

The Principle of Justice as a Judges' Considerations in the Concept of Third- Party Responsibility Against Cooperative Legal Action

**(Case Study of Supreme Court Verdict No.
250K/PDT/2019)**

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Abstract

This research critically examines and evaluates the judicial considerations in Supreme Court Decision Number 250 K/Pdt/2019, specifically focusing on the third parties' responsibility in connection with the *Audi Et Alteram Partem* principle, a pivotal aspect of the broader justice as fairness principle. Conducted as normative legal research, the study involves a qualitative analysis of data gathered through comprehensive library research. The qualitative data is systematically categorized and correlated to address the research questions accurately, facilitating a comprehensive understanding of the topic. The findings indicate that the Panel of Judges in Supreme Court Decision Number 250K/Pdt/2019, along with Decision Number 204/Pdt/2018/PT SMG and Decision Number 20/Pdt.G/2017/ PN Kds, effectively applied the *Audi Et Alteram Partem* principle, demonstrating a commitment to the overarching principle of justice as fairness. Notably, the panel made fair decisions while overlooking the conventional concepts of cooperatives and the responsibilities of the board of directors. The study suggests a pressing need for relevant stakeholders to promptly enact updated legislation concerning cooperatives to address emerging challenges and align with contemporary legal perspectives.

Keywords

Judges Considerations, Third Parties, Principle of Justice, Cooperatives



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Introduction

Cooperatives (*Koperasi*), recognized as legal entities, possess a capacity for responsibility akin to individual legal subjects. However, within the framework of Cooperative Law, the specifics of how a cooperative assumes responsibility for its actions remain unaddressed. Cooperative Law primarily centers on the accountability of trustees and receivers for legal actions leading to losses, particularly those affecting cooperative members. From a criminal law perspective, if we extrapolate the concept of corporate criminal liability from a civil law standpoint, it intersects with unlawful acts as outlined in Article 1365 of the Civil Code.¹

In the context of legal proceedings, a cooperative, as a legal entity, may become a party implicated in a case involving an unlawful act if the plaintiff contends that the cooperative's actions align with the elements defined in Article 1365 of the Civil Code. Consequently, the scope of legal actions undertaken by the cooperative extends beyond the realm of its inherent responsibility; it encompasses the potential culpability of its management, thereby holding members of the cooperative accountable for the cooperative's losses. This nuanced perspective acknowledges the multifaceted dimensions of responsibility within cooperative entities, emphasizing the need for a comprehensive legal approach that considers both the cooperative and its managerial aspects.²

¹ *Supreme Court Regulation Number 13 of 2016 concerning How to Handle Criminal Cases by Corporations*(Supreme Court, Indonesia, 2016).

² See Aji Basuki Rohmat, "Analisis Penerapan Prinsip-Prinsip Koperasi Dalam Undang-Undang Koperasi (Studi Undang-Undang No. 25 Tahun 1992 dan Undang-Undang No. 17 Tahun 2012)." *Jurnal Pembaharuan Hukum* 2, no. 1 (2016): 138-147; Mochamad Adib Zain, "Politik Hukum Koperasi di Indonesia (Tinjauan Yuridis Historis Pengaturan Perkoperasian di Indonesia)." *Jurnal Penelitian Hukum* 2, no. 3 (2015): 160-177; Muhammad Ridha Haykal Amal, *Hukum Koperasi dan UKM*. (Medan: Pustaka Prima, 2021); Teguh Tresna Puja Asmara, Tarsisius Murwadji, and Bambang Daru Nugroho. "Tanggung Jawab Pemilik Koperasi Pada Saat Terjadi Kredit Macet Ditinjau dari Teori Kepastian Hukum." *Jurnal IUS Kajian Hukum dan Keadilan* 8, no. 1 (2020): 109-126.

The notion of responsibility, it appears, does not consistently align with societal practices, as exemplified in Supreme Court Decision Number 250K/Pdt/2019, reinforcing Decision Number 204/Pdt/2018/PT SMG Jo. Decision Number 20/Pdt.G/2017/PN Kds. This legal precedent fundamentally places the burden of compensating for cooperative failures on third parties beyond the purview of the cooperative's managerial structures.³

The genesis of this case traces back to a lawsuit initiated by nine members of the *Koperasi Serba Usaha Modern* (hereinafter as KSU Modern), situated in Kudus, Central Java, Indonesia. The legal proceedings, documented under case registration number 20/Pdt.G/2017/PN Kds at the District Court of Kudus, unfolded with the plaintiffs directing their claims against three defendants. These included KSU Modern Kudus as Defendant I, Trifena Koo Ang Nio as Defendant II, and Hermawan Sunarto Putra as Defendant III.⁴

The lawsuit was instigated due to the Plaintiffs' inability to withdraw funds deposited in the Modern KSU. Subsequent investigations unveiled a disparity: despite KSU Modern being a cooperative legal entity with a defined management structure outlined in its articles of association, the actual management was not executed by the designated authorities but rather by Defendant III. Intriguingly, Defendant III operated as a third party external to the cooperative's established management hierarchy. The individuals listed as trustees in the articles of association merely lent their names to fulfill the cooperative establishment prerequisites, refraining from actively participating in the cooperative's management affairs.

³ See Rayhan Zhafrandy Kamalrullah, "Gugatan Anggota Koperasi terhadap Perbuatan Melawan Hukum yang Dilakukan oleh Ketua Koperasi Serba Usaha Modern Kudus (Tinjauan Yuridis terhadap Putusan Mahkamah Agung Nomor 250 K/PDT/2019)". *Thesis* (Purwokerto: Universitas Jenderal Soedirman, 2021). See also Dewa Ayu Putu Mita Purnamasari, I. Nyoman Putu Budiarta, and Desak Gde Dwi Arin. "Tanggung Jawab Debitur dalam Perjanjian Kredit Tanpa Agunan (KTA) Pada Koperasi Serba Usaha (KSU) Kuta Imba Kabupaten Badung." *Jurnal Interpretasi Hukum* 2, no. 2 (2021): 334-338.

