THE LIMITATION OF THE BREACH OF CONTRACT AND TORT IN ONE LAWSUIT

LEGAL CASE STUDY

By:

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INTERNATIONAL PROGRAM

DEPARTEMENT OF LAW

FACULTY OF LAW

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Demikian, surat pernyataan ini saya buat dengan sebenar-benarnya dalam kondisi sehat jasmani dan rohani, dengan sadar serta tidak ada tekanan dalam bentuk apapun oleh siapapun.

Dibuat di : Yogyakarta

Pada tanggal : 15 Oktober 2018

ang membuat pernyataan

FENTY ENDRIYANI

Motto

"Allah will raise those who have believed among you and those who were given knowledge, by degrees"

(Al-Mujadilla:11)

"Success needs process"

"Always be yourself no matter what they say and never be anyone else even if they look better than you"

DEDICATION

1. Allah SWT and Prophet Muhammad SAW who continues to provide extraordinary favors and ease me in writting this legal case study.
2. My Husband Mohamad Fuad Burhan Ladja Ga'a.
3. My oldest son Fushshilat Fuad Ladja Ga'a.
4. People that always support me, my lecturers, my advisors, my relations, and my all of friends in International Program Faculty of Law Universitas Islam Indonesia. Thank you for your love and care to me.

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Assalamu'alaikum.wr.wb,

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Finally, the writer recognizes that this legal case study is still far from being perfect, so the writer wants the reader to give some criticism and suggestion. However, the writer expects that this legal case study will be useful for anyone who reads this legal case study.

Wassalamu'alaikum, wr.wb

Yogyakarta, 26 July 2018

The Writer

Fenty Endriyani

TABLE OF CONTENT

A. Context of Study

This thesis focuses on the explanation about the limitation of the breach of contract and tort in one lawsuit. The lawsuit used as case study is the Decision Number 75/PDT/2016/PT YYK is an example of an appeal decision on a case that combines breach of contract and tort between PT Skylight Aviation Indonesia against Marsda TNI AU (Pur) Udin Kurniadi, S.E., M.M., on breach of contract buying and selling aircraft. In this decision, the judge decided that a lawsuit submitted by Air Force Marsda Udin Kurniadi, S.E., M.M, to PT Skylight Aviation Indonesia could not be granted which one result was a mistake in the filing of the lawsuit. In this case, the plaintiff combines breach of contract and tort in one lawsuit. The objection of the lawsuit for the merger of breach of contract and tort is what makes the author elaborate more deeply about the characteristics of breach of contract and tort.

The breach of contract and tort are forms of violation or deviation from an agreement made in the form of engagement. These acts are two distinct forms of offense, therefore, it is important to differentiate between each characteristic of them. This is because a merger between breach of contract and tort in one lawsuit is not justified in the legal view in Indonesia as mentioned in Supreme Court which states Merger lawsuit against the law with the act of breaking promises can not be justified in the orderly and must be solved individually as well"[1]. Based on this decision, therefore, it can be stated that the merger between breach of contract

[1] This joint agreement is mentioned in the decision of Supreme Court Decision Number 1875 K / Pdt / 1984 on 24 April 1986. This ruling affirms that in Indonesian law, the merger between the breach of contract and tort in one lawsuit is not justified. It also refers to the Circular Letter of the Supreme Court (SEMA) stating that the incorporation of default and unlawful acts must be adjusted to the previous Supreme Court ruling.

and tort in one lawsuit are then not justified if settled with one lane. The Supreme Court decision indicates that a merger between breach of contract and tort in one lawsuit is not justified and must be separated.

The rejection of the incorporation of breach of contract and tort in one of these claims traces the judgment on whether an act including unlawful conduct is insufficient if it is based solely on violations of the rule of law, but such conduct must also be judged from the point of view of propriety. The fact that a person has committed a violation of a rule of law may be a factor in judging whether the act of causing the loss is appropriate or not to the propriety that a person should have in association with his fellow citizens.[2] This discussion in the analysis leads to the types of harm resulting from breach of contract and tort. According to Al- Tawil ini his journal, the breach of contract and tort have different effects; if the breach is more harmful to moral, then the tort brings harm to moral and law which applicable directly.[3] The legal matter in accordance with the agreement is made between the two parties without involving the existence of the law, but the legal act of law can not and must be processed in accordance with the applicable law.[4]

According to the definition, the breach of contract and tort may be interpreted as a result of the law deriving from an engagement. Engagement is another form of agreement between one party and the other, where this

[2] Setiawan, *Four Criteria of Violation of Law and Its Progress in Jurisprudence*, Varia Justice No. 16, December 2006.

[3] Tareq Al-Tawil, "Damages for Breach of Contract: Compensation, Cost of Cure and Vindication," *Adelaide Law Review,* Accessed on https://www.adelaide.edu.au/press/journals/law-review/issues/alr-vol-34-2/alr-34-2-ch6.pdf Page 352.

[4] *Ibid.*

engagement has the power in the eyes of the law.[5] An engagement is held for the approval of some parties over something. Therefore the relationship made in an engagement then is ultimately in the form of a contract.[6] This contractual relationship is a legal relationship intended to give rise to legal consequences, which creates rights and obligations to the parties to the agreement.[7] As disclosed in Article 1233 of the Civil Code, it is mentioned that the legal relationship in the engagement may be born out of the will of the parties, as a result of the agreement reached by the parties, and as a result of the order of the law,[8] it can thus be said that the legal relationship can be born as a legal act, intentional or unintentional. The existence of a legal relationship in an engagement ultimately leaves each party in the engagement subject to every point of agreement that has been made.

Similarly, contracts that have been made in an engagement basically also have the force of law, where if there are parties acting outside the contract that has been made, then the parties can be criminalized. It is thing that then makes the contractual responsibility between the parties concerned is very important to obey. Any violation or deviation occurring in an agreement may be categorized as breach of contract or tort[9].

Although there is a rejection of a combination of breach of contract or tort in one lawsuit, the fact that the merger of breach of contract or tort in one lawsuit

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[5] Subekti. *Legal Agreement*. Jakarta: Intermasa. 1985. Page 1.

[6] Rosa Agustina. *Act Against the law. In the Law of Engagement; Series of Elements of Constituents of State Building Law.* Denpasar: Literature Library. 2012. Page 4.

[7] *Ibid.*

[8] Muljadi, K and Widjaja, G. *Alliances Born from the Agreement,* Jakarta: Raja Grafindo Persada. 1st Edition, 2004. Page 17.

[9] Yessica, E. "Characteristics and Linkages between Legal and Default Actions," *Journal of the Repertorium,* Volume 1 No 2, November 2014.

has been ratified in some cases, as stated by Hoge Raad[10] where the condition where the breach of contract and tort can be merged using unlawful act (perbuatan melawan hukum or PMH) as quoted as follow:

> "Tort can be defined as the breach of contract, as long as it is, which constitutes the breach of contract itself and irrespective of its contractual obligations, is also form of tort"

Raad's statement above then supported by Supreme Court Decision Number 886 K/Pdt/2007 on October 24, 2007. Where in the decision, the Panel of Judges in his consideration states that:

> "Whereas even though the lawsuit contains the positions of Breach of Contract and Tort, but is expressly described separately, such claims of objective cumulation may be justified."

