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RESEARCH ARTICLE

“RESPONSIBILITY OF A LAND DEED OFFICIAL IN A MERGER LAWSUITS FOR TORT AND DEFAULT (Decision Study: 217/Pdt.G/2017/PN.Mlg)”

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Abstract

The judge's legal consideration in combining tort and default claims is justified. In District Court Decision Number 217/Pdt.g/2017/PN.Mlg stated that Defendant I had been proven to have committed an act of default for not paying off the dependents on the payment for the sale and purchase of land and buildings, and Defendant II had been proven to have committed an *torfOnrecht* for making and using notarial sale and purchase agreement in violation of the law, so that it caused losses to the Plaintiff. The research method used is normative juridical, using secondary data from library research. The panel of judges in accepting the merger of tort and default lawsuits was carried out by analyzing whether the two lawsuits were closely related. So if the two lawsuits have a close relationship between one and the other lawsuit, then the merger lawsuit can be justified, where the merger of the lawsuit can create a simple, fast and light cost court, and can avoid conflicting decisions.

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Introduction:-

The merger of lawsuits is not regulated in the *HerzeineInlandschReglement* (hereinafter referred to as HIR), nor the *Buiten GovesternReglement* (hereinafter referred to as RBG). Likewise, the Rv does not regulate the merger of lawsuits expressly and does not prohibit it. Article 103 of the Rv (*Wetboek op de BurgerlijkeRechtvordering*) prohibits the merger of claims or is limited to combining claims for the right to control (*bezit*) with claims for property rights. Thus, in the opposite sense, i.e. interpreting or explaining the law based on the opposing understanding between the concrete event at hand and the event regulated in the law, the Rv allows the merger of lawsuits. The merger of tort and default claims has long been an important issue in judicial practice. Based on this, there is jurisprudence stating that there is a difference in normative regulation between default and tort, so that combining the two in one lawsuit cannot be justified. On the one hand, there is jurisprudence on the merger of lawsuits can be justified.

The merger of lawsuits, linguistically means unification, heap, merging of several lawsuits (in one lawsuit before the judge). According to M. Yahya Harahap, the merger of lawsuits or *samenvoeging van vordering* is the merger of more than one legal claim into one lawsuit or several lawsuits combined into one.

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Based on the above description, the problem to be studied is the existence of a court decision that has permanent legal force, that initially the Plaintiff was the legal owner of Property Rights Number 948, 949, and 950/ located in Gadang Village, Malang City, East Java Province. The Plaintiff (HS) intended to sell the land to Defendant I (S) with payments to be made in stages. The Plaintiff (HS) and Defendant I (S) appeared before Defendant II (IGM) as a PPAT to draw up a Sale and Purchase Deed. Defendant II (PPAT IGM) asked the Plaintiff (HS) to provide the original certificate of the land and building to be sold along with a Certificate of Inheritance and a Power of Attorney to Sell from the two children of the plaintiff (PS and RS).

Then the Plaintiff (HS) and Defendant I (S) signed Deed of Sale and Purchase Number 99 dated August 25, 2011, which was made and executed before Defendant II (PPAT IGM). On August 26, 2011, Defendant I (S) made an initial (first) payment to the Plaintiff (HS) in the amount of Rp.2,100,000,000 (two thousand dollars). .100,000,000 (two billion one hundred million rupiah) with details of Rp 1,450,000,000, - (One Billion Four Hundred Fifty Million Rupiah) through account transfer at Bank Muamalat Malang Branch, and the remaining Rp 650,000. 000, - (six hundred and fifty million rupiah) paid with 3 Giro, each of which amounted to Rp 500,000,000, - (five hundred million rupiah), Rp 75,000,000, - (seventy-five million upiah), and Rp 75,000,000, - (seventy-five million upiah), so that the total payment still remains Rp 1,000,000,000, - (one billion rupiah). Over time, Defendant I (S) as the purchaser has not yet completed its payments, namely by not making installment payments to the Plaintiff (HS).