⁴ See Decision Number 20/Pdt.G/2017/PN Kds

Against the lawsuit filed by the Plaintiffs, the district court of Kudus decided on the principal case as follows

1. Granting the Plaintiffs' lawsuit in part;
2. States that Defendant I together with Defendant II and Defendant III have committed unlawful acts by committing irregularities in the management of the cooperative which is detrimental to the Plaintiffs;
3. Punishing Defendant III to pay the material losses suffered by the Plaintiffs in cash and at the same time amounting to IDR. 1,538,868,331.11, - (one billion five hundred thirty-eight million eight hundred sixty-eight thousand three hundred thirty-one-point eleven rupiah);
4. Reject the remaining claims of the Plaintiffs;

The reason the Panel of Judges decided on *aquo* was because the Panel of Judges considered that Defendant III was the main mastermind behind the use of cooperative funds. This assessment is proven by the evidence presented by the plaintiffs which proves that Defendant III, although not a cooperative trustee, can control and manage the cooperative's finances. Then, against this decision, Defendant III filed an appeal at the Supreme Court of Semarang with the case registration number 204/Pdt/2018/PT SMG. Against the appeal, the Supreme Court of Semarang in the principal case decided as follows:⁵

1. Granting the claim of the Convention Plaintiffs in part;
2. Declare that Defendant III of the Convention has committed an unlawful act by committing irregularities in the management of the cooperative which is detrimental to the Plaintiffs of the Convention;
3. Punish Defendant III of the Convention to pay for material losses suffered by the Plaintiffs Convention in cash and all at once in the amount of IDR. 1,538,868,331.11, - (one billion five hundred thirty-eight million eight hundred sixty-eight thousand three hundred thirty-one point eleven rupiah);

⁵ See Decision Number 204/Pdt/2018/PT SMG

4. Rejecting the remaining lawsuits of the Convention Plaintiffs;

Against this decision, Defendant III again filed a cassation with the case register number 250K/Pdt/2019. Against the appeal, the Supreme Court decided as follows:⁶

1. Reject the cassation request from the cassation applicant;
2. Punish the cassation applicant to pay court costs at all levels of court and at the cassation level in the amount of IDR. 500,000.00,- (five hundred thousand rupiah).

Paying attention to the *aquo* decision, the researcher feels that there is a conflict with the concept of cooperative accountability as stipulated in the Cooperative Law. The responsibility for the legal actions of KSU Modern which harmed its members was transferred to Defendant III who is a third party outside KSU Modern. The trustee and receiver of KSU Modern are not made to be the parties that share responsibility for actions in the form of neglecting the management of cooperatives. In addition, the management whose names are recorded in the deed of establishment and articles of association of the cooperative also handed over the management of the cooperative to third parties outside KSU Modern, namely Defendant II and Defendant III. However, the judge in deciding certainly achieves legal objectives, namely justice, benefits, and legal certainty.

Court decisions are legal products that become the crown for a judge. A judge's decision is expected to end a dispute or case. The initial part of a civil decision is the word decision which is then followed by the sentence "For the sake of Justice based on Belief in One and Only God" as stipulated in the Supreme Court Decision Number 44/KMA/SK/III/2014 concerning the Enforcement of Decision Templates and General Court Case Numbering Standards. The phrase for the sake of justice emphasizes that justice is the main thing in a decision while still considering the benefits and legal certainty. The form of justice in a judge's decision is implied in the principle of proof of civil law, namely *audi et alteram partem*, which means that the

⁶ See Supreme Court Decision number 250K/Pdt/2019

judge must hear both parties in a civil case. All parties to the case must be treated equally. In deciding and making legal considerations, the judge must be based on the facts proven by the parties and evaluate them according to the evidentiary strength of each piece of evidence presented.

Based on the description above, the researcher is interested in conducting research in the form of a theoretical study of the judge's considerations based on justice as stated in the Supreme Court Decision Number 250K/Pdt/2019 Jo. Decision Number 204/Pdt/2018/PT SMG Jo. Decision Number 20/Pdt.G/2017/PN Kds. Furthermore, the researcher formulates research questions, how is the analysis of judges' considerations related to third-party responsibility for legal actions carried out by the Modern Multi-Business Cooperative of Kudus district (KSU Modern Kudus) related to the principle of *audi et alteram partem* as an embodiment principle of justice.

Method

This research is juridical-normative in nature. A juridical approach is used to analyze various laws and regulations related to cooperatives. This research uses normative studies whose data sources include research on legal systematics, level of legal synchronization, and legal comparisons. The approach used in this legal research is the statute approach and the conceptual approach.⁷ Thus, the researcher can obtain accurate information and data on various issues related to this legal research. The statute approach is carried out by examining all laws and regulations related to cooperatives and the accountability of third parties outside cooperatives. The conceptual approach is carried out by departing from the views and doctrines that have developed in the science of law to find ideas that arise on relevant legal understandings, concepts, and principles as a basis for

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenadamedia Group, 2005), 133.

building legal arguments in solving the formulated problems that researchers discuss.⁸

This research uses library research to search for secondary data. Library research is a data collection technique that originates from legal materials related to the problem being studied. This study uses secondary data obtained through research by studying and reviewing books, journals, results of previous studies and/or research, articles, and laws and regulations related to the problem. The legal materials that will be used in this research include primary legal materials and secondary legal materials.

