Analysis of The Consideration of The Judges over A Suit Violating The Law in Palembang State Of Court (The Study Of Decision No. 166/Pdt.G/2016/PN.Plg)

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Abstract
The doctrine of violating the law (onrechtmatige daad) is regulated in Article 1365 of the Civil Code from narrow teachings which interpret that the nature of illegal acts (onrechtmatige daad) is similar to acts against laws or written law, has developed into a broad teaching. Violation of Article 1365 of the Criminal Code The person who commits a violation of the law and causes a loss shall be obliged to compensate the said loss. Compensation can be in the form of money, restored to its original state, the claimant is entitled to request that the judge stated that the act was an unlawful act as such a lawsuit in Decision No. 166/Pdt.G/2014/PN.Plg. The plaintiff’s party has stated that the defendant’s actions violated Article 1365 of the Civil Code but the judge refused as an illegal act. The court not only decides the case procedurally but needs to have a legal breakthrough as a step of legal discovery (rechtvinding) so that it covers the frame of mind as a legal reasoning about how the judge must decide on a case. The research using normative and based on secondary data to support success. Based on this, a problem was found on the basis of the judge’s consideration so that the Plaintiff’s Violating Action Act in the above case was rejected by the Palembang District Court Judge as in Decision No. 166/Pdt.G/2014/PN.Plg.

Keywords: violating the law; lawsuit; compensation

Introduction
The act violates the law Article 1365 of the Civil Code as an article that regulates illegal acts that play an important role in the field of civil law. Based on the provisions of Article 1365 of the Civil Code that: "Any act that violates the law
which therefore causes harm to another person, requires that the person who by mistake causes the loss to compensate”.

An action is classified as an act that violates the law, as an act that violates the law must meet the elements: Unlawful deeds (onrechtmatige daad); There must be a mistake; There must be losses incurred; Relationship kausal between acts and damages (Santoso, 2016).

The term onrechtmatige daad some scholars translate with different meanings, among others according to MA Moegni Djojodirdjo was quoted in HA Mukshin Asyroof which means an act against the law which means that a new act is considered unlawful, if the act is contrary to the law (the legal obligation of the perpetrator) (Asrof, 2009).

According to Munir Fuady acts against the law are as a collection of legal principles that aim to control or regulate dangerous behavior, to give responsibility for a loss that arises from social interaction, and to provide compensation to the victim with a claim that correct (Fuady, 2013).

Based on the opinion of R.Wirjono Prodjodikoro, acts of violation are acts that not only directly violate the law, but also acts that directly violate other regulations of the law. In the sense that this action results in a shock in the balance sheet from the community. The jolt is not only found, if the legal regulations in a society are violated directly, but also if the rules of decency, religion and courtesy in the community are violated directly (Wirjono, 2000: 6).

The doctrine of breaking the law (onrechtmatige daad) from a narrow teaching that interprets that the nature of the act of breaking the law (onrechtmatige daad) is similar to the act against the law or written law, has evolved into a broad teaching that interprets the law violated in Article 1365 Civil Code is not only an act that violates the provisions of the law, but also acts that are contrary to the rules of moral conduct, and the principle of propriety in community relations (Murni, 2016).

The act of breaking the law according to Munir Fuady that an act is classified as a violation of the law must fulfill the following elements: There is an act; Illegal acts; There is an error from the perpetrator; There is a loss for the victim; There is a causal relationship between action and loss (Fuady, 2013). An offense must be carried out by someone as the perpetrator. In general, breaking the law is meant that, both doing something (active) and not doing something (passive). Therefore in the act of violating the law there are no elements of "agreement or agreement" and there is no element of "causa" which is permitted as in the agreement. Besides the existence of elements of actions that violate the law, there must also be elements of error as in Article 1365 of the Civil Code.
The element of error from the perpetrator as an obligation must be in violation of the law. The offender is only responsible for the loss caused if the action can be blamed. According to Munir Fuady an action has an element of error so that accountability can be requested for the perpetrator if: There is an element of intent; There are elements of negligence (negligence, culpa); There is no justification or forgiving reason (rechtvaardigingsgrond) for example overmacht, defending d jealous, not healthy mind (Fuady, 2013).

