



***MINIMUM EDUCATION REQUIREMENTS FOR PRESIDENTIAL  
CANDIDATES IN THE ADMINISTRATION OF STATE GOVERNMENT***

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**ABSTRACT**

This study aims to analyze the concept of unlawful acts (onrechmatigdaad) in civil law and the basis for the judge's consideration in Decision Number 5/Pdt.G.S/2021/Pn. Praya. By using normative legal research methods. The results of the research show that the concept of unlawful acts (onrechmatigdaad) in civil law, unlawful acts as in Article 1365 of the Civil Code must contain elements, namely the existence of an act, the act is against the law, there is fault on the part of the perpetrator, there is a loss to the victim, there is a causal relationship between the act and the loss and the act is contrary to prudence or necessity in good public relations. Then the basis for the Judge's consideration in Decision Number 5/Pdt.G.S/2021/Pn. Praya, the decision is clear that the actions of defendant 1 and defendant 2 have been proven to have committed an unlawful act because they have fulfilled the elements of Article 1365 of the Civil Code, there must be an act, the act must be against the law, there is a loss, there is a causal relationship between the unlawful act and the loss, and there is fault (schuld).

**Keywords:** *Agreement, tort, verdict*

**INTRODUCTION**

Law was created to maintain order and justice in social life. Humans are social creatures, therefore in social life humans cannot live alone and always interact with each other. In interacting, everyone has different interests and of course, wants their interests to always be satisfied properly. Starting from this, various clashes can arise from the different interests of community members. For this reason, the law was created to avoid various clashes between these interests with each other (Setiadi & SH, 2017).

In the business world, agreements have a very important role as guidelines, guidelines, and evidence for the parties. In general, an agreement is: The agreement of the parties on something that gives birth to an obligation / legal relationship, giving rise to rights and obligations, if not carried out as agreed there will be sanctions. An obligation is a legal relationship between two people or two parties based on which one party is entitled to demand something from the other party and the other party is obliged to fulfill that demand (Untung, 2012).

Thus, an agreement in the form of an agreement is essentially binding. Generally, an agreement starts from a difference or inequality of interests between the parties, and the formulation of the contractual relationship generally begins with a negotiation process between the parties.

Agreements must not conflict with legislation, public order, prevailing customs, and decency. Article 1320 of the Civil Code, the conditions for the validity of an agreement: Agreement of the parties, capacity of the parties, specific object, and halal cause. Conditions 1 and 2 are called subjective conditions because they concern the subjects who make agreements. If these conditions are not met, the result is that the agreement can be canceled (*vernietigbaar*), by the interested party. Conditions 3 and 4 are called objective conditions, which concern the object of the agreement. As a legal result, if the objective conditions are not met, the agreement is null and void, meaning that the agreement is considered to have never existed in the first place (Yulia, 2018).

Humans in fulfilling their various interests do various ways, one of which is by making an agreement. In the Civil Code, agreements are regulated in Book III (Articles 1233-1864) concerning Obligations. Article 1313 of the Civil Code states: "An agreement is an act by which one or more persons bind themselves to one or more other persons". An agreement has elements, namely competent parties, agreed subject matter, legal considerations, reciprocal agreements, and reciprocal rights and obligations. Based on the above understanding, an agreement consists of The parties; There is an agreement between the parties; There are achievements to be carried out; In oral or written form; There are certain conditions as the content of the agreement; There are objectives to be achieved.

Law enforcement is a series of processes to translate abstract values, ideas, and ideals into concrete legal objectives. Civil law enforcement efforts are carried out through the door of the judicial process in the form of a lawsuit or petition. The court as the last door of the law enforcement process will provide output in the form of a final determination or decision. However, it often happens that the output issued by the court institution is unable to provide a sense of justice to the community (Soekanto, 2004).

Some of these problems are closely related to the characteristics of the concept of tort and default raised in this research, of course, centered on the concept of tort, because it is based on the existence of laws that are violated or opposed. However, the application of tort is inseparable from the jurisprudence that occurred in the Netherlands as well as Indonesian legal products originally originated (Dellyana, 1988).

Unlawful acts have similarities with default. According to I. Ketut Oka Setiawan, in general, the rights and obligations arising from the engagement are fulfilled by the parties, both debtors and creditors. However, in practice sometimes the debtor does not comply with what is his obligation and this is what is called 'default' (Agustina, 2003).

