

## APPLICATION OF THE NE BIS IN IDEM PRINCIPLE BY JUDGES TO CIVIL CASES

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### ABSTRAK

Hukum acara perdata mengenal asas *ne bis in idem* yang bermakna suatu perkara telah diputus oleh hakim dan berkekuatan hukum tetap tidak dapat diajukan kembali. Tujuan penelitian yaitu untuk menganalisis pertimbangan hakim sehingga menyatakan perkara Nomor 268/Pdt.G/2021/PN.Kpg tidak dapat diterima karena *ne bis in idem* dan untuk menganalisis akibat hukum terhadap perkara dengan Nomor 268/Pdt.G/2021/PN.Kpg yang dinyatakan *ne bis in idem*. Metode penelitian yang digunakan adalah penelitian hukum normatif yang berfokus pada pendekatan Undang-Undang, pendekatan konsep, dan pendekatan kasus. Hasil penelitian ditemukan bahwa dasar pertimbangan menyatakan perkara Nomor 268/Pdt.G/2021 tidak dapat diterima karena *ne bis in idem* adalah terdapat kesamaan subyek, obyek, hubungan hukum, dan pengadilan serta perkara Nomor 268/Pdt/2021/PN.Kpg sebelumnya telah memiliki keputusan hukum yang tetap serta memiliki sifat putusan yang positif. Akibat hukum terhadap perkara Nomor 268/Pdt.G/2021/PN.Kpg yang dinyatakan *ne bis in idem* yakni pertama terhadap subyek tidak memiliki kedudukan hukum untuk mengajukan gugatan terhadap hal yang sama dan subyek hukum kembali kepada keadaan semula untuk menaati isi putusan. Kedua, terhadap obyek, tidak dapat diperkarakan kembali pada gugatan yang sama dan obyek hukum sah secara hukum. Saran yang diberikan oleh penulis adalah perlu adanya pemahaman yang mendasar tentang *ne bis in idem* bagi para pihak yang hendak atau akan mengajukan gugatan dan perlu dibentuk suatu regulasi yang memberikan batasan terhadap perkara yang memiliki potensi *ne bis in idem* untuk tidak perlu dilanjutkan pemeriksaannya sampai pada pokok perkara.

**Kata Kunci:** Asas; Hakim; *Ne bis In Idem*; Perdata

### ABSTRACT

*Civil procedural law recognizes the principle of ne bis in idem which means that a case that has been decided by a judge and has permanent legal force cannot be resubmitted. The purpose of the research is to analyze the judge's consideration so that case Number 268/Pdt.G/2021/PN.Kpg cannot be accepted because of ne bis in idem and to analyze the legal consequences of case Number 268/Pdt.G/2021/PN.Kpg which is declared ne bis in idem. The research method used is normative legal research which focuses on the law approach, concept approach, and case approach. The results of the study found that the basis for the consideration of declaring case Number 268/Pdt.G/2021 inadmissible due to ne bis in idem is that there are similarities in subjects, objects, legal relations, and courts and case Number 268/Pdt/2021/PN.Kpg has previously had a permanent legal decision and has a positive nature of the decision. The legal consequences of case Number 268/Pdt.G/2021/PN.Kpg which is declared ne bis in idem, namely first, the subject does not have legal standing to file a lawsuit against the same thing and the legal subject returns to its original state to obey the contents of the decision. Second, for the object, it cannot be re-filed in the same lawsuit and the legal object is legally valid. The suggestion given by the author is that there is a need for a basic understanding of ne bis in idem for parties who want or will file a lawsuit and there is a need to form a regulation that provides restrictions on cases that have ne bis in idem potential to not need to continue the examination until the subject matter.*

