

Immaterial Losses in Breach of Contract Lawsuit in Indonesia

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Abstract

One of the reasons for filed Breach of Contract's lawsuit to the Court is to demand compensation as one of the legal consequences that must be fulfilled by the debtor to creditors who suffered losses, both material and immaterial losses which have actually occurred or could be expected to occur at the time the contract was made as well as the profits that could have been obtained by the creditor. In Indonesia, there are still debates related to the fulfillment of immaterial losses in breach of contract cases. Therefore, authors conduct normative legal research using the statute and case approach in order to examine the issues. This research indicates that the immaterial losses in breach of contract cases was not explicitly regulated in Indonesian Civil Code. However, Supreme Court through its Jurisprudences Number 1503 K/Pdt/2001 and Number 2822 K/Pdt/2014 accept creditor's claim for the immaterial losses and broaden the meaning of immaterial losses in breach of contract cases. The fulfillment for the immaterial losses in these cases focuses on the combination of the objectivity and subjectivity of the Judges, reflect on the fundamental factors related to the case and base their decision on the ex-aquo et bono principle.

Keywords

compensation; immaterial loss; contract; breach of contract



I. Introduction

As a nature, human beings as subjects of law cannot live alone but rather live in groups in a society by interconnecting or interacting with each other. The result of the interaction then gives rise to bonds between the two parties, where sometimes each party wants to obtain benefits or benefits from the agreement. In Indonesia, the interaction in society that gives rise to ties between those who bind themselves falls within the realm of private law, as stipulated in Book III of *Burgerlijk Wetboek* or known as The Indonesian Civil Code ("Civil Code").

An agreement as a legal relationship between two or more persons with which one party (the creditor) is entitled to an achievement and the other party (the debtor) is obliged to fulfill the feat. The agreement gives birth to an agreement or legal relationship that gives rise to rights and obligations for each party, so that with the agreement, creditors can demand the fulfillment of the achievements of the debtor and for the debtor are obliged to carry out his achievements.

Default is a condition in which one of the parties does not fulfill the agreement. So that by its nature, defaults can occur because the achievements in the agreement were indeed carried out but not appropriately or the achievements were not carried out within the time that just right. If the debtor has been declared negligent or deemed negligent in fulfilling his achievements, then at that time a default arises. One of the legal consequences for debtors who are proven to have injured the promise (default) is to pay compensation for creditors who suffered as a result of their default. In Civil Law, compensation can arise both due to torts and torts.

Compensation for default cases should occur in an agreement between the creditor and the debtor contained in an agreement, where the debtor is negligent in the implementation of fulfillment the agreement. That is, that here there must be a casual relationship between the case of default that occurs and the losses suffered. In addition, in order to give the party who suffered the loss a complete and perfect equivalent for the loss suffered by him in the case of default, then the consequences of the loss which must be granted and fulfilled by the injuring party to the agreement, consisting of *pecuniary* and *non-pecuniary* losses, in other words material and immaterial losses. This is because defaults are never separated from the problem of compensation, one of which is Immaterial Losses.

Based on the Background that has been described above, in general, the main problem discussed in this study is related to Immaterial Losses in Breach of Contract lawsuit. Where the subject matter is divided into two formulations of the problem, namely *First*, How the immaterial losses for breach of contract lawsuit is regulated in Indonesian Civil Law; *Second*, how the immaterial losses are applied in breach of contract lawsuit reviewed from Indonesian Court Decision and Supreme Court Jurisprudence.

II. Research Method

The research was carried out using normative legal research methods that are descriptive and explanatory in nature with the aim of describing precisely and explaining more deeply about a situation/symptom related to immaterial compensation in cases of default (injury/breaking promises). In researching, studying and exploring the problems discussed in this legal research, the author uses two abbreviations of legal research as stated by Peter Mahmud Marzuki, namely the *Statute Approach* and the *Case Approach*. In addition, the author uses secondary data obtained through document / library studies and *content analysis*, which includes primary, secondary and tertiary legal materials.

