procedure law*”; Tuong Duy Luong in 2009 with “*Civil Procedure law and trial practice*”; Nguyen Thi Hoai Phuong in 2011 with “*Procedures to initiate and settle disputes at Court and Arbitration - The existing mechanism to protect civil rights*”; School of Law - Vietnam National University, Hanoi in 2014 with “*Textbook of Vietnam's Civil Procedure law*”; Nguyen Vinh Hung in 2016 with “*Details and facts are not required to be proved in Civil Procedure Code 2015*”; Nguyen Vinh Hung in 2018 with “*The burden of proof in the 2015 Civil Procedure Code*”; Hanoi Law

University in 2014 with *“Textbook of Vietnam’s Civil Procedure Law”*; Nguyen Vinh Hung in 2019 with *“Classification evidence in civil proceedings”*; Nguyen Thi Dinh Huong in 2019 with *“Burden of proof in current Vietnam’s civil procedure law”*; Nguyen Vinh Hung et al in 2021 with *“Civil matters: Theory - Procedure - Comment”*; Nguyen Vinh Hung et al in 2022 with *“Civil Cases: Procedure - Comment”*; Nguyen Vinh Hung and Tran Cong Thinh in 2022 with *“Judicial organization - Competence - Procedure for settling civil cases”*; Nguyen Vinh Hung in 2022 with *“Levels of proof” in civil procedure in Vietnam*”.

B. METHODS

In comprehensively examining and researching the institution of the burden of proof in Vietnamese civil procedure, the author integrates a multidimensional methodological approach by combining various traditional research methods commonly used in both the social and legal sciences. This interdisciplinary and doctrinal approach is systematically designed to dissect the issues of legal proof from both normative and applied perspectives. First, the legal analysis method is applied in depth to examine the doctrinal framework, statutory provisions, and relevant articles concerning the rights and obligations of subjects during the proving process. This textual analysis enables the author to delineate the boundaries, functions, and specific characteristics of the civil burden of proof, which substantially distinguish it from criminal and administrative procedures. Second, the legal efficiency evaluation method is employed to measure the extent to which existing evidentiary rules effectively achieve procedural justice and the accurate resolution of court cases.

Furthermore, the legal comparative method is utilized to contrast the concept of *onus probandi* across various international legal systems, gaining a critical perspective on the strengths and limitations of Vietnam's current judicial model. Complementing this normative analysis, the sociological investigation method is applied to capture practical realities on the ground. This method identifies various empirical obstacles, including the sub-optimal understanding among litigants and law enforcement officials in certain regions regarding the significance of the burden of proof. All of these methodological instruments are combined in a close, harmonious, and complementary manner. The synergy among these methods provides a solid and objective academic foundation for the author to formulate practical solutions—such as modernizing legal dissemination through digital media—to enhance the effectiveness of executing the burden of proof and advance judicial reform in Vietnam.

C. RESULTS AND DISCUSSION

The essence of proving in proceedings is “a process that includes collecting, providing and using evidence to clarify the legal basis as well as the factual basis of the claims of the parties in the case” (Nguyen Thi Dinh Huong, 2019, p. 13). “The burden of proof (which is often called *Onus probandi* in Latin, *Beweislast* in German, *Burden of proof* in English, or *La charge de la preuve* in French) is imposed to determine the obligation of a subject to prove or disprove a matter in the case” (Nguyen Thi Dinh Huong, 2019, p. 13 - 14). “Burden of proof includes certain procedural acts in the act of proof (activities of providing, collecting, studying, and evaluating evidence) that the subjects of proof are required to carry out or not to carry out with the provisions of the law” (Nguyen Minh Hang, 2009, p. 20).

On the other hand, stemming from the nature of “civil relations are private relations of the parties, mainly decided by the parties and resolved by themselves” (Tuong Duy Luong, 2009, p. 190), therefore, the burden of proof in civil procedure is very different from the burden of proof in criminal procedure or administrative procedure. The subject performing the burden of proof in civil procedure is also completely different from the subject performing the burden of proof in criminal procedure or administrative procedure.

