

Legal Certainty in the Application of the Imposition of *Moratoire* Interest as a Legal Effect in Default

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ABSTRACT

The payment of interest as compensation must be stated in the agreement between the creditor and the debtor, but there are several cases where moratoire interest is not specified in the agreement. For example, there is a case of default in the sale and purchase between Sri Mulyawati against PT Harmas Jalasveva and Real Estate Indonesia (REI) and a case of default in debt and credit between Tusrilawati against Marzuki. The purpose of this study is to determine the application of the imposition of moratoire interest and legal certainty about the application of the imposition of moratoire interest. The method used is normative juridical with a statutory approach and conceptual approach. As a result, the imposition of moratoire interest can be applied as a legal consequence in default even without an agreement related to late fees by the parties to the agreement. The imposition of moratoire interest can also be applied as a late penalty for payments that do not determine the amount of the penalty. However, in the absence of an agreement, the application of moratoire interest must be based on a Court Decision. The application of the imposition of moratoire interest in both cases shows equity in the application of the legal basis without neglecting justice and expediency, thus achieving a balance in achieving legal objectives according to Gustav Radbruch's theory. It can be concluded that the imposition of unspecified moratoire interest can be applied as a legal consequence in default as long as it is decided by a judge in court.

Keywords: Default; Moratoire Interest; Legal Certainty.

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INTRODUCTION

An agreement is a legal act, which is the creation of a legal relationship for the parties who promise to realize the things promised through a mutual action by each party honestly (Ariandi, 2009). An agreement is a legal relationship of wealth/property between two or more people, which gives one party the right to obtain achievement and obliges the other party to fulfill the achievement (Harahap, 1986). The parties can choose the form and content of the agreement according to Article 1338 of the Criminal Code, however, there are still restrictions on this principle of freedom of contract, including the requirement that it does not conflict with the law, decency, or public order (Safitri, & Tapiqurrahman, 2023).

A valid and binding agreement burdens the parties concerned to carry out the contents of the agreement that has been made. The agreement is an event where the event is affordable human action and negligence or negligence, as human nature is far from perfection. The parties who make an agreement so that the agreement can be carried out and fulfilled as well as possible until the obligations of both parties are completed. However, in reality, events often occur where the rights and obligations of the parties are not fulfilled, then one party will feel disadvantaged by the other party either intentionally or unintentionally. Therefore, the non-fulfillment of these rights and obligations means that the person who is at fault can be deemed to have broken the promise or default and the guilty person can be threatened with the penalty of paying damages.

The word default comes from the Dutch language which means bad performance (Slamet, 2013). Default is regulated in article 1238 of the Civil Code which states that "the debtor is negligent, if he is declared negligent, or by his own agreement, if this stipulates that the debtor must be considered negligent with the passage of time specified". Meanwhile, Article 1243 of the Civil Code states "Reimbursement of costs, losses and interest for non-fulfillment of an obligation begins to be required if the debtor, even though he has been declared negligent to fulfill the obligation, continues to neglect it, or if something that must be given or made, can only be given or made within the time that has been exceeded". Default is caused by several factors, including from the debtor's side, namely bad faith, the decline of the debtor's business, poor business management, and the use of financing that is less than the original purpose (Hayati, 2020).

Provisions regarding compensation caused by default are regulated in Article 1243 of the Civil Code up to Article 1252 of the Civil Code. Compensation is detailed in three elements, namely: costs, losses, and interest or in Dutch called *Kosten*, *Schaden*, and *Interesten*. What is meant by costs is all expenses or expenditures that have actually been incurred by one party. Loss is a loss caused by damage to goods belonging to the creditor caused by negligence. While interest is a loss in the form of lost profits, which would have been obtained or have been calculated by the creditor. Claims for compensation can be realized through the intermediary of a judge with a lawsuit filed by the injured party, so that the injured party can get what should be his right.

Payment of compensation does not always have to be in the form of money. The Hoge Raad in its Judgment of May 24, 1918, has considered that a return to the original state is the most appropriate payment of damages. The purpose of the provisions of Article 1365 of the Civil Code is to as much as possible restore the sufferer to his original state, at least to the state he might have reached, had no unlawful act been committed. So what is sought is a real return which is presumably more appropriate than the payment of compensation in the form of money because the payment of a sum of money is only an equivalent value (Apriani, 2021).

In the payment of compensation, there is a regulation governing moratoire interest. Moratoire comes from the Latin word "mora" which means negligence or negligence. Negligent statement (*ingebrekke stelling*) and negligence (*verzuim*). Moratoire interest is interest that must be paid as a penalty because one party is negligent or negligent in paying his debt. The provisions regarding moratoire interest are contained in State Sheet 1848 Number 22, the interest is set at 6% per year, according to article 1250 of the Civil Code the interest that can be demanded may not exceed the percentages stipulated in the law.

