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NE BIS IN IDEM not Attached at the Suit of the Verdict of the Civil Code that is Declarative

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Abstract:- A lawsuit in the civil procedure law there are two types of lawsuit voluntair and lawsuit contentiosa. The verdict against a lawsuit voluntair is a decision that is declarative. While the verdict of the lawsuit contentiosa consists of the ruling is declarative, the decision is constitutive, the verdict is kondemnator, of some kind of court verdict, the only verdict that is kondemnator that have permanent legal force, which have the nature of forcing the losing party to submit or empty the thing which is the object of litigation to the winning side, better submit its case voluntarily or by way of execution which was implemented by the court. While the decisions which are declarative and constitutive that have permanent legal force can not be implemented execution with the reasons for decisions which are declarative only declare something a state, in which case the state is a state that is valid according to the laws and the decisions which are constitutive only create a state of the new law, there is not a state of nature forcing the losing party to surrender or vacate its verdict. Therefore the solution that the ruling is declarative dankonstitutif can be executed the winning party can file a new lawsuit in the court of law which has to examine and decide the case with a lawsuit necessarily just adding and/or lists their petition judgment (kondemnatoir), so that the decisions which are declarative can be conducted by way of execution, but denganmemperhatikan carefully postulates a new lawsuit, so that is not attached to the principle of ne bis in idem.

Keywords*: Lawsuit, the verdict of the civil code are declarative, Ne bis in idem.*

I. INTRODUCTION

In the community there are a range of color of law,custom, regulation of religion, tradition, rules of association, which works all of it in some ways restricts human behavior, and overcome the desires of the true. Desire and ideals to a certain extent adjusted by the network-network surveillance this complex.All the reasons for compliance with law can not be used as a determination only to determine human behavior. One group for example that there are at the time legal or government benefit they consider a violation of the law as a disgraceful act but they will change his attitude if things turn around. In certain circumstances they maintain, that not obedient to the law mean betrayal, and in other circumstances they were sympathetic to the violators of the law.

As human beings have a habit to be obedient to the law. Aristotle said that the law has no power to order that the person be obedient to the law, apart from the power generated by the habit of people obedient. People obey because he is a social creature, in other words because he is a creature that disosialkan i.e. trained and educated according to the ordinances of the community. But although humans as social beings, but human beings not be separated from his desire to get something for the treasures of wealth, which is sometimes the desire to obtain wealth is acquired by way detrimental to the interests of other human beings. In this condition the importance of the role of law as an instrument to restrict human behavior in the arbitrariness wenangnya against other human beings. Present law in principle is not to hurt a human but the presence of law to govern the life of man in the behaving with each other or with other words the law is not fully guide human action, but rather more are keep the human remains within certain limits. Basically according to the content of law can be distinguished into 2 (two) kinds, namely public law and private law (civil law). Public law is the legal provisions that regulate in the public interest, while the civil law that regulates the interest that is civil. The word civil is derived from the word pradoto (Ancient Javanese language) which means to quarrel or dispute, so that letterlijk can be said that the civil law means the law of quarrels and legal disputes.

Written code of law prevailing in Indonesia at this time is provision of products of Dutch east Indies government imposed based on the principle of concordance, it means that the laws applicable in the country colony (Dutch east Indies) together with the provisions of applicable law in the Netherlands.Civil law that applies when it is based on Article II of the Transitional provisions of the 1945 CONSTITUTION. Article II of the AP of the 1945 CONSTITUTION reads : “All State agency rules and regulations are still directly applicable has been held that according to the CONSTITUTION of this”. This means, that the provisions existing at the time of the Dutch east Indies, in particular the civil law, still in force in Indonesia. The goal is to prevent the occurrence of the vacancy law (rechtvacuum), in the field of civil law. Thus, it can be said that B.W now this applies to the nation of Indonesia as long as not contrary to the 1945 CONSTITUTION, Pancasila, the laws and regulations as well as needed.

In line with that of civil law is the overall rules of law which regulate relations between subjects of law which is one with the subject of another law in familial relationships and in the association community.But the rules of law governing human relationships, the sometimes violated by

the man himself. A result of violations of the rules of the law, can result in losses that are experienced by other human beings, then by itself there was a dispute between the man himself.

In the case of the occurrence of such disputes, the man in maintaining the rights of keperdataanya should not be a vigilante. But man must be obedient to the law which is applicable as an instrument for resolving such disputes. Dispute settlement is carried out through the institutions of the law, organizer of the legal profession is organized towards the maturation and success of law enforcement. Attachment organizational this is a must for the organizers of the legal profession for in this attachment, law enforcement officers faced on the exam compliance and integrity of the moral as well as intellectual ability. In line with that of civil law is the overall rules of law which regulate relations between subjects of law which is one with the subject of another law in familial relationships and in the association community.But the rules of law governing human relationships, the sometimes violated by the man himself. A result of violations of the rules of the law, can result in losses that are experienced by other human beings, then by itself there was a dispute between the man himself.