Because the Plaintiff (HS) felt aggrieved by the sale and purchase transaction, the Plaintiff (HS) invited Defendant I (S) to enter into a handwritten agreement under a stamp duty dated October 31, 2011 which stated that Defendant I (S) promised to settle the remaining obligation to pay the shortfall of Rp 1. 000,000,000, - (one billion rupiah) no later than November 26, 2011 with the provision that if Defendant I is unable to pay it off then Defendant I is subject to a fine of Rp 2,500,000, - (two million five hundred thousand rupiah) per day for a period of 1 month. That on October 15, 2011, the Plaintiff (HS) received a summons from a law firm, Hasan Djalil S.H & Partner, acting on behalf of Defendant II (IGM) as PPAT. The subpoena stated that the certificates of title Nos. 948, 949 and 950, which were the object of the sale and purchase between the Plaintiff (HS) and Defendant I (S), were in the possession of the creditors of the Defendant (Bank M) because of an agreement made between Defendant I (S) as debtor and the Defendant (Bank M) as creditor. This made the Plaintiff feel aggrieved. The Plaintiff filed a lawsuit for default committed by Defendant I. The lawsuit was due to unpaid payments for the purchase of land to the Plaintiff. In addition, the Plaintiff also filed a tort claim against Defendant II, because they had made and used the sale and purchase deed in violation of the law.

The case was decided by the District Court Number 217/Pdt.G/2017/PN.Mlg, stating that the merger of the lawsuit by the Plaintiff was granted, so that all legal events constituted tort and default.

The formulation of the problem that is the subject of discussion is, first, the legal considerations of the judge in the lawsuit for the merger of tort and default in Decision Number 217/Pdt.G/2017/PN. Mlg. Second, How is the responsibility of the land deed official (PPAT) for the tort lawsuit in making the deed of sale and purchase and release of land in the decision on the application of the bank's prudential principles in granting credit in Decision Number 217/Pdt.G/2017/PN. Mlg?

ResearchMethod:-

This research will be compiled using normative juridical analysis. The methods used in this research are statutory approach, conceptual approach and case approach. The specification of this research is prescriptive, which is research that studies legal objectives, values of justice, validity of legal rules, legal concepts and legal norms. The data needed to be used in this research is by using secondary data. Primary legal materials include the Civil Code, Civil Procedure Law, Government Regulation Number 37 of 1998 which has been amended by Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning PPAT Position Regulations, HerzeineInlandschreglement (HIR), RechReglementVoor de Buiten Gewesten (RBg), Jurisprudence (Court decisions with permanent legal force). Then secondary legal materials include legal literature, research results in the field of law, scientific articles, journals, and the internet. Primary and secondary legal materials will be analyzed normatively qualitatively, which is done by describing the data obtained based on legal norms, legal theories and doctrines and rules relevant to the subject matter.

Results and Discussion:-

The merger of lawsuits is not regulated in the *Herzeine Inlandsch Reglement* (hereinafter referred to as HIR), nor the *Buiten Govestern Reglement* (hereinafter referred to as RBG). Likewise, the Rv does not regulate the merger of lawsuits expressly and does not prohibit it. Article 103 of the Rv (*Wetboek op de Burgerlijke Rechtvoordering*) prohibits the merger of claims or is limited to combining claims for the right to control (*bezit*) with claims for property rights. Thus, in the opposite sense, i.e. interpreting or explaining the law based on the opposing understanding between the concrete event at hand and the event regulated in the law, the Rv allows the merger of lawsuits. The merger of tort and default claims has long been an important issue in judicial practice. Based on this, there is jurisprudence stating that there is a difference in normative regulation between default and tort, so that combining the two in one lawsuit cannot be justified. On the one hand, there is jurisprudence on the merger of lawsuits can be justified.

Based on the results of data research in the decision of the Malang District Court Number 217/Pdt.G/2017/PN.Mlg, there is a merger of lawsuits for default and unlawful acts filed by HS (Plaintiff), the panel of judges granted the merger of lawsuits for default and unlawful acts committed by S (Defendant I) and PPAT IGM (Defendant II), from several decisions of the supreme court, the author argues that the merger of lawsuits is allowed if there is a close relationship between one lawsuit and another.

The panel of judges stated that Defendant I had defaulted because it was proven that he had not paid off the remaining payment for the purchase of land to the Plaintiff. The actions of S (Defendant I) as the buyer mentioned above clearly did not carry out the performance or agreement that had been agreed with HS (Plaintiff). According to Djoko Trianto, the form of *wannprestasi* can be:

- a) Not carrying out what has been agreed to be carried out.
- b) Carry out what has been promised but not the same as the contents of the agreement. .
- c) Late in performing the obligations of the agreement.
- d) Doing something that is promised not to be done.