III. Results and Discussion

3.1 Breach of Contract in Indonesian Civil Law

In Indonesian, breach of contract or default cases are specifically termed or known as “Wanprestasi”, which defined as broken or unfulfilled promises. In general, breach of contract or default cases defined as the untimely execution of an agreement (obligation) or performed improperly or not carried out at all. Default is the negligence of the debtor to fulfill their achievements (obligations) in accordance with the agreement that has been concluded.

According to the formulation of Article 1234 of the Civil Code, there are 3 forms of achievement in an agreement that must be obeyed or implemented by the parties are giving/handing over something and doing something or not doing something. Those three forms of achievement are related to the form of default (negligence) committed by one of the parties to an agreement, which can be categorized as into four types of default case, consist of: not doing what he is expected/supposed to do, carry out what he promised but not as promised, did what he promised but was too late, or did something which according to the agreement he was not allowed to do.

Furthermore, if we talk about breach of contract lawsuit, it cannot be separated from *ingebrekestelling* (negligent statement or notice of default or known as “somasi” in Indonesia) and *verzuim* (negligence, absenteeism). If one party breaks its promise against the other party, then it can be a reason for the other party to file a default lawsuit. Based on

Article 1243 of the Civil Code, an act of default occurs after the debtor is declared negligent. That is, the fulfillment of the debtor's obligation to pay fees, losses or interest to the creditor only begins to be carried out if the debtor after being declared negligent in fulfilling his agreement, remains the dereliction of its obligations in the engagement.

If in the implementation of the fulfillment of an achievement is not determined the grace period, then the creditor needs to warn or reprimand the debtor through a letter of encouragement submitted in writing so that the debtor fulfills his obligations. Later this letter of appeal will be useful evidence before the Court to prove that the debtor has committed default and there is no good faith on the part of the debtor to fulfill the obligations (achievements) in the agreement. However, if the grace period for the implementation of the fulfillment of obligations (achievements) has been determined in an agreement, then according to article 1238 of the Civil Code, the debtor must be considered negligent with the passage of the appointed time. So that a condition falls into the category of "negligent circumstances" in a case of default if, the debtor obtains a "statement of negligence" through a warrant or by a similar deed (we know as subpoena) or considered negligent if the implementation of the fulfillment of the achievement has passed the time specified in an agreement.

Meanwhile, there are several kinds of sanctions (penalties) for parties who are declared negligent in fulfilling their achievements (obligations) as stated in the agreement between the parties to the dispute. According to Subekti, one of the sanctions in question is to pay losses suffered by creditors or called compensation, as regulated in Article 1243 of the Civil Code

3.2 Regulation Regarding the Immaterial Losses in Indonesian Breach of Contract Lawsuit

In the case of Breach of Contract or Default, the payment of losses/damages (compensation) is the legal consequence for the Debtor who neglects to fulfill his obligations (achievements) in the agreement to provide compensation for the damage he has caused. Referring to the provisions in Article 1238 *jo.* Article 1243 of the Indonesian Civil Code, that compensation in a tort suit must be proved in the presence of an element of negligence of the debtor. Therefore, if the debtor has been declared negligent by the creditor through his subpoena or considered negligent because the deadline for fulfilling the achievements in the agreement has passed, then it becomes it is mandatory for the debtor to pay compensation to the creditor. Meanwhile, based on the provisions in article 1267 of the Civil Code, there is a right for creditors if the debtor commits an act of default, which includes: implementation of the fulfillment of the agreement, fulfillment of the agreement accompanied by compensation, fulfillment of indemnity only, cancellation of the agreement, or cancellation of the agreement accompanied by indemnification.

The purpose of filing a tort suit is to put the plaintiff in a position if the agreement is executed or fulfilled on the agreed time (*pay on time*). Thus, the compensation given to the Plaintiff constitutes a loss of expected profit (*expectation loss*). In addition, in contractual liability, the compensation in question is compensation as a direct result of the act of injury/breaking of promises (default). That is, there is a *causal-verband* relationship between the losses suffered and the act of default so that the loss must be a direct result of the default.

