

Study of Supreme Court Decision (Number 1666 K/Pdt/2022) Sale and Purchase Agreement Between Budi Said and PT Antam

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ABSTRACT

The study of the court verdict number 158/Pdt.G/2020/PN Sby, is a unlawful tort act of Indonesian Civil Law, between Budi Siad as the claimant, and a major mining coroporation owned by the Indonesian Government, ANTAM Ltd, and also with it, are some other individuals who are responsible in the tort. In this court verdict study, the author would like to examine, on what are the constituent of unlawful tort, have the defendant do. Lest we forget also that in a verdict study the author would also like to find out upon what are the factors used bby the judge in judging and considering the verdict of the case. The case itself occurred due to incongruity found between the amount of goods purchased by the claimant and the price paid, the incongruity found resulted in the loss received by the claimant. The purpose of this research specifically is to reinforce the theories used by the court in order to issues the verdict on the defendants. This research also use d normative juridical approach and use library study techniques of which the sources came from secondary sources such as books, journals, papers, or newspapers. In which the research method used normative-empirical method. From the said research, the author has found that the unlawful tort act that have been committed by the defendants are fullfield in most elements, and in terms of the second problems formulated in this article the author finds out that the legal findings methode the judge used are juridicialm philosophical, and sociological bases.

INTRODUCTION

In every business transaction agreement, of course, there is always a risk of problems with the transaction agreement, whether it is an element of fraud, differences in interest or inaccuracy of promises (default) or in this case unlawful acts committed by one party against the other party and what occurs in this case is unlawful acts. The unlawful act itself is regulated in the Civil Code more precisely in article 1365, "where legal acts are categorized as any act that violates the law and brings harm to others, obliging the person who caused the loss because of his fault to compensate for the loss." As for this case, the two parties who will carry out the agreement transaction are Budi Said, a Real Estate entrepreneur and director of PT Tridjaya Kartika Group, a company engaged in property such as housing, apartments, to plazas originating from Surabaya, with PT Aneka Tambang Tbk (ANTAM) a government-owned mining company as the first defendant, Endang Kumoro served as Head of BELM as the second defendant, Misdianto,

served as BELM Administration Personnel as the third defendant, Ahmad Purwanto, served as General Trading Manufacturing And Service Senior Officer at ANTAM's Precious Metal Processing and Refining Business Unit as the fourth defendant and also Eksi Anggraeni as the fifth defendant where this transaction actually occurred in 2018 and began to rise to cases in 2020 to 2022. (Anggraeni & Rizal, 2019)(Primary, 2020)(Azzahra et al., 2021; Muhtarima, 2019)

As for 2018, the businessman Budi Said bought 7,071 tons of gold from ANTAM at a price of 3.9 trillion Rupiah. In the transaction, Budi Said was accompanied by Marlina, the owner of a Gold Shop in Surabaya, which continued with a meeting by several employees from PT ANTAM, named Endang Kumoro, Misdianto and Eksi Anggraini, where at the meeting it was agreed that ANTAM had a discount on the gold purchase transaction. In fact, since Antam's gold bullion purchase transaction at the discounted price offered by Defendant II, Defendant III and Defendant V at the office of Defendant I from March 20, 2018 to September 25, 2018, Antam's gold bars were received smoothly by the Plaintiff, but after that Antam's gold bullion receipts began to not go smoothly. For this reason, since September 25, 2018 the Plaintiff repeatedly asked Defendant II, Defendant III, Defendant IV or among them and also asked Defendant V, because the purchase from March 20, 2018 to November 12, 2018 should have received gold totaling 7 tons more But Budi Said only received gold amounting to 5,935 Kg, so that there is still a shortage of 1,136 tons (1 ton 136 kilograms) of Antam's gold bars that have not been received by the Plaintiff. However, the transaction between the applicant and the defendant is still running well even though it is overshadowed by several obstacles and reasons given by the defendant such as "the raw materials are late", "the goods are still produced so late in Surabaya" or the reason "the cargo is late so that the delivery is also late". Even on November 12, 2018 Defendant II and Defendant III begged the Plaintiff to buy back Antam's gold bars on the grounds that it was to help increase the sales turnover of Defendant I, which was then in consideration of helping the State and so that the remaining stock of Antam's gold bars owned by the Plaintiff that had not been sent immediately then the Plaintiff decided to buy another 50 kilograms, based on the price offered by Defendant V after obtaining approval from Defendant II, which is IDR 505,000,000 (five hundred and five million rupiah) per kilogram. So that on that day (afternoon) the Plaintiff made 1 deposit to the account of Defendant I at Bank BCA No. 413,300,5393 on behalf of PT Aneka Tambang, in the amount of Rp 25,250,000,000,- (twenty-five billion two hundred and fifty million rupiah). However, on December 4, 2018, there were no more shipments of gold made by the defendant, which should have been sent in accordance with the following details:

- 1). Date 16 November 2018 : 325 KG
- 2). Date 23 November 2018 : 200 KG
- 3). Date 30 November 2018 : 200 KG
- 4). Date 07 December 2018 : 200 KG
- 5). Date 14 December 2018 : 161 KG
- 6). Date 21 December 2018 : 50 KG

On the same date the real problem arose, where after repeatedly contacting Defendant II, Defendant III, Defendant IV and Defendant V. Then the Plaintiff met with Defendant V together with Defendant IV at the BCA HR Muhammad Surabaya Bank Office, at that time Defendant V said orally to the Plaintiff and was also witnessed by Defendant IV, if the gold is no longer there. Hearing Defendant V's explanation, Plaintiff was shocked and suspicious that Plaintiff had been cheated by Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V.