Unlawful acts are not only contrary to the law but also acts or omissions that violate the rights of others contrary to decency as well as prudence, decency, and propriety in the traffic of society. Unlawful acts can also be defined as a collection of legal principles that aim to control or regulate harmful behavior, to provide responsibility for a loss arising from social interaction, and to provide compensation to victims with an appropriate lawsuit.

There are actually many cases of unlawful acts in Indonesia that already have incraht decisions. One of the decisions regarding unlawful acts, which has an increased decision, is decision Number 5/Pdt.G.S/2021/PN Pya.

To negate or avoid bias in this research, it is necessary to have restrictions on the research material and objects to be discussed. These restrictions are to make it easier for researchers to understand what the core of the problem is. The scope of this research is about the concept of unlawful acts (onrechmatigdaad) in civil law and, then the basis for the judge's consideration in Decision Number 5/Pdt.G.S/2021/Pn.Praya.

The purpose of this study is to analyze the concept of the concept of unlawful acts (onrechmatigdaad) in civil law and to analyze the basis for the judge's consideration in Decision Number 5/Pdt.G.S/2021/Pn.Praya.

## **RESEARCH METHODS**

To solve a problem to be the subject of discussion, this research uses normative legal research, normative legal research is normative legal research by comparing norms, legal concepts, and regulations in both sources of law and analyzing them with the interpretation method. Normative legal research is a study whose data source is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials (Asikin, 2004).

The characteristic of normative legal research is the approach used to examine legal products, both based on literature and laws and regulations, legal principles, and rules governing civil relations related to the problem under study.

### **Research Approach**

Legal research recognizes several approaches that are used to examine each problem or legal issue being studied, the types of approaches in legal research according to Pater Mahmud in his book entitled "Legal Research" namely: statute approach, case approach, and conceptual approach.

#### a. Conceptual approach.

Moving on from the views and doctrines that develop in legal science. Studying the views and doctrines in legal science, researchers will find ideas that give birth to legal notions, legal concepts, and legal principles that are relevant to the issue at hand. Understanding these views and doctrines is the basis for researchers in building a legal argument to solve the legal issue at hand (Mahmud Marzuki, 2005).

#### b. statuta approach.

This approach is carried out by reviewing all laws and regulations related to the legal issues being addressed (Rahardjo, 2009).

For practical research, the statutory approach will provide an opportunity for researchers to study whether there is consistency and compatibility between a law and other laws between laws and the Constitution, or between regulations and laws (Mahmud Marzuki, 2005).

#### c. Case Approach

The Case Approach is carried out by examining cases related to the issue at hand which have become court decisions that have permanent legal force (Mahmud Marzuki, 2005).

### **Data Collection Technique**

To obtain the material carried out by the author in writing this thesis, in the form of secondary data, the author conducts activities that are generally used in legal research, namely Literature Study, Literature study is carried out by inventorying and citing legal science literature books, statutory provisions, as well as scientific essays and lecture notes that have to do with the writing of this thesis. As well as by reading, studying, quoting, and collecting data obtained from literature books, as well as other regulations that relate to the issues to be discussed.

#### **a. Data Analysis**

Analysis of legal material is the process of simplifying data into a form that is easier to read and interpret through an interpretive analysis process. The data analyzed is based on interpretive analysis and interpreted based on references.

The final process in the preparation of this thesis is the data analysis process, which is an attempt to determine the answers to problems and things that will be obtained from preliminary research. The series of data is arranged systematically according to classification so that it is easy to understand, and understand, and is the answer to the existing problems. The data is then described in the form of sentences that are arranged systematically.

## **RESULTS AND DISCUSSION**

### **The basis for Judges' Considerations in Decision Number 5/Pdt.G.S/2021/Pn.Praya**

#### **A. Principles in Judgment**

Contains a clear and detailed rationale According to this principle, the verdict must be based on clear and sufficient considerations. Decisions that do not meet these provisions are categorized as insufficient judgment or onvoldoende gemotiveerd sufficient judgment, the legal reasons that form the basis of consideration reject the provisions (Harahap, 2017):

- a. certain articles of laws and regulations,
- b. customary law,
- c. jurisprudence, or
- d. legal doctrine,

This is confirmed in pasal 23 of Law No.14 of 1970, as amended by Law No. 35 of 1999, now in pasal 25 ayat (1) of Law No. 4 of 2004 which emphasizes that all court decisions must contain the reasons and bases for the decision and include articles of certain statutory regulations related to the case being decided or based on unwritten law or jurisprudence or legal doctrine. Even according to pasal 178 ayat (1) HIR, judges because of their position or ex officio, are obliged to fulfill all legal reasons that are not stated by the parties.