In Indonesia, civil compensation is categorized into 3 types, namely *costs (kosten)*, losses (*schadein*) and interest (*interessen*). Costs are defined as any expenses that have actually been incurred by the creditor as a result of the debtor's default. Meanwhile, loss is a loss due to damage to the creditor's property due to the debtor's negligence or other losses

suffered by the creditor as a direct result of the debtor's default. While interest relates to the loss of profits expected by the creditor towards an agreement. Regarding the amount of interest if it is not stipulated in the agreement, then following the rules in the *staatsblaad* 1848 No.22 which stipulates the interest from an omission / negligence (moratoire interest) that can be demanded by the creditor from the debtor is 6 (six) % per annum.

Some cases of default that result in *immaterial losses (nonpecuniary losses)* for creditors clearly involve willful *breach of contract*, not just due to carelessness or *random events*. The size of immaterial losses must reflect the *total loss* suffered by the creditor and the equivalent of the creditor surplus lost due to the debtor's default and other immaterial losses, including the impact of anxiety experienced by the creditor in the implementation of contract fulfillment. Claims for immaterial damages can be made separately from material losses, however in many rare cases both losses are requested separately.

In Indonesia, the regulation of material losses in cases of default has indeed been contained in the Civil Code. However, the Civil Code has not explicitly regulated immaterial (intangible, moral, ideal) losses in cases of default, nor does it clearly state (stated) the terms material or immaterial losses in the Civil Code. The civil code in force in Indonesia only regulates immaterial losses in cases of torts (PMH), where the assessment of losses is based on the circumstances, position and ability / wealth of the litigants. As seen in articles 1370 to 1372 of the Civil Code, the fulfillment of immaterial damages claims applies to cases of murder and acts that cause injury or disability, whether done intentionally or negligently, as well as cases of contempt.

Although it has not been manifestly and clearly regulated, in terms of its application we can know that the Jurisprudence of the Supreme Court has approved the fulfillment of immaterial damages for a tort suit, for example the granting of a claim for damages from a person who feels aggrieved for losing the enjoyment of a tranquility of life. As is the case in the Supreme Court Jurisprudence Number 2822 K / Pdt / 2014 for the default case between Budi Santoso (Plaintiff) and the President Director of PT. Lion Air (Defendant) which became the new rule on expanding the meaning of immaterial damages in tort cases and granting immaterial claims for tort.

3.3 Application of Immaterial Losses in Breach of Contract Lawsuit Reviewed from Indonesian Court Decisions and Supreme Court Jurisprudence

As a form of breaking promises, the act of default (breach of contract) clearly causes its own losses for the party who is injured by the promise (creditor), where the loss is a direct result of the debtor's default and a form of loss of expected profit (*expectation loss*). In addition to material losses, we also know immaterial losses in civil law. Immaterial compensation is not new in civil law, because it has been applied in several civil judgments in Indonesia, both related to Lawsuits against the Law (PMH) and Default. In the Tort Suit, we can see it in Supreme Court Jurisprudence No. 1503 K/Pdt/2001 for the default case between Maria F (Plaintiff) against Askan Soerjadji (Defendant), where the Defendant borrowed money belonging to the Plaintiff in the amount of Rp.50,000,000, - (fifty million rupiah) in accordance with the letter of agreement dated September 5, 1996. But defendant broke his promise and there was not the slightest intention to pay his debts.

As a result of the Defendant's actions, the Plaintiff considered that he had suffered immaterial losses in the form of loss of expected profits from his business ventures and the embarrassment and heartache suffered by the Plaintiff which as a whole could not be assessed but was deemed worthy of an estimate of Rp. 1,000,000,000, - (one billion rupiah). The Supreme Court considered that regarding immaterial damages it had been promised by the Defendant himself, so that morally and according to legal logic it would

be appropriate (*redelijk*) and fair (*rechtvaardig*) to punish the Defendant to pay immaterial damages to Plaintiff. In the memory of his appeal, the Plaintiff based his argument by referring to Article 1247 of the Civil Code, wherein addition to being obliged to carry out the contents of the letter of agreement that has been agreed with the Plaintiff, the Defendant is also obliged to pay damages, both material and immaterial damages.