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Law enforcement also relates to the discovery of the law, to establish the law of the concrete between the parties, the application of the law is not the right word, nor is it the formation of the law or creation of law, but rather the old word “legal discovery”. The law was there but it must be found.In Indonesia, the discovery of law is the authority of judicial power as referred to in article 5 paragraph (1) of Law Number 48 year 2009 on Judicial Power, which insists that the “Judge and constitutional Judge is obliged to dig, follow, and understand the legal values and sense of justice that live in the community”.Then article 10, paragraph (1) of Law Number 48 year 2009 on Judicial Power, which insists that “the Court is prohibited from refusing to examine. Hear and decide a case filed with the pretext that the law does not exist or is less clear, but obliged to examine and judge”. Furthermore, article 5 paragraph (1) of Law Number 39 year 1999 on Human Rights, affirms : Any person recognized as a man of personal right to demand and obtain treatment as well as protection of the same in accordance with the dignity of humanity in front of the law.

In the strife of the civil code, different the handling is with the criminal cases, where the procedure of handling a criminal through the police, the prosecutor's office and the court, while disputes of civil parties are harmed as a result of the actions of the other party, file a direct suit in district court to get a settlement which has a legal certainty, justice and expediency above rights keperdataannya that has been infringed. In the case filed a lawsuit in the court of law of the country, the party who filed the lawsuit in addition to load posita (basic) lawsuit, it must also load the things that are required (the petition) related to its interests to be granted by the court.

The importance of loading things that are required (the petition) in the lawsuit, so the court in examining and deciding the case is not attached to the principle of ultra petita. What is meant by the principle of ultra petita is the Judges are forbidden to grant something that is not asked (sued) in a lawsuit or in excess of that demanded in the lawsuit. The legal consequences of a court decision attached to the principle of ultra petitadapat canceled, in accordance with the Jurisprudence of the Supreme Court Number : 1001 K/Sip/1972 which prohibits the judge granted the things that are not required or in excess of what is requested. The ban must be adhered to by the judge, because the judge who violated the principle of ultra petita, together with the violation of the rule of law, for the following reasons:

- Because the action was not in accordance with law, on the case with the principle of the rule of law, all actions of judges must be in accordance with the law (accordance with law),
- The actions of the judge that granted in excess of that required, real-real beyond the limits of the authority given in article 178 paragraph (3) HIR to him, whereas in accordance with the principle of the rule of law, anyone should not perform actions that go beyond the limits of his authority (beyod the powers of his authority).

In addition to the above, there are many more other things which can result in a lawsuit is not granted, or a verdict can be overturned by the court in accordance with their respective authority through the efforts of ordinary law or the efforts of extraordinary law.In connection with the foregoing, then it is a decision that has force of the law, the winning party can apply for execution in the region of law court has to hear and adjudge the case,but in fact not all the verdict of the court which have force of the law can be executed. A court ruling has force of the law can not be executed or called by Non eksekutabel is a decision that is declarative or konstituif.

While the court decisions that have permanent legal force that can be carried out in execution of a verdict that is kondemnatoir (judgment). A verdict that is kondemnatoir can be directly carried out the execution by the court because the verdict is kondemnatoir is a putusanyang is the judgment that forces the losing party to submit something objects or goods that are the object of a crime.

In the civil Code, force majeure(force majeure or overmacht) arranged in Pasal1244 namely: “if there is a reason for it, the berutangharus sentenced to reimburse the cost, loss and bungabila he does not prove, that it is not implemented or did not at the time tepatdilaksanakannya

agreement that, due to sesuatuhal don't terdugapun don't dapatdipertanggungjawabkan him, kesemuanyaitupun if bad faith is not in him. In addition, there are other article that set keadaanmemaksa namely in Article 1255 of the civil Code states: "it is Not the cost, loss, interest should replace, if because of force majeure or suatukejadian accidental, the berutangberhalangan give or do something that is required, or because the same things had done the deed that is forbidden". Associated with a verdict that is not kondemnatoir such, the issue of whether the verdict is declarative not be carried out in execution? Nevertheless, because of the presence of civil law in the community is a solution that can provide a certainty for everyone to get the rights keperdataannya. According to the author, of such negligence is already a human nature that does not escape from the mistakes and negligence in both the preparation of the demands in the lawsuit or in the case of the preparation of a ruling made by the judge in its verdict.