The parties cannot file a lawsuit against the law and request compensation if it is not clearly stated which article and which law is violated. A person is said to commit an illegal act if his actions are contrary to the rights of others or contrary to the legal obligations of his own, contrary to decency. In lawsuits that violate the law the plaintiff must prove that all elements of the act of violating the law must prove the wrongdoing.

Lawsuits in civil procedural law occur if someone feels that their rights have been violated by another person. Claims are in the form of claims of rights submitted by a person or more commonly referred to as "plaintiffs" to other people called "defendants" through a court to obtain legal protection. Civil lawsuit is a contentious claim containing a dispute between litigant parties whose settlement examination is given and submitted to the court with the position of the parties: the one who submits a dispute settlement is called and acts as the plaintiff, while being withdrawn as an opposing party is referred to and is the defendant. (Harahap, 2011)

In addition to this, procedural failure in a lawsuit against a law is a strong reason to avoid accusations of violating the law. The procedural reasons between the number of power of attorney are not valid, evidence is not enough and others. This is as in Decision No. 166/Pdt.G/2014/PN.Plg lawsuits against the law are rejected by the judge. In that decision, the position as Plaintiff was the Manairysyah of the age of 31 years of private employment, residing in Sukajadi Indah Blok L Hospital No. 8 KM 14 Kel. Sukajadi, Kec. Palembang Talang Kelapa who gave power to H. Adi Gunawansyah, SH, Yenni Liza, SH and B. Budi Priyanto, SH sued Director of PT. Tri Gunung Selatan People’s Credit Bank as Defendant having his address at Jalan Kol Atmo No. 596/3 Kel. 17 Ilir Kec. Ilir Timur I Palembang who gave the authority to Susanto Widjaja, SH and Maryani Marzuki, SH advocate and Lawyer at Jalan Jenderal A. Yani 13 Ulu Lorong A Kadir No. 4 A Palembang.

As for the basis of the claim based on decision No. 166/Pdt.G/2014/PN.Plg are: In 2011 the Plaintiff worked for the PT Bank Perkreditan Rakyat “Tri Gunung Selatan” company which was led by the Defendant as the Director of the company; As the employee, the Plaintiff has worked according to the Defendant’s
assignments and responsibilities to the Plaintiff; In addition to serving as an employee in the office, if there is a transaction on the sale of houses for confiscation of collateral credit defaults or delinquency, then as is the custom in the office if someone can sell the auction house, the employee will get a fee of 2.5% (two and a half percent) of the price of homes sold; The Plaintiff had the opportunity to sell and do 10 (ten) housing units that the Defendant was about to sell, on this occasion the Plaintiff initially sought potential buyers and tried to offer the house to the buyer in accordance with the agreed price of Rp. 160,000,000 (one hundred and sixty million rupiahs) / unit; The Plaintiff managed to get a buyer and was faced with the Defendant for the next process and a portion of the house was sold; Until August 2014, the Plaintiff met with the Defendant to ask and take the fee percentage fee to the Plaintiff regarding 10 (ten) housing units that the Plaintiff had bought and sold, which amounted to around Rp. 40,000,000,-; But the Defendant can only provide a fee of Rp. 2,500,000 (two million five hundred thousand rupiahs) only. Plaintiffs complained that other employees and habits that often occurs in the office of PT Bank Rural "Tri South Mountain" who can sell and find a buyer for the house to be sold to get the services fee of 2.5% (two and a half percent) that the Defendant's tind ak very detrimental to the Plaintiff.

Based on the facts above, the defendant's party should have fulfilled the elements of Article 1365 of the Civil Code as a violation of the law. However, the judge, through several legal considerations, argued that the Plaintiff could not prove his guilty arguments because the claim of the Plaintiff must be rejected entirely. In its ruling, the Palembang District Court rejected the Plaintiff's claim in its entirety and sentenced the Plaintiff to pay court fees of Rp. 431,000 (four hundred thirty one thousand rupiahs).

**Research Problems**

Based on the description above, in this paper the problem is "What is the basis for consideration of the judge so that the Claims of Violating the Law of the Plaintiff in the above case were rejected by the Palembang District Court Judge as in Decision No. 166/Pdt.G/2014/PN.Plg ?.