To fulfill this obligation, pasal 27 ayat (1) of Law No. 14 of 1970, as amended by Law No. 35 of 1999, in pasal 28 ayat (1) of Law No. 4 of 2004 instructs judges in their position

as enforcers of law and justice, must explore, follow, and understand the legal values that live in society. According to the explanation of this article, judges play a role and act as formulators and diggers of legal values that live in the community.

### **Must adjudicate all parts of the lawsuit**

This principle is outlined in pasal 178 ayat 2 HIR, pasal 189 ayat 2 RBG, and pasal 50 Rv. The verdict must totally and thoroughly examine and adjudicate each claim filed. It is not allowed to only examine and decide on part of it and ignore the rest of the lawsuit (Harahap, 2017).

### **Must not grant more than the demand**

This principle is outlined in pasal 178 ayat (3) HIR, pasal 189 ayat (3) RBG and pasal 50 Rv. The verdict may not grant more than the demands stated in the lawsuit. This prohibition is called *ultra petitem partium*. Judges who grant more than the *posita* or *petitum* of the lawsuit are considered to have exceeded the limits of their authority or *ultra vires*, namely acting beyond the powers of their authority. If the decision contains *ultra petitem*, it must be declared invalid even though it was done by the judge in good faith and in accordance with the public interest. Adjudicating by granting more than what is claimed, can be equated with illegal actions even though it is done in good faith.

Therefore, judges who violate the principle of *ultra petite* are violating the principle of the rule of law (Harahap, 2017):

1. because the action is not in accordance with the law, whereas in accordance with the rule of law, all judges' actions must be in accordance with the law.
2. the actions of the judge who granted more than what was demanded, clearly exceeded the limits of authority given to him by pasal 178 ayat (3) HIR, whereas in accordance with the principle of the rule of law, no one may take actions that exceed the limits of his authority (beyond the powers of his authority).
3. Spoken in public

Trial and pronouncement in a court session that is open to the public or in public, is an integral part of the principle of fair trial. According to the principle of fair trial, the trial must be based on an honest process from start to finish. Thus, the principle of public trial from the beginning of the examination until the verdict is handed down is part of the principle of fair trial. In the literature, it is called the open justice principle. The main objective is to ensure that the judicial process is free from misbehavior by judicial officials.

Through the principle of being open to the public, it is considered to have a deterrent effect on the occurrence of partial or discriminatory judicial processes, because the examination process from the beginning until the verdict is handed down is seen and heard by the public. It is even widely publicized. This makes judges more careful about committing errors and abuse of authority on the one hand and prevents witnesses from committing perjury on the other.

The principle of open justice contrasts with secrecy or confidence as in mediation or arbitration hearings. In mediation or arbitration, hearings are designed to be confidential, to maintain the credibility of the parties to the dispute. Indeed, the law allows extra judicial

hearings based on the agreement of the parties. However, when resolving disputes through state courts or ordinary courts, the principle of public hearings must be upheld. This principle cannot be overridden by the agreement of the parties. Such an agreement is contrary to public order because the principle of openness is imperative, therefore it cannot be overridden by agreement (Hadrian & Hakim, 2020).

### **Identity of the Parties in Decision Number 5/PDT.G.S/2021/PN.Praya**

1. M. Hadi Asror, Male, Occupation Police, 20 years old, Address in Kopok Kenawa Hamlet, Dasan Baru Village, Kopang Sub-District, Central Lombok Regency, in this case giving power of attorney to: M. Shaufi Maula Anjani, S.H..M.H, Akhnad Junaidi, S.H., Sahdan, S.H. all three are Advocates / Lawyers and Legal Consultants at the People's Amanah Legal Aid Institute whose address is at Jalan Bung Karno, Graha Dekopinwil NTB Building, LT 2 Mataram City, based on Special Power of Attorney Number 15.SK/LBH- AR/05/2021 dated May 10, 2021, which has been registered at the Registrar of the Central Lombok District Court with register number 209/SK-HK/2021/PN PYA, dated June 9, 2021, hereinafter referred to as the Plaintiff.
2. Sahir, Male, Age +45 years, Religion Islam, Indonesian Citizenship, Occupation Farmer, Address at Keren, Mantang Village, Batukliang Sub-District, Central Lombok District, hereinafter referred to as the 1st Respondent.
3. PT Nusantara Sakti Cipta Dana (NSC FINANCE MOTOR) Central Lombok Branch, located at Pasar Renteng Shophouse Complex in Praya, Central Lombok Regency, hereinafter referred to as Defendant II.