The panel of judges stated that the actions of Defendant II were unlawful, because they had made and used the sale and purchase deed in violation of the law. His actions resulted in losses for the Plaintiff. The panel of judges stated that Defendant II had committed an unlawful act, because the elements of an unlawful act in Article 1365 of the Civil Code had been fulfilled. The following is an explanation of these elements:

The existence of a tort

A tort is preceded by an act of the perpetrator. It is generally accepted that by action here is meant either doing something (in the active sense) or not doing something (in the passive sense). The act must be against the law. Since 1919, the unlawful element has been interpreted in its broadest sense, which includes the following:

a) Actions Contrary to the Rights of Others

Acts contrary to the rights of others (*inbreuk op eensandersrecht*) are one of the acts prohibited by Article 1365 of the Civil Code. The rights violated are the rights of a person recognized by law, including but not limited to the following rights: Personal rights (*persoonlijkheidsrechten*), Property rights (*vermogensrecht*), Right to freedom, Right to honor and good name.

b) Acts Contrary to Their Own Legal Obligations

It is also included in the category of unlawful acts if the act is contrary to the legal obligation (*rechtsplicht*) of the perpetrator. With the term "legal obligation" (*rechtsplicht*), what is meant is that an obligation given by law to a person, both written and unwritten law. So, it is not only against the written law (*wettelijkplicht*), but also against the rights of others according to the law (*wettelijkrecht*). Therefore, the term used for unlawful acts is *onrechtmatigedaad*, not *onwetmatigedaad*.

c) Acts Contrary to Decency

Acts that violate decency, which has been recognized by society as unwritten law, are also considered as unlawful acts. Therefore, when the act of violating decency causes harm to another party, the party who suffers the harm can claim compensation based on the tort (Article 1365 of the Civil Code). In the famous decision *Lindenbaum v. Cohen* (1919), the Hoge Raad considered Cohen's act of divulging company secrets to be an act contrary to decency, so that it could be classified as a tort.

d) Acts Contrary to Prudence or Requirement in Good Society

Acts that are contrary to prudence or necessity in good public relations or what is called *zorgvuldigheid* are also considered as unlawful acts. So, if a person commits an act that harms another person, not in violation of the articles of written law, he may still be charged with a tort, because his action is contrary to the principle of prudence or necessity in the society. The necessity in society is certainly not written, but recognized by the community concerned.

The existence of fault on the part of the perpetrator

Article 1365 requires the existence of an element of fault (*schuld*) in a tort, so it is necessary to know how the scope of the element of fault so that legal responsibility can be sought if it meets the following elements: There is an element of intent, there is an element of negligence (*negligence, culpa*) and there is no justification or excuse (*rechtvaardigingsgrond*).

The existence of harm to the victim

The existence of loss (*Schade*) due to unlawful acts in addition to material loss, jurisprudence also recognizes the concept of immaterial loss, which will also be valued in money.

The existence of a causal relationship between the act and the loss.

Causal relationship between the act committed and the loss incurred is also a requirement of a tort. This causal relationship can be seen from the sentence of the act which by its fault causes loss. The loss is caused by the act, or the loss is the result of the act. The issue here is whether the loss is the result of the act, to what extent this can be proven. If there is a causal relationship between the loss and the act, then it can certainly be said that every loss is the result of an act.

That based on the legal considerations of the judge in the District Court Decision Number 217/Pdt.G/2017/PN. Mlg:

- Considering, that the Panel of Judges in essence is of the opinion that it is not regulated in formal or material civil law regarding the limitation for a Plaintiff to file a lawsuit against an object whether it must be one lawsuit or can be more than one lawsuit as long as the reason for filing the lawsuit is accompanied by a valid legal reason and does not conflict with the principle of *ne bis in idem*, which later on the arguments of each lawsuit will be considered by the Panel of Judges examining and adjudicating;
- Regarding the merger of default cases with tort cases, the Panel of Judges is of the opinion that as the prevailing principles in civil law, namely the principles of speed, simplicity and light cost, It is possible to merge a lawsuit for default with a lawsuit against the law as long as in the postulation of the lawsuit the two lawsuits must be described each in the postulation of default or in the postulation of unlawful acts other than that relating to the merger of two lawsuits can be justified if it can be described that there is a close relationship between the postulation relating to default and the postulation relating to unlawful acts which aims to facilitate the process and can avoid the possibility of several decisions that conflict with each other, which the opinion of the Panel of Judges is in line with the Jurisprudence of the Supreme Court of the Republic of Indonesia through Supreme Court Decision Number 880K/Sip/1973 dated May 13, 1975. In the Supreme Court's decision, it is stated that on the grounds that if the lawsuit contains a postulation of default and tort, but is expressly described separately, then such a lawsuit in the form of a merger of lawsuits can be accepted.