In his book, Khairandy also asserted that the breach of contract and tort can be merged in one lawsuit if then in one case, a person does not only breache the promise but also commits an infringing act, for example the broken agreement then coincides with the destruction of property, violence or acts theft.[11] This is also later confirmed by Rasmusen who asserted that the breach of contract and tort could be merged in one lawsuit if later the lawsuit contained a case involving violation of promise and law.[12] Ramusen here gives a case example when there A party borrows money from B party, but the A then is irriteted when coming B to negotiate an extension but do not reach an agreement. Party A then damages property belonging to B, then here the B can afford to prosecute the breach of payment agreement and the destruction of property as an act against the law in

[10] Khairandy Ridwan, *Pengantar Hukum Dagang Indonesia*. Yogyakarta: Gama Media, 1999. Page 320.

[11] *Ibid.*, Page 317-318.

[12] Eric Rasmusen. *Tortious Interference with Contracts: Why Punish It?* June 12, 2004 re-texed, UTF Öxed, 2008. Page 2-3.

one lawsuit. [13] This is then in line with the statement given by Khairandy in his book that the breach of contract and tort can be made in one lawsuit if then the case is related.[14]

The merger between the breach of contract and tort in the same lawsuit is known as the objective cumulation. Although this objective cumulation is not strictly regulated in legislation, but in the practice of justice, this objective cumulation has long been applied. It can be seen in the Decision of Raad Justisie Jakarta on June 20, 1939, allowing objective cumulation in cases where there is strong and close connection. [15]

The existence of pros and cons against the merger of breach of contract or tort acts here then raises a question, what is breach of contract and what is tort? What are the characteristics of breach of contract or tort in a single engagement? This research will try to explain these questions by describing the limitations of breach of contract or tort in a single engagement using Decision Number 75/PDT/2016/PT YYK as a case that will help explain those boundaries or limitations.

The pros and cons of incorporation of breach of contract or tort here is on the basis of basic differences in the conception of breach of contract or tort against the law itself. The fundamental difference between a lawsuit against a lawful offense is a breach of contract to place the plaintiff in a position in which the indemnification provided is a loss of expected profit, whereas a lawsuit on the

[13] *Ibid.*

[14] Khairandy Ridwan, *op. cit.*, Page 320.

[15] Soepomo R, *Hukum Acara Perdata Pengadilan Negeri*. Jakarta: Pradnya Paramita, 1993. Page 20.

basis of a tort places the plaintiff in a position before the unlawful act occurs so that the indemnification given is a real loss. However, at this time the previous shift of theory is a classic theory that distinguishes the two claims into modern theories that no longer distinguish sharply from the two lawsuits of breach of contract or tort.[16]

The controversy over the merger of breach of contract or tort then continues on the use of the terms of engagement or agreement therein. Article 1233 of the Civil Code states that the source of engagement is the agreement and the Law. Engagement is not formulated in the Act but according to science, what is meant by engagement is a legal relationship between two parties in the property field with one party entitled to achievement and the other party is obligated to achieve.[17] The two legal bases are though the source of the engagement but have a distinction between the two. The fundamental difference lies in the understanding between the two, in which the engagement itself where the treaty is meant by an agreement between the two parties who conduct the agreement, therefore it creates an agreement and is binding on the parties that conduct it. While the engagement sourced from the act which also includes the engagement due to the act of unlawful is the act committed by a person and the law attaches the legal consequences of the engagement. Due to an act that is violated and is not permitted by law, then the act is an act against the law. The treaty breaches the engagement which creates an obligation to one or more parties into the agreement.

[16] Rosa Agustina., *op. cit*., Page 12.

[17] Handri Raharjo. *Hukum Perjanjian di Indonesia.* Yogyakarta: Pustaka Yustisia. 2009. Page 75.

This engagement is formed because the parties intend to it and the will of the parties is fixed to the effect of certain laws. An agreement of a treaty is essentially binding in accordance with article 1338 of the Civil Code, therefore this agreement has a binding power as the act for the parties conducting it.

However, in practice, the term engagement is often referred to in the pronoun as an agreement between two or more parties, but not all engagements take the form of a contract. Basically, the agreement is one of the sources of engagement, where the other source of engagement is in the form of the act. This then results in the difference resulting from the engagement arising out of the agreement or from the law. Due to the law of engagement that arises out of the agreement in accordance with the agreement by the parties because the agreement is made on the basis of the agreement of the parties, while the legal consequences of the engagement born out of the act are determined by law, the party performing the act may not desire the legal consequences.[18]

B. Parties Identity

1. The Appeal/Plaintiff
    a. Marsda TNI AU (Pur) Udin Kurniadi, S.E., M.M as the Chairman of Sekolah Tinggi Teknologi Kedirgantaraan (STTKD) Yogyakarta, Jl. Parangtritis KM 4,5 Sewon Bantul Yogyakarta
2. The Comparator/Defendant

[18] Rosa Agustina. *op. cit.*, Page 3.

a. PT Skylight Aviation Indonesia in Kompleks Pergudangan Cardig (*Sayap Timur*) Halim Perdana Kusuma Airport, Jakarta Timur
b. Ny. Wulandari Ismail as President Director of PT Skylight Aviation Indonesia in Kompleks Pergudangan Cardig (*Sayap Timur*) Halim Perdana Kusuma Airport, Jakarta Timur

3. Date of Decision

   This verdict was stipulated on November 3, 2016 in the Consultative Assembly of the High Court Judges of Yogyakarta.

C. Case Position

The case position in this lawsuit is that the complainant/defendant filled an appeal for his defeat in the previous hearing which incriminating the complainant/defendant side. The Consultative Assembly of the High Court of Justice of Yogyakarta decided to accept the appeal of the defendants/the appellate and strengthen the Decision of the Yogyakarta District Court dated June 13, 2016 No. 75/PDT/2016/PT Yyk appealed for the appeal. Appeals here are filed on the basis of the defects found in the previous decision of Decision No. 80/Pdt.G/2015/PN Yyk. The appeal is filed because there are several points in the previous decision which become the problems for the defendant, such as:

1. Plaintiffs is not qualified nature filed a lawsuit

   This is because the plaintiff uses his personal name in filing a lawsuit, while in a sale and purchase agreement that is made under the name of the foundation.