1. Legal Characteristics of the Burden of Proof in Vietnam’s Civil Procedure

The burden of proof in Vietnamese civil procedure has the following basic legal characteristics:

Firstly, the burden of proof in civil procedure belongs to the subjects participating in the civil procedure legal relationship:

“Subjects participating in the civil procedure legal relationship are those who are directly involved in the dispute, the person who is assigned the task of settling the dispute, or the participants of the legal proceedings to assist the resolution process to settle civil cases objectively, fairly and accurately” (Nguyen Vinh Hung et al., 2022, p. 29).

According to the law and from practice at the Court, except for the interpreter, who is required to guarantee that his translation is truthful and accurate, all subjects participating in the civil procedure must prove that their requests or proposals are grounded, accurate, clear, and lawful. For each request or evidence presented to the Court, the subjects must prove that their truth is objective, accurate, and lawful. In other words, the subjects

participating in the civil procedure have to meet the burden of proof to confirm the truthfulness and legitimacy of the claims made. If subjects participating in civil procedure make requests and submit evidence but "don't prove" or "cannot prove", then, of course, such requests and evidence will not be accepted by the Court. Therefore, the burden of proof in civil procedure belongs to the subjects participating in the civil procedure legal relationship.

Second, depending on the legal position (eligibility to participate in the proceedings), the burden of proof of civil procedure subjects varies greatly:

The purpose of proving is to determine the truth of the case, so all circumstances and events related to the civil case must be proved" (Hanoi Law University, 2014, p. 148). Therefore, "every subject who has participated in civil procedure activities must perform their burden of proof" (Nguyen Vinh Hung, 2018, p. 03). Only through the act of proving do the litigants ensure that the claims, suggestions, or evidence presented are grounded and lawful. To object to the claim made by the opposing side, the subjects of the objection must also prove to show that the claim made by the opponents is incompetent or has no legal basis. Even for the Court, "despite being the adjudicating body, it still has the burden of proof to clarify the objective truth of the civil case, and the Court's proving activities are the basis for the judgments of the Court" (Nguyen Vinh Hung, 2018, p. 05 - 06).

For the representative of the litigant, the defender of the litigant's lawful rights and interests, the performance of the burden of proof by these persons is mainly to protect the legitimate rights and interests of the litigant whom they are representing or defending. For procedural participants such as witnesses and assessors, because their participation in the proceedings is mainly to support and assist the adjudication process only, "to ensure that the testimonies of witnesses or the inspection results of assessors are grounded and correct, these persons must in principle also prove before the Trial Panel. Their proving is only to ensure that the adjudication process of civil cases is objective, fair, and lawful" (Nguyen Vinh Hung, 2018, p. 06). As for the interpreter, his/her role is mainly to support the Court when settling civil cases, therefore, the interpreters do not have to prove but need to guarantee that their translation is truthful and accurate. Thus, depending on the participating position in the proceedings, the burden of proof of the subjects that participate in the proceedings is carried out in different ways, but all aim at the final result of settling the civil case.

Third, the burden of proof is continuously performed by the subjects from the start of the civil case to the moment at which the trial at the Court ends:

“The whole process of proving in the civil procedure is the process of finding evidence to determine the objective truth about a civil case” (Nguyen Minh Hang, 2009, p. 11). Litigants are those who have legitimate rights and interests directly related to the Court's settlement process. To protect their legitimate rights and interests, the litigants must continuously participate in the proceedings from the start of initiating the lawsuit until the trial at the Court ends. Along with participating, the litigants will have to meet the burden of proof every time the Court requests. Therefore, “proving in Court is a process” (Nguyen Thi Dinh Huong, 2019, p. 16), and the subjects participating in the proceedings will have to meet the burden of proof during that procedure. However, for witnesses and property appraisers, the fulfillment of the burden of proof of these subjects depends on the necessity of the case. Witnesses and property appraisers mainly assist in adjudicating the objective truth of the case because these people have knowledge or information related to the civil case. It is very likely that they will suddenly be summoned by the Court and have to prove that their basis or knowledge is objective, clear, and accurate.