**Research Method**

In accordance with the selection of the topic of the problem to be examined in this study, the object of the legal problem is about the consideration of the judge so that the Claims Violate the Law of the Plaintiff in No. 166/Pdt.G/2014/ PN.Plg rejected , then the type of research used is normative juridical, namely research
focused on reviewing research or norms in positive law (Johnny, 2008). This study uses legal materials obtained through literature search. Through library research, legal materials were collected which included primary legal materials, secondary legal materials and tertiary legal materials. According to Peter Mahmud Marzuki explained that to solve legal issues in a prescriptive manner, legal sources of research are needed which are divided into primary legal material, secondary legal material (Marzuki, 2011).

This research used primary legal materials, secondary law and tertiary legal materials. In the primary legal materials consist of Norma Basic or Basic Rule Pancasila, The Book of the Law of Civil Law, the draft Civil Procedure Code (HIR) and (RBG), namely Basic, hundreds Pe 1945 Constitution, Act 48 Year 2009 concerning Judicial Power, Put us Number 166/Pdt.G/2014/PNPlg and Decision Number 37/Pdt.G/2018/PN.Plg. Secondary law here is the law material in the form of publikasi-scientific publication of the law are not included in the official documents of the State and tertiary legal materials used are legal material which provides guidance and penjewel law to legal materials Primer and secondary include a dictionary, encyclopedia and so on related to problems in order to obtain the latest information, relevant and up-to-date, Legal Dictionary.

The legal material collection method used in this study is library research or literature. Literature study is a tool for collecting legal materials that is carried out through written legal materials using content analysis (Marzuki, 2011) and the analysis method used in this study is to use qualitative normative analysis, which is an analysis that emphasizes the process of deductive and inductive conclusions and the dynamics of relationships between phenomena observed using scientific logic. The use of qualitative data analysis method is a logical consequence of the application of normative type research, and examines the systematics of legislation by carrying out legal construction into categories on the basis of the basic understandings of the legal system (Soekanto, 2011).

Discussion

BASIC ANALYSIS OF JUDGMENT CONSIDERATIONS TOWARDS DECISIONS NO. 166/Pdt.G/2014/PN.Plg

The judge as a legal officer who gives justice then a judge must be independent, not taking sides with anyone, in the trial all are treated equally. This is as stipulated in Law Number 48 of 2009 concerning Judicial Power, that the duty of Judges to adjudicate cases is to uphold justice and uphold the law. Judges in carrying out their duties must be free and may not be affected or take sides with anyone. This guarantee of freedom is also regulated in various regulations, namely
in Article 24 of the 1945 Constitution of the Republic of Indonesia, which is free to hold a court to uphold law and justice.

Judges in making decisions are of course through several legal considerations. The basic theory of judges’ consideration, namely a good, and perfect judge’s decision, should the verdict be tested with 4 basic criteria of questions (the four way test), namely: a) Is this really true?, b) Am I honest in making decisions? C) Fair for the decision parties? And d) Is this useful? Legal considerations will determine the value of a judge's decision so that the aspect of legal consideration by the judge must be addressed carefully, well and carefully. If a judge's decision is made inaccurately, well and meticulously so that there is a complete lack of legal considerations, such a judge will be canceled by the High Court. (Mulyadi, 2009)

In connection with lawsuits against the law, the elements must be fulfilled. Based on the development of the notion of breaking the law (onrechtmatigedaad) above, there are 4 (four) criteria of acts that violate the law, namely: First, Contrary to the offender’s legal obligations. Unlawful deeds are acts that are contrary to the obligations of the offender. But not all actions that are contrary to the obligations of the perpetrator can be prosecuted for compensation. To be able to be sued for compensation must meet the following conditions:

a. The plaintiff’s interests are really exposed / threatened by violations of the violating the law.
b. The plaintiff’s interests are indeed protected by rules / regulations that are violated by law (Schutz norm theorie).
c. The interest is included in the scope of the intended interest to be protected by the provisions of Article 1365 of the Civil Code.
d. The violation of the rule is contradictory to the suitability of the plaintiff by also paying attention to the plaintiff’s attitude and behavior itself.
e. There are no justification reasons or forgiving reasons according to the law.