Library research is carried out by collecting materials in the form of literature consisting of books, theses, theses, dissertations and scientific journals that discuss cooperatives. Furthermore, researcher looks for laws and regulations that have a relationship with cooperative law and the accountability of third parties who manage cooperatives but outside the organs of the cooperative. The data obtained from the literature study were analyzed qualitatively. Qualitative descriptive analysis namely a data analysis method that groups and selects data obtained from library research according to quality and truth, then connected with the principle of *audi et alteram partem* which is the embodiment of the principle of justice which the researcher will relate to the research questions in order to answers on the problems formulated.

The principle of *audi et alteram partem* as an embodiment of the principle of justice in the judge's decision

The judge's decision is a form of law enforcement that occurs because of a violation of the law. According to Gustav Radbruch, there are three elements that must be considered by judges in law enforcement, namely legal

⁸ Marzuki.

certainty (*rechtssicherheit*), expediency (*Zweckmassigkeit*), and justice (*gerechtigkei*).⁹ Legal certainty is the implementation of the law in accordance with the rules and/or positive law.¹⁰ Furthermore, what is meant by benefit is that the law was created for humans, not humans for the law, so law enforcement must provide benefits to society. The final element in law enforcement is justice, which means law enforcement must be carried out fairly.¹¹ In civil courts, the task of the judge is to maintain the civil law order and establish the law.¹² The judge's decision must consider juridical, sociological, and philosophical aspects so that the justice to be achieved is justice with an orientation towards moral justice, social justice, and legal justice.¹³

A judge's decision can achieve perfection if the decision has achieved procedural justice as well as substantive justice.¹⁴ Justice is the central point in a judge's decision. The judge's decision is meaningful procedural justice-sourced from statutory regulations alone while substantive justice is justice that is based on values born from legal sources that live in society.¹⁵

In addition to procedural and substantive justice theories, there are other theories of justice, namely the theory of utilitarianism, the theory of intuitionism, and the theory of justice as fairness. The theory of utilitarian justice provides a definition of justice, namely that justice is the greatest form of happiness that can be given to the largest group. This theory is that the sole purpose of law is to ensure the greatest happiness for the greatest number of people. In essence, this theory assumes that the purpose of law

⁹ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: Liberty Yogyakarta, 2008), 160.

¹⁰ Mertokusumo.

¹¹ Mertokusumo.

¹² R Soepomo, *Civil Procedure Law of District Courts* (Jakarta: Pradnya Paramita, 2006),13.

¹³ Lilik Mulyadi, "Pergeseran Perspektif dan Praktik dari Mahkamah Agung Republik Indonesia Mengenai Putusan Pemidanaan." *Majalah Varia Peradilan* 6 (2006): 1-17.

¹⁴ Sunarto, *Peran Aktif Hakim dalam Perkara Perdata* (Jakarta: Prenada Media, 2016).

¹⁵ Yunanto Yunanto. "Menerjemahkan Keadilan dalam Putusan Hakim." *Jurnal Hukum Progresif* 7, no. 2 (2019): 192-205.

is benefit, especially in producing the greatest pleasure or happiness for the most people. The more benefits received; the more justice will be realized.

The theory of intuitionism holds that good and bad, fair and unfair are all determined by intuition or based on the human conscience. The human conscience is the most appropriate measure for judging right or wrong or fair or unfair. No matter how much the benefits are obtained from the actions committed as long as the actions are not in accordance with conscience, there will be no happiness because happiness arises from conformity with conscience. Thus, this theory holds that happiness is justice, meaning conformity with conscience is ultimately able to bring about justice.

John Rawls' theory of justice emerged in order to provide a solution to the utilitarianism theory of justice and the intuitive theory of justice which were felt to have not provided justice. The utilitarianism theory of justice assesses justice based on the benefits obtained for many people and the intuitionism theory of justice rejects the importance of rational procedures that can be used to reach mutual agreement regarding justice. John Rawls's theory of justice holds that the concept of justice must play a role in providing a way in which the main social institutions distribute fundamental rights and obligations and determine the distribution of the results of social cooperation. John Rawls also explained that the concept of justice of fairness touches two sides of the justice problem, namely equality and inequality.¹⁶

John Rawls through the theory of justice as fairness positions freedom of basic rights as the highest value and must be followed by guarantees of equal opportunity for everyone.¹⁷ Basically, John Rawls believes that determining whether it is fair or not is not based on whether there are benefits or no benefits and how much benefit is obtained. Justice is

¹⁶ John Rawls, "A Theory of Justice." In *Applied ethics*. (London: Routledge, 2017), pp. 21-29. See also Thomas Pogge, *John Rawls: His Life and Theory of Justice*. (Oxford: Oxford University Press, 2007).

¹⁷ Pan Mohamad Faiz, "Teori Keadilan John Rawls (John Rawls' Theory of Justice)." *Jurnal Konstitusi* 6, no. 1 (2009): 135-149.

determined by procedure. As long as the procedures to achieve a result are followed correctly and no obligations are violated, regardless of the outcome and whether there are benefits or not, then justice can actually be realized. A procedure has been carried out correctly if there is no discrimination in rights in its implementation. Everyone is given the same rights (equality) in the process, while the issue of unequal final results is not a judgment.¹⁸

In civil cases in Indonesia, the theory of justice as fairness is reflected in the *audi et alteram partem* principle. The principle of *audi et alteram partem* in civil procedural law means that when examining a case, the judge must hear both parties to the case. The application of this principle is carried out by the judge in the evidentiary trial agenda because the evidence in the evidentiary trial is the basis for the judge to determine a decision.¹⁹ Article 4 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power stipulates that the Court shall judge according to law without discriminating against people. This provision implies that in civil procedural law, the parties must be equally considered and entitled to equal and fair treatment and each must be given the opportunity to give his opinion.²⁰ The judge may not accept information from one party as true without hearing the opinion of the opposing party. This means that the judge, in assessing the evidentiary strength of the evidence presented by the parties, must apply the same principles.