Indonesia is a country of law. In order mewujudkanIndonesia u.s. state law, it is mandatory the construction of hukumnasional done in a planned, integrated, and sustainable system of national law which guarantees the protection of the rights and obligations of all the people of Indonesia. To meet the needs of the community on legislation, need to made regulations regarding the establishment of laws and regulations that are implemented with the ways and methods that is definitely, raw materials, and standards that bind all agencies authorized to make regulations.Article 28A of 1945 constitution states that every person has the right to life and the right to defend his life and existence. This as a guarantee of the State against the person or people who reside in the territory of Indonesia, because for a country or nation should be able to protect each of its citizens from various threats and acts of violence both from within the community itself or from outside that can harm the life of every human being itself. The presence of civil law as the right instruments to complete a verdict that is declarative, so that it can be executed by the court, by way of filing a lawsuit directly through a new lawsuit in a court that has been examining and deciding the case or file a legal attempt outside the usual review. In the case of filing a new lawsuit over the ruling dekladatif that have permanent legal force, the need for circumspection because of the principle of a case which has been examined and decided by the court and the verdict has obtained permanent legal force can not be asked back due to the inherent principle of Ne bis in idem, thus also in the case filed an extraordinary law over the decisions which are declarative should pay attention to the time period to file legal incredible.

Based on the description above, the writer intends to do research regarding a lawsuit over the verdict of the civil code that is declarative, not attached to the principle of ne bis in idem.

1. The Formulation of the Problem

In connection with the background of the above, then that becomes the problem formulation in this research, namely how a lawsuit over the verdict of the civil code that is declarative is not attached to the principle of ne bis in idem?

2. The purpose of the research

The purpose of the author to do this research is to find out how a lawsuit over the verdict of the civil code that is declarative is not attached to the principle of ne bis in idem?

II. RESEARCH METHODS

This writing is using the Literature review (library research).

A. The Study of Theory

1. The lawsuit in general

Civil procedural law also called civil law is formal, namely all legal norms that define and regulate the way how to carry out the rights and obligations of the civil code as stipulated in the civil law materially. In terms of examining and deciding a civil case is guided by the code of civil procedure, which recognizes two types of lawsuits that can be examined and decided by the court that the lawsuit petition (voluntair) and a lawsuit contentiosa.In line with the decision of the Supreme Court of the republic of INDONESIA Number : 3139 K/Pdt/1970, in accordance with the provisions of article 2 of the LAW No. 14 1970, the principal task of the court is to examine and decide matters that are of dispute or jurisdiction. But the authorities also examined the case including the scope yurudiksi voluntair that lazin called the matter of the application. But that authority is limited to matters expressly specified by the legal regulation. Indeed, the jurisdiction expands the authority it up to on things that there is urgency. Even then, with the terms, not to decide cases voluntair which contain the dispute in the party to be disconnected for contentiosa.

A lawsuit petition (voluntair)

Petition or lawsuit voluntairadalah problems of the civil asked in the form of the application signed by the applicant or its representative addressed to the chairman of the district court, the petition which is the unilateral interests of the applicant that do not contain a dispute from the other party.

The hallmark of a petition or a lawsuit voluntair ie:

- The problem posed is the interest unilaterally only, that have that:
- Absolutely pure to resolve the interests of the applicant something about the problems that civil need legal certainty, for example a request for permission from the court to perform certain actions.
- Thus in principle, what is in question, the applicant, is not in contact with the rights and interests of other people.

Problems are applied for the adjustment to the chairman of the PN, in principle without dispute with the other party. Based on this size, is not justified petition concerning the settlement of disputes of rights or of

ownership and delivery as well as payment of something by other people or third parties.

- No other person or third party which is drawn as an opponent, but it is ex-party.

Absolutely pure and absolute one party or the nature of ex-parte. The petition for the benefit of the unilateral (on behalf of one party) or that is seen in the problem of the law (involving only one party to a legal matter) that was filed in that case, only one of the parties. Therefore, in the case of the court of examining and deciding a lawsuit petition (voluntair), should be checked out thoroughly and carefully the contents of a lawsuit petition, if the contents of a lawsuit petition does not contain the meaning of the disputes involving third parties, then it is very based on the law of torts the request can be granted, but if the claim petition that its contents are to contain dispute involving a third party, then suit the application very based on the law was rejected because according to the law judge granted a lawsuit the petition that its contents contain the dispute, then the judge has exceeded the limits of authority, as referred to in the ruling of the Supreme Court of the republic of INDONESIA Number : 130 K/Sep/1975 dated 5-July-1957, among others, stated the petition or Voluntair asked requests that the court deciding who the heirs and distribution of inheritance, already exceeded the limits of authority.

