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Analysis of Judge's Consideration in Applying the Principles of Contract Law and *Nebis in idem* in the Examination of Civil Disputes Related to the Birth of an Agreement (Case Study of Case No. 969/Pdt.G/2022/PN.Tng. and No. 173/Pdt/2023/PT.BTN.)

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Abstract: This study aims to explore the considerations made by judges of the Banten High Court in resolving Civil Case Number 173/Pdt./2023/PN.BTN. concerning a dispute over the sale and purchase of land, which involves marital property and is linked to the principles of *nebis in idem* and the fundamental theory of contract formation. The methodology involves inventorying primary and secondary legal materials related to land law, followed by the identification of these materials according to the central issues of the research. Through analysis of these legal materials, the researcher seeks to provide insights and solutions to the questions raised. The findings revealed that the judges of the High Court of Banten affirmed the decision of the Tangerang District Court in Civil Dispute Number 173/Pdt./2023/PT.BTN. They found that the reasons behind the initial decision were correct, especially regarding the land and building ownership issue involving Mr. Arhan. Hence, it is crucial for judges to thoroughly review all aspects of a case, particularly the subject matter, to ensure a fair and just outcome that benefits all parties involved.

Keyword: Contract Law Principles, *Nebis In Idem*, Court Decision.

INTRODUCTION

In Civil Case Number 173/Pdt./2023/PT.BTN, the issue between the original Plaintiff Mrs. Faridah and the original Defendant Mr. Anhar is a dispute over land and the building on it owned by the Plaintiff. The land and the building on it are joint property owned by the Plaintiff and her husband (Mr. Anhar) with Ownership Rights Number 2001/Kelurahan Bencongan under the name of Mr. Anhar. In this land dispute, there was a signing of a blank or unstamped paper by the Plaintiff, done under duress or without understanding the implications. Without the Plaintiff's knowledge, it was later found that it contained an absolute power of attorney related to selling the land to Zulfanovriyendi, S.H (the original Defendant II), making it seem like a valid sale between them. Subsequently, the Special

Power of Attorney for the sale was notarized by the Notary Office of Nurbani Alam, S.H (the original Intervening Party I) with Number 337/Lgs/Not/V/2022 and the Special Power of Attorney for the purchase from Anhar to Zulfanofriyendi, S.H. with Number 338/Lgs/Not/V/2023. It turns out that Zulfanovriyendi, S.H. (the original Defendant II) is an employee of that notary, done to deceive the identity of the PPAT (Land Deed Official).

According to the law, a power of attorney originating from a blank template is legally defective and therefore lacks legal force to declare that Party I and Party II, as well as Intervener I, have committed unlawful acts and have lost in the dispute. Especially for Intervener I, as a Notary Institution, they have legalized 5 absolute power of attorney documents that are fake or engineered. However, during the trial of the plaintiff's lawsuit, the Defendant used the argument of land and buildings (the disputed object) stated in the sales and purchase deed number: 05/2022 dated March 2, 2022, as joint property between the Plaintiff and Intervener I. In the divorce case between the Plaintiff and Intervener I, it was decided in the Tigaraksa - Tangerang Religious Court that the authority to adjudicate the joint property dispute (the disputed object in this case) lies with the Religious Court, therefore the District Court does not have the authority to adjudicate the joint property dispute between the Plaintiff and Intervener I regarding the disputed object in this case.

In the process of proving, the judge's role is to determine the legal validity of the power of attorney (Sutedi, 2006). If it can be proven that the power of attorney is invalid or legally invalid, the judge has the authority to invalidate it (Meliala, 2008). Conversely, the Land Office of Tangerang City, as the Interested Party, is required to follow the decision of the Tangerang District Court and restore the original name, Mr. Arhan.