Furthermore, immaterial damages were also applied to Supreme Court Jurisprudence No. 2822 K/Pdt/2014 for the default case between Budi Santoso (Plaintiff) and the President Director of PT. Lion Air (Defendant). The Plaintiff in the postulated that he had suffered immaterial harms, in the form of loss of time, confiscation of energy and thoughts during the Time plaintiff spent the night at the airport, as well as the loss of togetherness and spiritual values with the family where habitually the Plaintiff should have gathered together on his birthday but the Plaintiff was unable to celebrate his birthday with his family and relatives, and caused a change in the schedule for met with a business partner, for which case the Plaintiff lost the trust of the business partner and the abandonment of the work of the Plaintiff, for which in its entirety these matters could not be assessed with anything, but in the case of *aquo* the Plaintiff determined a value for his losses converted in rupiah in the amount of Rp100,000,000.00 (one hundred million rupiah).

Legally, the Defendant is of the view that he does not have to pay compensation to the Plaintiff, because based on the testimony of the Plaintiff's witness, the Defendant has offered compensation to the Plaintiff in accordance with Article 11 of the Regulation of the Minister of Transportation Number 77 of 2011, namely in the form of lodging (Hotel), meal, transport cost, and will be dispatched on a Lion Air plane the next day, all costs are borne by the Defendant, but the Plaintiff does not want to use it. The Supreme Court held that the reasons for the appeal filed by the Defendant were unjustified, so the Supreme Court granted the claim for immaterial damages suffered by the Plaintiff with a total immaterial loss value of Rp7,170,000.00 (seven million one hundred and seventy thousand rupiah).

Meanwhile, there are several cases of default that base considerations related to immaterial losses on the legal rules of the Supreme Court Jurisprudence Number 2822 K/Pdt/2014, as for example in the Decision of the Sukoharjo District Court No. 11/Pdt.G.S/2021/PN.Skh, where the Panel of Judges granted the claim for immaterial damages on the grounds that the unwillingness of the Defendant to pay the debt to the Plaintiff until the filing of the suit had caused an inner suffering which resulted in a temporary loss of enjoyment of life in the plaintiff because the plaintiff could not use his money for the necessities of the Plaintiff's life.

The claim for immaterial damages should be granted by correction/correction of the nominal amount of immaterial damages to be charged to the Defendant. This is because although immaterial damages are granted, the number of damages to be charged to the Defendant must also reflect the value of eligibility and fairness for the Plaintiff and the Defendant. A similar case is seen in Malili District Court Verdict No. 44/Pdt.G/2018/PN.Mil between Djuhera (Plaintiff) against Romala Dewi alias Ros (Defendant). The two considerations of the Panel of Judges above look different from the considerations of the Panel of Judges in the Sidoarjo District Court Verdict No. 260/Pdt.G/2020/PN.SDA between Koperasi Solusi Dana Mandiri (Plaintiff) against Steven Kurniawan (Defendant).

Although there has been Supreme Court Jurisprudence which has become a new rule regarding the expansion of the meaning of immaterial damages in cases of Default, in practice the fulfillment of immaterial damages for a tort lawsuit is left to the Panel of Judges by applying the principal *ex aquo et bono*. Because it is based on a fairness and the

benchmark is left to the subjectivity of the judge who decides, it will certainly be difficult in determining the number of immaterial damages that will be granted by the Panel of Judges. This is what raises the pros and cons in the application of immaterial damages in a tort lawsuit.