**Keywords:** Principle; Judge; *Ne bis In Idem*; Civil Case

## A. INTRODUCTION

The existence of principles in the legal system serves to animate legal norms. The imbuing is the concretization of abstract ideas to be applied directly to legal events.<sup>1</sup> As a result, a principle not only animates one formulation of legal norms. This situation occurs because the abstraction is so broad, so that the structure of the law consisting of so many articles forms a net in order to realize the ideals contained in the principle.<sup>2</sup> Simultaneously, several principles contained in the law form a tighter net through legal norms as a support for the purpose of the law that is imbued. This chain makes it possible for one principle to animate several legal norms in the law. However, there will always be one legal norm in the law that is at the heart of a principle. Of the many legal principles, *ne bis in idem*, which prohibits the court from retrying the same case, is one principle that is interesting to analyze to understand its characteristics and existence in the structure of the law.<sup>3</sup>

The principle of *ne bis in idem* has very important benefits and objectives related to human rights<sup>4</sup> because the principle of *ne bis in idem* provides protection to ensure that a person is only tried once in a fair trial for an alleged act.<sup>5</sup> This is because the process and outcome of the court must be respected by the state for the realization of respect for *res judicata* or finality of a decision as a foundation for establishing good legal legitimacy<sup>6</sup> in a country because if a case continues to drag on, it will make a person feel insecure or a sense of constant danger, and will not maintain the good name of judicial officials.<sup>7</sup>

The principle of *ne bis in idem* in civil cases is regulated through Article 1917 of the Civil Code (KUHPperdata) which explicitly determines the conditions for a case to qualify as *ne bis in idem*, namely first, the claim must be based on the same reason; second, filed by and against the same parties; and third, in the same legal relationship.<sup>8</sup> Indeed, the principle of *ne bis in idem* is often used by the Defendant as a defense in the form of an exception to the lawsuit filed by the Plaintiff.<sup>9</sup>

Civil lawsuits found in court are dominated by tort lawsuits and default (contract) lawsuits. To file a tort claim, it must be ensured that the provisions in Article 1365 of the Civil Code are fulfilled, while to file a tort claim, the provisions in Article 1243 of the Civil Code must be fulfilled.<sup>10</sup> The scope of loss in tort has a different dimension from default. A person can be said to be in default if he violates an agreement that has been agreed with the other party, while a person can be said to be acting against the law if his actions are contrary to the rights of others, or contrary to his own legal obligations, or contrary to decency.<sup>11</sup>

<sup>1</sup>Rokilah, S. (2021). Application of Legal Principles in the Formation of Legislation. *Adjudication: Journal of Legal Science*, 5(2), 179-190, 180.

<sup>2</sup>Julyano, Mario, and Sulistyawan, A. Y. (2019). Understanding the Principle of Legal Certainty through the Construction of Legal Positivism Reasoning. *Crepido Journal*, 1(1), 13-22, 15.

<sup>3</sup>Putra, I., & Fahmi, K. (2021). Characteristics of Ne Bis In Idem and its Elements in the Procedural Law of the Constitutional Court. *Journal of the Constitution*, 18(2), 346-367, 347.

<sup>4</sup>Pasaribu, F. (2021). The Nebis In Idem Principle in Pretrial Decisions and the Implementation of More than One Pretrial Submission for Suspects in Indonesian Criminal Procedure Law. *Balrev Journal*, 3(2), 201-213, 208.

<sup>5</sup>Scientific Fawaidil, N. H. (2018). Application of the Ne Bis In Idem Principle in Civil Decisions (Study of the Analysis of Supreme Court Decision Number 3320 K / PDT / 2018). *Novum Journal*, 1(13), 234-248, 235.

<sup>6</sup>Hipan, N. (2017). A Review of the Inadmissibility of Lawsuits in Civil Cases in the District Court (Study of Several Decisions of the Luwuk District Court). *Yustisiabel Journal*, 1(1), 44-55, 50.

<sup>7</sup>Rizqi, K. P. M. (2021). Legal Remedies that Can Be Invoked Against Criminal Case Verdicts that are Ne Bis In Idem. *Journal of Jurist-Diction*, 4(1), 195-212, 197.