In this case, the judge's duty in terms of proof is merely to divide the burden of proof, assess the admissibility of evidence, and evaluate the strength of the evidence after the proof has been conducted (Mertokusumo, 2012). The judge *ex officio* cannot annul a notarial deed if cancellation is not requested, essentially a notarial deed can be annulled if there is opposing evidence (Mertokusumo, 2012). In the event of a legal cancellation, if a dispute arises, it is necessary for the cancellation to be decided by the judge or for there to be a ruling on the cancellation (Mertokusumo, 2012).

Therefore, the judge's consideration is crucial in delivering a verdict that is hoped to be a solution to a dispute between the parties involved. The judge's decision is believed to contain justice (*ex aequo et bono*) and legal certainty, in addition to also having benefits for the parties involved.

METHOD

The study utilizes the normative legal research method to uncover legal rules, principles, and doctrines for addressing legal issues. As a result, the legal materials employed in this research are library resources pertaining to land law.

The study employs a statutory approach and a conceptual approach. The statutory approach involves examining all laws and regulations related to the legal issues being addressed (Marzuki, 2016). On the other hand, the conceptual approach is based on the perspectives and doctrines within the field of law. Understanding these perspectives and doctrines serves as a foundation for researchers to construct legal arguments to resolve the issues at hand.

The legal research relies on both primary and secondary legal sources. Primary legal materials, known for their authoritative nature, consist of legislative regulations (Soekanto, 2015). Noteworthy examples include Law number 6 of 2023, which deals with the adoption of Government Regulation replacing Law number 2 of 2022 on Job Creation, Law number 40 of 2007 on Limited Liability Companies, and Government Regulation number 8 of 2021 on the basic capital of companies and the registration procedures for establishment, modifications, and dissolution, particularly for micro and small enterprises.

On the other hand, secondary legal materials, although not official documents, provide support to primary sources. These materials encompass law-related publications such as books, especially those focusing on land law, and legal journals that cover the relevant issues being examined. By conducting a comprehensive analysis of both primary and secondary sources, this research aims to offer a thorough understanding and analysis of the legal framework surrounding the subject matter under study.

In terms of the procedure for gathering and processing legal materials, once the specific issue has been determined, the researcher will initiate a search to locate legal materials that are relevant to the particular legal matter being examined. The collection of legal materials in this research is accomplished through documentary techniques, which involve reviewing archives and conducting literature studies. This technique entails gathering legal materials and regulations pertaining to land law, which are then compared with primary legal materials to establish a legal relationship and determine legal events and consequences. Additionally, the researcher seeks out doctrines from legal experts in the relevant fields, organizes the legal materials, and conducts interpretation to arrive at a conclusion regarding the issue.

The analysis of legal materials involves examining these materials, so the researcher will compile an inventory of both primary and secondary legal materials that are related to the issue under study, specifically land law. Subsequently, the researcher will categorize these legal materials based on the main problem addressed in this research. The researcher will then analyze these legal materials in order to find answers to the questions posed.

RESULT AND DISCUSSION

Binding, agreement, and contract refer to a legal association in the realm of property wherein one party is obligated to provide a benefit that is entitled to the other party. An agreement serves as a foundation for the emergence of an obligation, wherein the parties intentionally come to an understanding for the purpose of establishing said obligation. Written agreements are often referred to as contracts.

The purpose of a contract made by the parties is to deliver something and to do or not do something, based on Article 1234 of the Civil Code. An agreement or contract can be formed based on several factors, here are some explanations of the theories behind the formation of a contract:

1. The Theory of Will, asserts that with the existence of will or desire from the parties involved, the contract is automatically formed.
2. The Statement Theory, is a theory that states that the basis of a contract does not lie in will but in the statements given by the parties involved.
3. The Theory of Reasonable Statement, explains that only statements that are generally considered reasonable and acceptable by the parties involved can be accepted as the basis of a contract.
4. The Theory of Accountability, determines that every individual is responsible for the agreement or contract they make, regardless of any potential drawbacks in the agreement they create.