The legal consequences of a lawsuit is a request granted by the court, where the request contains the contents of the sengekta, then such determination may be cancelled, in line with the decision of INDONESIAN Supreme Court Number : 10 K/Pdt/1985 asserted, the verdict of the PN set the status of land rights through a lawsuit voluntair, invalid has no legal basis, because there are no provisions of law that authorize the PN to check the request as it is, so that since the original petition should be declared inadmissible. The difference between a lawsuit with the petition is that in the lawsuit there is a dispute or conflict that must be resolved and decided by the court. In a lawsuit there are one or more that “feel” that their rights or their rights have been violated, but a person who “feels” violated their rights or their right to it, don't want to willingly do everything that's asked of it. To determine who is right and is entitled to, is necessary the existence of a judge's ruling. Here the judges actually serve as judges who prosecute and adjudicate who among the parties is right and who is not true. While in the case of the so-called petition there is no dispute that under section 236a H.I.R. Here the judges only give their services as a labor state administration. The judge issued a determination or commonly called the verdict declarator, that is a decision that is set, explain the course.

In connection with the foregoing, the decision of or determination of the court on the application does not know a ruling or determination of the force of the law because it is very clear and bright in the petition there was never another party as opposed to resolve a dispute but only one-sided and therefore, it is based on the law of the other party can file a lawsuit contentiosa, if a result of a determination of the court is incurring losses to the other party.

a. *The Lawsuit Contentiosa*

In the law of civil procedure, the person who feels that his right was violated is called the plaintiff whereas for people who are drawn forward the court because he is violating the rights of a person or that person, called a defendant. The code of civil procedure indeed the early are set but if already used then its nature be a force.The lawsuit contentiosa this is what is meant by a civil lawsuit in practice. While the use of a lawsuit contentiosa, is patterned for the assessment toeritis to distinguish it with a lawsuit voluntair. In perudang, the term used is civil suit or litigation only.

- Article 118 paragraph (1) HIR use of the term civil lawsuit. However, in the later chapters, so-called lawsuit or sues alone (as in the article 119, 120 and so on.
- Article 1 of the Rv mention of (every process of the case...,starting with something permberitahuan lawsuit....). However, if the article was read overall, what is meant by a lawsuit is a civil lawsuit.

In addition to some of the problems that is not set in the H.I.R and R.B.g, if really felt necessary and useful for the practice of the court, can be worn the regulations contained in the Reglement of de Burgerlijke Rechtsvordering, abbreviated as R.V. for example, concerning the merger (voeging), assurance (vrijwaring), intervention (interventie) and rekes civil (request civiel). Therefore most of the rules of the code of civil procedure it is contained in H.I.R and R.B.g and pay attention, that the contents of both laws are virtually no different. Article the most important thing in the H.I.R after amended and supplemented, namely article 393 H.I.R is contained in Chapter fifteen that set about various-like rules. The article above is the article that is important, because it stated expressly that H.I.R applicable, but if really felt necessary in civil cases can be used other regulation that is more appropriate i.e. similar to the other regulations contained in R.V. Refer from the explanation above, what is meant by a civil lawsuit is a lawsuit contentiosa which contains the dispute between the parties reason together, ' an examination of the solution given and submitted to the court with the position of the parties:

- Filing the settlement of disputes referred to and act as a plaintiff (plaintiff = planctus, the party who institutes a legal action or claim),
- While drawn as the opposing party in the settlement, called and incorporated as a defendant (defendant, the party against whom a civil action is brought.

Thus, the hallmark of which is attached to a civil lawsuit:

- Legal issues submitted to the court contain the dispute (disputes, differences),
- A dispute occurs between the parties, most lacking between the two parties,
- Means a civil lawsuit is the party (party), with the composition of, one party to act and serves as the plaintiff and the other party is a resident as a defendant.

The lawsuit contentiosa or better known by the name of a civil lawsuit is a civil lawsuit containing the dispute between the parties berpekara that checks the solution given and submitted to the court where the party who filed the lawsuit are called and act as a plaintiff and the party which pulled in the lawsuit referred to and acting as defendant, the suit which based on the arguments/reasons of the law which contain the dispute. In the process of examination voluntair with a lawsuit contentiosa or a civil lawsuit, there are persamaanyaitu equally subject to the principle of evidence in courts, as follows:

1. Substantiation should be based on evidence that determined the law, namely article 164 HIR/Article 284 RBg/Article 1866 of the civil Code where it is affirmed about valid evidence consists of the above 1). Writing; 2). Testimony of witnesses; 3). Conjecture; 4). Recognition; 5). Oath;
2. The doctrine of the imposition of the evidentiary basis of article 163 HIR/Article 203 RBg/Article 1865 KUHPedata;
3. The value of the strength of evidence is valid must reach the minimum threshold of proof;
4. Valid as evidence only limited evidence that meets the terms of the formal and material conditions.