<sup>8</sup>Butarbutar, E. N. (2018). Ne bis in idem principle in tort lawsuit. *Judicial Journal*, 11(1), 23-39, 31.

<sup>9</sup>Simorangkir, M., Afriana, A., & Putri, S. A. (2022). The Nebis In Idem Principle in Civil Procedure Law Relating to Divorce Lawsuits Reopened After a Permanent Legal Decision is Related to Legal Certainty. *Journal of Socio Humanities Science*, 6(1), 31-52, 43.

<sup>10</sup>Isman. (2021). Cumulation of Lawsuits between Unlawful Acts and Defaults Review of Decision Number 886 K / Pdt/2007. *Judicial Journal*, 14(1), 57-78, 61.

<sup>11</sup>Mantili, R., & Sutanto, S. (2019). Cumulation of Wrongful Acts Lawsuit and Default Lawsuit in the Study of Civil Procedure Law in Indonesia. *Dialogia Iuridica: Journal of Business and Investment Law*, 10(2), 1-18,2.

The perspective of this research, the author found 1 (one) case Number 268/Pdt.G/2021/PN.Kpg which has been examined and decided and has permanent legal force at the Kupang District Court Class 1A whose verdict states that the Plaintiff's claim cannot be accepted due to *ne bis in idem*. Therefore, in order to examine the quality of the decision, the author formulates 2 (two) problems in this study, namely first, what are the considerations of the judge so that case Number 268/Pdt.G/2021 cannot be accepted because it is *ne bis in idem* and second, what are the legal consequences of case Number 268/Pdt.G/2021/PN.Kpg which is declared *ne bis in idem*. In line with the research problem, the research objectives are first, to analyze the judge's consideration so that case Number 268/Pdt.G/2021/PN.Kpg is declared inadmissible due to *ne bis in idem* and second, to analyze the legal consequences of case Number 268/Pdt.G/2021/PN.Kpg which is declared *ne bis in idem*.

## B. RESEARCH METHODS

The research method used in discussing and analyzing this research is the normative juridical research method. The research is conducted by examining library materials or secondary data. The secondary data is obtained by reviewing library materials, including a review of laws and regulations and legal concepts or theories.<sup>12</sup>

The collection of legal materials in this research is carried out on library legal materials in the form of Decisions of the Kupang District Court Class 1A Number 268 / Pdt.G / 2021 / PN.Kpg and Number 125 / Pdt.G / 2016 / PN.Kpg at the Kupang District Court Class 1A juncto the Kupang High Court Decision Number 96 /Pdt/2017 / PT.Kpg and juncto the Decision of the Supreme Court of the Republic of Indonesia Number 2182/K / Pdt/2018 in order to obtain conceptions in the form of theories, opinions, conceptual thoughts related to *ne bis in idem*. In addition, there are also books, scientific journals that are used as a foothold or reference in analyzing research problems. Based on the collection of legal materials through literature materials, it is then analyzed prescriptively juridically.

## C. DISCUSSION

### 1. Case Position

Civil case Number 268/Pdt.G/2021/PN.Kpg is based on a lawsuit filed by the Plaintiff on behalf of YYL on November 15, 2021 to MJS as the Defendant and KPNSS as the Co-Defendant. The substance of the Plaintiff's lawsuit basically argued that there had been an application for a loan of money to KPNSS (the Co-Defendant) secured by a Certificate of Title Number 445 in the name of JHW which was purchased in full by the Plaintiff and her husband. Based on the loan application submitted by the Plaintiff, on March 14, 2013 the Defendant through the Defendant disbursed Rp. 30,000,000 (thirty million rupiah) of the total amount of Rp. 100,000,000 (one hundred million rupiah) in accordance with the agreement between the Plaintiff and the Defendant, while the remaining loan of Rp. 70,000,000 (seventy million rupiah) that had not been given to the Plaintiff was to be handed over on April 20, 2013. However, until April 20, 2013, the Defendant did not provide the remaining Rp. 70,000,000,- (seventy million rupiah) to the Plaintiff. However, in 2015 when the Defendant was the Manager of KPNSS (the Co-Defendant), the Plaintiff and her husband learned that the Defendant had gone to JHW whose land was purchased by the Plaintiff to make and unilaterally sign a sale and purchase deed to transfer the name of the land to Building Rights Title Certificate Number 15 in the name of KPNSS (the Co-Defendant).