If we look at it from the *pro side*, there are several Court Decisions that have granted plaintiff's arguments and petitions regarding immaterial damages in tort cases, such as for example:

a. Jember District Court Verdict No. 38/Pdt.G/2011/PN.Jr

The default case between Santoso (Plaintiff) and Hendra Suwito (Defendant). As a result of the defendant's default that did not pay off the loan (debt) to the Plaintiff in the amount of Rp. 400,000,000, - (four hundred million rupiah) until the end of December 2002, resulting in the Plaintiff suffering immaterial losses so that the Plaintiff's hopes were wiped out. If deposited a year, the money will get a profit of 20% per annum calculated from September 30, 2002 until the verdict of *the aquo* case is carried out. The Panel of Judges granted the claim for immaterial damages of the Plaintiff because when referring to the loan period stated in the letter of receivables agreement between the Plaintiff and the Defendant, namely for 3 months (September 30, 2002 – December 20, 2002), but until the time the lawsuit was filed the Defendant had not repaid the loan.

Although it was considered reasonable, the Panel of Judges was of the view that the amount of interest of 20% as claimed by the Plaintiff was too large and was not in accordance with the Banking Act which is currently the amount of interest for deposits of 6% in 1 year. So that the Panel of Judges assessed the payment of interest at 6% per year of the value of the Defendant's debt of Rp. 400,000,000, - (four hundred million rupiah) in a year starting from December 30, 2002 until the content of *the aquo* judgment was carried out.

b. Marabahan District Court Verdict No. 04/Pdt.G/2012/PN. Mrb.

The *aquo* case occurred between the Defendants (PT Trans Varuna Lancar Indonesia and PT Dharma Lancar Sejahtera) and PT Asuransi Sinar Mas as co-defendants who fought the Plaintiffs (37 people residing around the coastal waters of the Barito River). The Defendants are a company that cooperates with each other in the maritime field of shipping transportation services, where the Beracah 3001 barge towed by the TABITHA 69 toug boat is one of its transportation fleets. The case stems from an accident on April 18, 2010, where the settlements and facilities (property) belonging to the Plaintiffs were damaged or became lost as a result of being hit by a Beracah 3001 barge towed by a TABITHA 69 toug boat coming from downstream towards the upper reaches of the Barito River. So that as a result of the accident, the Defendants through Sdr Alan Matulesy, who served as The Head of Operations of PT Dharma Lancar Sejahtera, on April 20, 2010 located at the Barito Kuala Resort Police Headquarters in Marabahan had entered into an agreement with the Plaintiffs, where the result of the agreement was that the Defendants were willing to pay compensation of Rp.727,750,000,- (seven hundred twenty-seven million seven hundred and fifty thousand rupiah) experienced and paid to the Plaintiffs.

From the beginning of the advance received by the Plaintiffs around the beginning of September 2010 until the filing of the suit letter, there was still no good faith on the part of the Defendants to take responsibility as quickly as possible to settle and pay off the remaining damages payments to the Plaintiffs. For the act of default, the Plaintiffs suffered immaterial losses which if taken into account and converted into nominal form, then the

total immaterial losses suffered by the Plaintiffs were Rp.10,000,000,000, - (ten billion rupiah).

c. West Jakarta District Court Verdict No. 277/Pdt.G/2019/PN.Jkt.Brt.

The *aquo* case took place between Drs. Hendro Kawi, MBA as Plaintiff against Hanggoro Santoso as Defendant. Immaterial damages arose because defendant's default caused Plaintiff's business to be disrupted, thus becoming a burden on the plaintiff's mind. Because it is abstract, the loss can be assessed with equivalent material and should be set at Rp.1,000,000,000(one billion rupiah). Against the plaintiff's argument, the Panel of Judges held that it was fair that the immaterial damages that could be granted were Rp500,000,000, - (five hundred million rupiah). This is because the immaterial loss is subjective and abstract in nature so it will be difficult to determine the exact amount of the loss. However, by paying attention to the fact that the receivables have been receivable for a long time and the value is also not small, namely Rp2,500,000,000, - (two billion five hundred million rupiah), of course, this can affect the psychological on the plaintiff's psyche, considering that this value is economically certainly very beneficial for the Plaintiff whose position is as an entrepreneur who can be used to increase his business capital.

d. Sengeti District Court Verdict No. 53/Pdt.G/2020/PN.Snt.