Which then Budi sent letters to Antam Surabaya up to 3 times, (which was never replied, and when Budi contacted ANTAM Jakarta it was discovered that there had never been a sale of gold at a discounted price. Feeling aggrieved, Budi Said finally reported to the police about this transaction and also through civil channels. Based on the Surabaya PN website, Budi won the lawsuit with Number 158/Pdt.G/2020/PN. Sby, so Antam had to compensate 1.1 tons of gold or Rp 817 billion. Then antam appealed to PT against the PN's decision and was won by ANTAM. The appeal is numbered (371/PDT/2021/PT SBY) in which in the decision of the judge of this high court, the judge decided that the lawsuit claimed by Budi Said as the Appellate was rejected in

its entirety. Not satisfied with this decision, Budi again filed a cassation for the defeat to the Supreme Court. In the decision of the Supreme Court Budi Said won, it was stated in the contents of the decision of the panel of Supreme Court judges in the Supreme Court decision Declaring Defendant I, Defendant II, Defendant III, Defendant IV and Defendant V have been guilty of committing unlawful acts that harm the Plaintiff; Declaring Defendant I responsible for all actions and all legal consequences committed by Defendant II, Defendant III and Defendant IV; Sentencing Defendant I together with Defendants II to IV of the Convention jointly to hand over gold weighing 1,136 (one thousand one hundred thirty-six) kilograms of Antam's gold bars to the Plaintiff or if not handed over gold weighing 1,136 (one thousand one hundred thirty-six) kilograms then replaced with money equivalent to the price of gold at the time of execution of this judgment; Sentencing Defendant V to pay material losses to the Plaintiff in the amount of Rp92,092,000,000.00 (ninety-two billion ninety-two million rupiah).

As background, Budi Said's decision in making gold buying and selling transactions with PT ANTAM with fantastic nonimal is not something that needs to be surprising, this is due to PT ANTAM's very famous reputation. ANTAM, a member of MIND ID (Mining Industry Indonesia), BUMN Holding Mining Industry is a diversified and vertically integrated mining company that is export-oriented. Through operating areas spread throughout Indonesia that are rich in mineral materials, ANTAM's activities include exploration, mining, processing and marketing of nickel, ferronickel, gold, silver, bauxite, and coal ore commodities. ANTAM has loyal long-term customers in Europe and Asia. Given the vast area of mining concessions and the large amount of reserves and resources owned, ANTAM formed several joint ventures with international partners to be able to utilize existing reserves into profitable mines. Furthermore, please note that what is meant as a transaction is an event that affects a business financially or in other words causes changes in its assets, liabilities, and/or equity. According to Skousen (2009) quoted in his book entitled Introduction to Financial Accounting which states that the notion of transactions is the exchange of goods and services (both individuals, companies and other organizations) other events that have an economic influence on business. Based on these two statements, we can conclude that the activity that took place between the plaintiff and the defendants was a transaction activity where we can also see from the chronology in detail that there was an exchange between the goods offered and the amount of money given gradually, although in the end the quantity of goods received by the sender was not in accordance with what should have been given. In addition to the transaction, it should be noted that there was also an agreement made between the plaintiff and the defendant, whereby defendants II, III, and V even gave a fictional discount to the plaintiff so that the plaintiff was interested in buying the gold bullion in question. Article 1313 of the Civil Code states that: "An agreement is an act by which one or more persons bind themselves to one or more other persons. If drawn from the case discussed in this article, it can be said that the sale and purchase agreement was made between the Claimant and also Defendants I, II, II, IV, and V which of the two elements in this case namely the existence of an agreement and a transaction can be concluded that the study of this judgment is very relevant to be discussed because it is closely related in business law, In fact, the author feels that this is the underlying reason why this topic was raised (Hudawanto, 2020; Saputra, 2010; Siregar, 2008).

METHOD

In writing this article the author takes a type of normative research, or a type of research that can be said to be doctrinal legal research. If the type of empirical research is research whose legal data is taken from primary data, then the type of normative research is research carried out with a collection method carried out by examining literature materials or secondary data, where this literature research consists of primary, secondary, and tertiary legal materials. Given Professor Peter Mahmud Marzuki's statement in his book entitled Legal Research that all research related to law (Legal Research) is always normative. Therefore, from this statement, the data sources used in this study are secondary data sources where the legal material consists of primary, secondary, and tertiary. In this legal case research approach, the author will use the

Case Approach approach method or case approach, and also the statute approach. As for the study of this decision, the laws and regulations that will be used in reviewing the PMH of the defendants are Civil Code 1365 – 1380, this Civil Code regulation is a regulation of the statutory approach used. Then the case approach is carried out by reviewing cases related to the issue at hand which has become a court decision that has permanent force. The case can be in the form of cases that occur in Indonesia or in other countries. In this decision study, of course, it is clear that the case used is a case that already has a decision and also has permanent legal force, namely the decision of the Supreme Court (Number 1666 K / Pdt / 2022.)