2. The Power of Attorney of the Plaintiff is invalid and deemed juridical

The power of attorney should supersede the foundation not the personal name, and the repredentative of the foundation competently filed the lawsuit

3. Plaintiff's claim is wrong in attracting the parties in the legal liability

   The Plaintiff in this case filed a lawsuit against PT Skylight Aviation Indonesia as the defendant 1 and NY. Wulandari Ismail as Defendant 2. In this case the personal claim is not appropriate given the lawsuit filed between the companies.

4. Plaintiff's claim is included in the qualification (*exception non adimpleti cntractus*)

   The Plaintiff did not fulfill the promise of making good payments and renegotiates the payment issue on the third term of payment. Therefore, the delay of delivery here is also based on inconsistent plaintiff behavior.

5. The claimant's claim is included in the *rechtsverwerking* qualification where the plaintiff has waived his right to indemnify

   The existence of a peace agreement in the sale and purchase agreement on February 23, 2015 here indirectly resulted in the position of the plaintiff included in the *rechtsverwerking* qualification. In light of the clause in the agreement stating that "the agreement will be terminated if the intent and purpose of this agreement has expired".

6. The plaintiff's claim is included in the peremtoria exceptie qualification

   Since the claim of the plaintiff is included in the peremtoria exceptie qualification, the claim of the plaintiff here can not be pronounced.

7. Plaintiff's suit is blurred (*Obscuur Libel*)

The Plaintiff mixes the breach of contract or tort found in sub.12, sub.13 and sub.15. In addition, the plaintiffs explain the existence of the legal basis for the cancellation of the agreement without specifying the terms of the canceled agreement.

Therefore, based on the points presented in the appeal it can be said that the previous decision was inaccurate and detrimental to the defendant.

D. Verdict

The Panel of Judges of the High Court of Yogyakarta observed that the core of the issues disputed by the plaintiff or comparator against the defendant/comparator stems from the so-called agreement by the parties to which the plaintiff and the defendants are related in the Sale and Purchase Agreement of 1 (one) Boeing 737-200 Aircraft unit on 21st April 2014, the plaintiff has purchased the used aircraft from defendant I PT Skylight Aviation Indonesia at an agreed price of Rp1,350,000,000.00 (one billion three hundred fifty million rupiah) signed by the plaintiff representing STTKD Yogyakarta and defendant II representing the interests of defendant I (PT Skylight Aviation Indonesia).

The defendants (Defendant I and Defendant II) in this case have appealed the first-level decision which resulted in the defendants being defeated, therefore here the defendants file an Appeal by enclosing Decision Number 80/Pdt.G/2015/PN.Yyk as consideration for the appeal. Based on this case, according to the Decision of the Yogyakarta District Court of June 13, 2016 Number 80/Pdt.G/ 2015/PN.Yyk, appeal memory, counter appeal and all court

files, the Panel of Judges appeals that the decision of the first judge in the case this has been considered correctly and fairly according to the law, therefore the considerations of the Panel of Judges of the first level may be approved, to further be taken into consideration by the judges at the appeal level and the proposed appeal may be strengthened.

E. Legal Issue

The appellant and appeallee in the Decision of Yogyakarta District Court on June 13, 2016 No. 75/PDT/2016/PT.Yyk represent a business entity in the form of PT (Limited Liability Company) and educational institutions that have been regulated in accordance with legislation applicable legislation. In addition, the Decision of Yogyakarta District Court on June 13, 2016 No. 75/PDT/2016/PT.Yyk indicates that Decision Number 80/Pdt.G/ 2015/PN.Yyk should be reviewed and then review on all points in the decision in accordance with appeal points made.

The issue which was then raised in Decision Number 80/Pdt.G/2015/PN Yyk is that the appellant and appeallee here have made a breach of agreement and tort towards the aircraft sale and purchase agreement made on 21st April 2014, in this case, the appellant filed an appeal because the lawsuit filed by the appellant and appeallee here is clearly blurred (Obscuur Libel). The obscurity of the lawsuit filed here is because the appellant can not distinguish whether the claim is in the category of a breach or contract or tort. The existence of the breach of contract debated here lies on the broken promises made by the defendant due to delays in

the delivery of goods that adversely affect the plaintiff materially and morally. However, this disagreement clause is then combined with the lawful action by the plaintiff in prosecuting the defendants/comparators.

F. Legal Consideration in The Decision

Here, the consideration material for decision making consist of the evidence attached by the defendants/comparators which contains the sale and purchase agreement charged by the complaint/plaintiff. The approval of the comparative's appeals here is based on several matters such as:

1. Comparing the memory appeal from the plaintiff and counter appeal to the defendant.
2. Comparing the correspondences proposed to each parties.
3. Reviewing the chronological agreements done by each parties.
4. Seeing the main problem in this case that the problem is the the existence of the breach of contract proposed by the defendant/comparator.

G. Legal Analysis

1. Related Actors

The actors involved in this decision include Marsda TNI AU (Pur) Udin Kurniadi, S.E., M.M who positioned himself as the plaintiff, the Chairman of the College of Aeronautics Technology (STTKD) Yogyakarta, Jl. Parangtritis KM 4, 5 Sewon, Bantul, Yogyakarta. Then the

actor who became the defendant and appealed here is PT Skylight Aviation Indonesia at Cardig Warehousing Complex (East Wing) Halim Perdana Kusuma Airport, East Jakarta, represented by Ny. Wulandari Ismail as President Director of PT Skylight Aviation Indonesia.

2. Sale and Purchase Agreement and the Breach of Contract; Two Perspectives

The initial agreement that took place between the Marsda TNI AU (Pur) Udin Kurniadi, SE, MM and PT Skylight Aviation Indonesia was in the form of sale and purchase agreement whereby the Air Force Marsda Udin Kurniadi, SE, MM representing STTKD bought the aircraft from PT Skylight Aviation Indonesia. Based on the Letter of Sale and Purchase Agreement of Boeing 732-200 aircraft on 21st April 2014, STTKD Yogyakarta shall pay Rp 1,350,000,000 (One Billion Three Hundred Fifty Million Rupiah) to PT Skylight Aviation Indonesia with the terms of payment in four payment terms up to the aircraft shipping to STTKD Yogyakarta. In addition, PT Skylight Aviation Indonesia must deliver the aircraft within 3 (three) months from the signing of the sale and purchase.

However, according to the agreement, the STTKD Yogyakarta believed that PT Skylight Aviation Indonesia had injured the agreement with these following points:

a. PT Skylight Aviation Indonesia handed over scrapped aircraft within 4 months after the agreement was signed.

b. That, as a result of the delay of the defendant’s obligation, here then the plaintiff is unable to implement the planned STTKD practice program, therefore in this case the plaintiff suffers from the loss of moral and material.

c. That Marsda TNI AU (Pur) Udin Kurniadi, S.E., M.M, as the Chairman of STTKD Yogyakarta felt disadvantaged both morally and materially because PT Skylight Aviation Indonesia ridiculed the plaintiff by withdrawing the given gift in the form of an electric converter at the anniversary event of STTKD Yogyakarta in 2014.