The Default Lawsuit occurred the Defendant had defaulted on the Letter of Agreement between the Plaintiffs (PT. Port of Indonesia II (Persero) Jambi Branch) with the Defendant (PT. Budigraha Perkasa Utama) about the Heavy Repair Work of the Container Pier of Talang Duku Jambi Port. On defendant's act of default, Plaintiff is of the view that it is not a far-fetched thing if in addition to seeking damages for damages actually suffered by Plaintiff, Plaintiff also asked Defendant to indemnify Plaintiff for Immaterial Damages. Immaterial Damages arose as a result of the non-completion of the Work carried out by the Defendant, which in business greatly affected the smooth running of the Plaintiff's business. If converted, the total value of the Immaterial Loss is Rp.10.000.000.000, - (ten billion rupiah).

The Panel of Judges considered that basically immaterial losses are losses arising from loss of profits that will be obtained in the future. These losses can be intangible and can also be moral or idiosyncratic and uneconomical, such as in the form of bodily pain, mental suffering, fear, and so on. With the payment of immaterial losses, the losses due to the loss of profits can be rehabilitated while still considering the position and ability of the litigants. Thus, taking into account the position and ability of the Defendant, the Panel of Judges considered that the loss of profits suffered by the Plaintiff could be rehabilitated by punishing the Defendant to pay immaterial losses in the amount of Rp1,000,000.00 (one billion rupiah).

Meanwhile, judging from the counter side, there are several judgments that do not grant claims for immaterial damages in tort cases. Some of the judgments in question are as follows:

1. Tangerang District Court Verdict No. 631/Pdt.G/2018/PN. Tng

A default case occurred between PT. Alfa Polimer Indonesia (Plaintiff) against PT. Fajar Adma Pratama (Defendant), where between the two there is a Sale and Purchase Agreement with the object of the bond in the form of Adhesive Chemicals Brand "ALFACOAT". Inthe nature of the agreement, the Defendant has neglected his obligation

to fulfill the entire bill for the purchase of the goods he purchased from the Plaintiff till the date of filing of the suit (late for more than 4 years). As a result of Defendant's default, Plaintiff feels that he has been harmed by trust and his reputation which has been judged to be good in business circles that should be maintained by Defendant as a business partner. The Plaintiff also often holds meetings, meetings and must contact either by calling or meeting with the aim of collecting the Defendant, so that here the Plaintiff must bear the loss of time, energy, mind, moral (immaterial) which should be used for something more productive and profitable business for the Company. Although the immaterial harm of the Plaintiff is very large and cannot be invaluable with the nominal money, but by underlying Article 1239 of the Civil Code *juncto* Jurisprudence of the Supreme Court of the Republic of Indonesia No. 2822 K/Pdt/2014 as well as the appropriateness assessed in terms of the Defendant's financial ability, the claim for immaterial loss The plaintiff must be converted into nominal money by taking into account the feasibility and appropriateness factors, namely the amount is not less than Rp. 2,000,000,000, - (two billion rupiah). In consideration of *the aquo* judgment, the Panel of Judges rejected the claim for immaterial damages because the Plaintiff did not submit any evidence to prove the existence of immaterial damages suffered by the Plaintiff for the act of default of the Defendant and did not provide clear details regarding the immaterial damages. The Panel of Judges also held that the charges were not reasonable at all because the subject matter of *the case in casu* was the act of default of the Defendant.

2. Samarinda District Court Verdict No. 43/Pdt.G/2020/PN Smr

The default case that occurred between Meliana Mukaji (Plaintiff) and Eka Damayanti (Defendant) caused immaterial arguments for the Plaintiff in the form of not being able to use the Plaintiff's finances to run his business and did not get any more trust from the husband to hold and save a certain amount of money so that the Plaintiff's life in the eyes of the family no longer gained trust. This Immaterial Loss, if initiated with a sum of money, the amount is not less than Rp1,500,000,000.00 (one billion five hundred million rupiah) which the Defendant must also pay in cash, cash and immediately to the Plaintiff. In line with Judgment No. 631/Pdt.G/2018/PN.Tng., the Panel of Judges rejected the claim for immaterial damages because in its was not explained in detail regarding immaterial damages, so the Panel of Judges considered that they did not have the authority *ex officio* by proximately assessing the *cause* to establish the nominal loss even though in fact the juridical harm has been suffered by the Plaintiff.