<sup>12</sup>Benuf, K., & Azhar, M. (2020). Legal Research Methodology as an Instrument to Unravel Contemporary Legal Issues. *Gema Keadilan*, 7(1), 20-33, 24.

The legal acts allegedly committed by the Defendant and Co-Defendant caused the Plaintiff to suffer a loss so that in the petitem of the lawsuit, the Plaintiff requested the Panel of Judges examining and adjudicating case Number 268/Pdt.G/2021/PN.Kpg to issue a decision with the following ruling:

- Grant the Plaintiff's claim in its entirety;
- Stating the law that the Money Loan Agreement between the Defendant, Co-Defendant and Plaintiff without the consent of the Plaintiff's husband is invalid and declared null and void because it is contrary to Article 36 paragraph (1) of Law Number 1 of 1974 concerning Marriage;
- Stating the law that the actions of the Defendant and the Co-Defendant in making a deed of sale and purchase and transferring the name of the collateral of Building Rights Title Certificate No. 445 to the Co-Defendant were unlawful actions that harmed the Plaintiff and her husband;
- Declare as valid and valuable the security seizure of Building Rights Title Certificate Number 15, covering an area of 328 M<sup>2</sup> in the name of JHW, which is currently still controlled by the Co-Defendants;
- Punish the Defendant and the Co-Defendant to hand back the Building Rights Title Certificate No. 15, covering an area of 328 M<sup>2</sup> JHW to the Plaintiff;
- Punish the Defendant and the Co-Defendant to pay forced money in the amount of Rp. 1,000,000, - (one million rupiah) every day if they fail to implement the contents of the decision of this case, starting from the time the decision of this case has obtained permanent legal force;
- Stating that the decision of this case can be implemented in advance even though there are legal efforts of Resistance, Appeal, Cassation, Judicial Review and other legal efforts from the Defendant (*Uitvoerbaar Bij Voorraad*);
- Punish the Defendant and Co-Defendant to pay the costs of this case;

In accordance with Article 121 paragraph (2) HIR after the Plaintiff files and reads out the lawsuit before the court session, the Defendant and the Co-Defendant have the right to submit an answer to refute the lawsuit filed by the Plaintiff. As for the answers from the Defendant and the Co-Defendant, namely in the first exception, case Number 268/Pdt.G/2021/PN.Kpg already has a previous decision that is legally binding so that the principle of *ne bis in idem* applies because there are similar parties, objects, and the same legal relationship between case 268/Pdt.G/2021/PN.Kpg and case Number 125/ Pdt.G/2016/ PN.Kpg at the Kupang District Court Class 1A juncto Kupang High Court Decision Number 96 /Pdt/2017/ PT.Kpg and juncto the Decision of the Supreme Court of the Republic of Indonesia Number 2182/ K/ Pdt /2018. Second, the Plaintiff's claim is vague because it has combined tort and default claims while the answer in the subject matter is a repetition of arguments by the Plaintiff who only quotes the arguments of the answer, the arguments of the appeal memory, and the arguments of the cassation memory in case Number 125/ Pdt.G/2016/ PN.Kpg at the Kupang District Court Class 1A juncto the Kupang High Court Decision Number 96 /Pdt/2017/ PT.Kpg and juncto the Decision of the Supreme Court of the Republic of Indonesia Number 2182/ K/ Pdt /2018.