The points above became the basis of the initial lawsuit filed by Marsda Air Force Udin Kurniadi, S.E., M.M as Chairman of STTKD Yogyakarta and this lawsuit was ratified in Decision Number 80/Pdt.G/ 2015/PN Yy. The plaintiff in this case emphasizes that the defendant has injured an adverse pledge for the plaintiff. The existence of this promise violation became the initial basis of the filing of this lawsuit.

Responding to Decision Number 80/Pdt.G/2015/PN Yyk is then the party of PT Skylight Aviation Indonesia proposed an appeal which responded to some points previously mentioned, such as:

a. The Plaintiff should use the Institution/Foundation's name in suing PT Skylight Aviation Indonesia instead of using personal name and title, since from the outset the signing the agreement, the plaintiff acted the agency's representative rather than a personal purchase agreement.

b. The plaintiff's claim is included in the qualification (exception non adimpleti cntractus). This is because the plaintiff himself was inconsistent in carrying out the agreement. The plaintiff in this case previously asked that the aircraft delivery could be done not according to the schedule because the plaintiff did not have hangar to place the aircraft. Besides that, the plaintiff suffered a setback in payment of the second term after the first payment. It should be noted here that there was a dispute over the price that was originally agreed to be Rp 1,350,000,000 (One Billion Three Hundred Fifty Million Rupiah) to Rp 1,150,000,000 (One Billion Seatus Fifty Million Rupiah) after the plaintiff asked for renegotiation. Plaintiffs in this case also conducted his own business with workers of PT Skylight Aviation Indonesia beyond the company's permission in purchasing small aircraft. Therefore, in this case the defendant did not feel injured or violated the agreement because the plaintiff's pledge was not consistence since the beginning.

c. The plaintiff's lawsuit is included in the *rechtsverwerking* qualification where the plaintiff has waived his right to indemnify. The existence of peace agreement in the sale and purchase agreement on February 23, 2015 here indirectly resulting the position of the plaintiff included in *rechtsverwerking* qualification. In remembrance of the clause in the agreement, it states that "the agreement will be terminated if the intent and purpose of this agreement has expired".

d. Plaintiff's lawsuit is blurred and not clear (Obscuur Libel). The Plaintiff mixes the breach of contract and tort found in sub.12, sub.13 and sub.15. In addition, the plaintiff does not explain the existence of the legal basis for the cancellation of the agreement without specifying the terms of the canceled agreement.

The points intended by PT Skylight Aviation Indonesia herein are considered to appeal with the hope that then Decision Number 80/Pdt.G/2015/PN Yyk may be reviewed by the court and indicate that there is no breach of pledge in the sale and purchase agreement that has been implemented.

3. The Basic Concept of the Breach of Contract and Tort

The main problem that arised in the appeal filed in Decision No. 75/PDT/2016/PT Yyk is that the plaintiff/complainant has filed an abscure lawsuit by mergering between the breach of contract and tort. Therefore, what needs to be further reviewed here is about the basic concepts between the breach of contract and tort. Here are some concepts of the breach of contract and tort:

a. The Breach of Contract

The breach of contract is an act of breaking the terms set out in a contract. It can also be described as the violation of a contract or an agreement that occurs when one party fails to fulfill its promises

according to the provisions of the agreement. The violation of the debtor can be caused by there two possible reasons, such as[19]:

1) Due to the debtor fault, either deliberately not fulfilled obligations or due to negligence.
2) Due to the overmacht (force majeure) which is beyond the ability of the debtor.

In the Civil Code, the breach of contract is regulated in Article 1238 which states that: "The debtor is negligent, if he by warrant or by a similar deed has been declared negligent, or for his own engagement, is if it establishes that the debtor should be deemed negligent by the agreed deadline."[20]

To know since when the debtor in circumstances of the breach of contract, it is required to consider whether in the statement contained the deadline in the implementation of performance fulfillment or not. On the deadline of implementation, the performance fulfillment was "unspecified", it is necessary to warn the debtor to fulfill the performance. However, in the set deadline, the debtor is deemed negligent by the specified deadline in the engagement. The debtor needs to be given a written warning which

states that the debtor must fulfill the performance within the specified

[19] Abdulkadir Muhammad. *Hukum Perdata Indonesia*. Bandung: PT Citra Aditya. 2000. Page 203.

[20] Subekti dan Tjitrosudibio. *Kitab Undang-Undang Hukum Perdata*. Jakarta: PT. Pradnya Paramita. 2008. Page 323.

time. If in that time the debtor does not fulfill it, the debtor is declared to have negligent or breaching the contract.

Written warnings can be done in formal and informal way. A formal warning is called as Legal Notice. Legal notice is done through an authorized District Court. Then the District Court with an intermediary bailiff deliver the warning letter to the debtor, accompanied by the delivery minutes. Whereas, the example of unofficial written warning are through registered mail, telegram, or delivered by the creditor to the debtor on a receipt. This warning letter is called "ingebreke stelling"[21].

To determine whether a debtor is guilty or not in the breach of contract, it is necessary to determine in what circumstances the debtor is stated to be intentional or negligent in failing to meet the performance. Three such circumstances are[22]:

1) The debtor does not fulfil the agreed performance at all.
2) The debtor fulfils the agreed performance, yet it was fault or wrong.
3) The debtor fulfil the performance, yet the set deadline was violated or overdue.

The legal consequences for a debtor who has committed a default are the following penalties or legal sanctions[23]:

[21] Abdulkadir Muhammad. *op.cit.* Page 204.
[22] J. Satrio. *Hukum Perikatan; Perikatan Pada Umumnya*. Bandung: PT Alumni. 1999. Page 122.
[23] Abdulkadir Muhammad. *op.cit.* Page 203-205.

1) The debtor is required to pay the damages suffered by the creditor (Article 1243 Civil Code).
2) If the engagement is reciprocal, the creditor may demand the termination or cancellation of the engagement through a judge (Article 1266 Civil Code).
3) If the engagement is to provide something, the risk is transferred to the debtor since the breach of contract (Article 1237 paragraph (2) of the Civil Code).
4) The debtor is required to comply with the engagement if it is still possible, or cancellation accompanied by payment of compensation (Article 1267 Civil Code).
5) The debtor shall be obliged to pay the court fee or administration if permitted in front of the District Court, and the debtor is found guilty.

According to Sofyan, the debtor is stated as the breach of contract if he or she meets three requirements as follow:

1) The act committed by the debtor is in regret. In this case is that what is done by the Defendant related to the delay of delivery of Aircraft according to the agreement becomes the main problem in doing the defaults. The delays in delivery of Aircraft that do not fit the schedule ultimately make the Plaintiff losing in a material and non-material because it affects the position or function of the Plaintiff in the institution.