The payment of interest as compensation must be stated in the agreement between the creditor and the debtor, but there are several cases where moratoire interest is not specified in the agreement. For example, in the case of default in the sale and purchase between Sri Mulyawati against PT Harma Jalsveva and Real Estate Indonesia (REI), in this case, Sri Mulyawati bought two apartment units with a credit system, but after the credit was paid off within the specified period, the seller did not also hand over the two apartment units to the Plaintiff. This case is contained in Decision Number 390/Pdt.G/2017/PN.JKT.Sel, in one of its considerations the panel of judges stated that the request for compensation in the form of moratoire interest could not be granted on one of the reasons that compensation was not regulated in the agreement. This decision was also upheld by the Appeal Decision. However, when this decision then reached the Cassation level which was registered in Supreme Court Decision Number 2031/Pdt/2019, the Panel of Judges granted the request for moratoire interest submitted by the Plaintiff of 6% per year since the lawsuit was registered in Court.

The next case was a case of default in debt and credit between Tusrilawati and Marzuki, the subject matter of which was that the Defendant borrowed a sum of money from the Plaintiff over a period of time, the Defendant paid off a small portion of the

debt but after the period ended the Defendant did not repay the debt. The plaintiff demanded that the defendant pay the remaining principal of the debt and claimed immaterial damages. This case was found in the first instance decision Number 5/Pdt.G/2019/PN Bna in which the panel of judges granted the plaintiff's claim, but in compensating for immaterial losses the panel of judges decided with interest of 10% per year. The Plaintiff then filed an appeal based on reclaiming immaterial damages, then in Appeal Decision Number 55/Pdt/2019/BNA the Panel of Judges decided the amount of compensation in the form of moratoire interest of 6% per year since it was registered in court with the consideration that the compensation was not regulated in the agreement between the Plaintiff and the Defendant. This decision was then upheld by the Cassation Decision by the Supreme Court Number 885 K/PDT/2020.

In deciding a case, a judge must fulfill several important principles, namely the principle of justice, the principle of expediency, and the principle of legal certainty. The principle of justice is a basic principle in the justice system that emphasizes the importance of ensuring that decisions made by a judge are fair and just, the principle of expediency refers to the importance of making decisions that provide benefits and positive contributions to society or the parties involved in the case. The principle of legal certainty requires judges to make decisions that are clear, consistent, and predictable, which is important so that people can understand and foresee the consequences of their actions. Legal certainty also contributes to stability and security in society.

The principle of legal certainty has an important role in the consideration of judges when deciding a case because it has a number of benefits and important considerations. The principle of legal certainty maintains that the law is applied consistently and clearly, this helps people to understand and predict the consequences of their actions or behavior. Legal certainty should provide legal protection for individual rights, encourage people to comply with the rule of law, avoid abuse of power, provide stability and security in society, and encourage legal development. Legal certainty is an important principle in maintaining the integrity of the justice system and ensuring that the law is applied in a way that the public can understand.

From several examples of cases and decisions as mentioned above, the application of the imposition of compensation in the form of moratoire interest as a legal consequence in unagreed default is still different because each judge has different opinions and considerations in each existing decision, causing bias in legal certainty, the application of uncertain or changing laws can cause confusion and uncertainty. Because of the differences in judges' decisions and considerations, there are pros and cons in various circles, especially for parties who have similar problems in the agreement. Therefore, the author is interested in discussing the application of the imposition of moratoire interest that is not regulated in an agreement as a legal consequence in default with the following problem formulation: (1) How is the application of the imposition of compensation in the form of moratoire interest as a legal consequence in default in the case between Sri Mulyawati against PT Harmas Jalasveva and the case between Tusrilawati against Marzuki? (2) How is the legal certainty regarding the application of the imposition of moratoire interest as a legal consequence in default with the difference in judges' considerations in the decisions in the case between Sri Mulyawati against PT Harmas Jalasveva and the case between Tusrilawati against Marzuki?

There are several previous studies related to the research to be discussed, namely the application of the imposition of moratoire interest as a legal consequence in default as a reference that supports the writing of this research.

Adela Faustin's research entitled "Default in Debt and Credit Agreement in Supreme Court Decision Number 885 K / Pdt / 2020" This research reviews the judge's consideration in determining whether the debtor can be considered to have made a mistake in the form of default in a debt and credit agreement, as well as the legal considerations considered by the judge in determining the amount of compensation that

must be given due to the default in Decision Number 885 K / Pdt / 2020. The results of his research explained that the judge's consideration of the debtor had made a default because the debtor did not act in good faith and deliberately did not pay off his debt, and the judge determined compensation in the form of moratoire interest of 6% per year which was included in compensation in the form of interest (Faustin, 2022).

Stephen William and Mia Hadiati's research entitled "Judges' Consideration in Refusing Moratoire Interest Compensation Based on Article 1250 of the Civil Code in the Sale and Purchase Transaction Between PT Elmecon Multikencana and PT AES Agriverde Indonesia (Study of Decision Number: 46/Pdt.G/2018/PN.Jkt.Pst)" The research focuses on the judge's consideration in refusing moratoire interest compensation in article 1250 of the Criminal Code in the sale and purchase transaction. The results of the study explained that the Panel of Judges did not grant the request regarding late fees or moratoire interest because immaterial losses could not be proven by the Plaintiff in Court (William, & Hadiati, 2021).