In addition to these similarities, there are also differences in the process of examination of a lawsuit contentiosa with voluntair in court, where the process of examination at the trial in the case voluntair does not require the enforcement of the principle of audi alteram partem and the principle of equal opportunity, because in accordance with the nature of the lawsuit voluntair only submitted by one party alone, but on the other hand, the principle of freedom of the judiciary and the principle of fair justice must still be upheld. Similarly, in the case of differences the form of the verdict of the court, where in voluntair decision shaped the determination that only contains a dictum that is the announcer while in the lawsuit contentiosa shaped verdict diktumnya more complex because it can contain dictum which is declarative, constitutive and kondemnatoir, which has permanent legal force.

2. The Verdict Of The Court

In accordance with the provisions of article 178 HIR, Article 189 of the RBG, if examination of the civil finish, the Judges due to his conduct deliberations and take a decision that will be dropped. The inspection process is considered finished, if he has taken the stage of the answer of the defendant in accordance with article 121 HIR, article 113 of the Rv, coupled with the replik of the plaintiff based on article 115 of the Rv, and duplik of the defendant and proceed with the process of the stage of substantiation and conclusion.

In the case of the Judges verdict in a case, it is obligatory on article 5 paragraph(1) of Law No. 48 year 2009 on Kekeuasaan of Justice stating that the Judge and the constitutional judge is obliged to dig, follow, and understand the legal values and sense of justice that live in the community. Then article 50 paragraph (1) of Law No. 48 year 2009 on Kekeuasaan of Justice confirmed the Verdict of the court in addition must contain the reasons and basis of the judgment, also contains certain articles of the regulations concerned or the source of the unwritten laws used as a basis to prosecute finally the decision of the Court on the subject matter and about the amount the cost, the additional is there a second party present at the time the decision was pronounced. Need to be explained that what is meant by the verdict in the description this is the judicial level of the first, he took a ruling by the judge that contains the settlement that is disputed. Based on the verdict, determined with certainty the rights and legal relations of the parties with the object of which is disputed.

Type-the type of Court Decision Based on the Nature

In the law of civil procedure, there are several types of verdict that can be handed down by the Judges by its nature, the most important of them as follows:

a. The Verdict Declarator/Declarative

The verdict declarator is that contains a statement or assertion about a situation or legal position solely. For example ruling that states the bond of a valid marriage, buy sell legitimate, the right of ownership over objects that disputed legitimate or not legitimate as belonging to the plaintiff and/or plaintiff is not legitimate, as the heirs or treasure cause is the inherited property of the plaintiff derived from the treasures of his parents. From the various examples above, the decision of who is the announcer or declarative (declaratory vonnis) is the statement the judge stated in the ruling that the imposition of the. The statement is an explanation or determination about something right or title or status. And that statement are listed in amar or dictum of the decision. With its statement, the ruling has been determine with certainty who is entitled to or who has a position over the disputed issues.

In connection with it, there is not a decision that is not or does not contain a declarator because if the lawsuit is granted, then the decision was preceded by amar declarator in the form of a statement, that the defendant declared to have committed an act against the law. And vice versa if the lawsuit is rejected, then the ruling is preceded by the statement that the defendant did not perform the deeds of the law and why the plaintiff is not entitled or does not have the status of a disputed issue.

b. The Verdict Declarator/Declarative

The verdict declarator is that contains a statement or assertion about a situation or legal position solely. For example ruling that states the bond of a valid marriage, buy sell legitimate, the right of ownership over objects that disputed legitimate or not legitimate as belonging to the plaintiff and/or plaintiff is not legitimate, as the heirs or treasure cause is the inherited property of the plaintiff derived from the treasures of his parents. From the various examples above, the decision of who is the announcer or declarative (declaratory vonnis) is the statement the judge stated in the ruling that the imposition of the. The statement is an explanation or determination about something right or title or status. And that statement are listed in amar or dictum of the decision. With its statement, the ruling has

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c. The Verdict Of The Constitutive

The verdict of the constitutive (constitutief vonnis) is the decision which ensure a state of law, be waived a state law or cause the state of the new law. For example, a judgment of divorce, a decision which waived the state law i.e. there is no longer a legal bond between husband and wife so that the verdict was waived the marital relations that exist, and together with it arise the state of the new law to the husband and wife as a widow and a widower. Actually almost no boundaries between the ruling declarator with constitutive. For example, the verdict of its constitutive declare the agreement void, basically amar containing the cancellation of the agreement is besifat declarative that contains the affirmation of a legal relationship or circumstances that is binding on the parties in the agreement was not valid therefore the agreement declared void.

d.The Verdict Kondemnator

The verdict Kondemnator is the verdict which download amar adjudication one of the parties litigants. The verdict of a character kondemnator is an indispensable part of amar declarative and konstitutif. It can be said amar kondemnator is the assessor with amar declarative or konstitutif, because amar is not able to stand on their own without preceded amar declarative stating how the legal relationship between the piihak. On the contrary amar the nature of the declarative to be able to stand on their own without amar kondemnator. Because it is not possible to punish the defendant to pay damages without first there amar declarative stating the defendant to do the act wanprestasi which raises the losses to the plaintiffs.