2) The result can be predicted beforehand either in the objective sense that a normal person can surmise that the situation will arise. Nor in the subjective sense, that is, as an expert can expect such a state to arise. In this case, the expected consequences should be included in the agreement clause such as a violation between the parties. This clause then becomes the guarantor if any infringement occurs, but in this case, there is no clause stating the sanction of a breach of contract. This is unfortunate when it must then sue but the lawsuit filed becomes ambiguous.

3) Can be asked to account for his actions, meaning not a madman or a weak memory[24]. Based on this case it can be said that both parties are Comparator/Defendant and Complained/Plaintiff in healthy condition so that each can be questioned for their witnesses.

b. Tort (Unlawful Act)

Article 1365 of the Civil Code states that: "Any unlawful act, which carries harm to another person, obliges the person who, for whose fault, issues the loss, compensates for the loss." Subsequently, Article 1366 of the Civil Code states: "Everyone is responsible not only for damages caused by his actions, but also for damages caused by negligence or lack of caution." [25]

[24] Sri Soedewi Masyohen Sofwan. *Hukum Acara Perdata Indonesia dalam Teori dan Praktek.* Yogyakarta: Liberty. 1981. Page 15.

[25] Subekti dan Tjitrosudibio. *op.cit.* Page 346.

According to Moegni Djojodirjo, in the broad meaning, unlawful acts can be interpreted as an act or omission that is contrary to the rights of others or against the legal obligations of the perpetrator himself or against the decency or carefullness attitude which should be heeded in everyday life towards other people or objects[26].

According to Munir Faudy, unlawful acts are as a collection of legal principles aimed at controlling or regulating hazard behavior, to provide responsibility for a disadvantage arising from social interaction, and to provide compensation for the victim with an appropriate suit[27]. Whereas based on Projodikoro, unlawful acts are interpreted as actions which cause shock in the balance sheet of society[28]. Furthermore he stated that the term "onrechtmatige daad" is widely interpreted, therefore it includes also a relationship that is contrary to decency or with what is considered appropriate in the social life of the community[29].

To understand more about unlawful act or tort, here are some elements of them to describe further as mentioned as follows:

1) Act (Daad)

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[26] Moegni Djojodirdjo. *op.cit.* Page 57-58.

[27] Munir Faudi. *Perbuatan Melawan Hukum*. Bandung : PT. Citra Aditya Bakti. 2002. Page 3.

[28] R. Wirjono Projodikoro. *Perbuatan Melanggar Hukum*. Bandung :Sumur. 1994. Page 13.

[29] *Ibid.*

The word "act" includes positive acts, which in Dutch means "nalatigheid" (negligence) or "onvoorzigtigheid" (less carefully) as specified in Article 1366 Civil Code. Thus, Article 1365 is for the person who actually does, while Article 1366 is for the one who does not do. The violation of these two Articles has the same legal effect which is to indemnify. The formulation of positive acts in Article 1365 and the negative acts in Article 1366 only has a meaning before the decision of Hoge Raad on 21st January 1919, because at that time the notion of "against the law" is still narrow. After the decision of Hoge Raad, the notion of "against the law" became more widespread, including negative acts. Thus, the meaning of the act in Article 1366 Civil Code has also been included in the formulation of the act in Article 1365

Civil Code. In this case, the intended act is a form of physically harmful action, but in the case of a decision here the action is still ambiguous and difficult to identify.

2) Againts the Law (*Onrechtmatig*)

Since 1890, the law enforcers have adopted a broad understanding of the unlawful notion, while Hoge Raad still holds a narrow understanding. This can be known from the decision of Hoge Raad before 1919 which formulates the unlawful act as "an act that violates the rights of others or if the person acts contrary to his or her own legal obligations." In this

formula, only the rights and obligations should be considered law by law (wet). Thus, the act must violate the rights of others or be contrary to its own legal obligations granted by law. Thus, against the law (onrechtmatig) is the same as breaking the law (onwetmatig). With this narrow interpretation, many people's interests are harmed, but can not demand anything[30]. What is meant by tort is that of the Comparative/Defendant and the Complaint/the Plaintiff each perform an act that is inconsistent with the provisions of applicable Laws. In this case the act that violates the provisions of the legislation is a breach of agreement/agreement that has been signed and stamped and has legal force in it.

3) Loss

The loss can be in the forms of material or immaterial. The elements of loss and the size of the indemnity assessment in unlawful acts can be applied analogically, thus the compensation calculation is based on possible cost elements, actual losses, and expected benefits (interest).[31] The disadvantage in this case is that from both parties the Comparisons/Defendants and the Complained/Defendant suffered visible and felt loss. For the Comparator/Defendant, the perceived loss is the unfair treatment of the verdict that justifies the Appeal/Plaintiff's lawsuit.

[30] Abdulkadir Muhammad. *op.cit.*., Page 252-253.
[31] *Ibid*. Page 255-256

However for the Complained/Plaintiffs the perceived loss is that in this case the reputation and position within the institution becomes threatened by the treatment of the Comparator/Defendant.

4) Fault

The Article 1365 of the Civil Code has clearly distinguished the notion of fault (schuld) from the definition of unlawful acts. The action itself is against the law, while the fault is on the side of the person/perpetrators. Meyers in his book entitled "De Algemene Begrippen" suggests that the notion of fault in most legal systems is an independent element, necessitated in addition to visible acts, whenever the legal consequence of compensation is required. Meanwhile, Rutten in his book entitled "Verbintenissenrehct" affirms that the fault (schuld) referred to in Article 1838 BW (Article 1365 Civil Code) is a subjective fault.[32] The fault here is reflected in the breach of contract made by the Defendant, but the Plaintiff also made a mistake by confusing different issues in one suit.

5) Causal Relation

The existence of a causal relation can be inferred from the sentence of Article 1365 which states that "... an act which, by its fault, incurs a loss." The loss must arise as a result of the person's

[32] Moegni Djojodirdjo. *op.cit.* Page 69-70.

acts. If there is no act, there is no consequence which is the loss. To find out if an act is the cause of a loss, it is necessary to follow the theory of "adequate veroorzaking" from Von Kries. According to this theory, what is regarded as a loss is an act which, according to human experience, causes a normal result, in this case is the loss. Thus, between the actions and the losses that arise, there must have direct relationship.[33] The causal relationship that occurs here is then implied from the sale and purchase agreement between the two parties, in which the agreement has been made there are rights and obligations of each party. This violation of rights and responsibilities is the principal cause of this problem.

4. Conflict Analysis; the Breach of Contract and Tort in One Lawsuit

The main issue which becomes the focus in this case is that there is different understanding between the Plaintiff and the Defendant over the concept of the breach of contract and tort, in addition, there is a dispute over the understanding of the agreement itself. Threfore, as mentioned earlier that in this case, the lawsuit filed is blurred by mergering the case between breach of contract and tort. In addition, the defendant highlighted that the plaintiff tried to impose any mistakes on the defendant in the fact that the plaintiff's own fault caused a delay in the delivery of the goods (aircraft).