The nature of the research used by the author in this case is the nature of descriptive research referring to the statement given by Sukmadinata (2006: 72), descriptive research itself is useful research to describe existing phenomena. In addition, the nature of descriptive research was chosen by the author as the nature of this case study research because the type of descriptive research is the type of research used in conducting a Case Study or case study, and because what is discussed in this case is a case decision study, the nature of this research is suitable to be applied in this decision study.

Given that the type of research method used from this decision study is Normative, which is a literature study and the data is taken from secondary data sources that are taken indirectly from the field, the data collection technique is mostly carried out by the author through the internet, online searches, books and also collected by visiting the library.

RESULTS AND DISCUSSION

In this discussion section, the author will try to describe what has been obtained from the results of data processing and research that has been carried out where as discussed in the problem formulation section there are 2 problems to be discussed in this article, namely determining what elements of unlawful acts are owned by the defendants and also the question of how the application of the law by the judge in considering this case.

Legal Basis Used

Because the verdict study is a study of Civil judgments, the Law used is certainly a Civil Code, although the Defendants are also criminally charged and tried, and commit criminal acts The legal basis for the discussion of this decision study will not use the legal basis of the Criminal Code, where the author tries to elaborate this fraud case using the Civil Code in accordance with what has been decided and considered by the judge. The basis of fraud used in the Civil Code is fraud that can result in the cancellation of an agreement where in the Civil Code this is regulated in Article 1328 which states Article 1328 of the Civil Code states that fraud is one of the reasons for canceling an agreement (*bedrog levert eenen grond op tot vernietig der overeenkomst*). The fraud according to Article 1328 of the Civil Code can be used as a reason for cancellation of the agreement if the fraud used by one party is such that it is evident that the other party will not enter into an agreement without deception (*niet zoude aangegaan*). Although Article 1321 jo 1328 of the Civil Code regulates fraud in relation to the reasons for the cancellation of contracts or agreements, the Civil Code does not regulate the substance or content of these norms at all. then because the formulation of the problem of this article focuses on PMH, of course, the legal basis used is the Civil Code 1365 where PMH is that everyone who commits unlawful acts is required to compensate for losses arising from his mistake. From these 2 legal bases, the author will determine what are the elements of PMH and also examine whether the judge in deciding this case has paid attention and considered using the proper considerations.(Nasution, 2018; Vijayantera, 2020).

Definition of Unlawful Acts

In order to answer the first problem formulation, before understanding what are the elements against the law, it is necessary for us to know the meaning of PMH itself. According to Civil Code 1365, an unlawful act is an act that causes harm to another person, which causes the person who gets the wrong to cause a loss in which the loss must be compensated by the person

who caused the loss. Actually PMH has a long history before it was adopted by Indonesia, where its roots emerged from Roman law, namely the theory of Culpa from Lex Aquilla, where this Roman law was taken by the French and adopted into their own law, from Lex Aquilla there was then a process of generalization, namely with the development of a principle of unlawful acts that is simple, but can capture all, From that development, an understanding of PMH itself was born, namely PMH is formulated as an act that harms others, which causes the person affected by the wrong cause of the loss must compensate. From this formula, it was applied by the Dutch and brought to Indonesia, (Dutch East Indies at that time) which is still valid today in Article 1365 of the Civil Code. Furthermore, Article 1365 consistently states that unlawful acts are unlawful acts committed by a person because his fault has brought harm to others. Where as we know in legal theory there are 3 categories of unlawful acts regardless of criminal or civil, namely;(Satya & Hermono, 2023)(Achmad, 2015)

- 1.Unlawful acts due to negligence
- 2.PMH by accident
- 3.PMH without any element of intentionality or error