The principle of *audi et alteram partem* provides protection and equal treatment to the parties involved in a lawsuit in order to defend and maintain their interests. When defending their interests, the parties must be treated fairly in the trial process in court.²¹ The principle of *audi et alteram partem* has been included in the code of ethics and behavioral

¹⁸ Nindyo Pramono and Sularto, *Bankruptcy Law and Pancasila Justice* (Jakarta: Andi Publishers, 2017)

¹⁹ Sudikno Mertokusumo, *Indonesian Civil Procedure Law* (Yogyakarta: Cahaya Atma Pustaka, 2012).

²⁰ Mertokusumo, 2012.

²¹ Sunarto, *The Active Role of Judges in Civil Cases*

guidelines for judges as part of fair behavior.²² The main behavior regulated in the code of ethics for judges is that judges must behave fairly. Behaving fairly means putting something in its place and giving what is due based on the principle that all people are equal before the law. The most basic demand of justice is to provide equal treatment and opportunity (equality and fairness) to everyone. When associated with the theory of justice as fairness by John Rawls, this theory emphasizes that justice is obtained when a procedure has been carried out correctly and there is no discrimination of rights in its implementation. The principle of *audi et alteram partem* focuses on providing equal opportunities by the parties in court proceedings. Thus, it can be concluded that a judge's decision can be considered to provide justice if the judge in handing down the decision has applied the principle of *audi et alteram partem*. When the judge has carried out the trial procedure in accordance with the applicable procedural law, whatever decision is decided by the judge has provided justice in accordance with the theory of justice as fairness by John Rawls.

From all the theories of justice that the researchers have discussed previously, the researchers argue that in analyzing whether a decision is fair or not, the theory of justice that is relevant to use is the theory of justice as fairness by John Rawls. Furthermore, in this study, the researcher will conduct an analysis of the judge's considerations in the Supreme Court Decision Number 250K/Pdt/2019 Jo. Decision Number 204/Pdt/2018/PT SMG Jo. Decision Number 20/Pdt.G/2017/PN Kds uses the principle of *audi et alteram partem* which is an embodiment of the principle of justice as fairness.

²² *Joint Decision Letter Between the Chief Justice of the Supreme Court of the Republic of Indonesia and the Chairperson of the Judicial Commission Number 047/KMA/SKB/IV/2009 Concerning the Code of Ethics and Code of Conduct for Judges, 2009.*

Summary of Supreme Court Decision Number 250K/Pdt/2019 Jo. Decision Number 204/Pdt/2018/PT SMG Jo. Decision Number 20/Pdt.G/2017/PN Kds

The KSU Modern civil case originated from District Court of Kudus Decision Number 20/Pdt.G/2017/PN Kds. The lawsuit was filed by several KSU Modern members who are customers in the KSU Modern savings and loan business. The lawsuit is addressed to KSU Modern as Defendant I, Trifena Koo Ang Nio as Defendant II, and Hermawan Sunarto Putra as Defendant III. The reason the plaintiff filed a lawsuit against Defendant II and Defendant III is because Defendant II is an individual who controls and coordinates KSU activities, while Defendant III is considered to be the individual owner of KSU Modern. KSU Modern as a multi-business cooperative has regular savings products and a voluntary term savings program. For this program, the plaintiffs have deposited funds as voluntary term savings investments at KSU Modern.

In the answer hearing agenda, KSU Modern as Defendant I did not submit a response because he was not present, and also no representative came even though he had been legally summoned by the Court. Defendant II gave an answer, namely rejecting the argument of the plaintiff's lawsuit which stated that Defendant II committed an unlawful act. The reason for Defendant II's statement was because Defendant II felt that Defendant II was only an employee of a cooperative belonging to Defendant III. Defendant II stored funds belonging to KSU Modern and then deposited them with Defendant III on the orders of Defendant III. Defendant II also explained that he had never used funds received from KSU Modern for personal gain because all funds received were directly deposited with Defendant III.

Defendant III in his answer explained that he had never received a transfer of money from the plaintiffs. Then Defendant III also explained that

all branch heads of KSU Modern were under the control and coordination of Defendant II. Defendant III has never taken active action in a legal relationship with the plaintiffs or received direct transfers in the form of deposit money from the plaintiffs. Based on this explanation, Defendant III felt that it had nothing to do with the unlawful acts intended by the plaintiffs in their lawsuit.

On the evidentiary hearing agenda, the Plaintiff presented documentary evidence and witnesses. The plaintiff submitted 29 documentary evidence. The documentary evidence submitted by the plaintiffs is in the form of proof of transfers and deposits made by the plaintiffs. In the proof of the letter, there is proof of the transfer and deposit sent to Defendant II. After the documentary evidence, the plaintiffs presented 4 witnesses, all of whom were KSU Modern employees.

Defendant II in the evidentiary trial agenda submitted documentary evidence and witnesses. Defendant II submitted 29 letters of evidence which contained evidence of an internal memo from Defendant III and evidence of money transfers from Defendant II to Defendant III. Furthermore, Defendant II also presented 3 witnesses who were employees of KSU Modern of Solo, Magelang, and Salatiga, Central Java. Defendant III in the evidentiary trial agenda presented written evidence, 1 witness, and 1 expert. Defendant III submitted 18 documentary evidence in the form of a list of cash disbursements from Defendant III. Defendant III presented an expert who explained cooperatives from a theoretical and practical point of view occurred in Central Java.