Fourthly, the burden of proof of each subject participating in the proceedings cannot be transferred to another subject but, in some special circumstances, can be performed by other subjects on behalf of the subject who has that liability:

In principle, the burden of proof is an obligation attached to each subject participating in the civil procedure, so it cannot be transferred to another subject; therefore, when participating in civil procedure, the subjects must bear the responsibility of performing their proof. However, in special cases such as minors whose legitimate rights and interests have been infringed, the representative may perform the burden of proof on behalf of the minor because minors do not have enough awareness to protect their legitimate rights and interests. In addition, the defense counsel for the involved litigant's legitimate rights and interests may also carry out the burden of proof together with the litigant to protect the litigant's legitimate rights and interests. In other words, “the burden of proof of the litigant's representative derives from the litigant's burden of proof. The burden of proof of the defense counsels of legitimate rights and interests of the litigant arises from the burden of proof of the litigant, from the purpose of the legitimate rights and interests of the litigant defenders' participation” (Faculty of law - Hanoi National University, 2014, p. 150).

As for “individuals, agencies and organizations that fire lawsuits and make requests to protect the legitimate rights and interests of others have the right and obligation to provide evidence and prove the legitimacy of those claims” (Nguyen Thi Hoai Phuong, 2011, p. 27). However, the performance of the burden of proof by these subjects is only meant to represent or assist the litigant in performing the burden of proof. The performance of the burden of proof for these subjects does not bring direct benefits to them, because this proving is only to protect the legitimate rights and interests of the person they are defending.

In addition, research shows that the characteristics of the burden of proof in civil procedure are also expressed through the burden to prove the content and the burden to prove the form. As for “the burden of proof on the content, also known as the obligation of persuasion, the obligation to affirm, the obligation to content, the obligation under the law, the obligation to objective, etc. The burden to prove the form is the obligation to present evidence and is part of the burden of proof. This is a common obligation of the litigants when participating in the procedure; they must provide evidence to the Court as a basis for affirmation or rejection of an issue” (Nguyen Thi Dinh Huong, 2019, p. 14 - 15).

2. Subjects Performing the Burden of Proof in Vietnam's Civil Procedure

“Proving in the civil procedure is a mandatory obligation for most of the subjects participating in the proceedings” (Nguyen Vinh Hung, 2022, p. 42). In principle, except for the interpreter, who is a participant who supports the adjudication process and does not have to prove, all the subjects conducting the proceedings or participating in the proceedings must fulfill their burden of proof. Specifically, the subjects performing the burden of proof in Vietnamese civil proceedings today include:

- *Litigant:*

In Vietnamese civil proceedings, litigants can be agencies, organizations, or individuals, including plaintiffs in civil cases; defendants in civil cases; persons with related interests and obligations in the case; requesters of settlement in a civil affair; or persons with related interests and obligations in the civil affair. In civil procedure, litigants are those directly involved in the dispute, those who give rise to it, or those with interests and obligations related to its settlement. Therefore, the litigants are the subjects who must first bear the burden of proof. In other words, the litigant is the “main and most important

subject who will have to perform the burden of proof in civil procedure. This is because the litigant is the person who makes the request or opposes the request of another person, so the litigant will have to prove whether his claim has a legal basis" (Nguyen Vinh Hung, 2018, p. 04).

As for the roots of civil disputes, it is formed from the civil relations between the litigants. The nature of civil relations is personal relations between the litigants. Civil relations are formed based on free will and legal equality, and are decided by the litigants. If a civil relationship arises in dispute, the litigants can resolve all issues among themselves. In Vietnam, the law and society have always supported the settlement of civil disputes in the direction of "a civil matter should be solved by the subjects themselves", therefore, civil disputes will be freely decided by the litigants to be resolved. The litigants can resolve the dispute in many ways, such as negotiation, mediation or request the Court to proceed with the dispute settlement if they find that settlement by other methods is not effective.

At the same time, "the litigants are the people who are most involved and understand the case, so they often know the documents and evidence related to the case (for example, what evidence?, what kind of evidence? , where is evidence hidden?) so collecting evidence to prove it is completely fit for them" (Nguyen Vinh Hung, 2018, p. 04). As for the Court, this is an agency established by the State and given the power to adjudicate all disputes under the law to ensure the fairness and strictness of the law. However, the Court cannot do all the work to prove for the litigants; therefore, "the fact that litigants, when participating in civil procedure, must have the obligation to provide evidence and prove their claims is one of the basic and important principles and it comes from the free right at the discretion of the litigants" (Nguyen Vinh Hung, 2018, p. 04).