Dhira Utari Umar's research with the title "Application of the Consensualism Principle in the Sale and Purchase Agreement According to the Civil Law Perspective" This research discusses Article 1458 of the Civil Code emphasizing the consensual nature of buying and selling, where an agreement on goods and prices is sufficient to be considered as a transaction, even though the goods have not been delivered or the price has not been paid. The law of agreements according to B.W. adheres to the principle of consensuality, which states that agreement alone is sufficient to give birth to an agreement. Legal consequences for violating the principle of consensualism include payment of losses to the creditor, cancellation of the agreement, transfer of risk, and paying court costs if the case goes to court. Article 1267 of the Civil Code also gives the creditor the right to sue the debtor who is negligent in fulfilling the agreement, provide compensation, or cancel the agreement with or without compensation (Umar, 2020).

The research of Oksana Shcherbanyuk, Vitalii Gordieiev, and Laura Bzova with the title "Legal Nature Of The Principle Of Legal Certainty As A Component Element Of The Rule Of Law" The purpose of this article is to highlight the need to comply with the principle of legal certainty in various aspects of the foundation and understanding covering modern topics, starting with the indisputable theoretical and conceptual evolution of the basis and nature, which in a more complex and complex form, many years has come to mean a kind of set of interrelated content and conditions for the organization of life between individuals and states that are a guarantee of legal stability (Shcherbanyuk, Gordjejev & Byoza, 2023). Byoza, 2023)

Andhi Subangun, Supanto, and Widodo Tresno Novianto's research entitled "The Implementation of Pretrial Object Extension on Suspect Determination After the Constitutional Court Ruling No.21/PUU-XII/2014 Viewed from the Perspectives of Justice and Legal Certainty" This research analyzes various pretrial decisions after the Constitutional Court Decision (hereinafter referred to as MK) Number 21/PUU-XII/2014, whether the implementation of pretrial decision making has considered the principles of justice and legal certainty in its decisions (Andhi, Supanto, & Widodo, 2019).

METHOD

The research method used in this research is juridical-normative, namely library legal research conducted by examining library materials or secondary data. The research is carried out by analyzing the problem to be the focus of research, based on legal principles and referring to the legal norms contained in the legislation in force in Indonesia. The approaches used are the Statute Approach and Conceptual Approach. The research specification that will be used in this research is descriptive-analytical which is expected to be able to provide an overall, detailed, and systematic description related to the problems in this study. The sources and types of data used are primary legal

materials consisting of the 1945 Constitution; Civil Code; Decisions relating to default cases between Sri Mulyawati and PT Harma Jalesveva, and Decisions relating to default cases between Tusrilawati and Marzuki. Secondary legal materials are books, scientific works, journals, and laws and regulations related to the addition of unpledged moratorium interest. The data collection technique used in this research is Library Research.

FINDING AND DISCUSSION

Application of the Imposition of Compensation in the Form of *Moratorium* Interest as a Legal Effect in Default Based on Indonesian Legislation

An agreement or contract is a series of agreements made by each of the parties to bind themselves to each other (Atmoko, 2022). Article 1234 of the Civil Code states: "The obligation is shown to give something, to do something, or not to do something". According to Subekti, the definition of an engagement in Book III of the Civil Code is a legal relationship or regarding property wealth between two people, which gives one the right to demand something from the other, while the other person is obliged to fulfill the demand (William, & Hadiati, 2021). At the implementation stage of the agreement, the parties must carry out what has been promised or what has become their obligation in the agreement (Nurdianto, 2018).

In the event of a default that is then resolved through litigation, a creditor has the right to demand compensation or moratorium interest from the debtor. In deciding the case, a judge must consider the existence of compensation. The concept of compensation contained in the Indonesian Civil Code is as follows. a. Costs b. Loss (in the narrow sense) c. Interest (Shellyn, 2016). One of them is in a case that occurred between Sri Mulyawati as the Plaintiff against PT Harma Jalesveva as the Defendant and Real Estate Indonesia (REI) as the Co-Defendant who bound themselves in a sale and purchase agreement for two apartment units. The agreement was contained in the Agreement of Sale and Purchase (PPJB) No. 541/PPJB/HJ-PDLG/LGL/06/2015 and PPJB No. 542/PPJB/HJ-PDLG/LGL/06/2015, both dated June 03, 2015.

Initially, the Plaintiff placed an order for two apartment units with the Defendant on January 19, 2014, with a cash payment system in stages. The Plaintiff successfully completed payment for the purchase of two apartment units within a time span of 18 months from the signing of the apartment reservation letter. Annex II of the PPJB for apartments 1 and 2 stated that Defendant was obliged to complete the construction and hand over the two apartment units by June 2016, however at the time the lawsuit was registered, Defendant had still not handed over the two apartment units ordered by Plaintiff. Both parties have agreed to a penalty for delay in payment of the purchase of the two apartment units as well as in the completion of their construction in PPJB 1 and PPJB 2. This is stated in Article 5 paragraph (2) and paragraph (3) of PPJB. According to J. Satrio, there are several forms of default, including:

- 1) Does not fulfill the achievement at all
In connection with the debtor who does not fulfill his performance, it is said that the debtor does not fulfill the performance at all.
- 2) Fulfilling achievements but not on time
If the debtor is considered to be able to fulfill their performance, the debtor is considered to fulfill the performance but not on time.
- 3) Meets the milestone but is inappropriate or erroneous
If the debtor fulfills the performance but is mistaken and the mistake cannot be corrected, then the debtor is said not to fulfill the performance at all.