Therefore, amar verdict kondemnator as follows:

- Is a union which is not integral with amar deklarator, up amar deklarator is a conditio sine qua non or a condition absolute to discredit the verdict kondemnator,
- And the placement of amar deklarator in the verdict is concerned, must be placed ahead of amar kondemnator.

Features of the judgment of the court of the nature kondemnator, as follows:

1. Punish or order the “surrender” of an article;
2. Punish or order the “emptying” of a piece of land or house;
3. Punish or order the “unpack” a rise;
4. Punish or order the “do” a certain act (eg division of heritage);
5. Punish or order the “termination” of an act or situation;
6. Punish or order the doing of “payment” a sum of money.

1.1. Court Ruling Permanent Legal Force

The terms of a ruling of a lawsuit contentiosa have permanent legal force as follows:

1. Parties berperkaraterhadap the verdict of the first instance does not put forth the effort of ordinary law (appeal, cassation), in accordance with the period of time specified by law to it and/or on the decision of the first level the allotted time passing legislation to put forth the effort of ordinary law. For example Supreme Court decision No. 1743 K/Pdt/1983 against the case No. 396/Pdt/1986 PN Medan, explained that no party appealed, so the ruling has been obtained permanent legal force (res judicata). Furthermore, a new lawsuit with the parties, the object and the postulate of the same suit with case No. 396/Pdt/1986 the.
2. The appellate decision and/or ruling of law efforts outside of the usual review;
3. The verdict of the deed of peace for a civil case in court, pursuant to article 1858 of the civil Code, peace among the parties, the same powers as a judge's ruling that the death. This is confirmed in the last sentence of article 130 paragraph (2) HIR, that the verdict of the deed of peace have the same force as a verdict that has permanent legal force.

The strength of the verdict which has permanent legal force as follows:

1). The Binding Force
2). The Strength Of The Evidence
3). The power to be implemented

The implementation of a court verdict which has permanent legal force in civil cases is the authority of the first instance court to examine and decide the case, as referred to in article 54 paragraph (2) of Law No. 48 year 2009 on Judicial Power which states that the execution of court decisions in civil cases made by the registrar and bailiff led by the chairman of the court. Then paragraph (3) the court Decision is implemented with attention to the values of humanity and justice.

2. Ne bis in idem

In the process to sue sued in a civil case, the defendant has the right to reply to the lawsuit the plaintiff submitted to the defendant in court. The answer of the defendant may consist of 2 kinds namely;

1. The answers are not directly about the main case that the so-called block or throw an exception;
2. The answers are directly on the subject matter (verweer ten principles).

In line with that block and batahan asked in the form of an exception;

- Addressed to matters relating to the terms or the formality of the suit, i.e. if a lawsuit is filed, contain defects or formal violations which resulted in the lawsuit is not legitimate therefore the lawsuit can not be accepted;
- Thus, the objections raised in the form of an exception, not intended and not offend the cantankerous to the subject matter (verweer ten principale). Rebuttal or block

against the material of main case, filed as a separate section following exceptions.

The main objective of the filing of the exception, namely that the court terminate the inspection process without more checking subject matter of litigation. Termination requested through the exceptions order that that court:

- The decision is negative, that states a lawsuit can not be accepted (niet ontvankelijk);
- Based on the verdict of the negative, the case examination is terminated without offending the completion of the subject matter of the case.

Ne bis in idemdalam the code of civil procedure, one of the exceptions. Some have argued,the Term Ne bis in idem, known only in the field of criminal. Stipulated in article 76 paragraph (1) KUHPidana, which states a person should not be prosecuted twice for the same things if him by judge has sentenced a ruling which has obtained permanent legal force about it. The goal is that the ruler and the government not to repeatedly memidana someone over the events of the same criminal.

Although originally the term Ne bis in idemhanya known in the field of criminal, however, the term has been commonly used in the field of the civil code that called the exception of res judicata (exceptie van gewijsde zaak) under article 1917 of the civil Code. The essence of these provisions, said:

- A judge's ruling which has obtained permanent legal force, the power of the law and mengikatnnya limited just about the substance of the ruling.
- The suit (the demands) that are filed by the proposition (basic law) of the same and filed by against the same parties in the same relationship with the judge's decision that has force of the law, then in such a suit attached to elements of the Ne bis in idem or res judicata;
- Therefore, the suit should be declared unacceptable (Niet ontvankelijke verklaard).

In a civil case, to file a new lawsuit against the verdict which has permanent legal force, can melekatnyane bis in idem in a ruling that, if it had been the fulfillment of the terms specified in article 1917 of the civil Code, but these requirements are cumulative. If one of the terms in article 1917 of the civil Code is not fulfilled in the decision of the previous then it is not attached to the ne bis in idem.