Like the civil law process, after the answering agenda, it is followed by an evidentiary and conclusion agenda which ends with a judge's decision. *Expressively verbis*, the Panel of Judges examining case Number 268/Pdt.G/2021/PN.Kpg rendered a decision with the first ruling granting the exception of the Defendant and Co-Defendant; second, declaring the Plaintiff's claim inadmissible due to *ne bis in idem* and third, sentencing the Plaintiff to pay court costs in the amount of Rp. 405,000, - (four hundred and five thousand rupiah). Furthermore, against this decision, the Plaintiff did not file an appeal, so the decision has permanent legal force.



Referring to the description of the position case that has been submitted by the author, in addition to knowing about the chronology and ruling in case Number 268/Pdt.G/2021/PN.Kpg, it is also necessary to analyze the consideration of the judge *a quo* which is the crown of a case decision. Henceforth, the following article analyzes the judge's consideration in case Number 268/Pdt.G/2021/PN.Kpg as follows.

## 2. Analysis of Judges' Considerations to Declare Case Number 268/Pdt.G/2021 Unacceptable Due to *Ne Bis In Idem*

The principle of *ne bis in idem* or known as the principle of *litis fniri oportet* contained in Article 1917 paragraph (1) of the Civil Code (KUHPperdata) and Article 134 Rv means that what at one time has been decided by a judge and has permanent legal force (*inkracht van gewijsde*) may not be filed again. Therefore, if the same case or claim is filed again, the judge is obliged to reject the claim.<sup>13</sup> The application of the principle of *ne bis in idem*<sup>14</sup> in civil cases refers to Article 1917 paragraph (1) of the Civil Code (KUHPperdata), which states that the power of a judge's decision that has obtained absolute force is not broader than just regarding the matter of the decision.

The article concludes that it can be used as a basis or valid reason for the existence of *nebis in idem*. The principle of *ne bis in idem*, which determines that the same case cannot be tried a second time, relates to a court decision that has obtained permanent legal force that cannot be changed or contested. Consequently, judges are prohibited from deciding the same case between the same parties with the same subject matter and legal subjects that have been decided before.<sup>15</sup>

The principle of *ne bis in idem* can be used by the defendant in terms of opposing a lawsuit filed by the plaintiff. The application must fulfill the conditions that the lawsuit filed by the plaintiff is based on the same reasons both about the sitting of the case, the object, the subject, and the court and the reason so that thus a lawsuit can be said to be *ne bis in idem*.<sup>16</sup>

In the realm of civil law, the principle of *ne bis in idem* is in accordance with the provisions of Article 1917 of the Civil Code (KUHPperdata), if the decision rendered by the court is positive (refusing to grant) then the decision obtains permanent legal force, then the decision is attached *ne bis in idem*.<sup>17</sup> Therefore, the same case and party may not be filed a second time. *Ne bis in idem* cannot apply to negative decisions, for example, formal defect lawsuits, premature lawsuits, voluntair contentiosa that are declarative in nature and decisions of judges who are not entitled to decide. This has also been emphasized in the Supreme Court Circular Letter (SEMA) Number 3 of 2002 concerning Case Handling Related to *ne bis in idem* which explicitly calls on court presidents to implement the principle of *ne bis in idem* carefully and carefully for the certainty of justice seekers and to avoid different decisions.<sup>18</sup>

*Ne bis in idem* in civil procedural law, experienced an expansion of meaning because based on the issuance of Supreme Court Circular Letter (SEMA) Number 7 of 2012 concerning Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as

<sup>13</sup>Mukarramah, Renggong, R., & Madiong, B. (2022). *Nebis in Idem in Civil Cases in Maros Religious Court Decisions. Indonesian Journal of Legality of Law*, 5(1), 151-158, 153.

<sup>14</sup>Masril. (2019). The Applicability of the *Ne Bis In Idem* Principle to Indigenous Court Decisions in the Indonesian Legal System. *Al Ijarah Journal*, 4(1), 49-56, 53.

