

Cumulative Lawsuits and Tort: Legal Reasoning of Judges and Major Decision's Ratio Decidendi (Study of Supreme Court Decision No. 575 K/Pdt/1983 and Supreme Court Decision No. 2686/Pdt/1985)

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ABSTRACT

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Purpose of Study: This research aimed at analyzing Supreme Court Decision No. 575 K/Pdt/1983 and Supreme Court Decision No. 2686/Pdt/1985 concerning cumulative lawsuits and tort according to the judge's legal reasoning.

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Methodology: This is library research using the normative juridical method. The approach used was the statutory approach. The statutory approach was carried out by analyzing Supreme Court Decision No. 575 K/Pdt/1983 and Supreme Court

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Decision No. 2686/Pdt/1985 in the context of the cumulative lawsuit and tort section.

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Result: This research found that even though unlawful acts and contracts are conventionally separated, there are still issues regarding overlapping understandings of the concepts of tort, cumulative lawsuit, and default in law. For example, there is an act by one party that, on the one hand, can be classified as an unlawful act, but it also has a contractual element. Similarly, one party's actions have contractual consequences for the other party, but they can also result in liability based on tort. This condition causes several parties to accumulate lawsuits for unlawful acts and defaults at the same time. Supreme Court accepted the cumulative lawsuit in decision No. 575 K/Pdt/1983 and Supreme Court Decision No. 2686/Pdt/1985, indicating that it does not violate procedural law.

Applications of this study: This research is useful for analyzing Supreme Court Decision No. 575 K/Pdt/1983 and Supreme Court Decision No. 2686/Pdt/1985. These Supreme Court decisions have a *ratio decidendi* or jurisprudence that a cumulative lawsuit is permitted and it does not violate procedural law.

Novelty: There are no previous researchers who conducted a legal analysis of the Supreme Court's decision, even though the Supreme Court is the jurisprudence in cases or legal issues of cumulative lawsuits and tort.

Keywords: Cumulation, Against the Law, Default, Decision, Ratio Decidendi

ABSTRAK

Tujuan: Penelitian ini bertujuan untuk menganalisis Putusan Mahkamah Agung No. 575 K/Pdt/1983 dan Putusan Mahkamah Agung No. 2686/Pdt/1985 tentang gugatan kumulatif dan perbuatan melawan hukum menurut penalaran hukum hakim.

Metodologi: Penelitian kepustakaan ini menggunakan metode yuridis normatif. Pendekatan yang digunakan adalah pendekatan Perundang-undangan. Pendekatan perundang-undangan dilakukan dengan menganalisis Putusan MA No. 575 K/Pdt/1983 dan Putusan MA No. 2686/Pdt/1985 dalam konteks gugatan kumulatif dan pasal perbuatan melawan hukum.

Hasil: Penelitian ini menemukan bahwa meskipun perbuatan

melawan hukum dan perjanjian dipisahkan secara konvensional, masih terdapat permasalahan mengenai tumpang tindih pemahaman tentang konsep gugatan, gugatan kumulatif, dan wanprestasi dalam hukum. Misalnya, ada perbuatan salah satu pihak yang di satu pihak dapat digolongkan sebagai perbuatan melawan hukum, tetapi juga mengandung unsur perjanjian. Demikian pula, tindakan satu pihak memiliki konsekuensi kontraktual bagi pihak lain, tetapi tindakan tersebut juga dapat mengakibatkan pertanggungjawaban berdasarkan kesalahan. Kondisi ini menyebabkan beberapa pihak menumpuk tuntutan atas perbuatan melawan hukum dan wanprestasi secara bersamaan. Mahkamah Agung menerima gugatan kumulatif dalam putusan No. 575 K/Pdt/1983 dan Putusan MA No. 2686/Pdt/1985, yang berarti tidak melanggar hukum acara.

Aplikasi penelitian ini: Penelitian ini berguna untuk menganalisis Putusan Mahkamah Agung No. 575 K/Pdt/1983 dan Putusan Mahkamah Agung No. 2686/Pdt/1985. Putusan Mahkamah Agung ini memiliki *ratio decidendi* atau yurisprudensi bahwa gugatan kumulatif diperbolehkan dan tidak melanggar hukum acara.

Kebaruan/Orisinalitas: Belum ada peneliti terdahulu yang melakukan analisis hukum terhadap putusan MA, padahal MA merupakan yurisprudensi dalam perkara atau permasalahan hukum kumulatif gugatan dan perbuatan melawan hukum.