Based on the evidence submitted at the evidentiary hearing, it was evident that the reason the plaintiffs were unable to disburse the funds was that KSU Modern did not have the funds to return the plaintiffs' money. All customer funds at KSU Modern were transferred by cooperative employees to Defendant II. Defendant II as the recipient of customer funds then sent the funds to a limited liability company which belonged to Defendant III and was also transferred to Defendant III's account. Defendant II is not a

cooperative manager but is an employee of a limited liability company owned by Defendant III and employed by Defendant III to manage KSU Modern's finances. In the evidentiary agenda, it was also proven that Defendant III was not a trustee of KSU Modern as stated in the deed of establishment and the articles of association of KSU Modern. Defendant III is a party outside the cooperative but has access to manage KSU Modern activities, especially related to customer funds placed in KSU Modern.

Against the evidence proven by the parties at trial, the panel of judges at the District Court of Kudus issued a decision stating that KSU Modern, Defendant II, and Defendant III jointly committed an unlawful act in the form of mismanagement of cooperatives which harmed cooperative members. However, in this decision, the only party obliged to pay compensation is Defendant III. The panel of judges decided this because in the trial it was proven that the flow of cooperative members' funds went to Defendant III and it was Defendant III who used the funds.

The decision issued by the District Court of Kudus was then appealed by Defendant III at the Supreme Court of Semarang. Defendant III put forward objections in the memorandum of appeal which basically explained that Defendant III felt that the Panel of Judges at the District Court of Kudus did not consider the documentary evidence submitted by Defendant III in the evidentiary trial agenda. Against this appeal, the Supreme Court of Semarang upheld the decision of the District Court of Kudus but amended the ruling and stated that it was Defendant III who committed the unlawful act.

Regarding the appeal decision, Defendant III filed a legal remedy in the form of cassation to the Supreme Court. Defendant III has submitted a memorandum of cassation which basically explains that

1. The *judex facti* decision (Supreme Court of Semarang) in the *aquo* case was not accompanied by perfect consideration because it only took over the judgment from the District Court of Kudus and did not re-examine this case, regarding the facts, or the application of the law so that the

considerations in the *aquo* decision strengthened the District Court of Kudus decision, with the correction of the ruling, the matter stated in its legal considerations states that the consideration of the Panel of Judges of the first level that the Panel of Judges at the appellate level can be taken over and strengthened is a decision that does not carry out the law or carry out justice in accordance with the Law (jurisprudence, Supreme Court Decision No. 621K/Sip/1975 jo Article 8 Rv)

2. The losses suffered by the plaintiffs occurred because KSU Modern deviated from the management of the cooperative, namely by giving all of the savings' funds obtained from the plaintiffs to Defendant II and then Defendant II did not hand it back to KSU Modern;
3. *Judex facti* does not consider expert evidence which explains that the management is the management responsible for the management of the cooperative.

Against the objections raised by Defendant III in his cassation memory, through Decision Number 250 K/Pdt/2019, the Supreme Court rejected Defendant III's cassation request with legal considerations, namely the decision of the Supreme Court of Semarang as a *judex facti* not against the law. In addition, the reason for cassation stated by Defendant III in the cassation memorandum is in the nature of evaluating the results of evidence which is not the task of the panel of judges at cassation level as *judex juris* to evaluate it.

Analysis of the judge's considerations in Decision Number 20/Pdt.G/2017/PN Kds

The panel of judges at the District Court of Kudus stated in their decision that KSU Modern, Defendant II, and Defendant III had committed an unlawful act in the form of irregularities in the management of cooperatives which harmed the plaintiffs. The form of deviation referred to by the Panel

of Judges is in the form of sending funds obtained by customers/members of cooperatives to Defendant II and then forwarding them to Defendant III. Based on Article 30 paragraph (1) of the Cooperative Law, the person responsible for managing the cooperative is the cooperative trustees. On the evidentiary trial agenda, it was proven that the management of KSU Modern did not carry out management as regulated by the Cooperative Law. The management of KSU Modern is only recorded in the deed of establishment and articles of association of the cooperative but has never managed the cooperative.

Article 34 of the Cooperative Law stipulates that the management is obliged to bear the losses suffered by the cooperative due to actions taken intentionally or negligently. The concept of accountability in Article 34 of the Cooperative Law has in common with the principle of liability in limited liability companies, namely the principle of *ultra vires*. The *ultra vires* principle is a principle that regulates legal consequences if there are actions by the management for and on behalf of the cooperative, but these actions actually exceed what is regulated in the cooperative's articles of association. The principle of *ultra vires* towards cooperative management is reflected in Article 34 paragraph (1) of the Cooperative Law which stipulates that management, both jointly and individually, bear the losses suffered by cooperatives. due to actions carried out intentionally or negligently. Taking into account the provisions of Article 34 paragraph (1) of the Cooperative Law, there is the phrase "an intentional or negligent act" which can be interpreted as a form of implementing the *ultra vires* principle in the regulation. This article emphasizes the consequences whether they cause harm or not.

Another principle that also has similarities with the principle of responsibility of a limited liability company is the principle of piercing the corporate veil. The principle of piercing the corporate veil is the process of imposing responsibility from the company to the company's organs for legal actions taken by the company's organs without considering that the act was

actually carried out by/or on behalf of the company. The company organs referred to in cooperative legal entities are the trustee and receiver. The management as the manager of the cooperative, can take actions that are detrimental to the cooperative. The principle of piercing the corporate veil penetrates the responsibility of cooperatives as legal entities for legal actions carried out by cooperatives. The purpose of penetrating cooperative accountability is that there is a transfer of responsibility from the cooperative as a legal entity to the management or supervisor as an organ that carries out cooperative activities even though it is for and on behalf of the cooperative but causes losses to the cooperative. This principle of accountability is also stated in Article 34 paragraph (1) of the Cooperative Law.

The management of KSU Modern, which is recorded in the articles of association of the cooperative, has neglected the management of the cooperative. Article 30 paragraph (1) of the Cooperative Law stipulates that the management is responsible for:

1. Managing cooperatives and their businesses;
2. Submitting work plans as well as draft plans for cooperative expenditure budgets;
3. Holding member meetings;
4. Submitting financial reports and responsibility for carrying out tasks;
5. carry out financial bookkeeping and inventory in an orderly manner;
6. Maintaining a register of members and trustees.

