

The Principle of *Nebis In Idem* in Settlement of Civil Cases in Indonesia

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Abstract: The principle of *Nebis in Idem* in its application in Indonesia is a fundamental principle because it is related to the requirements of a case claim which this principle can determine whether or not a case may be tried. The mutual lawsuit that was carried out between MS GLOW and PS GLOW is fascinating because there are allegations of filing the same case. The method used in this research is normative research with a case approach based on Medan and Surabaya court decisions. The results of this study are the application of the *Nebis In Idem* Principle in Indonesia, especially in the MS Glow and PS Glow; in this case, the Medan Commercial Court has yet to decide on the same case. Therefore, the principle of *nebis in idem* did not apply in this case when it was taken to the Surabaya Commercial Court because the elements in the demands of Article 1917 of the Civil Code were not fulfilled. The legal consequence of the *Nebis in Idem* principle's enactment is that cases included in these conditions cannot be reclaimed, and these conditions apply cumulatively.

Keywords: *Nebis in Idem*; Dispute Resolution; Civil Case.

1. INTRODUCTION

The principle of *nebis in idem* is one of the legal principles applicable in Indonesia, which applies to all law fields. The existence of this principle is beneficial in the process of carrying out proceedings in court, both for civil cases and for criminal cases, because it includes a formal principle. *The principle of nebis in idem* determines that the same case may not be tried a second time.

The benefits and objectives of this principle significantly protect someone who is tried once in court against the actions alleged against him because if a case that is suspected is carried out protractedly, it will give a feeling of discomfort and will experience losses both material and non-material as well will reduce the dignity of judicial officials who are considered unable to provide a sense of justice to the community, especially the parties in civil cases. However, in some instances, the *Nebis*

In Idem Principle based on the principle of legal certainty will be set aside and will prioritize the principles of justice and expediency (Ibrahim, 2014).

In settlement of civil cases in Indonesia, it only explicitly mentions this principle as contained in Article 1917 of the Civil Code but still provides loopholes regarding the requirements of civil cases that apply cumulatively so that if part or one of them is not fulfilled, then the principle of *Nebis In Idem*.

Principle *Nebis in Idem* in the legal system in Indonesia has yet to be widespread. Therefore when a case occurs between MS Glow and PS Glow due to the similarity of the two brands, it becomes the centre of attention for the community. The dispute between Shandy Purnamasari and Putra Siregar was due to the brand similarity between the two, which ended in suing each other.

In this case, there were two different court decisions. The mutual lawsuit event began with a lawsuit filed by Sandy Purnamasari at the Medan Commercial Court by filing for cancellation of the brand against Putra Siregar, the similarity in question was "PS STORE GLOW" and "PS STORE GLOW FOR MEN" and "MS GLOW/FOR BEAUTIFUL SKINCARE+LOGO" and "MS GLOW FOR MEN". The filing of this lawsuit is based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications Article 76 states that interested parties can file a trademark cancellation suit to the commercial court. Then in Article 76, it is explained that what is meant by interested parties includes registered trademark owners, prosecutors, and religious foundations/institutions.

In response to this lawsuit, Putra Siregar filed the same lawsuit against Sandy Purnamasari at the Surabaya Commercial Court, but not on behalf of himself but PT Pstore Glow Bersinar Indonesia as the plaintiff. Meanwhile, those sued in this case included PT Cosmetics Global Indonesia, PT Cosmetics Cantik Indonesia, Gilang Widya Pramana, Shandy Purnamasari, Titis Indah Wahyu Agustin, and Sheila Marthalia.

The legal issue when there is an incident of mutual lawsuits will be exciting if it is studied further with the *Nebis In Idem* principle, which is the legal principle that applies in Indonesia. With this background, the authors are interested in conducting a research entitled Principles of *Nebis In Idem* in Settlement of Civil Cases in Indonesia.

2. METHODS

The method used in this research is the normative research method. This method was chosen because the object of the research study is regarding legal principles and principles, legal rules, legal theories and doctrines from legal experts (Said, 2021). The normative research method uses primary legal materials and secondary legal materials. Primary legal material is in the form of legal material related to the applicable laws and regulations and the legal principle of *Nebis In Idem*. This research also uses secondary legal materials, journals, books, and all related articles. The approach taken is a descriptive, conceptual and case study approach. The technique for collecting legal materials is to conduct library research by reading, evaluating and conducting relevant

studies to find reliable sources related to research. Descriptive analysis is used in this study, namely by debating the results of a study, the purpose of which is to make arguments about the truth or wrong of a fact/case of a study.