In the Decision related to the default lawsuit filed by the Plaintiff, the Panel of Judges considered that in the Sales and Purchase Agreement (PPJB) between the Plaintiff and the Defendant, the completion of construction was scheduled for June 2016 plus 180 days or 6 months, so the Defendant should have handed over the 2 apartment units to the Plaintiff at the end of 2016. However, in its duplicates, Defendant stated that the

completion of construction and delivery of the new apartments would take place at the end of 2017. Therefore, the Panel of Judges thought that Defendant did not fulfill its agreement in the PPJB between Plaintiff and Defendant because it did not hand over the 2 apartment units by the end of 2016. The Panel of Judges was also of the opinion that Defendant had committed default (breach of promise) for not delivering the 2 apartment units in accordance with the agreed time so that Plaintiff's claim in relation to petitem points 2,3,4 should be granted.

According to Salim HS, in the event of a default, the party must first send a summons. If the summons is ignored, then the creditor has the right to resolve the matter in litigation, which is then decided by the judge in the case. To be declared in default, it must be through a Court Decision that has permanent legal force (Pasaribu, 2022). In the aforementioned Decision, the Defendant was legally proven to be in default. Because of the default, then according to Salim HS, the Plaintiff has the right to sue the Defendant with the following matters:

- 1) Creditors may request fulfillment of performance-only
- 2) Creditors can demand performance along with compensation from debtors, this is based on Article 1267 of the Civil Code.
- 3) Creditors may sue and seek damages, but only for damages due to delay.
- 4) Creditors can demand the cancellation of the agreement
- 5) The creditor can demand cancellation accompanied by compensation to the debtor, the compensation is in the form of payment of fines.

In the decision, the Panel of Judges also considered rejecting the petitem related to compensation for morator interest. This is based on the legal requirements of the agreement stipulated in Article 1320 of the Civil Code. The article states that all agreements, including compensation related to delays, must be contained in an agreement between the two parties. When the terms of the agreement are fulfilled, the agreement becomes valid and has the same legal force as the law, in accordance with Article 1338 of the Civil Code. Therefore, the ruling confirms that the terms of the agreement are the basis for legal judgment, and the parties involved must comply with the obligations and rights stated in the valid agreement. Although the late fee agreed in the PPJB was granted by the Panel of Judges in their Decision, the request for morator interest compensation was rejected because morator interest was not agreed in the PPJB. Then the Plaintiff appealed to the DKI Jakarta High Court. In its consideration, the DKI Jakarta High Court rejected the request for compensation for morator interest for the same reason that morator interest was not stipulated in the agreement between the Plaintiff and the Defendant, the consideration was written in the High Court Decision Number 443/2018/PT DKI.

After the rejection of the request for morator interest compensation in the Decision of the Court of First Instance and the DKI Jakarta High Court, the Plaintiff filed an appeal to the Supreme Court. In its consideration, the panel of judges in the Cassation Decision granted the Plaintiff's cassation request regarding the imposition of morator interest of 6% per year on the grounds of justice. This judge's consideration became the difference between the Cassation Decision and the previous decision. The panel of judges stated that there was an imbalance between Plaintiff as the buyer and Defendant as the seller, because if Plaintiff was late in paying the sale and purchase price then Plaintiff would be fined one per mile every day without any limit. Plaintiff was also several days late in paying the installment and Defendant immediately charged Plaintiff a late fee. Therefore, for the sake of justice and balance, the Plaintiff's petition as set out in paragraph 5 should be granted. This Cassation Decision upholds the request for morator interest compensation of 6% per annum submitted by the Plaintiff, even though it was not stipulated in the agreement between the Plaintiff and the Defendant.

In the second case, a debt and credit case occurred between Tusrilawati as the Plaintiff and Marzuki as the Defendant. The Defendant was a close friend of the Plaintiff, the Defendant borrowed Rp. 100,000,000 to build a two-storey shop from Plaintiff and used a land certificate as collateral for the loan with the agreement that Defendant would repay the loan after the shop was completed and sold by Defendant. However, after the construction of the shop was completed, Defendant did not repay the loan as promised. Plaintiff attempted to collect the Defendant, but the Defendant only repaid the loan slowly up to Rp. 38,000,000.- because he did not have the money to repay the loan. The remaining debt of the Defendant was not repaid for 8 (eight) years from 2008 to 2016.