[33] Abdulkadir Muhammad. *op.cit.* Page 257.

Purchase agreement in this case will be consensual, where there is agreement between the two parties involved in the agreement itself. From each of the parties an agreement deal was born. It is in the legal agreement called a consensual basis. The principle of consensual embraced the doctrine that a basic agreement had been born since the achievement of business agree. On a second born, agree to achieve an agreement. So according to the principle of consensual agreements that already exist and are binding when the already achieved agreements on matters of principal in the Treaty without the need of a formality, unless another is specified by law. The agreement between the parties must also be separated from elements of coercion, deception and momentarily led astray. Coercion occurs when someone gives his approval because he is scared of a threat. For example he will be persecuted or will open the secret if he did not approve of an agreement. Those who feel threatened must be about an act that is prohibited by law. If that feel threatened that an Act permitted by law, for example the threat will sue in question in front of a judge with the confiscation of goods, it cannot be said to be a force. Momentarily led astray can occur about the person or about stuff that became the goal of the Treaty. While the fraud occurs when one party intentionally provide information that is not correct, accompanied with a ruse-ruse, so that other parties persuaded therefore to provide licensing[34].

[34] R.Subekti. *Pokok-Pokok Hukum Perdata.* Jakarta: Intermasa. 1994. Page 135.

The dynamics of the conflict ensured here is that there is a confusion in the understanding of the breach of contract and the tort between the plaintiff and the defendant. In the concept of the agreement itself, what is meant by the agreement is the engagement arising from the will of two persons to reach a certain agreement.[35] Whereas the agreement under Article
1313 of the Civil Code is an act by which one or more persons bind themselves to one or more. Similarly, Prof. R. Subekti stressed that the agreement is a reciprocal relationship involving two or more persons such as a sale and purchase agreement, lease or exchange.[36] Therefore, based on those understanding, it can be said that the sale and purchase agreement between STTKD Yogyakarta with PT Skylight Aviation here is in accordance with existing concepts and has been in accordance with the Criminal Code which regulates the law of agreement. However, the problem here is related to the injury of a pledge which is deemed to have been committed by one of the parties as well as the unilateral cancellation of the agreement which is not in accordance with the provisions of applicable legislation. Before filing a lawsuit in 2015, the STTKD Yogyakarta canceled the agreement on the grounds that they felt aggrieved and the cancellation of this agreement by the defendant (PT Skyligh Aviation) was groundless and not in accordance with applicable legislation.

The cancellation of a contract or agreement is essentially happened if it is found a threat or danger that threatens both parties, therefore the

[35] Rosa Agustina. *op.cit.* Page 4.
[36] R. Subekti. *Hukum Perjanjian*. Jakarta: PT.Intermassa. 2008. Page 42.

agreement must be canceled. Legal agreement cannot be revoked unilaterally. The Treaty binds each of the parties involved, and may not be withdrawn or cancelled unilaterally only. If one party wants to retract or cancel it must obtain the consent of the other party, so exchanged again. However, if there are sufficient reasons according to the law, the agreement may be revoked or cancelled unilaterally[37]. Thus, each equipped with the rules of treaty law and customary in one place, in addition to the fit. On the basis of article this habit also appointed legal sources in addition to the legislation, so the habit it undertook to determine the rights and obligations of the parties in the agreement. However, the Customs should not be ruled out or get rid of the legislation when it is deviating from the provisions of the Act. This means that laws remain in force (won) even though there is already a custom set up[38].

Furthermore, under the constitution, it is permissible for one party to demand the cancellation of the contract if there is found a remarkable difference between the reciprocity rights of the parties and the aggrieved party without due consideration or due to the urgency of having signed the contract concerned.[39] In this case, one of the parties, which acts as the defendant, should be able to sue the plaintiff against the breach of the contract article, but what happens is contrary where the defendant is charged with the breach of contract article.

[37] Abdulkadir Muhammad, *op.cit.* Page 97.
[38] *Ibid.* Page 101.
[39] R. Subekti. *The Law of Contracts in Indonesia, Remedies of Breach*. Jakarta: CV Haji Masagung. 1998. Page 4.

However, in deciding whether the tort is void or the terms must be requested cancellations to the judge, Suharnoko[40] argue should be considered the case for the sake of the case and the parties made an agreement. The author himself agreed with the opinion, waiver of article 1266 Suharnoko KUH Civil tort as a condition that makes void is not a problem if both parties agree and accept that indeed tort has occurred from one of Parties, and the parties agreed to cancel the agreement, but that is a problem if the parties accused of tort evade the tort that he did, so cancellation through the courts is required in addition to determine whether there is indeed a tort or not, also to avoid arbitrariness a party which decided the agreement unilaterally without any reasons that are justified by the law to the detriment of the other party. While the opinion states that the cancellations must be requested to the Court, it would be a problem if it is exploited by the debtor to defer payment of credit or carry out its obligations, because the process through the courts need an expensive cost and time briefly. Because of the things above, necessary consideration of cases per year and the parties made an agreement in terms of deciding whether tort is void or the terms must be requested cancellations to the judge.

The different perceptions between the plaintiff and the defendant lie in the understanding of the agreement and the consequences arised from the agreement itself. The plaintiff feels that due to delays in the aircraft

[40] Suharnoko. *Hukum perjanjian; Teori dan Analisa Kasus*. Jakarta: Kencana. 2004. Page 4.

delivery, his party is harmed and sues the defendant for alleged the breach of contract and tort at once. The lawsuit filed by Air Marsda AU (Pur) Udin Kurniadi, S.E., M.M to PT Skylight Aviation Indonesia in this case emphasizes the existence of PT Skylight Aviation promises violation which resulted in the loss of morally and materially. However, in this case PT Skylight Aviation notes that the plaintiffs obscure the lawsuit by mergering it with unlawful acts by using foundation principal as follows:

> *Sub. 10 him 5: "……That the plaintiff also felt aggrieved and defamed of STTKD by the defendants …"*
> *Sub.12 him 5-6: "..... The Defendant has committed a disrespectful act to defame the plaintiff (STTKD Yogyakarta) ... .."*
> *Sub.13 him 6: "..... that since the defendants have broken promises and defamed the plaintiff, the plaintiff demanded compensation for the student's admission, the lawyer's rent, the immaterial loss with the total loss of Rp. 12.550.000.000, - (Twelve Billion Five Hundred Fifty Million Rupiah).*

The promise of injury conceptually may be intended to constitute a breach of contract and an objectionable act as a result of an unlawful act.[41]. However, based on the exception clause listed above, it can be seen that the plaintiff here attempts to combine the breach of contract and tort in one lawsuit. There are two forms of the merger of the lawsuit in practice, they are:[42]

a. Subjective cumulation. In this form, in a legal action form, there are several plaintiffs or several defendants. The variations that may occur can be in the form of some plaintiffs with a defendant or a plaintiff

[41] Rosa Agustina. *op.cit*.. Page 20.
[42] M. Yahya Harahap. *Segi-segi Hukum Perjanjian*. Bandung: Alumni,, 1986. Page 60.

with several defendants or multiple plaintiffs may have occurred with several defendants.

b. Objective cumulation. In this form, the plaintiff merges several lawsuits in one legal action where the lawsuit becomes the factor of cumulative.