<sup>15</sup>Munandar, T Nanda Aditya, M. A. (2018). Case Study of the Decision of the Lhoksukon Syar'iyah Court Number 43/PDT.G/2011/MS-LSK Regarding the Application of the *Nebis In Idem* Principle. *Student Scientific Journal of Civil Law*, 2(1), 148-164, 154.

<sup>16</sup>Vanggy Poli, Grace H Tampongangoy, G. M. F. K. (2021). Juridical Analysis of the Implementation of the *Nebis In Idem* Principle in Civil Cases (Case Study of Decision Number: 145/Pdt.G/2017/PN.Thn). *Journal of Lex Privatum*, 9(4), 120-129, 121.

<sup>17</sup>Nahrudin, Sufirman Rahman, A. M. (2023). Application of the *Nebis In Idem* Principle in Civil Cases: An Examination of Decision Number 352/Pdt.G/2019/PA.Mrs. *Journal of Lex Generalis (JLS)*, 4(1), 51-65, 58.

<sup>18</sup>Amiruddin, Rina Khaerani Pancanigrum, C. E. P. (2021). The Concept of Prejudicial *Geschil* in the Examination of Criminal and Civil Cases. *Journal of Law Compilation*, 6(1), 63.

Guidelines for the Implementation of Duties for the Court, *ne bis in idem* does not require the exact similarity of the parties with the previous case as long as the principle is the same even though there are additional parties and the status of the case object has been determined by the previous case. Similarly, there is a permanent jurisprudence of the Supreme Court of the Republic of Indonesia which is used as a reference in determining whether a case is declared *ne bis in idem*, namely the Decision of the Supreme Court of the Republic of Indonesia Number 1226 K / Sip / 2001 which states that even though the position of the subject is different but the object is the same as the case that has been decided previously and has permanent legal force, then the lawsuit is declared *ne bis in idem*.<sup>19</sup>

Looking at the description of *ne bis in idem*, before the author analyzes the judge's consideration in case Number 268/Pdt.G/2021/PN.Kpg, the author first describes the judge's consideration in the case *a quo*.

The panel of judges who heard Case No. 268/Pdt.G/2021/PN.Kpg was of the opinion that before examining the merits of the case, it was necessary to first examine the exception filed by the Defendant and Co-Defendant regarding the existence of *ne bis in idem*. In the process of proving the case, it was found that the parties in Case Number 268/Pdt.G/2021/PN.Kpg compared to the parties in the Kupang District Court Decision Number 125/Pdt.G/ 2016/PN.Kpg in conjunction with the Kupang High Court Decision Number 96/Pdt/2017/PT.Kpg in conjunction with the Decision of the Supreme Court of the Republic of Indonesia Number 2182K/Pdt/2018, it has been found that the parties are the same, as in the previous case MJS as the Plaintiff who is the Manager of KPNSK against YYL as Defendant I and JVS as Defendant II, where the Defendant II is the husband of the Plaintiff YYL who is drawn as a party in the case to comply with the decision *a quo*.

The previous case, it has been found that the object of dispute in the current case is the same as the object of dispute in case Number 125/Pdt.G/2016/PN.Kpg Number 96/Pdt/2017/PT.Kpg juncto Number 2182K/Pdt/2018. Likewise, case Number 125/ Pdt.G/ 2016/PN.Kpg juncto Number 96/Pdt/2017/PT.Kpg juncto Number 2182K/Pdt/2018 has a decision that is legally binding and positive in nature, namely Granting the Plaintiff's Lawsuit in part. Thus, according to the Panel of Judges, case Number 268/Pdt.G/2021/PN.Kpg is declared inadmissible due to *ne bis in idem*, where the lawsuit in case Number 268/Pdt.G/2021/PN.Kpg has been litigated before and has obtained permanent legal force and the decision is positive, the parties to the dispute in this case are also the same as the parties in the previous case, as well as the object of the lawsuit is the same.