III. DISCUSSION

A Lawsuit Over The Verdict Of The Civil Code That Is Declarative,Not Attached To The Ne Bis In Idem

1. The verdict on the lawsuit voluntair, not melekatNe Bis In Idem

The previous has been explained above, the verdict of the lawsuit voluntair is a decision or determination of the court that is both declarative and against the verdict or determination in a lawsuit voluntair not attached to the ne bis in idem,the decision or determination of such refuse or grant the lawsuit voluntair. Don't attach the ne bis in idem on the award or determination of the court against a lawsuit voluntair because the process of examination is one-sided and there is no dispute that is litigated, so that the decision is only valid and binding to the applicant. Not valid and not binding to any other person or third parties.

Therefore, decision or determination of the court against a lawsuit voluntair not valid and not binding on the other party or a third party, then if the verdict or determination of the cause harm the legal interests of the other party or a third party, open opportunities to other parties or such third party to file a lawsuit contentiosa, based on article 1365 of the civil Code, which asserts that every unlawful act that brings harm to another obliges the person because of the harm published loss it, replace those losses. this is confirmed also in the decision of the Supreme Court No. 144 K/Sip/1973, that the determination of heirs handed down PN Gresik 14 April 1956 No. 43/1955/Pdt, does not contain the elements of the ne bis in idem, because such determination is declarative, being case No. 66/1992/Pdt is a dispute between interested parties.

❖ *The verdict of the lawsuit contentiosa that is declarative is not attached to the Ne bis in idem overall*

The legal consequences of the verdict of the lawsuit contentiosa that are declarative without coupled with amar kondemnator as follows:

- Not a large benefit, because the ruling thus does not effectively resolve the dispute;
- The decision handed down is not thoroughly resolve the dispute, because without amar kondemnator the implementation of the fulfillment of the verdict can not be enforced through execution, if the defendant does not want to carry out voluntarily.

There are several reasons a verdict of a lawsuit contentiosayang granted can be declarative without coupled amar kondemnator, namely:

1. The presence of oversight/negligence of the Plaintiff in drafting the complaint does not list in the petition (the demands of) a lawsuit regarding the kondemnator (judgment/order to pay, turn over, unload, divide and so on).
2. The presence of oversight/negligence of the Judges that does not include amar kondemnator in verdict, although plaintiffs have included in the petition gugatanya about kondemnator.

Associated with the decisions which are declarative, the resulting verdict has force of the law was not enforceable execution, then if in the ruling of the requested execution contains only the verdict of nature declarator of course will be declared non-executable, then if the applicant's execution of wills filed execution against the judgment that the object be, then the applicant's execution must first file a lawsuit with a lawsuit immediately (uitvoerbaar bij voorraad) to the court which issued the verdict just added the petition of the lawsuit which contains the judgment (kondemnator). The judge should be granted with the trial process that simple. If the posita was not listed application for discharge, but if in

the petition/lawsuit already there is a listed application for emptying and judges neglect to consider then the plaintiff can file legal incredible review first. For the implementation of the verdict necessarily does not need to guarantee, as required in SEMA Number 3 of the year 2000 and SEMA Number 4 of the year 2001.

The nature of the declarator contained in the judgments contentiosa (dispute case) can be turned into a verdict of the magnitude of execution with "the help of a new lawsuit". Strictly speaking, the judgments contentiosa that is the declarator can be changed by the way filed a lawsuit recently asking that the verdict declarator is executed, kemudianpenerapan examination pengabulan and execution of the new suit upon the judgments contentiosa nature of declarator, in the examination of a new lawsuit, the Judge should not be judging and picking at-ngutik material the verdict of the declarator. Because the verdict declarator requested execution through a new lawsuit is the decision which has permanent legal force.

The basis of the law filed a new lawsuit over the decisions which are deklaratof, namely Article 180 HIR and Article 191 of the RBg, as well as the SEMA No. 3 of the Year 2000 about the Verdict Necessarily and Provisioneel, and SEMA Number : 4, 2001 about the Problems Immediately and Provisioneel, with the proviso that the decision necessarily can be granted must be with the evidence in the letter legitimate (authentic) and court decisions that have permanent legal force. In line with that, about requirements that must be met to grant and handed down a decision which can be executed first, can be explained as follows:

• First; according to the version of Article 180 HIR, Article 191 of the RBG, and Article 54 of the Rv, the terms of which must be met consists of:

a. The lawsuit is based on a pedestal of rights that shaped the authentic deed,
b. Based on the deed under the hand is recognized or deemed recognized if the verdict handed down verstek;
c. Based on court decisions that have permanent legal force.