The cumulative of legal action both subjective and objective is essentially a cumulation of rights demands and must be distinguished by the concursus which is a compilation of several rights demands. The concursus occurs when a plaintiff filed a lawsuit containing multiple demands that all lead to the same legal consequence, by fulfilling or granting one of the demands, the other demands are at once met. Therefore, here the defendants/appeals submitted an exception based on basis of the merger of the breach of contract and tort which is irrelevant to the exception points are as follows:

a. It is not permissible to merge the breach of contract and tort in one lawsuit.
b. It is considered wrong to formulate the argument of unlawful act in lawsuit if there is found in krokerto realistically which suits the breach of contract.
c. Or it is not appropriate if it is conducted the breach of contract lawsuit while the legal act objectively is the unlawful act, yet it is possible to merge or accumulate both of them in one lawsuit with the condition if there is absolute limitation.

The points above highlighted that here the case of the breach of contract and tort are combined in one lawsuit i.e break the promises as claimed. This then refers to some opinions stating that cumulative merging can be justified in the following cases:

a. There is a close relationship

   According to Soepomo, between the mergered lawsuits, there must be *innerlijke samenhang*[43] or inner relationship. The inner connection which is meant here is that in one lawsuit there must be two different cases in one case that can distinguish whether it enters into the breach of contract or tort. Khaerandy[44] gives analogy in his book if later in the case of leasing, A party as tenant is unable to pay the rent to B party in the promised time and A party does the property damage because of anger. Therefore, this delay in payment can be interpreted as broken promise while the destruction of property categorized in the unlawful act. However, in Decision Number 80/Pdt.G/2015/PN Yyk the lawsuit filed is the breach of contract resulting the loss to the plaintiff (as an act against the law). Conceptually, this can not be justified and deviate from some existing definition.

b. There is a legal relationship between the plaintiffs or between the defendants. If in the subjective cumulation, there are some people submited while between them and the object of the case there is absolutely no legal relationship, the lawsuit must be filed separately

[43] Soepomo. *op.cit.*. Page 28.
[44] Khairandy Ridwan. *op.cit.* Page 320-321.

and stand alone. [45] This then indicates that the subjective cumulation can not be imposed and must be separated if it does not meet the existing requirements.

Meanwhile, the breach of contract and tort can not be combined or mergered if then the following things happen[46]:

a. The different lawsuit object owner proposed culmulation lawsuit towards several objects, and each object of the lawsuit belonged to a different or opposite owner. Such aggregation either subjectively or objectively can not be justified.
b. The mergered lawsuit is subject to different procedural laws. The merger of a lawsuit dated to the principle of incriminating case is subject to the same procedural law, it is not justified to incorporate several lawsuits subject to different procedural laws.
c. The lawsuit is subject to a distinct absolute competence. Some claims subjecting to the absolute authority of different mergers can not be justified.
d. The reconvention lawsuit has no connection with convention lawsuit. In accordance with the provisions of Article 132 paragraph (1) HIR, the defendant has right to file a reconvention law, resulting in a merger between convention and reconvention, but there must be a close relationship between the two, if there is no close relationship

[45] *Ibid.*
[46] M. Yahya Harahap. *op.cit.*. Page 108-109.

between them, the incorporation of defendants through a reconvention law is not justified.

Based on the explanation above, here it can be seen clearly that the essence of the merger lawsuit between the breach of contract and tort can occur if there is a close relationship therein and can not be combined if then in a case resulted in two different things with the limitation confusion between the two. It is almost similar between tort (*onrechtmatigedaad*) and the breach of contract. Therefore, it can be stated that the breach of contract is also a specific genus of *onrechtmatigedaad* as formulated in Article 1365 of the Civil Code which states: "any unlawful act, which carries harm to another, obliges the person who because of the wrong to issue the loss, indemnify it." Yet, if we take a look once again, there is an essential difference between the nature of tort and the breach of contract. In fact, Pitlo asserted that both viewed from its history as well as from systematic legislation, the breach of contract can not be classified as the notion of unlawful acts. M.A. Moegni Djojodirdjo in his book entitled "Acts against the Law" argues that it is important to consider whether a person will file a claim for damages due to the breach of contract or tort. [47]

According to Moegni[48], there will be differences in the burden of proof, the calculation of loss, and the form of compensation between claims of the brach of contract and tort. In tort lawsuit, the plaintiff must prove that

[47] Moegni Djojodirdjo, M.A. . *Perbuatan Melawan Hukum*. Jakarta : Pradnya. Paramita, 1976. Page 27.

[48] *Ibid.*

all elements of tort must be able to prove a mistake made by the debtor. Whereas in a breach of claim, the plaintiff simply indicates a breach of contract or a breach of agreement. Then in tort lawsuit, the plaintiff may demand a restitutio in integrum. However, such claims are not filed if the claim filed essentially uses the breach of contract.

Basically to distinguish a tort action with tort law, can be seen from there or whether an agreement as the pedestal of the relationship of the parties. But the laws governing civil redress of this long-known in the history of law. In the Lex Aquilia one of the laws that apply in the Roman era, the concept of punitive damages is thus able to read in the first chapter, which is set up as follows:

> "If a person is generally against the law to kill a slave or servant girl proof the freeing of the property of another person or four-legged livestock animals (four) belonging to someone else, then the killer had to pay to the owner of the highest value found by the property last year. The indemnity be attributed in 2 (two) if the defendant refuses his responsibility "[49]

If the damages in tort because the enactment of stiffer whereas compensation because the contract is softer that is one hallmark of the law's so modern . Because, in the world that has possess high civilization, then someone should always be alert to not cause harm to others. Therefore for the perpetrators of the tort giving rise to losses in others, must get enough punishment in the form of compensation.

[49] Munir Fuady. *Perbuatan Melawan Hukum (Pendekatan Kontemporer)*. Bandung: PT. Citra Aditya Bakti. 2010. Page 133-136.

Turns out it's not that simple. The difference between tort with tort law has been experiencing thinning. A dispute that has annulled the unilateral agreement on can be sued with the concept in tort law. This showed the possibility of a relationship or similarity between the concept of tort with tort law, because both are essentially an act of violating the principle of propriety in society, giving rise to harm to the other party. If seen in passing, in the elements of the tort are mentioned in section 1365

KUH Perdata, tort concept is also included in it, because the concept of tort glance meets the elements of tort law in the civil litigation KUH.