Second, Violating the subjective rights of others. Violating the sub-right rights of others based on judicial review includes:
a. Material rights and other absolute rights such as eigendom rights (property rights), erfpacht (usufructuary rights), octagonal rights (rights granted on request to someone who finds something new).
b. Personal rights (rights to physical integrity and integrity, honor and good name, etc.).
c. Special rights such as residential rights owned by a tenant.
Third, Violating the rules of decency. Another criterion is that violating the law is a violation of the rules of decency, namely moral principles to the extent accepted by society as an unwritten rule of law.

Fourth, Contrary to the principle of decency, thoroughness and caution. Acts that violate the law of an act or do not act are classified as unlawful if it is contrary to propriety, accuracy and caution that should be owned by someone in his association with fellow citizens or against other people's property. (Asrof, 2009)

Based on the description above, the provisions of Article 1365 of the Civil Code, a claim for compensation due to illegal acts must fulfill the following elements: there is an unlawful act; there must be losses incurred, there must be a relationship of causality between lawlessness and loss, there must be an error and schutznorm. Unlawful acts by legal entities (rechtspersoon) can commit illegal acts. Therefore it can be held accountable based on Article 1365 of the Civil Code. In doing, the action of a legal entity is carried out by people or their organs. But not all actions of the person from the legal entity are the actions of a legal entity, depending on the form of the relationship between the person and the legal entity (Asrof, 2009).

The existence of a judge's decision or a court decision is very necessary to settle a civil case so that the parties, both the plaintiff and the defendant, are expected to accept the decision. For the parties who feel and feel their rights have been violated by others, they get their rights back and people who feel and feel they have violated the rights of others must return those rights. The judge's decision is the crown as well as the summit and closing deed reflects the values of justice, truth, mastery of the law and facts, ethics, and morals of the judge concerned.

Based on the opinion of Rubini and Chaidir Ali that "The judge's decision is a closing deed of a case process and the judge's decision is called vonnis which according to the final conclusions about the law from the judge and also contains the consequences". Another definition also is that court decisions are statements of judges pronounced at court hearings that are open to the public to settle or end civil cases. The opinion of Lili Mulyadi in the judge's decision was "Decisions pronounced by a judge because his position in a civil court case is open to the public after going through the process and procedural civil procedure law generally made in written form with the aim of resolving or ending a case". (Mulyadi, 2009)

Based on the provisions of legislation explicitly and theoretically and normatively not found on how should the systematic contents of the judge's decision. Systematics and content of judges' decisions in civil cases must contain
the following matters: Verdict head, case register number, name of the court deciding the case, identity of the litigants, about the case, f ) about legal considerations, regarding the opinions of different judges, decision ( dictum), date of decision of the case, information about the presence/ absence of parties when the decision is issued, name and signature of the Judge, Registrar, seal, details of court fees and Substitute Registrar records. (Mulyadi, 2009)

Judge's consideration as one of the most important aspects in producing a value from a judge's decision that contains justice ( ex aequo et bono ) and has legal certainty, in addition it also contains benefits for the parties concerned so that the judge's consideration must be addressed carefully, both , and careful. Therefore the Judge in examining a case requires proof to decide the case. Proof is the most important stage in the trial. Because proof aims to obtain certainty that an event or afakta proposed actually happened to get a judge's verdict that is right and fair.

In essence the consideration of judges should also contain the following matters: The subject matter and matters recognized or arguments that are not denied; There is a juridical analysis of the decisions of all aspects concerning all the facts/ things that were proven in the trial; The existence of all parts of the Plaintiff's petitum must be considered / tried one by one so that the judge can draw conclusions about the proven / not and can be granted / whether the claim is in the verdict (Harahap, 2011)

The freedom of judges also needs to be exposed to the position of impartial jug Article 5 paragraph (i) of Law No. 48 of 2009. The term impartiality here must not be literal, because in making decisions, the judge must take the right side. In this case it is not interpreted as not partial in its judgment and judgment. The more precise formulation of Law No. 48 of 2009 Article 5 paragraph (i): "The court hears according to law by not discriminating against people". A judge in finding his law is allowed to reflect on jurisprudence and the opinion of famous legal experts (doctrine). Based on the provisions of Article 28 paragraph (1) Law No. 40 of 2009 that: "Judges must explore, follow, and understand the legal values that live in society". So the judge in giving a decision is not only based on the legal values that live in the community.