Referring to the description of the judge's consideration in case Number 268/Pdt.G/2021/PN.Kpg in relation to Article 1917 paragraph (1) of the Civil Code, Supreme Court Circular Letter (SEMA) Number 3 of 2002 concerning Handling Cases Relating to *ne bis in idem*, and Jurisprudence of the Supreme Court of the Republic of Indonesia Number 1226 K/Sip/2001, the author argues that first, case Number 268/Pdt.G/2021/PN.Kpg has fulfilled the same legal subject element. From the perspective of civil procedural law, legal subjects are parties who have a legal relationship and have the right to file a lawsuit. This terminology also applies in civil case No. 268/Pdt.G/2021/PN.Kpg because in case No. 268/Pdt.G/2021/PN.Kpg, YYL acts as Plaintiff, MJS as Defendant and KPNSK as Co-Defendant while in case No. 125/Pdt.G/ 2016/PN.Kpg Number 96/Pdt/2017/PT.Kpg juncto Number 2182K/Pdt/2018, MJS is the Plaintiff, YYL is Defendant I and YYL's husband (JVS) is Defendant II. Although there are additions and subtractions of parties, it does not eliminate the essence of the legal subjects who have direct legal relations, namely YYL and MJS, so that the elements of the same legal subject have been fulfilled.

<sup>19</sup>Nasichin, M. (2016). Application of the Nebis Idem Principle in the Settlement of Land Rights Disputes. *Journal of Pro Hukum*, 1(5), 71-88, 73.

Second, the same legal object. From a civil perspective, a legal object is something that is useful and can be utilized by legal subjects. However, legal objects are often the source of legal problems that occur between legal subjects. In civil litigation, legal objects are often referred to as objects of dispute. In Case Number 268/Pdt.G/2021/PN.Kpg, the Plaintiff argued that the legal object was a money lending and borrowing agreement entered into by YYL (Plaintiff) with the Defendant (MJS) and the Co-Defendant (KPNSK), while in Case Number 125/Pdt.G/2016/PN.Kpg Number 96/Pdt/2017/PT.Kpg juncto Number 2182K/Pdt/2018, the legal object is a money borrowing agreement between MJS (Plaintiff) with YYL (Defendant I) and JVS (Defendant II). The context of case No. 268/Pdt.G/2021/PN.Kpg with case No. 125/Pdt.G/2016/PN.Kpg No. 96/Pdt/2017/PT.Kpg juncto No. 2182K/Pdt/2018 is a money borrowing agreement based on a credit application submitted by YYL to KPNSK. Therefore, the element of the same legal object has been fulfilled.

Third, the same legal relationship. A legal relationship is a relationship between two or more legal subjects regarding the rights and obligations on one side vis-à-vis the rights and obligations on the other side. Legal relations can occur between fellow legal subjects and between legal subjects and objects. Relationships between fellow legal subjects can occur between a person and another person, between a person and a legal entity, and between a legal entity and another legal entity. Underlying the judge's consideration, in Case Number 268/Pdt.G/2021/PN.Kpg, YYL (Plaintiff) had a direct interest in the money lending and borrowing agreement entered into by YYL (Plaintiff) with MJS (Defendant) and KPNSK (Co-Defendant), while in Case Number 125/Pdt.G/2016/PN.Kpg Number 96/Pdt/2017/PT.Kpg juncto Number 2182K/Pdt/2018, MJS (Plaintiff) had a direct interest in the money lending and borrowing agreement. Thus, the element of the same legal relationship has been fulfilled.

Fourth, the same court. This relates to the competence of the court that hears the case in accordance with its jurisdiction, which consists of where the Defendant is domiciled, where the fixed object of the dispute is located, and the Plaintiff's selection of the court area if there is more than one Defendant. Case No. 268/Pdt.G/2021/PN.Kpg and case No. 125/Pdt.G/2016/PN.Kpg No. 96/Pdt/2017/PT.Kpg juncto No. 2182K/Pdt/2018 are in the jurisdiction of the same court, namely the Kupang District Court Class 1A, so in this case the same court element has been fulfilled. However, the same court element is only an alternative option for the judge if it is later discovered that the Defendant has changed domicile.