What needs to be remembered here is that every action is said to violate, either intentionally or unintentionally whose nature is still said to be violating, regardless of the category, thus the elements of intentionality and negligence can be said to be fulfilled. In order for a violation of the law to be said to be an act that is against the law, the consequences of the violation must certainly cause harm to the other party. Thus, every word in the sentence of each unlawful act cannot be separated, where each must be in line in realizing the meaning of PMH. It can be concluded from the description above that in a narrow sense, unlawful acts are defined as "a person who has committed an offense against another person or he has acted contrary to a his own legal obligation". From this definition, PMH can only be said to be an unlawful act if the violator only violates the written law (law) Where the broad meaning of the unlawful act itself arises based on the arrest of Hoge Road 1919 Number 110 dated January 31, 1919 which was expanded to "The thing to do or not to do is to violate the rights of others, or it is contrary to the legal obligation of the person doing it (hereinafter it is a formulation of a narrow opinion), or contrary either to decency or against the propriety that ought to exist in the traffic of society towards self or the property of others)". From the following statement, it can be ascertained that PMH is not only an act that violates the rights or obligations of others but also PMH is an act that is contrary to propriety or decency towards themselves or other people's objects, violates the subjective rights of others, is contrary to the proper prudence in society, and is contrary to the legal obligations of the perpetrator. In addition, it should also be remembered that those who violate the law due to negligence or intentionality have the same legal consequences, namely Indemnification in either Civil Code 1365 or Criminal Code 1365, where what distinguishes PMH from the Civil Code with the Criminal Code is more focused on differences in the nature of public criminal law and private civil law. Furthermore, this was emphasized by Munir Fuady who stated "with criminal acts, there are public interests that are violated (besides possibly individual interests), while with unlawful (civil) acts, only personal interests are violated.", of course, PMH in crime needs to be mentioned a little in this discussion so as not to cause confusion and ensure that the PMH discussed in this decision study is the PMH Civil Code because those who are harmed here is an individual (Hulu, 2020; Muhtarima, 2019)

Elements of Unlawful Acts

As mentioned several times in the introduction and also the formulation of the problem that in order for a person or a legal entity to be said to do PMH there are several elements that need to be fulfilled so that the act is said to be unlawful. The Civil Code itself has regulated this, where according to Article 1365 the elements of PMH itself are;(Rastuti, 2016)

- a) The unlawful act itself, which is defined above, is an act that causes harm to another person, which causes the person who gets the wrong to cause harm for which the loss must be compensated by the person who caused the loss.
- b) Error

c) Disadvantages

d) The causal relationship between the unlawful act and the loss

The elements of PMH are explained in more depth by those who elaborate that;(Istiqamah, 2019)

a) The act must be said to violate the law, which from the sentence there are two meanings, namely, act, and against the law, both of which are certainly related to each other and cannot stand alone, alone as the elements discussed above are if narrowly PMH is a violation of the written law only, where a person or legal entity can only be sued if he violates the written law (law) only. However, as we know since the Hoge Arrest in 1919, PMH has only been described in a broad sense where, violators who commit PMH acts outside the law such as the unwritten law can also be said to have committed PMH, actions that violate the unwritten law, namely;

i. Contrary to the proper prudence in society. This criterion is based on an unwritten law (relative). That is, actions done contrary to good attitudes / propriety in society to pay attention to the interests of others

ii. Contrary to the legal obligations of the perpetrator, meaning legal obligations both written and unwritten, including public law.

iii. Violating the subjective rights of others, meaning if the actions committed have violated the rights of others guaranteed by law (including but not limited to personal rights, freedoms, property rights, honor, good name or other individual rights.

iv. Contrary to decency, namely moral rules (Article 1335 Jo Article 1337 of the Civil Code)

So it can be concluded that PMH is widely included (which is used in our Civil Code) is when there is an act against the Law, committing an act that violates the rights of others, and also contradicts the legal obligations of the perpetrator and is contrary to decency. Where in this case as a whole defendants I to defendant V are declared to have committed PMH, the elements of which will be discussed in detail in the next section.

a) The meaning of the element of error is the existence of an element of negligence or intentionality, Negligence means there is an act of ignoring something that should be done, or not being careful or careful so as to cause harm to others, where Negligence means there is an act of ignoring something that should be done, or not being careful or careful so as to cause harm to others. However, keep in mind that in the presence of a certain circumstance the element of error can be eliminated, for example in a state of force. In this case, consideration of whether the element of guilt against the 5 defendants is waived or not waived will also be discussed in the next point.

b) The element of loss. In this Civil Code, losses are actually divided into 2, namely material and immaterial material, in this case, namely the loss on the part of the claimant where the gold that has been purchased by the plaintiff never arrived even though it has been paid, which caused the claimant to suffer a loss of 1,136 kilograms of gold. Where immaterial is a loss that refers to the mental nature of a person such as feelings of being aggrieved to shame, or anxiety, concerns that will ultimately be valued in the form of money, in this case, defendant I also launched a reinvention lawsuit against the Claimant for the immaterial loss suffered, namely the existence of an element of defamation by the news due to the emergence of this case, where Defendant I suffered losses in the form of defamation due to various reports by online newspapers that cornered the defendant. In addition, defendant I also considered that the immaterial loss in the form of defamation, caused the loss of opportunities to carry out sound business practices and the loss of opportunities to gain great trust from the public as gold consumers of the Convention Plaintiffs/Defendants I of the Convention, even as a result of the defamation a number of people demonstrated in front of the offices of the Reconvention Plaintiffs/Defendants I of the Convention which gave rise to disruptions to the business activities of the Reconvention Plaintiff/Defendant I Convention in which defendant I claims immaterial damages to the plaintiff in the amount of Rp. 200,000,000,000 (two hundred billion rupiah). However, this reinvention lawsuit was rejected. The provision of compensation is also regulated according to the Civil Code, but the types of compensation that will be discussed here are only those related to this case study, namely;