Based on the evidentiary trial, it was proven that the trustees who were recorded in the articles of association only recorded their names without carrying out the tasks regulated in Article 30 paragraph (1) of the Cooperative Law. This neglect was also evident from the absence of cooperative management as KSU Modern representatives in court. The form of omission in question is that the Management of KSU Modern does not manage cooperatives and cooperative businesses. The management of KSU Modern is carried out by a third party, namely Defendant II.

The management of KSU Modern by Defendant II is not based on the Cooperative Law which requires an agreement in the form of a work agreement between the trustee and receiver. Defendant II is also a third party outside the cooperative ordered by Defendant III to manage KSU Modern. In the trial agenda, it was also not proven that Defendant III was a receiver, trustee, or member of a cooperative. Defendant III is a third party outside the cooperative but can access KSU Modern's finances and the entire management of KSU Modern like a cooperative management. In this case, it is clear that the cooperative management did not carry out the obligations that should have been carried out in managing the cooperative, thereby causing losses for the cooperative.

Apart from having to bind the cooperative management with a work agreement, the cooperative management must also ask for approval from members through a member meeting in accordance with the provisions of Article 32 of the Cooperative Law. Based on the facts of the trial, the KSU Modern management never carried out management and was only the management listed in the articles of association. The KSU Modern management never asked for approval for the appointment of managers through a member meeting. The management of Modern KSU has been carried out by Defendant II and Defendant III without the mechanisms regulated by the Cooperative Law. Even though in theory and statutory regulations, it can be concluded that the management of KSU Modern has committed acts that are detrimental to cooperative members, KSU Modern's management in the *aquo* case was not named as a defendant by KSU Modern's customers in their lawsuit letter. The plaintiff did not explain and provide a description of the lawsuit regarding the negligence committed by the KSU Modern management. In other words, customers assume that the management of KSU Modern is not the party responsible for the losses suffered by customers who are members of KSU Modern.

In addition to cooperative management, cooperative organs that are also responsible for letting third parties manage cooperatives are

cooperative supervisors. Article 38 paragraph (2) of the Cooperative Law stipulates that supervisors are responsible for member meetings. Then Article 39 paragraph (1) of the Cooperative Law stipulates that the supervisor is assigned to

1. Supervise the implementation of cooperative policies and management;
2. Make a written report on the results of supervision.

If we link Article 38 paragraph (2) of the Cooperative Law with Article 39 paragraph (1) of the Cooperative Law, the form of responsibility of the supervisor is to supervise the implementation of cooperative management by the cooperative management at member meetings. The Cooperative Law does not explicitly regulate the responsibilities of cooperative supervisors. The Cooperative Law in Article 34 of the Cooperative Law only regulates the responsibility of cooperative management if they commit an act that is detrimental to the cooperative, then the management is responsible for the loss. Thus, researchers conducted an analysis of the personal responsibility of cooperative supervisors for committing unlawful acts based on Article 1365 of the Civil Code.

1. There is an act of the defendant that is contrary to law;
2. There are losses that arise;
3. There was an error or negligence on the part of the defendant;
4. There is a causality or causal relationship between the defendant and the mistakes or actions that have been committed by the defendant;

Regarding these elements, the definition of unlawful acts is interpreted broadly and consists of 4 categories of acts, namely:²³

²³ Rosa Agustina, "Perbuatan Melawan Hukum dalam Hukum Perjanjian". *Thesis* (Jakarta: Universitas Indonesia, 2003). *See also* Syukron Salam, "Perkembangan Doktrin Perbuatan Melawan Hukum Penguasa." *Nurani Hukum* 1, no. 1 (2018): 33-44; Jordy Herry Christian, "Juridical Study of Unlawful Acts as Factors in Cancellation of Auctions on Guaranteed Objects (Kajian Yuridis Perbuatan Melawan Hukum Sebagai Faktor Pembatalan Lelang Atas Objek Jaminan)." *Lex Scientia Law Review* 3, no. 2 (2019): 205-218; Ulhaq Adhiyaksa, "Penerapan Sifat Melawan Hukum Materiil dalam Putusan Hakim di Pengadilan Tipikor Jakarta." *Unnes Law Journal* 1, no. 1 (2012): 65-70.

1. Contrary to the legal obligations of the perpetrator;
2. Violating the subjective rights of others;
3. Violating the rules of morality;
4. Contrary to the principles of propriety, thoroughness and prudence;

Article 38 paragraph (2) of the Cooperative Law and Article 39 paragraph (1) of the Cooperative Law have regulated the legal obligations that must be carried out by a supervisor. KSU Modern supervisors have an obligation to oversee the process of managing KSU Modern business by KSU Modern management. The results of the supervision are accountable to the meeting of members. In fact, there are no supervisory actions carried out by cooperative supervisors so the management of KSU Modern is carried out by third parties who do not have the legal standing. This act can be classified as a form of conflict with the legal obligations of cooperative supervisors and does not apply the precautionary principle.

If we analyze whether KSU Modern supervisor has committed an unlawful act, it is proven that the Modern KSU supervisor has committed an unlawful act that is detrimental to KSU Modern members. However, the KSU Modern supervisor in the *aquo* case was not named as a defendant by the KSU Modern customer in the lawsuit. The plaintiffs' lawsuit focuses on KSU Modern as a legal entity and Defendant II and Defendant III as parties who are considered to carry out real management of KSU Modern's business. The plaintiff's lawsuit letter does not explain and provide a description of the lawsuit regarding negligence committed by KSU Modern supervisors in supervising the business processes of KSU Modern.