Related to indemnification, it is clearly estimated that the compensation in the legal consequences between the breach of contract and tort is different. Regarding the demand for compensation requested, for the amount of the breach of contract can be estimated because it is mentioned in the agreement. While for tort, it is submitted to the judge to assess the magnitude of the indemnity. However, in the case of agreement between STTKD Yogyakarta and PT Skylight Aviation Indonesia, the compensation filed by STTKD Yogyakarta here is prepared based on the following clause:

1) Material Lost
   -Admission Lost : Rp. 2.500.000.000
   -Total Charge for Lawyer Fee : Rp. 2.500.000.000
2) Immaterial Lost : Rp. 10.000.000.000
   Total amount : Rp. 12.550.000.000

Basically, in distinguishing a tort action with tort law, can be seen from there or whether an agreement as the pedestal of the relationship of the parties. But it turns out it's not that simple. The difference between tort with

tort law has been experiencing thinning. A dispute that has annulled the unilateral agreement on can be sued with the concept in tort law. This showed the possibility of a relationship or similarity between the concepts of tort with tort law, because both are essentially an act of violating the principle of propriety in society, giving rise to harm to the other party. If seen in passing, in the elements of the tort are mentioned in section 1365 KUH Perdata, tort concept is also included in it, because the concept of tort glance meets the elements of tort law in the civil litigation KUH.

Based on the explanation mentioned above, what then becomes the problem is that there is no clarity in the letter of agreement governing the compensation in case of breach of contract between one party and other parties. The absence of a compensation clause in the agreement clause here results in the plaintiff/complaint making the indemnity compensation at his/her own discretion. In addition, the clause that the defendant/complainant has harmed and libeled the plaintiff/comparable here makes the plaintiff/complainant submit his own compensation. Whereas in stipulation, the compensation in the amount of tort is determined by the judge. [50]

In the Civil Procedure Code, the judge shall not prejudice the interests of either party, but may wisely divide it in accordance with the system of evidence by giving the same account to the litigant. [51] Therefore, the

[50] *Ibid.*

[51] Teguh Samudera. *Hukum Pembuktian dalam Acara Perdata*. Bandung: Alumni. 1992. Page 21.

division of burden of proof is allocated in accordance with the mechanism outlined by the legislation. The verification to determine whether what happens is really a breach of contract or tort or a merger needs to be done clearly and take into account the existence of several things as follows[52]:

a. Proof of written
b. Proof with witness
c. Accusation
d. Acknowledgement
e. Oath

The written evidence is placed in the first place. This is in accordance with the fact of the type of letter or deed in civil cases which plays an important role. All activities pertaining to the civil area, deliberately recorded or written in letters or deeds. Every sale and purchase agreement, as happened between STTKD Yogyakarta and PT Skylight Aviation Indonesia, is intentionally made in written form with the intention as evidence of transaction or event of legal relationship that happened. If there is found dispute in the future, it can be proved using the matter and the truth by the deed concerned. In addition to the writings which are made for evidence, there is also a written article which is made without such intent, but at any time it may be used and beneficial as a proof, for example: regular correspondence, notes, books, etc. There are various types of written evidences such as receipts, letters of agreement, letters of correspondence, letters of property, letters of signs, etc. Therefore, if someone is asked for a

[52] M. Yahya Harahap. *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*. Jakarta: Sinar Grafika. 2008. Page 556-557.

letter of proof, then this proof letter is intended to be used later on the person who gave the proof. So, it would be the evidence of the author. Receipts, correspondence and others are a testament to the signing.[53]

In this case, there is evidence of a preliminary agreement signed on 21st April 2014 concerning the sale and purchase agreement with a predetermined payment agreement. However, there are some problems at the end because the plaintiff/complain invites renegotiation for payment upon entering the 3rd payment term which is then agreed upon on February 23rd, 2015. Where this then indicates inconsistency in the signed initial agreement. However, based on the acknowledgment of the plaintiff/comparable here that from the beginning of the pledge injury comes from the defendant/complainant. The plaintiff/complaint's acknowledgment is then used as the basis for filing a lawsuit.

Basically, a recognition is seen from legal perspective in proof as the opposite of denial. The defendant denies the claimant's argument, or else the plaintiff denies the defendant's matters. The occurrence of such a thing, by itself brings the examination process towards the mandatory imposition of evidence to prove the argument denied each side. According to its nature and form, it is incorrect to include recognition as evidence. Common reasons stated, among others, are as follows[54]:

[53] R. Subekti. *Hukum Pembuktian*. Jakarta: Pradnya Paramita. 2005. Page 20.
[54] M. Yahya Harahap. *op.cit.*, Page 723.

a. The evidence is a means which can be used to proof the subject matter of disputes, whereas the recognition can not be used, because he/she himself/herself has no physical that can be filed in the hearing.
b. If either party acknowledges what the adversary has proposed or argued, the judge shall not be allowed to give an opinion on the matter or object of recognition, so that the judge shall no longer investigate the truth of the admission; because with recognition, the parties to the dispute have their own dispute settlement;
c. Therefore, the judge must be bound to settle the dispute accordingly and start from the acknowledgment.

The above reasons are in accordance with the principle that in a civil case the main purpose is not to seek material truth as it is in a criminal case, but the function of the judge is limited to seeking formal truth, that is, the truth about the matters requested by the parties to him. That is why, if there is an acknowledgment given by either party on what is postulated, it means that the parties have removed the admitted matter from the examination and the opinion of the judge. It means that as long as it is acknowledged, there is no need to be proved again with other evidence. Therefore, such acknowledgment is not evidence, but it is a state that is liberating from the proof of recognized things or propositions.

H. Conclusion

Based on the description above, then there are several points than can be summed up as follows: That the Decision Number 80/Pdt.G/2015/PN Yyk which has granted the incorporation of a lawsuit against tort and the breach of contract lawsuit is inaccurate and violates the existing laws and regulations because there is no separation between the cases handled. It is not appropriate to demand a loss in the matter of a pledge injury, there should be a clear clause between tort and the breach of contract mergered in a single suit. Therefore, the appeal filed in Decision No. 75/PDT/2016/PT Yyk is correct. The limitations of the lawsuit between the breach of contract and tort described in Decision Number 80/Pdt.G/2015/PN Yyk are inaccurate and vague as appealed in decision No. 75/PDT/2016/PT Yyk. Therefore, then it is necessary to review the clear limitations and clear compensation to be able to detail the lawsuit that has been filed for the breach of contract. The appeal in Decision No. 75/PDT/2016/PT Yyk shows that there is still confusion in the understanding of how the law views the limitations between the breach of contract and tort clearly as well as with the causation caused by both.

Based on the conclusions, the researchers advise for further research as follows: Research can compare the two cases decided that unlawful acts and breach of contract in one lawsuit is approved or rejected, so as to provide the empirical examples of how cases are on the decline as well as how the case It receives. Further Research can expose the facts of the case which discusses the unlawful acts and breach of contract in a lawsuit in the international arena so as to

distinguish how the law which took place in Indonesia and the apply internationally.

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