### **Case Position of Decision Number 5/PDT.G.S/2021/PN.Praya**

The plaintiff is the owner of a black Honda pcx motorcycle, police number DR 6432 UG, frame number MH1KF2117LK28190, engine number KF21E1327855, STNK, AND BPKB on behalf of the plaintiff, the object of the dispute is the BPKB of a Honda pcx motorcycle, black color, license plate DR 6432 UG, frame number MH1KF2117LK28190, engine number KF21E1327855, STNK, AND BPKB on behalf of the plaintiff, at the end of September 2020 the 1st respondent came to the plaintiff's house to offer cooperation in a cattle business with a profit-sharing system with a joint capital of around 40. 000,000 (forty million rupiah). After hearing the explanation from the 1st respondent, the plaintiff agreed to the cooperation but at that time the plaintiff only had Rp. 10,000,000 (ten million rupiah).

After that the plaintiff told the defendant 1 'I will help pawn Mr. Hadi's motorbike to my brother for Rp. 10,000,000 (ten million rupiah), so that Mr. Hadi will have enough money for Rp. 20,000,000. 000 (twenty million rupiah), after which the plaintiff gave defendant 1, the original bpkb, and after a few weeks defendant 1 came to the plaintiff's house and said I will take the motorcycle first, Mr. Hadi, to be checked by my brother and after that the plaintiff gave the motorcycle to the defendant, the next day the plaintiff's motorcycle was delivered by the defendant 1 to his house and said my brother was trying to get the money. just wait for information from me.

A few weeks later the plaintiff called defendant 1 and did not pick up the phone, and the plaintiff searched the home of defendant 1 but could not find him. The actions of the 1st respondent who had pawned the bpkb of the plaintiff's motorcycle secretly to the 2nd respondent was an act against the law (onrechmatigdaad).

As a result of the unlawful acts committed by the 1st and 2nd defendants, the plaintiff felt uncomfortable and was always wary and afraid of driving, therefore it is appropriate and proper for the plaintiff to request moral compensation in the amount of Rp. 100,000,000 (one hundred million rupiah). Due to the actions of defendant 1 and defendant 2, the plaintiff also suffered material damage, namely that the plaintiff was in danger of losing his motorcycle and the disputed object in the form of a BPKB valued at Rp. 25,000,000 (twenty-five million rupiah).

That the actions of the 2nd defendant in accepting the pawned bpkb from the 1st defendant which was clearly and obviously in the name of the plaintiff and without the consent of the plaintiff was unlawful (onrechmatigdaad). That the unlawful acts committed by defendant 1 and defendant 2 caused moral and material damage to the plaintiff who was the legal owner of the motorcycle whose bpkb was pawned by defendant 1.

#### **Defendant's response Decision Number 5/PDT.G.S/2021/PN.Praya**

That against the Plaintiff's claim, Defendant I through his attorney submitted an answer dated June 16, 2021, that it is indeed very true that posita number 1 to posita number 10 submitted by the Plaintiff in his lawsuit, that posita number 11 submitted by the Plaintiff is not true, the truth is that Defendant 1 pawned secretly without the Plaintiff's consent to Defendant 2 with a contract number: 02201005505 an. Defendant 1 pawned Plaintiff's BPKB secretly to Defendant 2 because Plaintiff's business was going bankrupt and Defendant's income was unstable due to the corona pandemic, as a form of good faith Defendant 1, had paid installments of 6 x 696. 000 4,176,000 to Defendant 2, and Defendant 1 is willing to pay off to Defendant 2 the amount of 5,000,000 (five million rupiah) so that Defendant 2 will return the Plaintiff's BPKB.