3. RESULTS AND DISCUSSION

In the decision of the Commercial Court Number 2/Pdt.Sus.HKI/Merek/2022/PN.Niaga Sby (Decision, Agung, Indonesia, Pdt, et al. 2022) and the Medan Commercial Court Decision Number 2/Pdt. Sus.HKI/Merek/2022/PN Niaga Mdn. (Decision, Agung, Indonesia, Niaga et al. 2022) Both became an issue when the *Nebis In Idem* Principle applies in Indonesia. So, the research will discuss the application of the principle of *Nebis in Idem* in settling cases in Indonesia. What are judges' considerations in deciding related cases in district and commercial courts?

3.1. The Application of the *Nebis in Idem* Principle in Settlement of Cases in Indonesia

In the Civil Code it is not clearly stated regarding the *Nebis in Idem*, but it is expressly stated in Article 1917 of the Civil Code concerning filing a claim, namely that the same claim must fulfill three things, namely:

- a) the claim based on the same reasons;
- b) filed by and against the same parties; and
- c) in the same relationship.

It can be explained that the parties cannot sue for the same reasons for a case, the party submitting is the same party as in the first submission and the parties are involved in the same relationship.

Principle *Nebis In Idem* states that the same case may not be tried a second time because it has obtained permanent legal force and any case that has permanent legal force cannot be changed or contested (Ibrahim, 2014). The next consideration is the opinion of Yahya Harahap in his book entitled Civil Procedure Law, a decision is said to be *Nebis In Idem* if the following conditions are fulfilled (Harahap, 2010): "Lawsuit filed later, has been previously brought before; Against the previous lawsuit (case) a decision has been passed and the decision has obtained permanent legal force (*res judicata/inkracht van gewijsde*); Decisions that have permanent legal force are positive in the form of: rejecting the lawsuit in full or granting part or all of the lawsuit; Subjects who are the same party; The object of the matter is the same" (Fawaidil Ilmiah, 2018). With this provision, the authors say that when there is a submission for the same case, both in terms of material and object, while the disputing parties are different, this is not included in *Nebis In Idem* because this principle applies cumulatively as happened in the PS GLOW case against MS GLOW, which the object and material are the same, but when viewed from the parties who make the submission are different.

Legally, a lawsuit can be said to be *nebis in idem* if: 1. What is being sued/sued has already been disputed, 2. There has been a decision that has permanent legal force

and is positive, such as rejecting the lawsuit or granting it. Thus, the decision is *litis finiri oportet*. If the decision is still negative, it does not result in *nebis in idem*. This can be seen in the decision of the Supreme Court dated June 27, 1979 in the cassation decision no. 878 k/ Sip/ 1977 which stated, "between this case and the case decided by the High Court there was no *nebis in idem*, because the High Court's decision stated that the lawsuit could not be accepted because there were parties who were not included so that there was still the possibility of suing again". 3. The object, subject and subject matter are the same (Ibrahim, 2014).

At first glance the lawsuit filed by the two is the same case but it is different when it comes to the points of filing a claim, namely the relationship of the parties.

In the PS GLOW and MS GLOW cases, it started with the filing of a claim by Shandy Purnamasari at the Commercial Court in Medan, namely a trademark cancellation lawsuit against Putra Siregar. This lawsuit is based on the similarity of the trademarks PSTORE GLOW and PSTORE GLOW FOR MEN owned by Putra Siregar with the trademarks "MS GLOW/for beautiful skincare LOGO" and "MS GLOW FOR MEN" owned by Sandy Purnamasari. Shandy sued Putra Siregar for plagiarizing his brand. In this case, the Court decided to uphold Shandy Purnamasari's claim. It was found that Shandy Purnamasari is the legal owner of the trademarks "MS GLOW/for beautiful skin care LOGO" and "MS GLOW FOR MEN" based on the first supplier principle and compared to the trademarks "PSTORE GLOW" and "PSTORE". GLOW FOR MEN" there are fundamental similarities between the two brands. The judge considered that Putra Siregar was not in good faith because he tore, imitated, and plagiarized the image of his trademark. As a result, the court accepted Shandy Purnamasari's request to cancel the registration of the PSTORE GLOW and PSTORE GLOW FOR MEN Putra Siregar brands.,