Fifth, the previous case has a permanent and positive legal decision. A decision with permanent legal force is a decision of the court of first instance that is not appealed or cassated within the time specified by law, a decision of the court of appeal that is not appealed within the time specified by law, and a decision of cassation. Furthermore, a positive decision is a decision that has examined the subject matter of the case and then the final verdict is in the form of rejecting the claim entirely or granting the claim (in whole or in part). For case Number 125/Pdt.G/2016/PN.Kpg Number 96/Pdt/2017/PT.Kpg juncto Number 2182K/Pdt/2018 which is used as the basis for determining case Number 268/Pdt.G/2021/PN.Kpg declared *ne bis in idem*, it turns out that it has legal force and the decision is positive, namely at the Kupang District Court Class 1A level with case Number 125/Pdt.G/2016/PN.Kpg, the Panel of Judges examining the case handed down a decision by granting the Plaintiff's (MJS) claim in part, even though YYL filed legal remedies through appeal and cassation, but there were no legal reasons for the appeal and cassation so the panel of judges examining the appeal and cassation rejected the appeal and cassation from YYL.

### 3. Legal Consequences of Case Number 268/Pdt.G/2021/PN.Kpg Which is Declared *Ne Bis In Idem*

Legal effect is an event that is caused by a cause, namely an action taken by a legal subject, either an action that is in accordance with the law, or an action that is not in accordance with the law. Case Number 268/Pdt.G/2021/PN.Kpg which has been declared *ne bis in idem* has caused legal consequences for 2 (two) things, namely the subjects and objects contained in the case. The legal consequences for legal subjects are first, YYL as the Plaintiff in Case Number 268/Pdt.G/2021/PN.Kpg does not have the legal standing to file a new lawsuit with the same subject, object, and legal reason to litigate with MJS and KPNSK. Second, YYL as a legal subject returns to its original state which is obliged to implement the contents of the decision in case Number 125/Pdt.G/2016/PN.Kpg Number 96/Pdt/2017/PT.Kpg juncto Number 2182K/Pdt/2018, while the object, namely first, in the form of a money borrowing agreement between YYL and MJS and KPNSK, cannot be re-filed in a lawsuit with the same party except with different parties and different legal relationships. Second, the money borrowing agreement between YYL and MJS and KPNSK is legally valid in accordance with Decision Number 125/Pdt.G/2016/PN.Kpg juncto Number 96/Pdt/2017/PT.Kpg juncto Number 2182K/Pdt/2018.

#### D. CONCLUSIONS

Based on the discussion that has been described, the basis for stating that case Number 268/Pdt.G/2021 cannot be accepted because *ne bis in idem* is that there are similarities in subjects, objects, legal relations, and courts and case Number 268/Pdt/2021/PN.Kpg has previously had a permanent legal decision and has a positive nature of the decision. The legal consequences of case Number 268/Pdt.G/2021/PN.Kpg which is declared *ne bis in idem* are first, the subject does not have legal standing to file a lawsuit against the same thing and the legal subject returns to its original state to obey the contents of the decision. Second, for the object, it cannot be re-filed in the same lawsuit except with different parties and different legal relationships and the legal object is legally valid according to Decision Number 125/Pdt.G/2016/PN.Kpg Number 96/Pdt/2017/PT.Kpg juncto Number 2182K/Pdt/2018.

The suggestion given by the author is that there is a need for a basic understanding of *ne bis in idem* for parties who want or will file a lawsuit so that the case is not declared *ne bis in idem* and it is necessary to form a regulation that provides limits and standards for cases that have the potential for *ne bis in idem* to not need to continue the examination until the subject matter.

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