The fact that Vietnamese civil procedure law prescribes the principle of providing evidence and proving also shows the specificity of civil procedure because, unlike civil procedure, in criminal procedure, the accused and defendants are not obliged to provide evidence and have no obligation to prove their innocence. Criminal procedure prescribes that the accused and defendants have rights but are not required to prove themselves innocent. Compared with the burden of proof in a civil case, the burden of proof in a criminal case belongs only to the criminal procedure-conducting agency and the criminal procedure-conducting person. In other words, to charge and convict a person who is believed to have committed a crime, the agency competent to investigate and adjudicate a criminal case will have to prove that the person is guilty.

Stemming from the burden of proof of the litigants in civil procedure, the law stipulates that the handover of evidence to the Court is both a right and an obligation of the litigants participating in the proceedings.¹ In case the litigant fails to submit or does not submit enough evidence, the litigants will have to bear the consequences of such failure or incomplete submission (Nguyen Vinh Hung, 2018, p. 05).

In addition, as introduced, the subjects participating as litigants are very diverse, and the burden of proof of each subject also depends on the legal status when participating in civil procedure. For the plaintiff, who is the subject of a lawsuit request that gives rise to the dispute settlement process at the Court, according to the statutory principle, the plaintiff will have to meet the burden of proof first to ensure his/her case is grounded and lawful. In other words, it can be considered that the plaintiff initiates the lawsuit, so they must be the first to meet the burden of proof so that the lawsuit can be recognized as lawful by the Court.

As for the defendant, who is being sued and although he/she does not want to participate in the settlement of the dispute at the Court, to prove that he/she does not infringe upon the legitimate rights and interests of the plaintiff, the defendant must also meet the burden of proof. The defendant's proof is to oppose the plaintiff's claim and to protect his/her interests. In addition, Vietnamese civil procedure law is very concerned with the interests of all participants in the proceedings and always creates all favorable conditions for the subjects participating in the proceedings to protect their legitimate rights and interests. If the plaintiff has the right to petition to sue, even though the defendant is the passive party, the defendant also has the right to make a counterclaim to sue the plaintiff. Depending on each specific case, a person with related interests and obligations may also make an independent claim to sue both the plaintiff and defendant when his/her legitimate rights and interests are infringed in a dispute between the plaintiff and defendant. Thus, if making a counterclaim, the defendant will have to meet the burden of proof to prove that the counterclaim is grounded and lawful. Similar to the counterclaim, the person with related interests and obligations when making an independent claim will also have to meet the burden of proof.

- *Representative of the litigant:*

Representation means that a person (referred to as a representative) establishes and performs civil transactions on behalf of and for the benefit of

¹ Article 6, Article 7 and Article 91 of Civil Procedure Code 2015.

another person (referred to as the represented person) within the scope of representation. Individuals, legal entities, and other entities may establish and perform civil transactions through their representatives.¹ In the civil life of Vietnamese, the most commonly used forms of representation are "legal representation" and "authorized representation". In addition, in commerce, there is also a form of "trader representative".² In civil procedure, if the litigant falls into special circumstances, the Court may also appoint a representative for the litigant. This is also known as the "Court-appointed representative". When participating in civil procedure, the representative of the litigant is often compared to a "stunt" or "substitute" to act on behalf of the litigant to carry out procedural acts. Therefore, the litigant's representative is the person who directly represents the litigant to participate in the civil procedure stages "to exercise the rights and obligations of the litigant as the person they represent. As the person acting on behalf of the litigant, the representative's burden of proof is formed based on the litigant's burden of proof" (Nguyen Vinh Hung, 2018, p. 05).

However, because a representative participating in civil procedure relations can be formed based on a legal representative, an authorized representative, or a representative appointed by the Court, the burden of proof of each type of representative also has a big difference. In the case of being the legal representative, this person will have to perform the entire burden of proof of the litigant. If participating in civil procedure as an authorized representative, this person must only perform the burden of proof within the authorized scope (limited scope based on the agreement in the authorization document between the representative and the represented). If the representative is appointed by the Court, this person will also perform the entire burden of proof of the litigant, the same as the legal representative.