Kata kunci: Kumulasi, Melawan Hukum, Wanprestasi, Putusan, Rasio Decidendi

INTRODUCTION

One of the issues in contract law, more broadly engagement law, is the overlapping understanding of default and tort. A tort is the financial loss or value of the loss suffered by the plaintiff in legal cases. This problem arises not only in academic discourse but also in law enforcement practices, particularly judicial practices (Khairandy, 2014). The issue emerges not only in the Civil Law system but also in the Common Law system. Even though Common Law and Civil Law have different systems for regulating torts and defaults, the two legal systems frequently have overlapping understandings of acts of contravention and default. These problems can occur because there is a conceptual similarity between unlawful acts and defaults (Cruz, 1999).

Unlawful acts are different from defaults. The plaintiff's rights in an unlawful act or an obligation violated by the defendant in an unlawful act arise from (general) legal provisions,

whereas in default, the rights or obligations stem from the parties' contract or agreement. Catherine Elliot and Frances Quinn proposed similar opinions. They argued that an unlawful act includes an act that violates a legal obligation, while a default is a breach of an obligation that the parties agreed upon voluntarily (Elliot & Quinn, 2003). In a contract, the obligations are typically owned only by the parties making the contract, whereas in an unlawful act, the obligations are generally held by society (Agustina, 2003).

However, in terms of legal theory and legal history, torts and contracts are not always intended as independent or separate concepts. The separation of tort law from other parts of the law is a relatively new development. Winfield emphasized that responsibility in torts arises from the breach of an obligation established by law, but in a contract, the obligation is established by the parties themselves. This generalization is certainly true when responsibility arises solely from reciprocal promises, but not in the modern era, where contractual responsibility is seen when the plaintiff has surrendered an advantage to the defendant or suffered a loss as a result of the defendant's actions (Michael A. Jones, 1989).

In fact, even though unlawful acts and contracts are conventionally separated, there are still issues with overlapping understandings between the concepts of tort and default in law. For example, there is an act by one party that, on the one hand, can be categorized as an unlawful act, but it also has a contractual element. Similarly, the actions of one party have contractual consequences for the other party, however, they can also give rise to tort liability (Elliot & Quinn, 2003).

HIR, RBg, as well as Rv do not explicitly stipulate or prohibit the merging of claims or cumulative lawsuits. Cumulative lawsuit or *samenvoeging van vordering* is the merging of multiple lawsuits into a single lawsuit. Positive law does not govern a combination of suits, nor is it regulated by the Herzeine Inlandsch Reglement ("HIR"), Reglement Buiten Govesten ("RBg"), and Reglement op de Rechtsvordering ("Rv") (Mantili & Sutanto, 2019). The merger occurs because of their mutual connectivity. Combining two, three, or more cases can be justified if there is a close relationship between each of these lawsuits and to facilitate the process. Merging lawsuits can also help avoid conflicting decisions. This type of merger is considered beneficial in terms of the process (*procesuel doelmatig*).

Article 103 Rv prohibits only the merger or accumulation of lawsuits between claims for ownership rights (*bezit*) and claims for property rights. Thus, in a *contrario* (in the opposite sense), Rv allows the amalgamation of lawsuits. As previously mentioned, the

purpose of lawsuit accumulation is to simplify the litigation process so that the principle of a simple, fast, and low-cost trial is enforced (M. Y. Harahap, 2009).

Efforts to realize this principle are the obligations of the court as stated in Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, which states: "The court assists seekers of justice and tries to overcome all obstacles and obstacles in order to achieve a simple, fast, and low cost". Even though HIR, RBg, and Rv do not regulate it, the judiciary has long enforced it. Supomo showed one of the Rulings of the *Raad Justitie* Jakarta on 20 June 1939, which allowed the merger of lawsuits if there is a close relationship between the lawsuits (*innerlijke samenhang*) (Mahkamah Agung RI, 1994). The same conclusion was confirmed in the Supreme Court Decision No. 575 K/Pdt/1983. This Supreme Court decision has a ratio decidendi in filing a lawsuit for unlawful acts (PMH) and breach of contract. Based on the above background, the research problem is: What is the *ratio decidendi* (jurisprudence) of cumulative lawsuits and judges' legal reasoning from Supreme Court Decision No. 575 K/Pdt/1983 and Supreme Court Decision No. 2686/Pdt/1985?

