**Breach of contract remedy: Penalty**

1. **Definition and characteristics:**

Penalty for breaching a contract is defined in the Civil Code 2005 and the Commercial Law. This is considered a very important mechanism to protect the parties in commercial relation, preventing violations that may occur, protecting the legitimate interests of the parties. This is also a favorable legal ground for the aggrieved party when suing the offending party.

* Clause 1 of Article 422 of Civil Code 2005 stipulates: "Penalty for breach of the agreement between the parties in the contract, under which the offending party is obliged to pay a sum of money to the aggrieved party."
* Under Article 226, Commercial Law: "Penalty for breach of the contract means the party whose rights are being violated demands the offending party to pay a certain fine for breaching the contract, if the contract contains an agreement or stated in the law."

The penalty will be paid to the aggrieved party and it isn’t a compensation for damages, because it can be applied just by a violation of contractual obligations, even if the damage of the violation is very minor or no damage at all. This is also the difference between penalty and damage compensation.

1. **Application of penalty**

Under the provisions of the Commercial Law and Civil Code, penalty is only applicable in the case where the parties have specifically agreed in the contract. This means penalty is an agreement made by both sides and one can not request the other party for penalty if they haven’t agreed upon in the contract.

When applying the provisions for breach of contract, the parties may agree on a specific amount of money, make the penalty based on the value of the obligation violated. However, the penalty levels can also be found in some specific types of contracts which are specified in specialized documents of laws guiding the implementation.

* Civil contract:

- For civil contract, the penalty level is freely agreed without limit by both parties in the contract

- The parties may agree on the term that the offending party only has to pay for the penalty and no compensation or having to pay both; if there is no prior agreement on the compensation for damage then that party has to pay for all damage.

- In the event the parties do not agree on compensation for damages, the offending party only has to pay for the penalty.

* Commercial contract:

- According to Article 301 Commercial Law 2005, “The penalty for violation of contractual obligation or the total penalty for multiple violations are agreed in the contract by both parties, but not exceeding 8% of the violated contractual obligations, unless otherwise specified in Article 266 of this Law.”

1. **Some exceptions**

- Force majeure

- Damage caused is entirely the fault of the aggrieved party

- Term on liability exemption