This explains that Defendant has made a default in its agreement with Defendant based on the First Level Decision Number 5/Pdt.G/2019/PN.Bna. In his lawsuit, the Plaintiff also requested compensation in the form of the implementation of the agreement, namely the repayment of debt payments and immaterial compensation worth Rp. 250,000,000.- as the profit expected by the Plaintiff in the future. Then related to compensation in the form of implementation of the agreement and immaterial compensation in its decision, the Panel of Judges evaluated that the Defendant had been declared negligent in carrying out its debt obligations to the Plaintiff over a long period of time, where there was a significant shift in currency values and losses experienced by the Plaintiff. This led the Panel of Judges to conclude that the Defendant should be liable to pay immaterial damages. However, the Panel of Judges disagreed with the value proposed in the petitum of the Plaintiff's lawsuit, to calculate a reasonable immaterial loss that can be charged to the Plaintiff is equated with the profit that would have been achieved by the Plaintiff if the remaining debt of Rp62,000,000.00 was deposited by the Plaintiff, namely getting a profit in the form of deposit interest, which in general in banks each year is around 10% / month so that the reasonable immaterial loss charged to the Defendant is $\text{Rp}62,000,000.00 \times 10\% \times 8 \text{ years}$, namely an amount of Rp 49,600,000.00. Despite this, the Panel of Judges concluded that the petitum was reasonable enough to be granted but with a smaller immaterial loss value than that contained in the petitum of the Plaintiff's lawsuit.

In further proceedings at the Appeal Level, the Court of Appeal Judges analyzed the consideration of immaterial damages requested by the Plaintiff. Based on the decision, the Plaintiff did not specify the amount of loss suffered, and interest was not agreed upon by both parties. Therefore, the Panel of Judges considered applying the imposition of morator interest of 6% per annum on the remaining debt of the Defendant, starting from the time this case was registered. This is stated in the Court of Appeal Decision Number

In both decisions the Judges attempted to draft fair decisions, ensuring that the rights and obligations of both parties were recognized and considered. In essence, justice is the main foundation in the formation of legal decisions. Judges give careful consideration, taking into account the rights and obligations of each party involved. Aristotle divided justice into two, namely distributive justice (*iustitia distributive*) and corrective justice. Distributive justice is justice that demands that everyone gets what they are entitled to, so it is proportional. Here, what is considered fair is if everyone gets what they are entitled to proportionally (Nasution, 2014). The same proportion will be given to the same people, otherwise, people who are not the same will certainly get a different distribution, so that everyone is treated the same for the same thing and treated differently for different things (Suliantoro, 2018).

In the legal process, the success of a lawsuit related to late fees or morator interest does not always depend on the existence of a written agreement. The absence of a written agreement is not an absolute obstacle to a lawsuit being accepted or not by the judge. Even though the party filing the lawsuit has submitted the matter to the District Court, the trial judge has a central role in determining the verdict. The judge has the authority to determine whether a lawsuit can be granted or not, regardless of the existence of a written agreement. Even if a person has filed a lawsuit based on legal

provisions, the judge has the authority to reject the lawsuit if it is deemed unreasonable. The success of a lawsuit is not only determined by the existence of a written agreement but also by the judgment and discretion of the judge on duty. This shows the flexibility in the judicial process, where the judge has the authority to make a decision that is deemed the fairest based on the facts and arguments of the Parties in the trial.

The benchmark for granting a lawsuit related to late fees or moratoire interest depends based on the lawsuit or arguments presented by the Parties at trial. If the lawsuit or posita submitted has been explained properly and correctly, then the Judge has the authority to grant the lawsuit or posita. However, the laws governing late fees or moratoire interest may still be ambiguous or irrelevant, creating a gray area (William & Hadiati, 2021). This condition makes the interpretation of the law more subjective, and the Judge's decision can be influenced by legal considerations and arguments presented by the parties in the trial. In this case, whether or not the lawsuit is granted can be relative depending on the legal interpretation applied by the Judge.

Legal Certainty of the Application of the Imposition of *Moratoire* Interest as a Legal Effect in Default

Normative legal certainty is when legislation is made and promulgated with certainty because it regulates clearly and logically, it will not cause doubts due to multiple interpretations so that it does not clash or cause norm conflicts. Norm conflicts arising from the uncertainty of laws and regulations can take the form of norm contestation, norm reduction, or norm distortion. Order in society is closely related to the element of certainty in law because certainty is the main foundation of order itself. Regularity becomes one of the reasons for individuals to live with certainty because they can carry out their activities in community life clearly and regularly (Kusumaatmadja, & Sidharta, 2000).

The purpose of the law is not only to ensure justice but also to create legal certainty. Legal certainty is closely related to legal effectiveness. Guarantees of legal certainty will arise when the state has adequate and effective means of implementing existing regulations. For the creation of legal certainty, there needs to be rules that are general or generalizing. The generalizing nature is certainly contrary to the element of justice because justice demands that everyone be given according to their share (*sum cuique tribuere*).