RESEARCH METHOD

This is library research using the normative juridical method. The statutory approach was used in this research. It was carried out by analyzing Supreme Court Decision No. 575 K/Pdt/1983 and Supreme Court Decision No. 2686/Pdt/1985 concerning the cumulative lawsuit and tort section. The researchers selected Supreme Court Decision No. 575 K/Pdt/1983 and Supreme Court Decision No. 2686/Pdt/1985 because these Supreme Court decisions have become jurisprudence in terms of the cumulative lawsuit and tort section.

RESULTS & DISCUSSION

What is the Ratio Decidendi and Jurisprudence of the Supreme Court Decisions concerning Cumulative Lawsuits and Tort?

There are no rules that strictly allow or prohibit cumulative lawsuits, but in practice, there are three cumulative objectives that are not permitted, namely:

- a) If for a certain claim (lawsuit) a special procedure is required (claim for divorce), while other claims must be examined using the usual procedure (claim to fulfill the agreement).

- b) Likewise, if the judge has no relative authority to examine one of the charges filed in conjunction with another claim in one lawsuit.
- c) Claims for *bezit* may not be filed in the same lawsuit as a claim for *eigendom* (Mertokusumo, 2010).

The same opinion was confirmed in Supreme Court Decision No. 575 K/Pdt/1983, which contains a *ratio decidendi* in cumulative lawsuit cases, which explains, among other things:

- a) Even though Article 393 paragraph (1) Het Herziene Indonesisch Reglement (HIR) states that only the HIR pays attention to the procedural law, to realize the *doelmatigheid* process, it is possible to apply institutions and procedural provisions other than those regulated in the HIR.
- b) Guided by the real objective of facilitating or simplifying the judicial examination process.
- c) Avoid conflicting decisions.
- d) For that reason, cumulation (*samenvoeging*) or objective or subjective accumulation may be performed, as long as there is *innerlijke samenhangen* or a close connection between them.

In discussing the Supreme Court decision, we must be able to define the link between unlawful acts (abbreviated as PMH) and default so that it can be cumulated. According to Article 1233 of the Civil Code, the sources of engagement are agreements and laws. Engagement is a legal relationship in the field of wealth law in which one party has the right to demand an achievement and the other party is obliged to carry out an achievement (Widjaja, 2006). Whereas, an agreement, according to Article 1313 of the Civil Code, is an act by which one or more people bind themselves to one or more people (Sadewa, n.d.).

This definition was criticized by Prof. R. Subekti, as quoted by Soepomo, because it only includes unilateral agreements even though agreements are generally reciprocal in nature, such as sale and purchase agreements, lease agreements, exchange agreements, and so on. Meanwhile, engagements born from laws are divided into two categories: engagements born solely from laws and engagements born from laws related to human actions. Agreements arising from laws related to human actions can be divided into lawful and unlawful engagements (Soepomo, 2002).

An unlawful act is an act that is contrary to the rights of other people, both natural rights and rights that are born because they are protected by law, whereas a default is an act that is also said to be against the law and the rights of other people but arises because of the rights and obligations determined and agreed upon by the parties in an agreement (contract) (Raharjo, 2009).

The agreement is made by the parties in accordance with Article 1320 of the Civil Code. If the agreement fails to meet the objective requirements, it is null and void. When an agreement is declared null and void, all realizations of its contents become null and void and revert to the pre-agreement condition. If another act violates the rights after the agreement is null and void, the violator is no longer called a default, but an unlawful act because it violates the rights of others, which are protected by law (Fuady, 2017).

When discussing default, the normative study cannot be separated from the concept of contract law; default is included in a discussion of contract law. Parties who do not carry out the agreement are more precisely called defaults, as a form of reneging on the agreement. Default refers to a situation where the debtor does not fulfill an obligation. Syaifuddin, (2012) acknowledged the following forms of default:

- a. The debtor does not carry out his obligations at all.
- b. The debtor does not fulfill his obligations properly or performs his obligations but not as he should.
- c. The debtor fails to fulfill his obligations on time.
- d. The debtor engages in prohibited action. A default can occur because the debtor deliberately does not carry out an obligation or is negligent.

Default occurs when there is no achievement at all or achievement that is no longer useful or irreparable. Defaults are late to fulfill achievements or the debtor fulfills the performance but not properly or not as expected, or the debtor does something that should not be done. Defaults include when the debtor fails to perform an obligation at all, performs it but not as it should, fails to perform on time, or engages in conduct prohibited by the agreement.