- i. Indemnity for all unlawful acts (Article 1365 of the Civil Code); This type of compensation in the PMH case is borne by defendants I to defendant IV where the judge's decision states that Defendant I together with Defendants II to IV of the Convention jointly handed over gold weighing 1,136 (one thousand one hundred thirty-six) kilograms of Antam's gold bars to the Plaintiff or if not handed over gold weighing 1,136 (one thousand one hundred thirty-six) kilograms then replaced with money equivalent to the price of gold at the time of implementation this verdict. and defendant V paid material losses to the Plaintiff amounting to Rp92,092,000,000.00 (ninety-two billion ninety-two million rupiah);
- ii. Indemnity for acts committed by others (Article 1367 of the Civil Code). Article 1367 paragraph (1) of the Civil Code, a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of those who are his dependents or caused by goods under his control (vicarious liability). This compensation is also given by defendant I as the company that employs defendants II to V, therefore the losses caused by the defendants must be compensated by defendant I because defendants III to V are those who work under PT ANTAM, so that it becomes Vicarious Liability or corporate responsibility.

PMH elements owned by each defendant

After understanding in detail what is meant by PMH, and its relationship with this decision study, in this discussion point, the author will discuss the elements of PMH owned by each defendant, namely defendant I to defendant V. these elements are taken from the elaboration of Civil Code 1365 and total 4 items, consisting of PMH itself, errors, losses, and the existence of causal relationships. If even one of these four elements is not fulfilled, it can be said that PMH does not apply to one of the defendants.

1. Defendant I (PT ANEKA TAMBANG Tbk, (or abbreviated as PT ANTAM TBK), domiciled at Aneka Tambang Tower A Building, Jalan Letjen Tahi Bonar Simatupang Number 1, Lingkar Selatan, Tanjung Barat, South Jakarta,). The role of Defendant I in this case is a limited liability company that conducts business activities in the field of mining various types of excavations and carries out business in the fields of industry, trade, transportation and services related to the mining of various types of excavations as well as optimizing the utilization of resources owned by Defendant I to produce goods and / or services of high quality and strong competitiveness to obtain or pursue profits for increase the value of Defendant I by applying the principle of limited liability company. One of the businesses of Defendant I is the sale of gold bars to individuals or companies. Based on the judge's consideration, quoted from Decision Number 158/pdt. G/2020/PN. SBY. page 296, "That from the transaction it appears that the relationship between the Plaintiff and Defendant I and other Defendants is not in relation to general transactions such as the usual purchase of gold made by ordinary people but transactions that are special because individuals by buying gold in the amount of rupiah as mentioned above are empirically rare so that the legal relationship of buying and selling gold between Plaintiff and Defendant I is a special relationship or in banking terms categorized as priority customers; However, in a transaction that has a nominal amount and as fantastic as this, defendant I did not handle this transaction activity properly, this can be seen from the most obvious is the lack of 1,136 tons (1 ton 136 kilograms) of Antam's gold bars that have not been received by the Plaintiff, which even though when related to transactions of this size and special, ANTAM should take this transaction more seriously so that there will be no more fraudulent activities like this that harm its buyers. From the judge's statement of consideration stating that ANTAM should maintain a good relationship during the transaction so as not to be exploited by parties such as defendants II-V indicates that ANTAM has an element of negligence in handling this large sale and purchase transaction. In addition, the court considered that ANTAM should have prioritized the transaction between this plaintiff and himself because it is rare for individual buyers to buy gold in large quantities, due to negligence in not prioritizing this transaction, in other words, ANTAM is not careful in handling this

transaction, because of the lack of prudence that some parties can exploit this sale and purchase agreement, It even manipulates the plaintiff by claiming that there is a discount price to the sale of gold. This resulted in losses obtained by the plaintiff. Then referring to the evidence of evidence P-408 to exhibit P-415 in the form of invoices issued by the defendant, it can be seen that these evidences are different from the invoices issued by the Defendant as mentioned in exhibits P-408 to exhibit P-415 because the invoices as mentioned in exhibits P-416 to exhibits P-524 are not complete so that there is an indication that Defendants I, II to Defendant V have bad faith because there are invoices that are not complete or manipulated, with this act of manipulation or fraud both in terms of manipulation of invoice evidence, as described above, verbal manipulation to the plaintiff that there is a discount on gold sold, to manipulation of the power of attorney requested by defendant II Eksi Anggraini to the plaintiff Budi Said indicates the existence of PMH, where the PMH violated is Article 1328 of the Civil Code Law.