Gustav Radbruch said that a good law is when it contains the values of justice, legal certainty, and usefulness. The certainty aspect points to the law actually functioning as a rule that is obeyed. The aspect of justice points to equal rights in law. Meanwhile, the aspect of legal expediency points to promoting goodness in human life. This theory of legal mind by Gustav Rudbruch is the main theory used in dissecting universally the issues raised, which are then dissected and concretized using supporting theories from the main theory such as the theory of norm levels by Hans Kelsen, the theory of justice by John Rawl and the theory of legal protection by Phillipus M. Hadjon (Nuryawan, & Sadnyini, 2018). Although all three are basic legal values, each value has different demands from one another, so that all three have the potential to conflict with each other and cause tension between the three values.

In the first case, namely the default case that occurred between Sri Mulyawati as the Plaintiff against PT Harma Jalesveva as the Defendant and Real Estate Indonesia (REI) as the Co-Defendant who bound themselves in the sale and purchase agreement of two apartment units, the Plaintiff as the buyer filed a lawsuit based on the delay in the delivery of two apartments by the Defendant as the seller for two years. In his lawsuit, Plaintiff requested compensation from Defendant in the form of delivery of the apartment, payment of a fine of 1 percent per day at a maximum of 3% of the price of

the apartment, and morator interest of 6% per year. District Court Decision Number 390/Pdt.G/2017/PN.Jkt.Sel The panel of judges decided to impose a penalty on Defendant in the form of The continuation of the agreement between the two parties, in other words, Defendant must hand over the apartment to Plaintiff, and Defendant must pay a fine of 3% of the price of the apartment multiplied by two to the Plaintiff. However, the Plaintiff's claim related to morator interest compensation of 6% per year must be rejected because the Panel of Judges considered that this was not included in the agreement. The decision was strengthened by the results of the Plaintiff's appeal, namely the High Court Decision Number 443/Pdt/2019/PT.DKI.

In the decision, the judge only prioritized legal certainty without assessing other elements to achieve justice and expediency. This shows that although the decision fulfills the aspect of legal certainty, it does not proportionally take into account justice for the Plaintiff and expediency in upholding the law. The judge's decision in resolving a case is expected not only to consider statutory provisions but also to pay attention to the principles of justice and expediency. Consideration of justice, expediency, and legal certainty must be implemented thoroughly to realize good law enforcement (Margono, 2019). The plaintiff filed an appeal to the Supreme Court, and the panel of judges in its consideration granted the plaintiff's appeal regarding the imposition of morator interest of 6% per year on the grounds of justice. Cassation Decision Number 2031 K/Pdt/2019 applies Article 1320 of the Civil Code and Article 1250 of the Civil Code as the basis for legal considerations in the Decision.

In evaluating legal decisions, Radbruch emphasized three main goals: justice, expediency, and legal certainty. The court in the decision applied Articles 1320 and 1250 of the Civil Code to achieve legal certainty by following clear rules. Legal considerations are based on the principle of proportionality justice, which demands a match between the sanction and the offense committed. In the context of expediency, this decision provides guidance for the public to understand legal consequences and resolve disputes appropriately. It also ensures that the law is implemented properly and appropriately, increasing public confidence in justice and legal certainty. Thus, Cassation Decision Number 2031 K/Pdt/2019 reflects an effort to pay attention to the principles of justice, expediency, and legal certainty in resolving legal disputes.

The second case is a default case between a debt and credit case that occurred between Tusrilawati as the Plaintiff and Marzuki as the Defendant. The Defendant borrowed money worth Rp. 100,000,000.- but for 8 (eight) years the money returned was only worth Rp. 38,000,000.- while the remaining Rp. 62,000,000.- has not been paid by the Defendant. In his lawsuit, the Plaintiff requested compensation in the form of the return of the remaining debt and immaterial compensation due to the long-term delay in debt payment.

In District Court Decision Number 5/Pdt.G/2019/PN.Bna the panel of judges granted the request for compensation for the return of the remaining debt and immaterial compensation with the consideration that the panel of judges did not agree with the value proposed in the petitum of the lawsuit, but in legal considerations, it was stated to calculate reasonable immaterial losses that could be charged to the Plaintiff was equated with the benefits that would be achieved by the Plaintiff if the remaining debt of Rp62.000,000.00 was deposited by the Plaintiff, namely getting a profit in the form of deposit interest, which in general in banks each year is around 10% / month so that the reasonable immaterial loss charged to the Defendant is $Rp62,000,000.00 \times 10\% \times 8 \text{ years} = Rp49,600,000.00$ (forty-nine million six hundred thousand rupiahs).

The decision emphasizes the achievement of justice but is lacking in explicitly stating the legal basis, which may result in a lack of legal certainty. Legal certainty is a key objective in the judicial system, which requires clarity and certainty in the legal basis used. This lack of clarity can make it difficult to understand and apply decisions and can lead to uncertainty and confusion in the community. To increase public confidence in the

justice system, it is important for judges to clearly state the legal basis used in deciding a case, so as to achieve the desired justice and legal certainty. The purpose of law is not only to ensure justice but also to create legal certainty, legal certainty is closely related to legal effectiveness. The guarantee of legal certainty will arise if the state has adequate means and effectiveness to implement existing regulations.