The problem is whether a default is considered an unlawful act (*onrechtmatig daad*) or not. For this reason, the conditions for unlawful acts (PMH) must also be known, including:

- a. Violating the subjective rights of others.
- b. Violating legal obligations as defined in the law.
- c. Violating social ethics (*goede zeden*).

d. Violating obligations as members of society in social life.

According to J. Satrio, default includes PMH, apart from that there is no principal difference between the two. Default is the same as PMH carried out by a party in his position as a debtor. This meaning is based on developments that broaden the meaning of PMH from a narrow meaning (legal) to a broader meaning that includes principles outside the law (Satrio, 2012).

The broadening of the meaning of PMH has implications for the category of someone's actions that not only violate the contents of the agreement but also violate the principles of decency, prudence, and decency in relations between fellow citizens. Based on the principle of decency and fairness, the debtor is said to be against the law because he does not want to hand over an item that is not his right to someone who is more entitled, and he does not even provide any contra on the use of the item in question (Hernoko, 2011).

The act of refusing to hand over an item that is not his right to someone who is more entitled and does not provide any counter to the use of the item is referred to as PMH, namely, an act against the subjective rights of other people and his own legal obligations. It is inappropriate if someone refuses to hand over things that belong to someone else who is more entitled. It is improper for someone to rule over other people's property, and it is unjustified for someone to change the shape of things at will without the permission of the person entitled to do so. Initially, the meaning of PMH was limited to Article 1365 of the Civil Code, but following the Hoge Raad in the Lindenbaum case against Cohen in the Netherlands, the meaning of PMH has broadened to include not only Article 1365 of the Civil Code (in law) but also any act that violates it (Suharnoko, 2004).

Unlawful acts in the *onrechtmatig daad* concept are not related to a two-party agreement, but the *onrechtmatig daad* concept can be applied if the agreement is unilateral. The form of a unilateral agreement is, for example, an agreement that arises from the law. Every citizen is unilaterally bound and subject to the issuance of a law by the government. It is in contrast to an agreement born from an agreement because this type of agreement is not a unilateral agreement but involves two parties.

Default, according to J. Satrio, is an unlawful act, and there is no significant difference between default and an unlawful act. Default is the same as an unlawful act committed by a party in his capacity as a debtor; violation of the agreement means against the law.

Based on Article 1365 of the Civil Code, using the term unlawful act for default can be confusing. An unlawful act is an act that, in addition to being against the law or contrary to the law, contradicts the principles of decency, prudence, and decency in relations between members of the community. Whereas default is not against the law even though based on Article 1338 of the Civil Code, the agreement that has been agreed upon is binding on the parties as law for them. A default is an act that is not in accordance with the contents of the agreement. Indeed, sometimes it can be difficult to determine whether an act is a default or an unlawful act.

The incorporation of contractual arrangements and unlawful acts into one generic engagement, as adopted in Book III of the Civil Code, raises several fundamental problems, such as:

- a. Although there is a conceptual separation between unlawful acts and defaults, because they are in the same generic category, there is an overlapping understanding of unlawful acts and defaults;
- b. Impact on practice, causing controversy in court decisions involving cases of default and unlawful acts related to contracts.

The difficulty in distinguishing default and unlawful acts is partly due to the fact that the concept of engagement in Book 2 of the Civil Code combines both default and unlawful acts, resulting in overlapping understandings. According to Gus Sardjono, in academic discourse, talk of unlawful acts frequently intersects with the concept of default. " This is partly because the two concepts provide the same "penalty" in the form of "compensation".

Judges' Legal Reasoning in the Supreme Court Decision No. 575 K/Pdt/1983 and Supreme Court Decision No. 2686/Pdt/1985

In court practice, creditors often file lawsuits by combining (summarizing) the basic claims of default and tort in one lawsuit, resulting in controversial judge's decisions or decisions that differ from one another, leading to legal uncertainty. In one case, the court accepted and granted the combination of the bases of the lawsuit, but in another case, the combination of default and tort resulted in an unacceptable lawsuit (*niet ontvankelijk verklaard*) (Suhendro, 2014).

Initially, it was thought that courts in Indonesia could not be justified in combining lawsuits for default and unlawful acts because each claim must be settled in a separate lawsuit under civil procedure rules. As a result of the combination of lawsuits for default and

unlawful acts in one lawsuit, the court declared the lawsuit to be *obscuur libel* (Djojodirdjo, 1982).