As in the provision of Article 178 HIR, Article 189 RBG, if the case examination is completed, the Panel of Judges because of their position conducts deliberations to take the decision to be dropped. Deliberation of judges will directly influence the decision. Because of the importance of judges' deliberations. The inspection process is deemed complete, if it has taken the answer phase of the defendant in accordance with Article 121 HIR, Article 113 Rv, which is accompanied by a replication of the plaintiff based on Article 115 Rv, as well as duplicate of the
defendant, and proceed with the process of verification and conclusion. If everything has been done and the assembly states that it has finished, then the examination is closed and the next process is to drop or pronounce the decision.

Relating to a violation of the law which results in another party suffering a loss will certainly have an effect on the claim. Lawsuits in civil procedural law occur if someone feels that their rights have been violated by another person. Claims are in the form of claims of rights submitted by a person or more commonly referred to as "plaintiffs" to other people called "defendants" through a court to obtain legal protection. Civil lawsuit is a contentious claim containing a dispute between litigant parties whose settlement examination is given and submitted to the court with the position of the parties: the one who submits a dispute settlement is called and acts as the plaintiff, while being withdrawn as an opposing party is referred to and is the defendant (Harahap, 2011).

Relating to the power of the judiciary that the judicial power has an independent power to conduct justice in order to uphold the law and justice based on the Pancasila. With the independence of judicial power in casu, the judiciary in making decisions on cases filed has freedom that must not be interfered with or intervened by any party, does not require negotiation, compromise, let alone bargaining decisions. Every case submitted by the plaintiff, defendant, prosecutor, defendant or other interested parties is not always in accordance with the wishes of the parties who are intended to put their hopes in winning or the case is granted. If the verdict is not as desired, feelings of disappointment arise. Therefore ideally the judge's decision must be accepted by the community but with the understanding "whether or not a decision can be accepted should not be interpreted purely and factually. Judges are not "bouche de la loi" but they are not "bouche de la societe" or funnels from the public. Must judge according to law. Therefore the decision must be based on law, must contain or guarantee legal certainty, which means that there is a guarantee that the law is carried out, that those who are entitled according to the law can obtain their rights and their decisions are carried out (Pramono, 2013)

Verdict is a product of real justice which always contains orders from the court to the losing party to do something, or release something or punish something. In the dictum verdict is always condemnation (punishing) or constitution (creating). This court order if it is not carried out voluntarily, it can be carried out by force called execution. (Harahap, 2011)

In accordance with the provisions of Article 178 HIR, Article 189 of the RBG if the case review is completed. The panel of judges because of their position held a deliberation to take the decision to be dropped. The inspection process is deemed
complete, if it has taken the answer phase of the defendant in accordance with Article 121 HIR, Article 113 The RBG is accompanied by a copy of the plaintiff based on Article 115 of the RBG, as well as duplicates of the defendant and proceed with the process of verification and conclusion.

Judges are required to be able to provide legal consideration (legal reasoning) that is mature in the decision. As understood that the decision is the product of the court and the crown of the judge. Decisions must contain three (3) aspects that exist in the legal considerations (legal reasoning) namely: First, the juridical aspect (rule of law), Second, sociological aspect (benefit) and third, the philosophical aspects (justice).

The judges of legal reasoning are useful in taking consideration to decide a case. A judge before making a decision must pay attention to and try to do so that the decision that will be imposed later allows for a new case to arise. The decision must be complete and not cause a new case. The duty of the judge does not stop by just making a decision, but also completing it until the implementation. In a civil case the judge must help justice seekers and try their best to overcome all obstacles and obstacles to achieve a simple, fast and low-cost trial (Isnantiana, 2017).

It was emphasized that judges as the personification of the judiciary, in deciding a case other than being required to have intellectual capabilities, also had high moral and integrity so that they reflected a sense of justice, guaranteed legal certainty and could benefit the community. The judge in deciding a case must be based on various considerations that can be accepted by all parties and do not deviate from the existing legal rules, which are called Legal reasoning. Legal reasoning is defined as a search for "reason" about law or a basic search for how a judge decides a case/ legal case. Legal reasoning is part of a court decision in deciding a case. Legal reasoning by a judge can be based on philosophical, juridical, sociological or theological aspects that reflect the principle of legal certainty, justice and benefit for the parties.