Thus, based on the legal considerations of the judges mentioned above, the opinion of the panel of judges who accepted and granted in deciding a lawsuit more than one lawsuit, was correct where the opinion of the Panel of Judges was in line with the Jurisprudence of the Supreme Court of the Republic of Indonesia through Supreme Court Decision Number 880K / Sip / 1973 dated May 13, 1975. In the Supreme Court's decision, it is stated that on the grounds that if the lawsuit contains a postulation of default and tort, but is expressly described separately, then such a lawsuit in the form of a merger of lawsuits can be accepted, besides that the actions committed by the defendants both have a close relationship with each other so as to facilitate the trial process and avoid conflicting decisions between each judge who examines and decides the case, besides that the application of the merger of tort and default lawsuits to simplify the legal process, which aims to realize a simple justice. So that through the merger of these lawsuits, several lawsuits can be examined, decided and resolved at the same time so that the process becomes simple, low cost, not much time and energy is needed and can avoid conflicting decisions.

From the results of research related to the responsibility of the land deed maker (PPAT) against tort claims in the making of deeds of sale and purchase and release of land rights, based on the provisions of Article 55 of PERKABAN

No.1/2006 as amended by PERKABAN No.23/2009, it is said that the PPAT is personally responsible for the implementation of his duties and positions in every deed. The PPAT's responsibility for deeds that contain legal defects, namely:

First, the administrative responsibility of PPAT. Administrative errors or maladministration committed by PPAT in making authentic deeds will certainly lead to certain legal consequences, namely PPAT can be held accountable both legally (administratively) and morally. Administrative liability by PPATs related to their intentions, negligence and/or negligence in exercising their authority, namely making authentic deeds, is the imposition of administrative sanctions. The imposition of administrative sanctions is adjusted to the quantity and quality of violations committed by the member. Basically, administrative sanctions that can be imposed on PPATs who violate the PPAT Position Regulations or other laws and regulations are reprimand, warning, temporary dismissal, honorably discharged, dishonorably discharged. A PPAT may be dishonorably discharged. Furthermore, the PPAT concerned may also be subject to administrative sanctions for violating the PPAT code of ethics (Article 6 paragraph (1) PPAT Code of Ethics), namely:

1. Reprimand;
2. Warning;
3. Suspension (temporary dismissal) from membership of the IPPAT association;
4. Onzetting (dismissal) from the membership of the IPPAT association; and
5. Dismissal with dishonor from membership of the IPPAT association."

Second, civil liability of PPAT. The responsibility of a PPAT related to his/her intentions, negligence and/or negligence in making a sale and purchase deed that deviates from the formal and material requirements of the procedure for making a PPAT deed, not only can be subject to administrative sanctions, but also civilly. Civil liability applies if there is a civil claim from a party related to the sale and purchase deed made by the PPAT, and the party feels harmed by the presence of the AJB. Civil claims against errors (beroepsfout) of the PPAT must first be examined. Whether the mistake is a default or an unlawful act (onrechtmatigedaad). Default occurs if it is preceded by an agreement, while if there is no connection with the agreement, the form of violation is called an unlawful act or onrechtmatigedaad. Civil sanctions imposed on PPAT for unlawful acts (onrechtmatigedaad), namely actions that cause losses, and normatively these actions are subject to the provisions of Article 1365 of the Civil Code, which reads "Every unlawful act, which brings harm to another, obliges the person who through his fault causes the loss, to compensate for the loss".

Third, the criminal responsibility of PPAT. Criminal acts are acts that are prohibited in a rule of law, where the prohibition is also accompanied by sanctions or threats in the form of certain criminal sanctions for violators. Criminal provisions are not regulated in the Notary Position Law, but in terms of criminal responsibility, a Notary/PPAT who commits a criminal act can be imposed on the Notary/PPAT. In the Notary Position Law, it only regulates sanctions for violations committed by Notary/PPAT in the form of deeds made that do not have authentic power or only have evidentiary power as deeds under the hand. As for the Notary/PPAT, sanctions can be given in the form of a reprimand to dishonorable dismissal.