Although the plaintiff's lawsuit stated in the *posita* and *petitum* that the defendant had defaulted and violated the law, the court did not provide clear benchmarks regarding the limits of the meaning of default and unlawful acts in the case that eventually resulted in Supreme Court Decision No. 575 K/Pdt/1983. The judge's legal considerations were solely based on the direction of evidence submitted by the plaintiff. Then, the court granted the lawsuit based on this evidence. In this case, the Supreme Court judge approved the lawsuit based on default and stated that the legal relationship between the parties was based on a contractual relationship. The contractual relationship is a lease agreement. This is the *ratio decidendi* for accepting the cumulative lawsuit for PMH and default.

The acceptance of this cumulative lawsuit implies that there is sufficient legal interest, which is the main condition for the court to accept the claim for that right (*point d'interet, point d'action*). The claim will be granted if the court determines, after the evidentiary process, that the claim has been proven and is based on the existence of a right (Sunarto, 2014).

In line with the preceding explanation, Supreme Court Decision No. 2686/Pdt/1985 dated January 29, 1985, stated that the argument for the lawsuit was an unlawful act and the actual legal event was a default, therefore, the lawsuit was not *obscuur libel* because the judge could consider that the argument for the lawsuit was a default.

The *ratio decidendi* in the two Supreme Court Decisions above states that the filing of a cumulative lawsuit for unlawful and default acts does not violate procedural law at the same time. The majority of the judges considered that the lawsuit was unacceptable (*Niet Ontvankelijk Verklaard*) because the formulation of the lawsuit was based primarily on unclear subjective accumulation by mixing PMH and default. Thus, the lawsuit was legally flawed (Munir Fuady, 2017).

Another consideration is that the judges believed that, according to the decision of the Supreme Court described above, in the merger of lawsuits, it is required that the two of them have a close relationship (*innerlijke samenhangen*), and the above-mentioned merger is inappropriate because it obscures the plaintiffs' lawsuit. The judge's decision to reject the lawsuit for unlawful acts and default can lead to legal debate.

Yoni A Setyono, Lecturer in Civil Procedure Law at Universitas Indonesia, argued that accumulating lawsuits for unlawful acts and defaults is legally not easy because it is known that in civil courts judges are passive so the parties in dispute must be more active in expressing their arguments (Setyono, n.d.).

In practice, court judges may or have won cases with cumulative claims of default and unlawful acts in one lawsuit. This is evident from the *ratio decidendi* of the Supreme Court in the Supreme Court Decision No. 2686/Pdt/1985, dated 29 January 1987. Yahya Harahap opined that although the Supreme Court decision stated that the argument put forward in the lawsuit was an unlawful act and the actual legal event was a default, the lawsuit was not *obscuur libel* because the judge could consider that the argument for the lawsuit was the default (Y. Harahap, 2006).

The Supreme Court's decision as a *ratio decidendi* above also contains the notion of a merger of claims or a cumulative lawsuit (*samenvoeging van vorderings*), namely the merger of more than one lawsuit into one lawsuit. Based on the judge's consideration, this merger has 2 (two) benefits and objectives, including:

- a. Realizing simple justice through a system of combining multiple lawsuits into one lawsuit, several cases can be settled through a single process, considered and decided in one decision. On the other hand, if each case is sued separately and independently, a settlement process is forced into each case so that the principle of justice "simple, fast and low-cost" is not enforced.
- b. Avoiding conflicting decisions. Conflicting decisions in the same case can also be avoided through a merging system.

Therefore, if there is a connection between several lawsuits, a cumulation system or a combination of lawsuits is an effective way to avoid conflicting decisions. Subekti contended that to avoid conflicting decisions regarding cases that have connectivity, such as when two or more related cases are heard in a certain district court and the parties involved are the same, the cases can be merged into one so that they are examined by one assembly only.

CONCLUSION

The two Supreme Court decisions above have a *ratio decidendi* that filing a cumulative lawsuit for unlawful and default acts does not violate procedural law at the same time. Materially, the majority of the judges' considerations state that the lawsuit is

unacceptable (*Niet Ontvankelijk Verklaard*) because of the formulation of the lawsuit, particularly on an unclear subjective accumulation by combining PMH and default. As a result, the claim is legally flawed.

This cumulative lawsuit means that it must have sufficient legal interests, which is the main requirement for the court to accept those rights claims (*point d'interet, point d'action*), but it does not mean that the court will grant every right claim that has legal interests. The claim will be approved if the court determines, after the evidentiary process, that the claim has been proven and is based on the existence of a right.

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