The foundation of legal contract provisions is based on the principles of values as outlined in positive law regulations, such as the Civil Code, with Article 1338 (3) emphasizing the necessity of executing agreements in good faith. Additionally, contract implementation outside of positive law can take place in written or unwritten forms, as well as in conventional or modern methods. There are various principles of contract law, including:

1. Principle of freedom to contract, where parties are free to promise or not promise anything they desire with each other.
2. Principle of consensus, where a contract is formed as a result of mutual agreement.
3. Principle of good faith, where a contract must be based on honesty.

4. Principle of fairness, where a contract must be based on reasonable interests of the parties involved.
5. Principle of *pacta sunt servanda*, where a promise made is binding and must be fulfilled.
6. Principle of equality, where parties have equal legal standing and rights and obligations.
7. Principle of balance, where an agreement must have equal weight for all parties and cannot be biased.
8. Principle of appropriateness, where the basis of an agreement must comply with societal norms.
9. Principle of confidentiality, where parties are obligated to keep the contents of the agreement confidential.
10. Principle of transparency, where the information used as the basis of an agreement must be openly disclosed to all parties.

The principle of *nebis in idem* cannot be directly found in legislation, but can be inferred from Article 1917 of the Civil Code. The text of Article 1917 of the Civil Code is as follows:

"The force of a court decision that has obtained absolute force is not broader than just about its decision. In order to advance that force, it is necessary that the issue demanded is the same; that the claim is based on the same basis; moreover, it is advanced by and against the same parties in the same relationship."

The following is the definition of the principle of *ne bis in idem* according to the legal dictionary of the United Kingdom and legal experts in Europe:

"(Latin: not for the same thing) A principle in criminal law that a person should not be tried or punished twice. It is generally recognised as a legal principle in most states and might be considered a principle of International Law, however, jurisdictions are not bound by it" (Dictionary of Legal Terms, United Kingdom Dictionary-English Legal System, Sixth form, 2003 http://sixthformlaw.info/03_dictionary/dict_no.htm). *"Nebis in idem is considered to be a general principle of International Law and stipulates that a person should not be tried twice for the same offences"* (Azaria, 2005). *"The principle that a person should not be prosecuted more than once for the same criminal conduct, expressed in the 19 maxim ne bis in idem and also referred to as the rule against double jeopardy, is prevalent among the legal systems of the world"* (Conway, 2003).

The concept of *nebis in idem*, as explained by legal experts in Indonesia, encompasses a variety of significant notions. The principle of *nebis in idem* stipulates that a decision cannot be revisited in the same dispute (Subekti, 2011). Abdulkadir Muhammad elucidates that *nebis in idem* signifies that a judge's ruling cannot be reexamined for a second time (Muhammad, 2000). R. Soeparmono highlights that based on the fundamental tenets of procedural law, a final decision cannot be reopened in the same case or *nebis in idem* (Soeparmono, 2000). Sudikno Mertokusumo emphasizes that a judge is prohibited from adjudicating on a matter that has been previously resolved between the same parties and concerning the same subject. Repetition of such action will result in legal implications of *nebis in idem* (Mertokusumo, 2012). R. Soepomo points out that the conclusiveness of a judge's ruling can be utilized in a negative manner, such as when a Defendant disputes a claim on the basis that it has already been decided by a judge, and the decision has attained finality. This dispute is known as an exception that invokes the principle of *nebis in idem* (Soepomo, 1995).

According to the views of the aforementioned experts, it can be inferred that the concept of *nebis in idem* is a ruling on the same dispute and involving the same parties, which has already been adjudicated by a judge, cannot be reexamined and ruled upon for a second time.

The conditions for the application of the principle of *Nebis in idem* in Article 1917 of the Civil Code, which states that the legal force of a court decision that has acquired absolute

legal force is not broader than just regarding the decision itself. Therefore, in order to advance that legal force, the issues demanded, reasons, and the same parties must be considered (Nabilasari Lesmana & Yustiawan, 2023).