Judges’ decisions that have legal certainty, the judge in completing a civil case in court has the duty to find the right law. Therefore, it is not enough just to look in the law, because the possibility of the law does not regulate clearly and completely so that the judge must explore the legal values that live in society. Legal values that live in society are nothing but customary law or non-written law. The judge is assigned as a digger and formulates it in a decision. Judge’s decision is a law enforcement process that aims to achieve one of the legal truths in order to realize "legal certainty" (Wantu, 2017).
In Decision No. 166/Pdt.G/2014/PN.Plg the parties are Manairsyah as Plaintiffs who have given power of attorney to H. Adi Gunawansyah SH, Yenni Liza, SH and B. Budi Priyanto, SH Advocates against the Director of PT Bank Credit a Tri People Gunung Selatan as Defendant. Sitting on the case for the submission of this lawsuit, in 2011 the Plaintiff worked for the company PT Gunung Selatan South Bank Credit located at Jalan Kolonel Atmo No. 596/3 Kel. 17 Ilir Kec. Ilir Timur I Palembang, led by the Defendant, was the Director of the Company. The company often occurs in home sales transactions for confiscated collaterals that are stuck or in arrears and Auction for Underwriting Rights by PT Perkredititasn Rakyat Tri Gunung Selatan. As is the custom in the office if there is someone who can sell the house, both the employee at the Plaintiff’s office and the outsider will get a fee of 2.5% (two and a half percent ) of the price of the house sold.

The plaintiff in October 2013 had the opportunity to sell 10 (ten) housing units which were not sold by the Defendant, on this occasion the Plaintiff began to look for prospective buyers and attempted to do the house to the wider community and distributed it to buyers according to the agreed price of Rp. 160,000,000 (one hundred and sixty million rupiahs) / unit located in Bukit Rawa, hingga finally ten (10) units over Plaintiff get buyers and Penggugat faced with the Defendant. On June 2014, the Plaintiff was dismissed and dismissed because he did not meet the target of what the Company wanted, for the dismissal. The suspect accepted it, but the Plaintiff objected to the Defendant’s fee for the sale of houses by the Defendant. The Plaintiff attempted to explain to the Defendant the rights of the Plaintiff to obtain fee services 2.5% (two and a half percent) of the 10 (ten) rumH units that the Plaintiff had bought and sold, but were still not fulfilled by the Defendant and rejected. As a result of the Defendant’s actions, he made a lot of damage to the Plaintiff both material losses and immaterial losses so that the Plaintiff resolved to file a Claim for Defendant’s Unlawful Acts against the Plaintiff to the Palembang Class IA District Court.

The judge’s consideration in Decision No. 166/Pdt.G/ 2014/PN.Plg above to the Defendant Majel’s exception is the judge considering that the Defendant’s exception that the Plaintiff’s claim was "error in persona" then the judge argued that it was the right of anyone as Plaintiff to submit anyone as Defendant. In this case the Defendant was the Director of PT Bank Perkenditasn Rakyat Tri Gunung Selatan with the address on Jalan Kolonel Atmo No. 596/3 Kelurahan 17 Ilir Kec. Ilir Timur I Palembang, so that this exception was declared rejected because it was unreasonable according to law. Juridical acts that violate the law have consequences for the perpetrators and people who have legal relations in the form
of work that causes unlawful acts to arise. So the consequences arising from an act that violates the law will be realized in the form of compensation for victims who experience. Legal subjects as supporters of rights and obligations called people. People in the legal sense consist of human persons and legal entities. Personal human is a subject of law in a biological sense, as a natural phenomenon, while a legal entity is a legal subject in juridical terms as a symptom of living as a society and human creation based on law, having rights and obligations such as personal human beings. (Muhammad, 2000)