Civil procedural law in Indonesia recognizes the principle of passive judges. The meaning of a judge being passive is that the judge does not determine the extent of the subject matter of the dispute and the judge may not increase or decrease the extent and subject matter of the dispute.²⁴ The

²⁴ See Eka Susylawati, "The Judge Principle is Active in Case of Divorce in Madura District Religious Court." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 2 (2019): 267-282. See also Tata Wijayanta, et al. "Penerapan Prinsip Hakim Pasif dan Aktif serta Relevansinya terhadap Konsep Kebenaran Formal." *Mimbar Hukum* 22, no. 3 (2010): 572-587; Rian Saputra, "Pergeseran Prinsip Hakim Pasif ke Aktif Pada Praktek

parties freely at any time according to their wishes can end the dispute that has been brought before the court itself. The emergence of civil cases in court is due to the initiative of the plaintiff.

In their lawsuit, the members of KSU Modern filed a lawsuit against KSU Modern, Defendant II, and Defendant III because these members considered that these parties were the parties that caused losses to the members of KSU Modern. Even though the judge in the evidentiary trial agenda knows that according to the rules, the trustee and receiver are also responsible for neglecting and not exercising supervision, the judge cannot, because of his initiative, make the trustee and receiver of the cooperative defendants in the case. In their consideration, the panel of judges explained that the management of KSU Modern was only listed in the articles of association and the deed of establishment in name, while control was carried out by a third party outside the management. This consideration confirms that the panel of judges in making considerations only focuses on the subject matter of the dispute. The researcher is of the opinion that the judge's actions did not allude to the accountability of the management or supervisor's responsibility is a form of fairness that applies the principle of *audi et alteram partem*, namely the panel of judges listened to both parties that the subject matter of the dispute in the *aquo* case was only limited to the responsibility of KSU Modern, Defendant II, and Defendant III who had detrimental to KSU Modern members who are always plaintiffs.

In their considerations, the panel of judges at the District Court of Kudus explained that KSU Modern, Defendant II, and Defendant III had committed acts against the law because they had committed irregularities in cooperative management that were detrimental to cooperative members. Article 1365 of the Civil Code essentially regulates that for every act that is

Peradilan Perdata Perspektif Hukum Progresif." *Wacana Hukum* 2, no. 1 (2019): 10-18; Junaidi Junaidi, and M. Martindo Merta. "Asas Hakim Pasif Dalam Reglement Op de Rechtsvordering (RV) dan Prinsip Hakim Aktif dalam Herziene Indonesisch Reglement (HIR) dalam Penyelesaian Perkara Perdata di Pengadilan." *Qistie* 13, no. 1 (2020): 60-77; Sunarto Sunarto. "Prinsip Hakim Aktif dalam Perkara Perdata." *Jurnal Hukum dan Peradilan* 5, no. 2 (2016): 249-276.

against the law and causes loss to another person, the person who caused the loss through his fault is obliged to compensate for the loss.²⁵

The elements of an unlawful act are that there is an act, the act must be against the law, there is a loss, there is a causal relationship between the unlawful act and the loss and there is a mistake.²⁶ An act is declared an unlawful act if all of these elements are met. If there is 1 element that is not fulfilled then the act cannot be declared as an unlawful act. Paying attention to this concept, it can be concluded that if the defendants are declared to have committed an unlawful act, then the defendants have an obligation to pay compensation jointly and severally. However, in the *aquo* case, the panel of judges only imposed compensation payments on Defendant III. The panel of judges' reason for this was because, in the evidentiary hearing, KSU Modern and Defendant II were able to prove that the funds obtained from customers were channeled directly from KSU Modern to Defendant II and then to Defendant III.

Associated with the principle of *audi et alteram partem*, the researcher believes that the panel of judges has acted fairly because the panel of judges also assessed the evidence from Defendant II in a balanced manner. Defendant II, through his evidence, explained the flow of customer funds which were sent entirely to Defendant III's account. If applying the concept of unlawful acts as referred to in Article 1365 of the Civil Code, KSU Modern, and Defendant II, even though they did not receive money from members of KSU Modern, the actions committed by KSU Modern and Defendant II also resulted in losses for members of KSU Modern.

The concept of accountability for cooperative management as stipulated in Article 34 of the Cooperative Law was not applied by the panel of judges at the District Court of Kudus. This is based on the evidence at trial which can prove that the party receiving the benefits as a result of mismanagement of the cooperative is Defendant III.

²⁵ Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*).

²⁶ Munir Fuady, *Contemporary Approach Unlawful Acts* (Bandung: Citra Aditya Bakti, 2002).

The lawsuit filed by the plaintiff is not a breach of contract. If the context of the lawsuit is default, Modern KSU is responsible for being bound by a customer deposit agreement. The plaintiff filed a lawsuit against the law which is not limited to the legal relationship between KSU Modern as a cooperative and the plaintiff as a member of the cooperative, but the lawsuit covers the entire cause of the cooperative not being able to pay the rights of KSU Modern members. Liability arose against Defendant III as a third party outside the cooperative because, in the evidentiary agenda, it was proven that KSU Modern and Defendant II were tools used by Defendant III to obtain personal gain. Therefore, the panel of judges has decided fairly by setting aside the concept of responsibility for cooperatives and cooperative management but using the concept of responsibility for someone who commits an unlawful act as regulated in Article 1365 of the Civil Code. The panel of judges objectively explained that the person responsible for making payments was the party who actually received the funds from KSU Modern members. The panel of judges at District Court of Kudus has achieved the court's goal, namely that the decision not only has value as formal truth but also has value as material truth.²⁷

Analysis of judges' considerations in Decision number 204/Pdt/2018/PT SMG

Based on how they make decisions, courts in Indonesia are divided into 2, namely *judex facti* and *judex juris*. The Supreme Court is *judex facti* together with the District Court. The court which is *judex facti* has the authority to examine the evidence in a case and determine the facts of the case.²⁸ The Supreme Court as a *judex facti* has the authority to re-examine the facts of a case that has previously been examined at the District Court.