- Defenders of the litigants' legitimate rights and interests:

To assist litigants in performing their rights and obligations when participating in the settlement of civil cases in Court, the civil procedure law also allows litigants to have additional assistance from defenders of their legitimate rights and interests. In other words, the defenders of the litigants' legitimate rights and interests participate in the civil procedure to provide additional assistance and support to the litigant. According to current regulations, defenders of the litigants' legitimate rights and interests include four subjects: Lawyers, legal assistants, or participants in legal assistance; the

¹ Clause 1 and clause 2, Article 139 of Civil Code 2015.

² Article 141 của Commercial Law 2005 (amended in 2017, 2019).

representative of the representative organization of the laborers (the defender of the legitimate rights and interests of the laborers in labor cases according to the provisions of the labor law); the union; and Vietnamese citizens who can meet the conditions prescribed by law.¹ “Defenders of the litigants' legitimate rights and interests are the people who possess in-depth knowledge, experience, deep understanding of the law, and dispute resolution skills, so they can be asked for help or be hired by the litigants. Stemming from the purpose of this subject's civil procedure participation, the defenders of the litigants' legitimate rights and interests will have to prove that the litigants' legitimate rights and interests exist” (Nguyen Vinh Hung, 2018, p. 06).

It can also be said that the defenders of the litigants' legitimate rights and interests' performance of the burden of proof when participating in the civil procedure does not aim to bring direct benefits to these persons but relates to the protection of the legitimate rights and interests of the people they defend. Therefore, these subjects' performance of the burden of proof is also mandatory because they are supporting and helping their clients. It should also be noted that “compared with the provisions of the Civil Procedure Code of 2004 (amended and supplemented in 2011), the current Vietnamese Civil Procedure Code 2015 has significantly expanded the number of subjects who can participate in the civil procedure as defenders of the litigants' legitimate rights and interests” (Nguyen Vinh Hung, 2018, p. 06). This provision shows that Vietnamese civil procedure law pays a great amount of attention to facilitating and supporting litigants to protect their legitimate rights and interests more easily and smoothly.

- Agencies or organizations that file lawsuits to protect the interests of others, state interests, or public interests:

Although they are not directly related in terms of rights or obligations to the dispute, these agencies or organizations file lawsuits simply because of their responsibility for their work or to protect the subjects they are supposed to protect. However, as the subject who files the lawsuit, these agencies or organizations still have to bear the burden of proof. The performance of the burden of proof of these agencies or organizations is to clarify the issues that they request the Court to settle. In other words, because these agencies or organizations have made requests to the Court to consider and settle, they must prove to the Court that their requests are grounded and legitimate. “If these subjects fail to fulfill their burden of proof, it will lead to adverse outcomes for

¹ Clause 2, Article 75 of Civil Procedure Code 2015.

the litigants they represent or the related issue, which needs to be resolved in the fields which these agencies or organizations are in charge of" (Nguyen Vinh Hung, 2018, p. 06).

- *People's Court*:

The Court is a procedure-conducting agency tasked with resolving all disputes under the law to ensure fairness and protect the legitimate rights and interests of citizens. "The task of the Court is to determine the objective truth of the case and restore the legitimate rights and interests of individuals, agencies, or organizations" (Nguyen Vinh Hung, 2016_2, p. 04). Although the Court is in the position of an adjudicating agency and completely unrelated to the dispute, to resolve the dispute, it still has to bear the burden of proof. The Court "must have the burden of proof to clarify the objective truth of the civil case, and the Court's proving activities are also the basis for its judgments" (Nguyen Vinh Hung, 2018, p. 06). In other words, "to be able to make judgments, the Court needs to carry out the activities of proof" (Nguyen Vinh Hung, 2019, p. 30). Research shows that, when legislation was promulgated on civil¹, economic², and labor³ dispute settlement procedures, the Court's burden of proof was somewhat broader than it is today.