3. South Jakarta District Court Verdict No. 151/Pdt.G/2020/PN. Jkt.Sel.

The *aquo* case occurred between PT. Digital Commerce Indonesia (Plaintiff) against PT. Andiarta Muzizat ("Ninja Xpress"), wherein Plaintiff postulates immaterial damages in connection with Plaintiff's reputation as a merchant as well as loss of trust from his customers and the potential development of Plaintiff's business. Development is a change towards improvement (Shah et al, 2020).

The plaintiff considers that the total immaterial loss he suffered when converted with money became Rp. 20,000,000,000, - (twenty billion rupiah). However, the Panel of Judges considered that the claim for immaterial damages should be rejected because in the trial the Plaintiff could not submit evidence, and the occurrence of legal problems was a consequence in the field of business.

If we look at the court decisions and the Jurisprudence of the Indonesian Supreme Court above, we can understand together that in practice the determination of the amount of compensation for creditors who suffer as a result of the debtor's default is at the

discretion of the Judge's policy. Since there is no exact measure of immaterial damages on tort suits, everything is returned to the objective and subjective view of the Panel of Judges examining, adjudicating and deciding the case. Here the Panel of Judges needs to consider several factors that are fundamental in nature, such as socioeconomic position and status, the value of feasibility and justice for the litigants, the good faith of the Defendant, and based on his consideration of the principle of *ex-aquo et bono* so as not to violate the provisions in Article 178 paragraph (3) of the *Herziene Inlandsch Reglement* (HIR). In fact, the issue of the size of immaterial compensation is more of a matter of feasibility, propriety, fairness and appropriateness that cannot be approached by a certain measure. Therefore, in determining the size of immaterial losses and feasibility factors in *aquo* cases, it is necessary to consider in a balanced or proportional manner the position of both parties to the case.

IV. Conclusion

Judging from the Civil Law Regulations in force in Indonesia, namely *Burgerlijk Wetboek* (BW) or what we know as Indonesian Civil Code (KUHPerdata), indemnity in cases of default still refers to the applicable provisions in particular article 1236, article 1239, article 1243, 1246 to article 1250. Loss in question is in the form of costs, losses, and interest by taking into account the factors of negligence of the debtor and elements of force majeure. The limitation of indemnity as a result of a default that the debtor is obliged to pay to the creditor follows the rules from article 1246 to 1248 of the Civil Code, which include losses that have actually occurred or can be expected to occur when the agreement is made and such losses as a direct result of the act of default and the benefits that should otherwise be enjoyed by the creditor. This is because basically not all losses can be reimbursed. Meanwhile, related immaterial damages in tort suits are not explicitly regulated in the Civil Code. However, some Supreme Court Jurisprudence has accepted claims for immaterial damages in The Tort Suit filed by the Plaintiff (creditor), as for example in Supreme Court Jurisprudence No. 1503 K/Pdt/2001 and No. 2822 K/Pdt/2014 which became a new rule in the expansion of the meaning of immaterial damages in the case of Default. From the point of view of the Court Decision, the application of immaterial losses in breach of contract lawsuit is still a legal issue because in practice there are still many pros and cons. There are many factors that the Panel of Judges needs to consider. Even though there has been Jurisprudence which has become a new rule for expanding the scope of immaterial losses in cases of default, in practice it is returned to the objectivity of the Panel of Judges who decide cases by paying attention to and considering several factors fundamentals such as e.g. defendant's good faith, Plaintiff's ability in the trial to prove the arguments of immaterial harm suffered by him, the position and ability of the litigants, pay attention to the value of eligibility, propriety and fairness for both parties, and base their considerations on the principle of fair verdicts (*ex aquo et bono*).

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