As we know, fraud is an act against the law. From this unlawful act, it is clear that the plaintiff in this case Budi Said, suffered losses, this can be seen from the fact that the remaining gold that should have been sent and paid by Budi Said, was never received. In addition, keep in mind that the act of manipulating the price of gold, power of attorney, and also invoices indicates intentional action by the defendants under Defendant I. in essence although most of these unlawful acts were not committed by ANTAM as defendant I, the principle of Vicarious Liability or responsibility imposed on someone over others under their dependents in Article 1367 paragraphs (2) to (4) as well as Article 1368 and Article 1369, stated that this act was indirectly carried out by ANTAM, because those who committed fraud in the sale and purchase agreement were those who worked for Defendant I, as a representative of ANTAM. as quoted from the Supreme Court Decision, namely; "Although in the judgment in the case on behalf of Defendant Endang Kumoro (Defendant II of the Convention), Defendant Misdiyanto (Defendant III of the Convention), Defendant IV Ahmad Purwanto (Defendant IV of the Convention) and Defendant V Eksi Anggraeni (Defendant V of the Convention) it is not stated that Defendant I is guilty and responsible for the losses of the Convention Plaintiff, but it is proven that in committing the act, the position of Defendant Endang Kumoro (Defendant II of the Convention) as the Head of BELM (Gold Boutique of Precious Metals) Surabaya 01 PT Antam Tbk and Defendant Misdiyanto (Defendant III Convention) as Back Office at Surabaya 01 Gold Metal Boutique PT Antam Tbk., and Defendant Ahmad Purwanto (Defendant IV Convention) as General Trading Manufacturing and Senior Service Officer at Defendant I are employees / subordinates of Defendant I of the Convention who committed the act in the framework of their core business and authority to buy and sell gold under the control and supervision of Defendant I of the Convention and not personal actions from Defendant II to Defendant IV of the Convention because when the gold sale and purchase agreement was carried out at the office/Boutique of Gold Logam Mulia Surabaya 01 PT Antam Tbk., on working days and hours it was carried out with Antam Employees, one of which was Defendant II of the Convention as Head of BELM Surabaya 01 PT Antam Tbk., and in the transaction using PT Antam's account, so that for the unlawful conduct of the Defendants II to IV of the Convention committing fraud together which harms the Convention Plaintiffs, in accordance with the provisions of article 1367 of the Civil Code, the Defendants I of the Convention employing Defendants II to IV of the Convention as employees shall be liable for losses arising from the fault of such employees.

So it can be concluded that even though Defendant I did not directly carry out the PMH, Defendant I is still responsible because of the principle of Vicarious Liability stipulated in Article 1367.

2. Defendant II Endang Kumoro, d/h served as Head of BELM Surabaya 01 ANTAM. To determine the PMH carried out by Defendant II, it can be seen in the minutes of the case, where Defendant II who knew that Defendant I had never traded gold at a discount actually gave a false statement, agreed and agreed that Defendant I sold gold at a discount, this means that not only did Defendant II commit PMH against Article 1365 of the Civil Code which was

contrary to his legal obligations as Head of BELM, but even providing special seat facilities to Defendant V at the office of Defendant I, this is contrary to his legal obligations, so the actions of Defendant V meet the elements of Article 1365 of the Civil Code so that Defendant II and Defendant III are classified as committing Unlawful Acts on the Plaintiff. Where the element of unlawful acts and errors is done intentionally by Defendant II without regard to the actual facts. In other words, the PMH committed by Defendant II satisfies the element of intentional misconduct, and also the PMH committed is contrary to the legal obligations of Defendant II in his capacity as Head of BELM and employee of Defendant I. then for the element of causality relationship, in this case Defendant II did not straighten out the actual facts, where when Defendant V incorrectly explained and offered future prices would vary and the payment was transferred to account Defendant I, after that 12 working days later the Plaintiff will receive Antam's gold bars in accordance with the agreement on the price per kilogram and the number of kilograms made at the time of the transaction, Defendant II who knows this is not true allows or even denies actually agrees and allows and agrees to this act of violation of Article 1328 (Fraud) in other words the action of Defendant II who agrees to the statement of Defendant V has resulted in adverse consequences Defendant I had denied Defendant V's statement, the loss of Defendant I could have been avoided, therefore the Causality Element had been fulfilled by Defendant II in his PMH.

In addition, due to the absence of intervention given by Defendant II, Plaintiff I suffered substantial losses, in terms of material losses in the form of a shortage of 1,136 tons (1 ton 136 kilograms) of Antam's gold bars that had not been received by Plaintiff, and also immaterial losses indirectly caused to Defendant I, due to the actions of Defendant II, Defendant I was indirectly tainted by his good name where as the head of BELM, Defendant II's actions harmed Defendant I, namely the credibility and good name of Defendant I in the field of gold sales business became disturbed or burdened. This can be seen from a number of people protesting in front of the office of Defendant I because of the unlawful actions committed by Defendant II.