At that time, the Court must carry out the activities of the investigation, verification, collection of evidence, preparation of case files, etc. The litigants make requests and the court must prove these requests. The burden of proof when settling a civil case during this period rests mainly with the Court. "This leads to the Court being overloaded with work, wasting human resources, causing unnecessary costs, and possibly even forming prejudice against one of the litigants while collecting evidence, and sometimes the litigants rely fully on the Court. Therefore, at present, in principle, the Court is not obliged to prove or clarify the circumstances and facts presented by the litigants as the basis for their claim or objection. The Court is not obligated to point out those circumstances or facts" (Nguyen Vinh Hung, 2018, p. 06).

However, the Court also cannot rely solely on the evidence presented by the litigants or the performance of the litigant's burden of proof because they can also be subtly forged by the litigants to deceive the Court. Therefore, the Court still has to carry out proof activities to determine the objectivity, truthfulness, and lawfulness of the evidence used as the basis for proving the claims or objections to the claims in the Court. The Court's proving activities

¹ Ordinance on Procedures for settling civil cases 1989.

² Ordinance on Procedures for settling economic cases 1994.

³ Ordinance on Procedures for settling labor disputes 1996.

aim to ensure an objective, fair, and accurate settlement of the case. That is the basis on which the Court makes legal settlement decisions.

According to current regulations, the burden of proof in the civil proceedings of the Court is limited to the scope of research and evaluation of the evidence provided by the litigants.¹ If the Court finds that the evidence is incomplete, it has the right to request the litigants to submit additional evidence. In principle, only when the litigants are unable to collect the evidence themselves and make requests to the Court will the Court conduct verification and evidence-collection activities. "Verification and evidence collection are always one of the central and also very heavy tasks for Judges during the settlement of civil cases" (Nguyen Vinh Hung, 2022, p. 62). Therefore, according to the current civil procedure law, the burden of proof mainly belongs to the litigants.

- *People's Procuracy:*

"The People's Procuracy always plays a very important role in the process of settling civil cases" (Nguyen Vinh Hung, 2017, p. 24). This is because it is the only agency that has the authority to supervise judicial activities in Vietnam.² Although, according to current regulations, the participation of the People's Procuracy in the process of settling civil cases tends to decrease gradually, in cases of civil case settlement which has the participation of People's Procuracy, the Procuracy still has the responsibility to prove.

However, it should be emphasized that the burden of proof on the People's Procuracy is completely different from that of the Court. The burden of proof in civil procedures of the People's Procuracy is formed from the functions and tasks of this agency. "A study of the provisions of the Civil Procedure Code shows that the role of the Procuracy in civil procedures is performed by two specific activities: (1) participating in Court hearings and meetings to resolve civil cases, and (2) protesting against civil judgments and decisions of the Court" (Nguyen Minh Hang, 2009, p. 33).

During its participation, to perform its duties, the People's Procuracy must express its opinions. If the Procuracy finds that the Court's adjudication is unreasonable or inaccurate, it may protest according to appellate, cassation, and retrial procedures. However, to have a basis for defending the arguments and to persuade the parties involved in the trial, the prosecution will also have to have scientific grounds. As such, convincing scientific grounds can only come

¹ Article 96, Article 97, Article 106 and Article 108 of Civil Procedure Code 2015.

² Clause 1, Article 2 of Law on Organization of People's Procuracies 2014.

from the Procuracy's proving process. Therefore, "the Procuracy's burden of proof in the civil procedure is mainly expressed in evidence research and evidence evaluation. In the providing and collecting evidence activities, the Procuracy's burden of proof is limited by the right of requesting the Court to verify and collect evidence based on the litigants' complaints and the right to present additional evidence at the appellate stage, etc" (Nguyen Minh Hang, 2009, p. 36).

- Witnesses and assessors in civil proceedings:

These are all participants who participate in civil procedure to help clarify the objective truth of the civil case. A witness in the civil procedure is a person who knows details related to the content of a civil case and, at the request of the litigants or when it is considered necessary, the Court summons them to participate in the proceedings as a witness (Tuong Duy Luong, 2009, p. 13). An assessor is a person who has the required knowledge and experience, as prescribed by law, on the subject matter of expertise, who is agreed upon by both parties in the litigation or is solicited by the Court at the request of one or more of the litigants (Hanoi Law University, 2018, p. 128). "To ensure that the testimonies of witnesses or assessors are grounded and accurate, these persons must, in principle, also prove themselves before the Trial Panel. Their proving is only to ensure that the adjudication process and settlement of the civil cases is objective, fair, and lawful" (Nguyen Vinh Hung, 2018, p. 07).