Based on the judges' legal considerations in District Court Decision Number 217/Pdt.G/2017/PN. Mlg:

Based on the aforementioned reasoning of the Panel of Judges, it can be concluded that the making of the Deed of Sale and Purchase of Building and Release of Land Rights Number 99 dated August 25, 2011 along with the Cover Note made by ACCUSED II which was subsequently used by ACCUSED I to make a credit agreement with ACCUSED ACCUSED which resulted in loss to PLAINTIFF according to the Panel of Judges was an unlawful act, because the making of the Credit Agreement between ACCUSED I and ACCUSED ACCUSED which was registered through ACCUSED II did not fulfill the material requirements and was made without the knowledge of PARA PENGUGAT as the rightful owner of the disputed object, the Panel of Judges is of the opinion that the actions of ACCUSED I and ACCUSED II constitute an unlawful act (see Article 1365 BW): Article 1365 BW) due to the fact that the actions of ACCUSED I and ACCUSED II have caused loss to PARA PENGUGAT because the land price of the disputed object has not been paid in full by ACCUSED I but the disputed object has been used as collateral for a loan to the ACCUSED;

Based on the legal considerations of the judge above, if it is related to the responsibility of PPAT in making an authentic deed, it adheres to the principle of responsibility based on error, so that in making an authentic deed, PPAT

must be responsible if there is an error or violation of the deed he made. PPAT as an official making an authentic deed, if there is a deliberate act that results in other people suffering losses, it means that in this case the PPAT has committed an unlawful act by abusing the authority that has been regulated in PP 37 of 1998 concerning the Regulations on the Position of Land Deed Officials, and if the mistakes made by the PPAT can be proven by the parties who feel harmed, then the PPAT can be subject to sanctions as determined by the Law.

Based on the results of the research, the responsibility carried out by PPAT IGM (Defendant II) is in the form of civil responsibility, because the actions of PPAT IGM (Defendant II) have fulfilled the elements of unlawful acts in Article 1365 of the Civil Code in making and using deeds in the form of deeds of sale and purchase of buildings and release of land rights number 99, dated August 25, 2011, and the panel of judges declared the deed null and void and of no legal value, this was detrimental to HS (Plaintiff), so the panel of judges ordered PPAT IGM (Defendant II) to return Certificate of Title Number 948, Number 949, and Number 950 all in the name of Mrs. KWEE INDRAYANI to HS. KWEE INDRAYANI to HS (Plaintiff).

Conclusion:-

1. The legal consideration of the judge in Decision Number 217/Pdt.G/2017/PN.Mlg in accepting and granting the merger of the tort lawsuit and the default lawsuit is correct, because the two lawsuits have a close relationship between one lawsuit and another, besides that the merger of lawsuits in order to achieve a simple, fast and low-cost justice, and avoid conflicting decisions, on the basis of which the judge decided to accept and grant the merger of tort lawsuits and default lawsuits.
2. The responsibility of the PPAT in Decision Number 217/Pdt.G/2017/PN.Mlg who is proven to have deliberately used the sale and purchase deed in a way that violates the law so that the AJB becomes null and void is in the form of civil liability, where the PPAT must return the certificate to the rightful owner, in this case the plaintiff. The juridical construction used in civil liability for the material truth of deeds made by PPATs is the construction of tort (Article 1365 of the Civil Code). What is called an unlawful act has an active or passive nature. Active in the sense of committing an act that causes harm to the other party, thus the unlawful act is an active act. Passive in the sense of not doing a certain action or a necessity, then the other party can suffer a loss. The elements of this unlawful act include the existence of an unlawful act, the existence of fault and the loss caused.

Suggestion:-

1. Judges in every case deciding the merger of tort and default lawsuits, should agree in understanding the rules that allow the merger of lawsuits, so as to create legal certainty over the case and with the completion of the merger of lawsuits, the principle of simple, fast, and low cost will be implemented more optimally. In addition, it is also expected that the judge's decision given to justice seekers also contains the value of justice for the parties.
2. PPAT in carrying out its authority to make authentic deeds, PPAT is expected to fulfill and always adhere to the provisions governing the valid requirements of authentic deeds according to the applicable laws and regulations, so that legal certainty of authentic deeds can be truly achieved.

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