After Defendant II read and carefully examined the chronology of the cause of the problem at the subject matter of Plaintiff's simple lawsuit, it is true that Defendant I is the debtor of Defendant II as the creditor, based on the multipurpose financing agreement No. 02201005505 (Vide T-1) dated October 23, 2020, which contains the provision of multipurpose financing facilities by Defendant II to Defendant I worth Rp 10,458,938. (ten million four hundred fifty-eight thousand nine hundred thirty-eight) with the guarantee of the Motor Vehicle Ownership Book (BPKB) with the identity of the object Honda brand vehicle, black color, type Honda PCX, year 2020, frame number: MHIKF2117LK328190, Engine Number KF21E1327855 and the agreement has been bound with Fiduciary Guarantee based on Fiduciary guarantee deed number 123 (Vide T-3) and Fiduciary Certificate number: W21.00063684 AH.05.01 TAHUN 2021. (Vide T-2), that prior to the written agreement between Defendant I and Defendant II, Defendant I first submitted the required documents for the financing application to Defendant II in the form of an Identity Card (KTP), Family Card (KK), and proof of ownership of the motorcycle vehicle unit in the form of a Motor Vehicle Ownership Book (BPKB), Vehicle Number Certificate (STNK) along with the

object of the vehicle, where the requirement file after checking the legality is confirmed that the files are ORIGINAL and not in or related to any legal problems, besides that the object of the vehicle according to the identity in the Vehicle Ownership Book (BPKB) is presented to the PT. NSC office which is checked for data adjustments in the Motor Vehicle Ownership Book (BPKB) and checks the frame number and engine number.

After it was confirmed that all requirements as described in point 2 (two) above were fulfilled by Defendant I and the authenticity and suitability of the data had been checked by Defendant II, then the binding between Defendant I and Defendant II was carried out in a multipurpose financing agreement with number 02201005505 dated October 23, 2020, that after signing the Multipurpose Agreement number 02201005505 Defendant II provided a financing facility in accordance with the submission of Defendant I worth Rp 10,458,938. (ten million four hundred fifty-eight thousand nine hundred thirty-eight). After obtaining a financing facility from Defendant II, Defendant I carried out its installment payment obligations to Defendant II with the following details:

- a. Installment 1 (one) was paid by Defendant I on November 23, 2020, with a value of Rp 696,000 (six hundred ninety-six thousand);
- b. Installment 2 (two) was paid by Defendant I on December 23, 2020, with a value of Rp 696,000 (six hundred ninety-six thousand);
- c. Installment 3 (three) was paid by Defendant I on January 22, 2021, with a value of IDR 696,000 (six hundred ninety-six thousand),
- d. Installment 4 (four) was paid by Defendant I on February 23, 2021, with a value of IDR 696,000 (six hundred ninety-six thousand),
- e. Installment 5 (five) was paid by Defendant I on March 23, 2021, with a value of IDR 696,000 (six hundred ninety-six thousand);
- f. Installment 6 (six) was paid by Defendant I on May 25, 2021, with a value of IDR 696,000 (six hundred ninety-six thousand);

That all processes were followed regarding the engagement between Defendant I and Defendant II. Defendant I has always been cooperative in carrying out payment obligations, so there were no concerns prejudices, and other allegations from Defendant II to Defendant I. Based on the facts described above, Defendant II questions the motive of the Plaintiff in handing over and giving the object of the motor vehicle and the Motor Vehicle Ownership Book (BPKB) which is recognized as the owner to another person without any concern that this could harm another party as occurred in this case; That in the Multipurpose Financing Agreement number 02201005505 it is also stated in the consumer statement at number 7, namely that the data provided by the declarant is the actual data, if in the future it is found that the data provided is incorrect and/or falsified, the declarant is willing to bear all the consequences, including legal consequences, both criminal and civil, and to compensate and/or hand over the motorized vehicle (object of collateral) in its proper condition, That prior to Defendant I not fulfilling their payment obligations, Defendant I from the 1st payment to the 6th payment still fulfilled their multi-purpose financing payment obligations to Defendant II, although during their payments



Defendant I was late on the 6th payment from the agreed/specified time, which was every 23rd (twenty-third).

Based on the descriptions above, please ask Your Honor the Panel of Judges of the case a quo to set aside the chronology of the problem which is not based on the law and is not by the truth, based on all the descriptions above, please ask Your Honor the Panel of Judges of the case a quo to declare the chronology of events of the problem which is not by the actual situation to be rejected or at least cannot be accepted (Niet Onvankelijke Verklaard).