The problem in this case is that the Plaintiff as an employee of the Tri Gunung Selatan People's Credit Bank Company, in October 2013, the Tri Gunung Selatan People's Credit Bank Company, wants to sell 10 (ten) housing units from delinquent debtors or bad credit. Then the Plaintiffs find potential buyers to the wider community or offer buyers according to the agreed price of Rp. 160,000,000. (one hundred and sixty million rupiahs) per unit located in Rawa Bukit, until finally the 10 (ten) units of the Plaintiff get their buyers and the Plaintiff is confronted by the Defendant for the next process. In August 2014 the Plaintiff acknowledged the Defendant to ask and take the percentage fee fee to the Defendant regarding 10 (ten) housing units that the Plaintiff had purchased and had sold which calculated a total fee of Rp. 40,000,000 (forty million rupiahs) with details of 1 (one) house unit Rp. 160,000,000 (one hundred and sixty million rupiahs) multiplied by 10 (ten) housing units totaling Rp. 1,600,000,000 (one billion six hundred million rupiahs) x 2.5% fee service = Rp. 40,000,000 (forty million rupiahs) but by the Defendant PT Bank Perkreditan Rakyta Tri Gunung Selatan, only provided a fee of Rp. 2,500,000 (two million five hundred rupiahs) and the Plaintiff protested that other employees and habits that occurred at the Tri Gunung Selatan Bank of Rural Bank who could sell or find buyers for the house to be sold received a fee of 2.5 % (two and a half percent) so that the action of Tegrugat is very detrimental to the Plaintiff.

Based on the analysis of these considerations, one element of the act of violating the law is the "loss" of both material and immaterial losses. The result of breaking the law is the loss of victims. The loss must be replaced by people charged by law to compensate for the loss. From a juridical perspective, the concept of compensation in law is known in 2 (two) legal fields, namely: a) the concept of compensation due to default and b) the concept of compensation because the agreement is based on the law including compensation for illegal acts. Forms of compensation for violating the law are known as nominal compensation, compensation for compensation and anti-loss penalties. Nominal compensation for serious violations of law, which is an act containing intentional elements, but
does not cause a real loss to the victim, so the victim can be given a certain amount of money in accordance with the sense of justice without calculating how much the actual loss. Compensation compensation is compensation that is a payment to the top victim and a loss that has actually been experienced by the victim from violating the law. This compensation is called actual compensation, for example compensation for all costs incurred by the victim, loss of profit / salary, illness or suffering, including mental suffering such as stress, falling in good name and others. (Fuady, 2011: 134)

The evidence in a civil case based on the provisions of Article 164 HIR, Article 284 RBg, and Article 1866 of the Civil Code, are known to be the main types of evidence in civil cases, namely: Proof of letter; Witness evidence; Suspension; Recognition; and Oath.

The five types of evidence, in principle, the panel of judges tried civil cases to give the widest opportunity to litigant parties to submit evidence to strengthen the arguments of the lawsuit. In Decision No. 166/Pdt.G/2014/ PN.Plg the parties have presented witnesses and evidence as in the urain above. Then the panel of judges researched, assessed, considered and tried cases to be fair and impartial in providing opportunities for the parties to prove, submit witnesses and drop the burden of proof as confirmed in the Decision of the Supreme Court of the Republic of Indonesia No. 162K/Sip/1955 dated 21 November 1955. Submission of evidence to be examined, assessed, considered and tried is the absolute authority of the judicial facti of the District Court and High Court. Strictly accepted or rejected proof is the authority of Yudex facti (Mulyadi, 2009). Whereas from the series of considerations, the Panel of Judges further argued that the Plaintiff could not prove the arguments of the lawsuit. Therefore tort "Plaintiff haruslah h k untu entirely rejected" because Plaintiff rejected entirely by itself Plaintiffs should be sentenced to pay all fees in this case.

After the panel of judges made several legal considerations, the panel of judges tried: rejected the Plaintiff’s claim in its entirety. The messenger is "rejected" if the case has been examined to the subject matter but the plaintiff is deemed unsuccessful in proving the claim. The legal consequences are if the claim is not received, then it is submitted again, then it can be tried again (no nebis in idem). Whereas if the lawsuit has been rejected, then it cannot be sued again because it has already been tried (nebis in idem). Based on the opinion of Yahya Harahap that the claim can be granted with the terms of the claim the claim can be proven by the Plaintiff in accordance with the evidence as stipulated in Article 1865 of the Civil Code and Article 164 HIR. Granted the claim was granted partly or wholly determined by the judgment of the panel of judges. If the "rejected" claim
means that the Plaintiff has not succeeded in proving the lawsuit's argument, the legal consequences that have been borne by him for failing to prove his claim are "the claim is completely rejected". If a claim cannot be proven by the claim that the Defendant deserves to be punished for committing an illegal act, then the Plaintiff's claim will be rejected. (Harahap, 2011) This is as in the consideration of the judge of Decision No. 166/Pdt.G/2014/PN.Plg in the series of considerations the panel of judges argued that the Plaintiff could not prove the arguments of the lawsuit, therefore the claim must be rejected entirely.