3. Defendant III Misdianto, served as Administrative Officer (Back Office) at BELM Surabaya 01 ANTAM. basically, the unlawful acts committed by Defendant III are the same as those committed by Defendant II, namely fraud or violations of Article 1328 of the Civil Code. Which can result in the cancellation of the agreement, but the element of compensation is the same, namely compensation for unlawful acts which are carried out with elements of intentional error, where like Defendant II, Defendant III knows that there has never been a discount policy in the sale of ANTAM gold bars and also ANTAM's policy in buying and selling is only Cash And Carry, and instead the transfer then took 12 business days before the goods until, as explained by Defendant V, Defendant III did not dispute this, which caused the applicant to be deceived and suffer losses. Like Defendant II, Defendant III is also said that Defendant III clearly knew that Defendant V's actions were contrary to his legal obligations but instead allowed, agreed and even provided special chair facilities in the office of Defendant I so that PMH action occurred. Thus, it can be explained that the legal elements possessed by Defendant III are the same as those of Defendant II, namely PMH in the form of Fraud, and also discharge its liability as BELM Administrative Personnel, by not refuting the untrue facts said by Defendant V. had Defendant III denied Defendant V's statement, Defendant I's losses could have been avoided, therefore, the Causality Element has been fulfilled by Defendant III in his PMH. The element of compensation has also been fulfilled where, Defendant III must compensate for the lack of gold, but because all defendants (except Defendant V because Defendant V is only an intermediary), are bound by the principle of Vicarious Liability, where the responsibility imposed on one person over another person under his dependents, in this case each defendant is those who work for Defendant I so that it becomes the responsibility of Defendant I.

4. Defendant IV Ahmad Purwanto, serving as General Trading Manufacturing And Service Senior Officer at the Antam Precious Metal Processing and Refining Business Unit (or abbreviated as UBPP-LM Antam) or as Back Office at BELM Surabaya 01 Antam, basically the unlawful acts

committed by Defendant III are the same as those committed by Defendant II, namely fraud or violations of Article 1328 of the Civil Code Law, acts committed by Defendant II, Defendant III and Defendant V that are contrary to their legal obligations, are also known to Defendant IV but Defendant IV also allows which among others is proven by his act of printing 8 Jakarta Location invoices even though the purchase of Surabaya Location, without filling in price quote data or reference, also signed a Certificate dated 06 November 2018, whose actions are contrary to their legal obligations but the element of compensation is the same, namely compensation which is borne by Defendant I because of the principle of Vicarious Liability. Because of these unlawful acts which are done with elements of intentional guilt. The element of causality here has also been satisfied, whereby because Defendant IV abandoned his obligations as an employee of Defendant I, the claimant suffered great losses.

5. Defendant V Eksi Anggraeni, (also written Eksi Anggraini), residing at Jalan Jepara I / 29, RT / RW: 001/001, Jepara Village is a gold shop trader who is an intermediary between other Defendants and also plaintiffs in this transaction, Defendant V is also the figure who introduced the Applicant to other Defendants. The role of Defendant V is slightly different from that of other Defendants where if the other defendants have their damages held by Defendant I because of Vicarious Liability, Defendant V is not under the responsibility of Defendant I because there is actually no official legal relationship between Defendant I and Defendant V, because even though in the judgment Defendant V is stated to be the Freelance Marketing of Defendant I, this turned out to be untrue, where Defendant I was only an unauthorized intermediary of the plaintiff and other Defendants, Defendant V was also known to receive Fees or costs as its capacity to become an intermediary where the fees were paid by the plaintiff to Defendant V amounting to, Rp.92,000,000,000.00 (ninety-two billion Rupiah). Thus, it can be concluded that Defendant V has benefited from the non-lawful means. From this fact it can also be said that Defendant V committed PMH fraud together with Defendants II-IV. This fraudulent act resulted in losses to the plaintiff which in addition to losses for the lack of gold shipments received by the plaintiff, the plaintiff was also harmed in material form, amounting to Rp.92,000,000,000.00 (ninety-two billion Rupiah), from this fact it can be said that Defendant V is the party that has the largest share in this PMH scheme, where starting from the beginning of this fraud scheme, such as the idea of giving false discounts, to the method of payment (which includes 12 business days which Defendant I never did or recommended), and also the request for power of attorney by the Defendant requested by Defendant V so that because Defendant V who handled the administrative process caused Defendant V to reap such large profits, all these related acts (causality) brought harm to the Claimant and gave rise to deliberate errors. Where the compensation paid by Defendant V to Plaintiff is different from Defendant II-IV which is 92,000,000,000.00 (Billion), this is because Defendant V is not the responsibility of Defendant I which is based on the principle of Vicarious Liability.

Basics Judges Consider in Deciding

In order to discuss the formulation of the second problem, namely, how the application of the law by the judge in deciding, it is important for us to understand in advance what the judge considers in deciding a case in general, where the judge in deciding must pay attention to several important aspects, including juridical truth, philosophical and sociological truth. Juridical correctness means that the legal basis used has fulfilled applicable legal provisions. Philosophical truth means that the judge must consider the side of justice whether the judge has done and acted fairly in deciding a case. Sociological considerations mean that judges must also consider whether their rulings will have adverse and repercussions in society, in other words that a judge must make fair and wise decisions by considering the impact of the law and the impact that occurs in society. Based on the facts that have been outlined, it can be concluded that the things that are considered by the judge in deciding are;

a) Consider juridical correctness (conformity of the legal basis used with the case being handled).