• Second; expressed in SEMA No. 3 years of 1971 and the Guidelines and Administrative Court Book II, said terms to drop the first or the verdict necessarily:

1). A letter of evidence submitted to prove the postulate of the suit consists of;
• Authentic deed
• Certificate under the hand of the recognized content and a signature by the defendant;
2). There is a decision that is already final and binding legal force (in kranckh van gewijsde) to the benefit of the plaintiff and the ruling was nothing to do with the lawsuit that concerned;
3). There is a lawsuit provision that granted;
4). If the object of the suit is of goods belonging to the plaintiff which was possessed by the defendant;

In addition to the requirements in filing a new lawsuit, the ruling pengadillan that are declarative can be executed, then it is important also pay attention to the arguments which should filed in the new lawsuit, which aims so in that case filed a new lawsuit is not attached to the ne bis in idem. In the verdict of the lawsuit contentiosa (a lawsuit that is party), ne bis in idem was not attached although the verdict is a positive form of pengabulan lawsuit. If the verdict handed down:

- Are declarative, the ruling only stated that the plaintiff has the right or has a position as heirs;
- But the verdict did not include amar condemnatoir, to punish or ordered the defendant to pay or hand over an object that disengketan.

In a Case like this, concerning the declarative referred to in the verdict, is attached to the ne bis in idem,So that it is no longer possible filed a new lawsuit about it. However, for the inherent nature of the condemnatoir the ruling, in order to be executed, the plaintiffs initially may file a new lawsuit against the verdict of the previous listed amar Condemnatoir.By why all the demands that have been mentioned in the ruling of the previous, then there is no need prosecuted again because it will be attached to the ne bis in idam, which resulted in the lawsuit stated can not be accepted.

2. The authorities of a Court to Examine and decide the suit on the award is the announcer of The principles mentioned in article 14 paragraph (1) of LAW No. 14 1970, amended by LAW No. 35 in 1999, then provided for in article 16 paragraph (1) of LAW No. 4 the year 2004, it is now stipulated in article 10 paragraph (1) of Law No. 48 year 2009 on Judicial Power, which declared that the Court is prohibited from refusing to examine, adjudicate, and decide a case filed with the pretext that the law does not exist or is less clear, but obliged to examine and judge.

Remember back in article 5 paragraph (1) of Law No. 48 year 2009 on Judicial Power states that a Judge and the constitutional judge is obliged to dig, follow, and understand the legal values and sense of justice that live in the community. Principles and in this way pursued the judge, should examine cases submitted to him and that he must seek and find the law objectively and materiel to apply to resolve disputes, and in resolving disputes:

- Should not be based on feelings or subjective opinion of the judge,
- But it should be based on the law objective or material that live in the community.

The principle of the other judges in the search for and find the law, the judge is considered to know all the laws or curia novit juice. Thus, the judge is authorized to determine the law objective which should be applied (toepassing) in accordance with the subject matter of litigation concerning the legal relations of parties who are litigants in konkreto, because in the case of finding and applying the law objectively, not the rights and authority of the parties, but to be absolute obligations and authority of the judge.

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Each Judge that checks a new lawsuit with respect to the request of execution against the court verdict, contentiosa nature declarator need to pay attention to several things, among others:

- First, the Judge is Not allowed to assess and examine the material contents of the verdict declarator;
- Second, the function of the Judge in the examination of a new lawsuit just all about can be whether or not the verdict declarator is executed, by means of examining carefully whether the statement declarator can be associated with the execution of the;
- If the verdict declarator through a new lawsuit actually executed, should the Judge grant it with a verdict of "execution in advance"; and
- Execution can continue to run, even if the parties executed appeal and verzet;

In that case the judge granted a new lawsuit over the decisions which are deklartif so that it can be executed, it must be the starting point of the petition lawsuit. If in the suit there was filed the petition requesting the ruling can be run first, arising the authority of judges to grant, on the contrary, if in a lawsuit, no petition requesting a ruling can be executed first, then the judge is not authorized to try the case.

IV. CONCLUSION

The conclusion in this study,in order that a lawsuit over the ruling declarator is not attached to the ne bis in idem, namely :

1. The verdict is the announcer of such, have permanent legal force;
2. In drawing up the postulates of the new suit, no longer need to repeat the arguments of the lawsuit that has been mentioned in the ruling of the previous or in other words, the postulates of a lawsuit that has been granted in the ruling of the previous, which is the announcer of such, with attention to the elements contained in article 1917 of the civil Code.
3. In the petition (the demands of) the new suit is, there should be a petition lawsuit which stated "this ruling can be implemented in advance, although there is an appeal, cassation, verzet".

❖ *Advice*

Who becomes suggestions in this study, yaituAgar the government and/or the Supreme Court of the Republic of Indonesia make a the laws and regulations related with the procedures of filing a new lawsuit against a court ruling that is the declarator that have permanent legal force, for the achievement of legal certainty, justice and expediency for justice.

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