The purpose of the law is not only to ensure justice but also to create legal certainty. Legal certainty is closely related to legal effectiveness. Guarantees of legal certainty will arise when the state has adequate and effective means of implementing existing regulations. For the creation of legal certainty, there needs to be rules that are general or generalizing. The generalizing nature is certainly contrary to the element of justice, because justice demands that everyone be given according to their share (*sum cuique tribuere*) (Aveldorn, 1990).

The Defendant then filed an appeal to the Banda Aceh High Court, in the High Court Decision Number 55/Pdt/2019/PT.Bna, the panel of judges stated that the Plaintiff could not clearly detail the costs and losses he had suffered. Therefore, the judges decided to only consider the interest aspect as a component of reimbursement that could be calculated with more certainty. As interest was not agreed in the agreement, the panel of judges decided to consider moratour interest, which amounted to 6% a year of the Defendant's remaining debt. This moratour interest was applied from the time the case was registered at the Banda Aceh District Court. The panel of judges tried to carefully consider the elements that could be calculated with certainty in granting the Plaintiff's claim, although not all aspects of the loss could be explained in detail.

With a clear legal basis in this decision, the judges stated that they had tried to fulfill legal certainty. Thus, this decision reflects the efforts of the panel of judges to balance justice for the injured party, expediency in providing reasonable compensation, and legal certainty by referring to the applicable legal provisions with certainty. Legal certainty is a justiciable protection against arbitrary action which means that a person will be able to obtain something that is expected under certain circumstances (Prayogo, 2016).

In the judicial process, it is important for judges to strike the right balance between legal certainty, a sense of justice and expediency. Legal certainty is a very important cornerstone in the judicial system, as it provides clear guidelines for the public on what to expect from the law and how the law will be applied in specific cases. However, legal certainty should not be obtained at the expense of the sense of justice, which is the essence of justice itself. But giving too much importance to the sense of justice can also be at the expense of legal certainty, as a subjective assessment of what is fair for one party may not be the same as that for another party or in a different case. Achieving a balance between legal certainty and a sense of justice is therefore key to an effective justice system.

CONCLUSIONS

Based on the explanation above, the author concludes the imposition of moratour interest in the two cases above. In the case between Sri Mulyawati against PT Harmas Jalasveva, the imposition of moratour interest is applied as a means of fulfilling justice by balancing the offense and punishment. Whereas in the case between Tusrilawati and Marzuki, moratour interest was applied as compensation or immaterial compensation for late payment of debts made by the Defendant.

In essence, the imposition of moratour interest can be applied as a legal consequence in default even without an agreement regarding late fees by the parties to the agreement. The imposition of moratour interest can also be applied as a late penalty for payments that do not determine the amount of the penalty. However, in the event

that it is not agreed, the application of the imposition of morator interest must be based on a Court Decision, in other words, it must be submitted in a lawsuit and decided by the Judge who examines the case.

The cassation decisions from the two cases above apply the imposition of morator interest as a legal consequence in default. This confirms that the imposition of morator interest achieves legal certainty, as it is based on clear rules in civil law, specifically Article 1250 of the Civil Code. As such, the decisions provide definitive guidance on how the law will be applied in similar cases in the future.

In both Cassation Decisions, the imposition of morator interest can also be seen as an attempt to achieve justice. Even though the late fee was not agreed upon beforehand, the imposition of morator interest is a fair compensation to the injured party for the late payment made by the other party. Therefore, the application of morator interest as a penalty can also provide tangible benefits to society. It creates a balance between the interests of the litigants and the public interest, as it provides a warning to business people or other parties to comply with their contractual obligations in a timely manner. In essence, the application of the imposition of morator interest in both cases demonstrates equity in the application of the legal basis without neglecting justice and expediency, thus achieving a balance in achieving legal objectives according to Gustav Radbruch's theory.

REFERENCES

BOOKS

- Aveldorn, Van. (1990). *Introduction to the Science of Law* (Twenty-fourth printing). Translation of *Inleiding Tot De Studie Het Nederlandse Recht* by Oetarid Sadino, Jakarta: Pradnya Paramita.
- Harahap, M. Yahya. (1986). *Aspects of Agreement Law*. Bandung; Alumni.
- Kusumaatmadja, Mochtar, & Sidharta, Arief B. (2000). *Definition of Legal Science A First Introduction to the Scope of the Applicability of Legal Science*. Bandung: Alumni.
- Margono. (2019). *The Principles of Justice Benefit and Legal Certainty in Judges' Decisions*. Jakarta : Sinar Grafika.