The requirement for the application of the principle of *nebis in idem* is that the defendant must be the same. If the parties involved in the dispute are the same and the dispute has already been decided by a court and the judgment has acquired *res judicata*, then the dispute can be subject to the principle of *nebis in idem*. The elements of the principle of *nebis in idem* are as follows:

1. The parties involved in the dispute, namely the plaintiff and the defendant, are the subjects of the lawsuit. The subject of the lawsuit that can be subject to the *nebis in idem* principle is when both the plaintiff and the defendant in a previous dispute are the same as those in the subsequent dispute.
2. The subject matter of the claim is about what is at issue in a previous lawsuit and the lawsuit filed later. The subject matter of the claim can be subject to the *nebis in idem* principle if the subject matter of the previous lawsuit and the one filed later are the same.
3. The third requirement for the *nebis in idem* principle to apply is that the lawsuit or claim is the same. This means that the legal basis of the lawsuit that has been decided previously has legal force, and is the same as the reasons or basis of the lawsuit filed later (Krisna Harahap 2007: 26).

The application of the principle of *Nebis in idem* in settling civil disputes in the District Court, where the parties involved in a dispute proceed to court with the aim of obtaining a fair decision from the court to resolve the issues in a case. The court is the last resort for seekers of justice in resolving all disputes. Before taking this legal route, the parties must first seek peace through negotiation. The main task of the court as the executor of judicial power is to receive, examine, and adjudicate every dispute brought before it. Based on Article 178 of the HIR paragraph (2): "The judge must adjudicate all parts of the claim." The judge, as a judicial organ, is considered to understand the law, and seekers of justice come to him to seek justice. If the judge does not find a written law, then he must dig into unwritten law to decide on an issue based on the law, as a wise and fully responsible profession to the Almighty, oneself, the nation, and the state. A fair court decision is highly desired by the parties involved in the dispute.

Factors Causing The Occurrence of Lawsuits in The Tangerang District Court and Proceeding to The Banten High Court

The issue that occurred between the original plaintiff Mrs. Faridah and the original defendant Mr. Anhar is a dispute over land and the building on it owned by the plaintiff. The land and the building on it are joint assets owned by the plaintiff and her husband (Mr. Anhar) with Ownership Rights Number 2001/Kelurahan Bencongan under the name of Mr. Anhar. In this land dispute, there was a signing of a blank or unstamped paper by the plaintiff, done under duress or without understanding the implications. Without the plaintiff's knowledge, it was later found that it included an absolute power of attorney related to selling the land to Zulfanovriyendi, S.H (the second defendant originally the second defendant), making it seem like a valid sale between them. Subsequently, the Special Power of Attorney for the sale was notarized by the Notary Office of Nurbani Alam, S.H (the intervening defendant previously the intervening defendant) with Number 337/Lgs/Not/V/2022 and the Special Power of Attorney to buy from Anhar to Zulfanofriyendi, S.H. with Number 338/Lgs/Not/V/2023. It turns out that Zulfanovriyendi, S.H. (the second defendant) is an employee of that notary, done to deceive the identity of the PPAT.

According to the law, a power of attorney originating from a blank template is legally defective and therefore lacks legal force to declare that Party I and Party II, as well as Intervener I, have committed unlawful acts and have lost in the dispute. Especially for

Intervener I, as a Notary Institution, they have legalized 5 absolute power of attorney documents that are fake or engineered. However, during the trial of the plaintiff's lawsuit, the Defendant used the argument of land and buildings (the disputed object) stated in the sales and purchase deed number: 05/2022 dated March 2, 2022, as joint property between the Plaintiff and Intervener I. In the divorce case between the Plaintiff and Intervener I, it was decided in the Tigaraksa - Tangerang Religious Court that the authority to adjudicate the joint property dispute (the disputed object in this case) lies with the Religious Court, therefore the District Court does not have the authority to adjudicate the joint property dispute between the Plaintiff and Intervener I regarding the disputed object in this case.