In the doctrine of civil law, opposing elements or in the provisions of Article 1365 of the Civil Code, it is said that violating the law is known as 2 (two) types namely formal law and material law. The criteria for determining an act that is contrary to the law in general are: Contrary to the offender's legal obligations; or Violating the subjective rights of others, or Violates the rules of morality (zeden geode); or Contrary to the principle of decency, thoroughness and caution in community life (Bimasakti, 2018).

It is more clearly explained that the basis of the lawsuit of onrechtmatigedaad is a factual act that harms others. In the act of violating the law there is also a justification (Rechtvaardigingsgronden) even though it is proven that someone committing an offense cannot be prosecuted if there is a reason that justifies his actions. A justification which eliminates the unlawful nature of the act is that: First, the state of force (coercion); Second, forced defense (noodweer); Third, implement the law; Fourth, order superiors. In addition to justification reasons there are also forgiving reasons (Schuldtsluitingsgronden) are things that eliminate the guilty nature of the perpetrators, so that my application cannot be held accountable. Unlawful acts by legal entities in the practice of legal entities (rechtspersoon) can commit acts that violate the law can therefore be held accountable based on Article 1365 of the Civil Code. In doing, the action of a legal entity is carried out by people or their organs (Asrof, 2009).

Judges' decisions reflecting justice because the judge has the duty to uphold justice, this is in accordance with the head of the decision which reads "For the sake of Justice based on the One Godhead". In Decision No. 166/Pdt.G/2014/PN.Plg who reject the lawsuit for violating the law in its entirety, have fulfilled the element of justice because, the Plaintiff has received compensation in accordance with what was determined by the Defendant. Although the Plaintiff felt that his rights were not fulfilled because he was only given a fee of 5 (five) housing units sold.

The element of legal certainty in the judge's decision aims to provide a way out of the legal problems faced by the parties. Then the benefits element is to create satisfaction for parties who litigate, eliminate polemic and conflict between
parties in dispute. Because the parties have got what is right and fulfilled their obligations. Judges' decisions reflect the benefits if the judge not only applies the textually applicable law, meaning that it is not only pursuing mere justice, but also leads to benefits for the parties. The judge's decision must emphasize the final outcome of the decision which provides benefits and uses for the litigant parties (Wantu, 2017).

Judges' decisions must reflect benefits in the sense that the parties who litigate, especially considering losses for those who feel their rights are violated. If someone's rights are punished then the act is a violation of the law. The appearance of losses due to illegal acts has nothing to do with the agreement. This right is given by law to someone making other people as members of the community bear the obligation to respect these rights as legal obligations and not contractual obligations (Isnaeni, 2017: 253).

Conclusion

The judge's consideration in a decision as Legal reasoning is interpreted as a search for " reason " about law or a basic search for how one can decide a case/ case of law. Legal reasoning by a judge can be based on philosophical, juridical, sociological or theological aspects that reflect the principle of legal certainty, justice and benefit for the parties. Judges' decisions reflect justice because the judge has the duty to uphold justice, this is in accordance with the head of the decision which reads "For Justice based on the Almighty Godhead". In Decision No. 166/Pdt.G/2014/PN.Plg who reject the lawsuit for violating the law in its entirety, have fulfilled the element of justice because, the Plaintiff has received compensation in accordance with what was determined by the Defendant. Therefore the decision has fulfilled the principle of justice, namely the Plaintiff has received compensation, and the Defendant has fulfilled his obligations.

Suggestions

Judges' decisions must reflect 3 (three) aspects, namely justice, legal certainty and expediency. In Decision No. 166/Pdt.G/2014/PN.Plg The panel of judges is required when examining, evaluating, considering and adjudicating cases to be fair and impartial in providing opportunities for parties to prove, submit witnesses and unite the burden of proof as stated in the Decision Republic of Indonesia's Supreme Court No. 162K/Sip/1955 . The duty of the judge does not stop by just making a decision, but also completing it until the implementation. Based on this in a civil case the judge should be is to help those seeking justice and make great effort to
overcome all obstacles and barriers in order to achieve the justice that is simple, fast and inexpensive.

References


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