Meanwhile filed the same lawsuit at the Surabaya District Court. However, in this case, Putra Siregar did not file a lawsuit personally, but as a plaintiff through PT Pstore Glow Bersinar Indonesia. Meanwhile, PT Cosmetics Global Indonesia, PT Cosmetics Cantik Indonesia, Gilang Widya Pramana, Shandy Purnamasari, Titis Indah Wahyu Agustin and Sheila Marthalia were sued in the case. In this case, the Court accepted the plaintiff's lawsuit. They found that the registered trademark for MS Glow products was "MS GLOW / FOR CANTIK SKINCARE", so there are differences between the brands on the product d brand ith brand certification. If you take a closer look, CV Cosmetics Cantik has registered the MS Glow trademark, but the class of the registered brand is Class 32, namely for products in the form of powdered tea drinks, which are not suitable for use as a cosmetic brand. Basically, Hakim said that the MS Glow Shandy Purnamasari brand was not properly protected because it had a different name from the brand certificate. Thus, the meeting decided that the use of the MS Glow brand was without rights and against the law and was detrimental to the plaintiff as the owner of the PS Glow brand. In this case, the judge decided to indemnify the defendant in the amount of IDR 37 billion against the plaintiff and stop the production of all MS Glow cosmetic products.

In the MS Glow and PS Glow cases, it should be noted that Putra Siregar's trial was concluded at the Surabaya Commercial Court while the same case is still being processed at the Medan District Court. This means that the Medan Commercial Court has not yet rendered a decision in the same case. Therefore, the principle of *nebis in idem* did not apply in this case when it was taken to the Surabaya Commercial Court because the elements in the lawsuit were not fulfilled and that the parties differed in filing lawsuits in these two cases. The parties to the commercial case in Medan are Shandy Purnamasari and Putra Siregar. Meanwhile, in the Surabaya Commercial Court, the parties to the dispute were PT Pstore Glow Bersinar Indonesia vs PT Cosmetics Global Indonesia, PT Cosmetics Cantik Indonesia and their owners, so the points as referred to in Article 1917 of the Civil Code were not fulfilled.

3.2. Legal Consequences of the Application of the Nebis in Idem Principle in Settlement of Cases in Indonesia

Legal consequences are events arising because of a specific condition, whether the condition originates from a legal subject, be it an act that complies with the rule of law or violates the rule of law.

In civil law, the principle of *nebis in idem* can be referred to as *res judicata* or *exceptionie van gewijsde zaak*, which in principle, applies to cases involving the same object, the same party and the same thing and is decided by a court that has permanent jurisdiction/ binding whether that which has been given or refused cannot be reviewed (Fawaidil Ilmiah, 2018).

Based on this, what is contained therein are: First, *nemo deboto al vexari*, meaning that no one needs to worry when accused twice in the same case. Often this proverb becomes known as *nebis in idem*, which more or less means that a person cannot be tried a second time in court for the same case. Second, *nulla in lege intolerabilius est (quam) eandem rem Miscellaneous jure censer*. In other words, the law does not allow the same case to be tried in several courts. (Vanggy Poli, Grace H. Tampongangoy and Karwur 2021) A case that is *Nebis In Idem* is still being investigated in court, so a judge must decide that the prosecutor's demands cannot be accepted (Zainuddin, 2014).

The judge's decision is a law and becomes a source of law used as a reference for the judge afterwards in deciding the case (*landmark decision*). Therefore, when the Nebis in Idem principle has been fulfilled, the consequences of this principle will apply, namely the inability to resubmit cases with the fulfilment of the requirements.

4. CONCLUSIONS

In the application of the Nebis In Idem Principle in Indonesia, especially in the cases of MS Glow and PS Glow, in this case, the Medan Commercial Court has not rendered a decision in the same case. Therefore, the principle of *nebis in idem* did not apply in this case when it was taken to the Surabaya Commercial Court because the elements in the demands of Article 1917 of the Civil Code were not fulfilled.

The legal consequence of enacting the *Nebis In Idem* principle is that cases included in these conditions cannot be reclaimed, and these conditions apply cumulatively.

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