The decision of the Tangerang District Court was pronounced on March 29, 2023, attended by the Appellant, the original Plaintiff, and the Appellee I, the original Defendant I, without the presence of the Appellee II, the original Defendant II, and the Intervener I, the original Intervening Defendant I, as well as the Intervener II, the original Intervening Defendant II. The decision was notified to the Appellee II, the original Defendant II, on April 10, 2023, and to the Intervener I, the original Intervening Defendant I, on May 3, 2023, and to the Intervener II, the original Intervening Defendant II, on April 10, 2023;

That the Appellant, the original Plaintiff, has filed an appeal as evidenced by the Appeal Statement No. 969/Pdt.G/2022/PN TNG dated April 10, 2023, prepared by the Clerk of the Tangerang District Court. The appeal was notified by the Substitute Court Clerk of the Tangerang District Court through registered mail to the Appellee I, the original Defendant I, on April 27, 2023, and to the Appellee II, the original Defendant II, and the Intervener I, the original Intervening Defendant I, as well as the Intervener II, the original Intervening Defendant II, each on April 12, 2023;

The original Plaintiff's Appellant has filed an Appeal Memorandum on April 17, 2023, and against the appeal memorandum, it has been delivered and submitted by the Substitute Clerk of the Tangerang District Court through registered mail to the original Defendant I Appellee I, to the original Defendant II Appellee II, and to the Intervening Defendant I Intervenor I and Intervening Defendant II Intervenor II respectively on May 3, 2023;

The original Plaintiff's Appellant has filed an Appeal Memorandum on April 17, 2023, and the said appeal memorandum has been notified and delivered along with its copies by the Substitute Clerk of the Tangerang District Court through registered mail to the original Defendant I Appellee I, to the original Defendant II Appellee II, and to the Intervening Defendant I Intervening Plaintiff I and Intervening Defendant II Intervening Plaintiff II respectively on May 3, 2023;

The Counter Memorandum of Appeal filed by Respondent I was received by the Clerk of the Tangerang District Court on May 9, 2023. The Counter Memorandum of Appeal has been notified and its copies have been handed over by the Substitute Court Clerk of the Tangerang District Court through registered mail to the Appellant, Respondent II, Co-Appellant I, and Co-Respondent I on May 3, 2023;

That the 2nd Respondent originally Defendant II has filed a Counter-Memorial of Appeal which was received at the Registrar of the Tangerang District Court on May 09, 2023 and the Counter-Memorial of Appeal was notified and a copy was submitted by the Substitute Bailiff of the Tangerang District Court by registered mail to the 1st Respondent originally Plaintiff on May 10, 2023 and to the 1st Respondent originally Defendant I on April 27, 2023;

That the parties have been given the opportunity to examine the case file (inzage) by the Substitute Bailiff of the Tangerang District Court as the Relas of inzage notification by registered mail, respectively on May 10, 2023 to the Appellant originally Plaintiff and on April 27, 2023 to the 1st Respondent originally Defendant I and Relas of inzage notification by the Substitute Bailiff of the Tangerang District Court to the 2nd Respondent originally

Defendant II and to the 1st Respondent originally Defendant I and 2nd Respondent originally Defendant II respectively on April 12, 2023.

Causes of The Judge's Decision in Civil Dispute 173/Pdt./2023/PT.BTN

Considering that the division of joint property is carried out based on Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, then the wealth acquired by either the husband or wife becomes joint property as long as it is not otherwise determined in a prenuptial agreement;

Considering that according to the Explanation of Article 50 paragraph (2) of Law Number 3 of 2006, this provision authorizes the Religious Court to simultaneously adjudicate ownership disputes or other civil matters related to the disputed object regulated in Article 49 of Law Number 3 of 2006 if the dispute involves individuals who are Muslims;