²⁷ Sunarto, *Peran Aktif Hakim dalam Perkara Perdata*.

²⁸ Yahya Harahap, *Power of the Supreme Court: Cassation Examination and Review of Civil Cases* (Jakarta: Sinar Grafika, 2014).

In case number 204/Pdt/2018/PT SMG, the panel of judges at the Supreme Court made changes to the District Court's decision. The panel of judges decided that it was Defendant III who committed the unlawful act in the *aquo* case.

The basis for considering this decision was that the panel of judges stated that KSU Modern and Defendant II were only tools for Defendant III to collect funds from KSU Modern customers so the person who committed the unlawful act was Defendant III. The principle of fairness explains that in essence, justice can be achieved if a procedure has been carried out correctly and if there is no discrimination in rights in its implementation. Everyone is given the same rights (equality) in the process. The main element of fairness and justice is the implementation of trial procedures in accordance with applicable laws and regulations. If it is associated with the principle of fairness, the panel of judges at the Supreme Court has decided in accordance with the procedure, namely continuing to examine the facts contained during the examination of evidence at the District Court. This can be seen from the decision of the Supreme Court which corrects the decision of the District Court.

Apart from applying appropriate procedures, as previously discussed, the form of embodiment of the principle of fairness is the application of the *audi et alteram partem* principle by the panel of judges examining the case. The panel of judges at the Supreme Court in their decision has also applied the principle of *audi et alteram partem*, namely listening to the opinions of all parties through the memory of appeals and documents of evidence at the District Court. Submission of the appeal memory at the level of appellate examination is not an obligation. The parties are free to submit a memorandum of appeal or not. In the *aquo* case, Defendant III as the applicant has submitted a memorandum of appeal through the District Court of Kudus. Against the memorandum of appeal, the other party has the right to answer or give his opinion on the memorandum of appeal.

The Supreme Court then made improvements regarding which party should be declared to have committed an unlawful act. The panel of judges at the Supreme Court emphasized that the elements of an unlawful act must be fully proven, including the imposition of compensation by the party that caused the loss to the other party. Basically, the panel of judges at the District Court and Supreme Court have the same opinion regarding who should be actually responsible for paying compensation. However, the Panel of Judges at the Supreme Court stated that KSU Modern and Defendant II did not commit any unlawful acts because they were only tools and not subjects who received benefits from the unlawful acts committed by Defendant III.

Analysis of judges' considerations in the Supreme Court Number 250K/Pdt/2019

Against the Supreme Court's decision, Defendant III then filed a cassation effort at the Supreme Court. Through decision Number 250K/Pdt/2019, the Supreme Court stated that it rejected the cassation application submitted by Defendant III. The reason for the Supreme Court rejecting Defendant III's cassation request was because the reason for the cassation filed by Defendant III was regarding the considerations of the Supreme Court of Semarang relating to evidence. The Supreme Court as a *judex juris* means that at the cassation level what is examined is only the application of the law of a case to the facts. Article 30 of Law Number 3 of 2009 concerning the Supreme Court stipulates that the Supreme Court in essence the scope of a civil cassation decision is about not having authority or exceeding the limits of its authority in a decision, the decision misapplies or violates the applicable law and the decision fails to comply with the requirements required by the laws and regulations. The Supreme Court through the *aquo* decision has implemented the principle of fairness because procedurally it complies with the *aquo* laws and regulations. The Supreme Court cannot

accept the grounds of cassation which raise questions regarding the proof of facts. Even though the cassation request was rejected, on the other hand, the Supreme Court has also applied the *audi et alteram partem* principle because it continues to accept and examine the cassation request submitted by Defendant III. The Supreme Court through the *aquo* decision has implemented the principle of fairness because procedurally it complies with the *aquo* laws and regulations. The Supreme Court cannot accept the grounds of cassation which raise questions regarding the proof of facts. Even though the cassation request was rejected, on the other hand, the Supreme Court has also applied *audi et alteram partem* principle because it continues to accept and examine the cassation request submitted by Defendant III. The Supreme Court through the *aquo* decision has applied the principle of fairness because it is procedurally in accordance with the *aquo* statutory regulations. The Supreme Court cannot accept the grounds of cassation which raise questions regarding the proof of facts. Even though the cassation request was rejected, on the other hand, the Supreme Court also applied the principle of *audi et alteram partem* because it continued to accept and examine the cassation request submitted by Defendant III.

Conclusion

In the Supreme Court Decision Number 250K/Pdt/2019 Jo. Decision Number 204/Pdt/2018/PT SMG Jo. Decision Number 20/Pdt.G/2017/PN Kds, the Panel of Judges demonstrated a commitment to the fundamental principle of *audi et alteram partem*, exemplifying the essence of fairness and justice. Their impartial decision-making was rooted in adherence to applicable laws and regulations. Notably, the ruling underscores that third parties external to the cooperative can be held accountable for legal consequences arising from the cooperative's actions if linked to unlawful acts perpetrated by these external entities. This interpretation deviates from the traditional limited liability concept in Cooperative Law, instead focusing

on the assessment of unlawful acts during the evidentiary trial proceedings. The verdict found Defendant III culpable of exploiting Defendant II and KSU Modern for personal gain, detrimentally impacting cooperative members who are plaintiffs. In rendering this decision, the panel of judges departed from the conventional notion of cooperative responsibility and management, opting for a framework based on accountability for unlawful acts, as outlined in Article 1365 of the Indonesian Civil Code. This nuanced approach ensures a just resolution, emphasizing the core principles of legality and ethical conduct in the legal proceedings.

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