- b) Philosophical truth (the fairness of the decision of a case whether the judge has considered justice or been fair to the Defendant and the Defendant).
- c) And sociological considerations (has the punishment given had a good impact on society?)

Without protracted, the section below will discuss the application of the law used by the judge in deciding and considering the decision in this case, as for the juridical basis, in essence in this decision the judge uses the basis of Civil Code 1367 or the Vicarious Liability Principle to grant claims for compensation requested by the Plaintiff, where Article 1367 states substitute liability or also known as corporate liability. In other words, the judge's consideration in granting the element of compensation in this PMH action is influenced by Article 1367 of the Civil Code. Then for the PMH itself against the Defendants, the decision of the Supreme Court has agreed and in accordance with the existing PN decision that Defendants II-V are proven to have committed PMH as specified in Article 1328 (Fraud in the agreement) in this case the sale and purchase of gold.

In terms of justice or philosophical foundations, the judge has also considered well, this is reflected in the judge's decision which states that the bail sentence requested by the Claimant was not granted, this is because considering that the compensation costs that have been submitted by the Claimant have been given so that if the bail claim is fulfilled it will also cause injustice on the part of the Defendant, disaping is a philosophical element, also noticed by the judge when, the judge refused to award imtaeriil damages demanded by the Claimant where, as we know, despite suffering great material losses, the Plaintiff in this case was not seriously harmed in immaterial terms, where the judge also ruled that the consideration that because of immaterial losses only given to certain unlawful acts that brought impact or risk or trauma that did not Such is the loss of its weight or even permanent nature as death, grave injury, disability and humiliation and against Dwangsom which does not apply to the payment of a sum of money, whereas against Amar Uitvoerbaar Bij Voorraad in the level of cassation is no longer relevant.

In terms of sociological foundation itself, it can be said that it has been fulfilled, it can be seen that the court in this case really carries out its functions well, where the existing problems are decided well, and the judicial function from the first instance, appeals to cassation has run well, this smooth judicial process is what makes people more confident in our judicial system.

CONCLUSION

The elements of PMH owned by Defendants II-V are actually relatively the same, where there is an element of unlawful acts in the form of fraud against the sale and purchase agreement made between the Plaintiff and the defendant, although all these Defendants (II to V violate the existing Law Article 1328 fraud in the agreement) it can be said that only Defendants II to IV have other elements of PMH that oppose obligations / abandon their obligations as parties working for parties Defendant I, in addition to Defendants II to V both have an element of causality where the PMH committed by Defendants II to V is based on the losses obtained by the Defendant, this resulted in the decision of the Supreme Court court which caused Defendant I to be bound by the principle of Vicarious Liability stipulated in Article 1367 where this compensation was borne by Defendant I as the party responsible for PMH committed by Defendants II to IV. Even though Defendant I is said not to have conducted PMH directly, Defendant I is still said to be negligent or has errors in this matter, where this sale and purchase transaction that is quite different from buying and selling transactions in general should be prioritized and given more attention so as not to be exploited by irresponsible parties. Defendant V has also been said to have committed PMH where the person concerned succeeded in making profits in an improper way or by deception so that the elements of PMH have also been fully fulfilled.

Regarding the application of the law used by the judge in deliberating, it can be determined that the judge uses the basis of Civil Code 1367 or the Vicarious Liability Principle to grant the claim for compensation requested by the Plaintiff, where Article 1367 states substitute liability or also known as corporate liability. In other words, the judge's consideration in granting the element of compensation in this PMH action is influenced by Article 1367 of the Civil Code. Then for the PMH itself against the Defendants, the decision of the Supreme Court has agreed and in

accordance with the existing PN decision that Defendants II-V are proven to have committed PMH as specified in Article 1328 (Fraud in the agreement) in this case the sale and purchase of gold. Then also the philosophical and sociological foundations have also been fulfilled where In terms of sociological foundations themselves can be said to have been fulfilled, it can be seen that the court in this case really carries out its functions well, where the existing problems are decided well, and the judicial function from the first instance, appeals to cassation has been running well this smooth judicial process is what makes the community more confident in the system Our court and the judge's philosophical basis have also considered well, this is reflected in the judge's decision which states that the bail sentence requested by the Claimant was not granted, this is because considering that the compensation costs that have been filed by the Claimant have been given so that if the bail claim is fulfilled it will also cause injustice on the part of the Defendant, disaping is a philosophical element, also noticed by the judge when, the judge refused to award imtaeriil damages demanded by the Claimant where, as we know, despite suffering great material losses, the Plaintiff in this case was not seriously harmed in immaterial terms, where the judge also ruled that the consideration that because of immaterial losses only given to certain unlawful acts that brought impact or risk or trauma that did not Such is the loss of its weight or even permanent nature as death, grave injury, disability and humiliation and against Dwangsom which does not apply to the payment of a sum of money, whereas against Amar Uitvoerbaar Bij Voorraad in the level of cassation is no longer relevant.

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