Considering that because the Plaintiff's lawsuit alleges land and buildings (the disputed object) stated in deed of sale Number: 05/2022 dated March 2, 2022, as joint property between the Plaintiff and Defendant I, and in the divorce case between the Plaintiff and Defendant I was decided in the Tigaraksa Religious Court - Tangerang, the competent authority to adjudicate the joint property (the disputed object in this case) is the Religious Court, so the District Court is not authorized to adjudicate the joint property dispute between the Plaintiff and Defendant I regarding the disputed object in this case;

Considering that based on the above considerations, the Panel of Judges is of the opinion that the present case is a dispute over joint property within the jurisdiction of the Religious Court, therefore the objections of Defendant I and Defendant II are legally justified and thus should be granted; In Substance of the Case

Considering that since the objections of Defendant I and Defendant II are granted, the Plaintiff's lawsuit in the Substance of the Case does not need to be further considered, and the Plaintiff's lawsuit must be declared inadmissible;

Considering that with regard to the objections raised by the Appellant, initially the Plaintiff, in his appeal memorandum, the Panel of Judges of the Appellate Court is of the opinion that there are no new matters and they are repetitions and have been considered by the Panel of Judges of the first instance, therefore they do not need to be further considered, so the considerations of the Panel of Judges of the First Instance are adopted and become the considerations of the Panel of Judges of the Appellate Court in deciding the case at the appellate level;

Considering that based on the above considerations, the decision of the Tangerang District Court Number 969/Pdt.G/2022/PN Tng, dated March 29, 2023, is legally justified and should be upheld and strengthened.

Legal Remedies That Can Be Undertaken Against The Decision of The Banten High Court

Cassation is one of the common legal remedies that can be requested by either party involved in a case against a decision of the High Court. The parties may file for cassation if they are dissatisfied with the content of the High Court's decision to the Supreme Court.

If a cassation application against a decision of the lower court is accepted by the Supreme Court, then the decision is annulled by the Supreme Court. There are several reasons for filing cassation, namely:

1. Lack of jurisdiction or exceeding the court's authority
2. Misapplication or violation of applicable law
3. Failure to fulfill the requirements mandated by legislation

To file for cassation, there is a time limit of 14 days after the decision or ruling of the court in question is notified to the petitioner.

CONCLUSION

The conclusion drawn by the judges of the High Court of Banten in deciding Civil Dispute Number 173/Pdt./2023/PT.BTN is that the judges of the High Court of Banten in the decision Number 173/Pdt./2023/PT.BTN affirmed the decision of the Tangerang District Court dated March 29, 2023 Number 969/Pdt.G/2022/PN.Tng. which was appealed. The judges of the High Court of Banten considered that the reasons and considerations of the first instance judge's decision were essentially correct and accurate, namely that according to the judge of the Tangerang District Court, the civil dispute re-submitted to the Tangerang District Court with Number 969/Pdt.G/2022/PN.Tng. was not *nebis in idem*, therefore the decision can be upheld and strengthened.

The consideration of the judges of the Banten High Court in the Civil Dispute Decision Number 173/Pdt./2023/PT.BTN. confirms the Civil Dispute Decision Number 969/Pdt.G/2022/PN.Tng. In this case, the judges of the Banten High Court should have better considerations that they themselves believe contain justice and benefits for the disputing parties before deciding to confirm the decision of the Tangerang District Court judge. Because upon further examination, the subject of the civil dispute is related to land and buildings as stated in Ownership Certificate Number 2001/Kelurahan Bencongan, meaning that everything that initiated the civil dispute is the land and building owned by Mr. Arhan, both in Civil Dispute Number 969/Pdt.G/2022/PN.Tng. jo. Number 173/Pdt./2023/PT.BTN. The judge should carefully examine the lawsuit, especially regarding the subject of the dispute, where one of the requirements of a dispute is *nebis in idem*, in order to avoid a judgment that is *eigenrichting* or a self-judgment action that could result in losses for one of the disputing parties, and to achieve a judgment that contains justice and provides legal certainty for the disputing parties.

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