JOURNAL

- Apriani, Titin. (2021). The Concept of Compensation in Unlawful Acts and Default and its Regulatory System in the Civil Code. *Ganec Swara Journal* Vol.15, (No.1), pp.929-934. <http://journal.unmasmataram.ac.id/index.php/GARA>.
- Atmoko, Dwi. (2022). Application of the Principle of Freedom of Contract in a Standard Agreement. *Journal of Bina Mulia Hukum*, Vol.11, (No.1), pp.82-92. <https://doi.org/10.37893/jbh.v11i1.308>.
- Hayati, Siti. (2020). Analysis of Dhaman (Compensation) for Defaulting Customers in Islamic Banking (Study on Murabahah Financing). *Syarikat: Journal of Islamic Economics*, Vol.3, (No.2), pp.1-6. [https://doi.org/10.25299/syarikat.2020.vol3\(2\).5018](https://doi.org/10.25299/syarikat.2020.vol3(2).5018).
- Nasution, Bahder Johan. (2014). Philosophical Studies on the Concept of Justice from Classical Thought to Modern Thought. *Yustisia Journal*, Vol.3, (No.2), pp.118-130. <https://doi.org/10.20961/yustisia.v3i2.11106>
- Nurdianto, Fauzan Thariq (2018). Payment of Compensation by the Debtor to the Creditor Due to Default in the Agreement Based on Article 1236 KUHperdata. *Journal of Lex Et Societatis*, Vol.6, (No.7), pp.58-65. <https://doi.org/10.35796/les.v6i7.21605>.
- Nuryawan, I Dewa Gede Oka, & Sadnyini, Ida Ayu. (2018). Reconstruction of Collective Labor Agreements in Law Number 13 of 2003 concerning Manpower. *Journal of Legal Analysis*, Vol.1, (No.2), pp.255-277. <https://journal.undiknas.ac.id/index.php/JAH/index>.

- Pasaribu, Samuel Wesley. (2022). Application of Law on Default of Accounts Payable Agreement (Case Study of Medan District Court Decision No. 24/Pdt.G.S/2020/PN Mdn). *Jurnalrectum*, Vol.4, (No.1), pp.447-466. DOI: <https://doi.org/10.24912/adigama.v4i1.10992>
- Prayogo, R. Tony. (2016). Application of the Principle of Legal Certainty in Supreme Court Regulation Number 1 of 2011 concerning the Right to Material Test and in Constitutional Court Regulation Number 06 / PMK / 2005 concerning Procedural Guidelines in Law Testing. *Indonesian Legislation Journal*, Vol.13, (No.02), pp.191-201. <https://doi.org/10.54629/jli.v13i2>.
- Slamet, Sri Redjeki. (2013). Claims for Damages in Unlawful Acts: a Comparison with Default. *Lex Jurnalica*, Vol.10, (No.2), pp.107-120. DOI: <https://doi.org/10.47007/lj.v10i2>.
- Safitri, Elsi, & Tupiqqurrahman. (2024). Analysis of Compensation Claims Due to Default in the Procurement Contract for NICU and Neurosurgery Support Facilities. *Journal of USM Law Review*, Vol.7, (No.1). pp.144-162. <https://journals.usm.ac.id/index.php/julr/article/view/8120/3789>.
- Shcherbanyuk, Oksana, Gordieiev, Vitalii, & Bzova, Laura. (2023). Legal Nature Of The Principle Of Legal Certainty As A Component Element Of The Rule Of Law. *Juridical Tribune*, Vol.13, (Issue 1), p.21. DOI: 10.24818/TBJ/2023/13/1.02.
- Shellyn, Jennita Tesa Christ. (2016). Consumer Rights to Compensation of Business Actors Who Default in Indonesian Online Contracts. *Journal of Atma Jaya University*. pp.1-10. <http://e-journal.uajy.ac.id/id/eprint/11568>
- Subangun, Andhi, Supanto, & Widodo. (2019). The Implementation of Pretrial Object Extention on Suspect Determination After the Constitutional Court Ruling No.21/PUU-XII/2014 Viewed from the Perspectives of Justice and Legal Certainty. *International Journal of Research and Innovation in Social Science (IJRISS)*, Vol.III, (Issue I). pp. 323-331. <https://ideas.repec.org/a/bcp/journal/v3y2019i1p323-331.html>.
- Suliantoro, Bernadus Wibowo, Runggandini, Caritas Woro Murdiati. (2018). The Concept of Social Justice in Diversity According to Karen J. Warren's Thought, Response: *Journal of Social Ethics*, Vol.23, (No.01), pp.39-58. <http://ejournal.atmajaya.ac.id/index.php/respons/article/download/467/160>
- Umar, Dhira Utari. (2020). Application of the Consensualism Principle in the Sale and Purchase Agreement According to the Civil Law Perspective. *Lex Privatum* Vol. VIII, (No.1), pp. 38-48. <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/28519>.
- William, Stephen, & Hadiati, Mia. (2021). Consideration of Judges in Refusing Compensation for Moratour Interest Based on Article 1250 of the Civil Code in the Sale and Purchase Transaction Between Pt Elmecon Multikencana and Pt Aes Agriverde Indonesia (Study of Decision Number: 46/Pdt.G/2018/Pn.Jkt.Pst.). *Adigama Law Journal*, Vol.4, (No.1), p.447. <https://doi.org/10.24912/adigama.v4i1.10992>

THESIS

- Ariandi, M. Arif. (2009). Judges' Consideration in Determining the Loan Interest Rate in Accounts Payable Dispute (Case Study in Surakarta District Court). Thesis: University of Muhammadiyah Surakarta.
- Faustin, Austin. (2022). Default in Debt and Credit Agreement in Supreme Court Decision Number 885 K/Pdt/2020. Thesis: General Soedirman University.