Expanding the scope of research, there are differences in the performance of the burden of proof in different countries. In the countries of the Anglo-American legal system (common law), "the burden of proof is entirely on the litigants; the Court plays a passive role and has very little interference in the proving activity. The Court does not investigate and collect evidence of the case, but on the contrary, the litigants' lawyers have the leading role in determining the issues that need proving and the evidence presented to the Court" (Faculty of Law - Hanoi National University, 2014, p. 146). Contrary to common law countries, in Germany and France (civil law), "although the law stipulates that the litigants must prove, the Court plays an active role in the civil procedure. Before the opening of the trial, the evidence and documents are fully investigated, collected, and shown in the case file by the Judge" (Faculty of Law - Hanoi National University, 2014, p. 147). Thus, in countries following the interrogation procedure model, the burden of proof in the civil procedure, to clarify the case, rests with the Trial Panel (Nguyen Vinh Hung, 2018, p. 07).

In conclusion, the burden of proof performed by subjects participating in the civil procedure is the basis for the Court to consider and make decisions to

settle the civil case. “Only through the act of proving can the subjects participating in the civil procedure be able to strictly and fully fulfill their obligations, and the act of proving is also the basis for the claims or objections made by subjects to be accepted by the Court” (Nguyen Vinh Hung, 2018, p. 04). The failure to perform or the inadequate performance of the burden of proof greatly affects the lawful rights and interests of the relevant subjects and affects the results of the settlement of civil cases.

3. Recommendations

“The fourth industrial revolution has had a great impact on the political, economic, and social fields... in most countries around the world” (Nguyen Vinh Hung et al., 2023, p. 71), and more or less includes the work of adjudication to settle civil cases in Vietnam. However, from trial practice at the Court, it is shown that, for many reasons, many subjects who participate in the civil procedure do not perform the burden of proof effectively. This can lead to inaccurate or wrong decisions made by the Court, which is still happening. Therefore, it is necessary to pay special attention to the performance of the burden of proof of every subject related to this obligation in civil procedure.

The authors believe that the propagation, dissemination, and education of civil procedure law need more focus and attention. In particular, along with the traditional propagation, dissemination, and education of the law, it is wise to research and expand more methods of legal propaganda and legal education, such as opening more contests to learn about the law of civil procedure. It is necessary to develop hypothetical situations about how the full or partial fulfillment of the burden of proof will affect the outcome of a civil case. In addition, the propagation and dissemination of civil procedure law need to pay special attention to the importance of the burden of proof and the characteristics of the burden of proof in civil procedure.

Regarding the form of conducting legal propaganda and dissemination, under the strong influence of the fourth industrial revolution, the authors assume that it is necessary to pay more attention to and to promote the advertisement, introduction, and education of law through social networks being used by many people in Vietnam, such as Facebook, Zalo, YouTube, Viber, Instagram, etc because the percentage of Vietnamese people using social networks and the level of interest and follow-up on social networks is increasing compared to the interest in information on other media such as television, radio stations, printed newspapers, district speakers, etc. If properly

exploited and promoted, social networks can effectively support the propaganda, dissemination, and education of legal consciousness in general and civil procedure law in particular. Since then, the burden of proof has become more and more deeply rooted in the people's awareness and understanding, and the performance of this obligation at the Court has become more and more practical and effective.

D. CONCLUSION

The burden of proof is directly related to the outcome of the settlement of the civil case. The litigant's performance of the burden of proof is related to the protection of legitimate rights and interests. For procedural agencies, the performance of the burden of proof helps in assessing, judging, and making a valid and lawful judgment. However, the attention and awareness of the burden of proof in civil proceedings among many subjects in Vietnam are still limited. Therefore, on the one hand, it is necessary to promote the propagation and dissemination of the burden of proof; on the other hand, the Vietnamese civil procedure law needs to continue to be researched and improved.

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