### **Legal Considerations of Decision Number 5/PDT.G.S/2021/ PN.Praya**

After the Panel of Judges examined the fundamental petendi of the Plaintiff's lawsuit, it can be briefly explained that the Plaintiff is the owner of a black Honda PCX motorcycle, with police number DR 6432 UG, frame number MH1KF2117LK28190, engine number KF21E1327855, then around the end of September 2020 Defendant 1. came to the Plaintiff's house to offer cooperation in a cattle farming business with a profit-sharing system with shared capital of around Rp. (forty million rupiah), but at that time the Plaintiff only had Rp. 10,000,000.00 (ten million rupiah). (forty million rupiah), but at that time the Plaintiff only had Rp. 10,000,000.00 (ten million rupiahs), based on this, Defendant 1 offered Plaintiff to pawn Plaintiff's motorcycle to Defendant 1's brother to provide capital for the cattle business, so at that time Plaintiff gave Defendant 1 the original BPKB and the Plaintiff's motorcycle to be shown to Defendant 1's brother who would be offered a place to pawn, However, after several months Defendant 1 disappeared and could not be contacted by the Plaintiff, so the Plaintiff sent a summons to Defendant 1, then based on this, Defendant 1 on December 3, 2020 went to the Plaintiff's house and told the Plaintiff that the BPKB of the Plaintiff's motorcycle had been pawned secretly without the knowledge of the Plaintiff to Defendant 2 in the amount of Rp. 8,200,000.00 (eight million two hundred thousand rupiah) so that Defendant 1 could not return the BPKB of Plaintiff's motorcycle, and therefore the actions of Defendant 1 and Defendant 2 were unlawful acts that caused moral and material damage to Plaintiff.

That is the Plaintiff's claim. Defendant 1 provided an answer that stated that Defendant I acknowledged the truth regarding posita number 1 to number 10 of Plaintiff's lawsuit and denied the amount of the pawn value mentioned by Plaintiff in his lawsuit and stated that the BPKB of Plaintiff's motorcycle was pawned by Defendant I in the amount of Rp. 9,400. 000 (nine million four hundred thousand rupiah) because at that time Defendant I needed money because Defendant's business was about to go bankrupt and as a form of good faith from Defendant I, then Defendant I had paid 6 x loan installments of Rp. 696,000 Rp. 4,176,000.00 to Defendant II, and Defendant I was willing to pay off to Defendant II the amount of Rp. 5,000,000.00 (five million rupiah) so that Defendant II would return the BPKB of Plaintiff's motorcycle.

That upon the Plaintiff's claim, Defendant I denied and provided an answer which stated that Defendant I was a debtor of Defendant II based on a multipurpose agreement number: 02201005505 worth Rp 10,458,938. (ten million four hundred fifty-eight thousand nine hundred thirty-eight) with BPKB collateral for a Honda brand motorcycle, black color, type Honda PCX

Year 2020, Frame Number: MHIKF2117LK328190, Engine Number: and has also been bound in the form of a fiduciary guarantee deed number W21.00063684.AH.05.01 of 2021, and as is known that before the multipurpose agreement was approved, Defendant II examined the documents required for the financing application including the Identity Card of Defendant I, Family Card of Defendant I, proof of ownership of the vehicle. motor vehicle, namely BPKB and STNK along with the vehicle unit, and after it was confirmed that all files were original and not related to legal problems, then Defendant II made a binding by making a multipurpose financing agreement with Defendant I with a value of Rp. 10,458,938. 00 (ten million four hundred fifty-eight thousand nine hundred thirty-eight), and over time until now Defendant I has only made 6 (six) installments, so based on this, Defendant II rejects the arguments put forward by Plaintiff, because when applying for financing facility by Defendant I, the documents and vehicle units were properly controlled by Defendant I, so Defendant II based on the principle of fairness and justice, Therefore, Defendant II, based on the principle of movable objects, which by its nature is Bezit, assumes that the person who controls the movable object is considered the owner, namely Defendant I, so the argument of the Plaintiff stating that Defendant II committed a tort is unfounded and vague because the relationship between Defendant I and Defendant II, in this case, is related to the financing agreement.

that a tort lawsuit is a lawsuit regarding compensation for damages due to an unlawful act that has caused harm to others as stipulated in pasal 1365 of the Civil Code so that to claim compensation based on unlawful acts (PMH), the conditions must be met, namely:

- a. The existence of an action, the action can be active or passive, active means that someone is actively doing, while passive is defined as not doing anything;
- b. The act is against the law, against the law is narrowly defined as violating the law, while broadly defined as violating the rights of others, contrary to the legal obligations of the perpetrator, contrary to decency, and contrary to the public interest;
- c. The existence of a fault, the intended fault is a factor that connects the perpetrator and the unlawful act itself, namely intent or negligence;
- d. The existence of loss, the intended loss is material and immaterial
- e. The existence of a causal relationship (causality), namely between the act and the loss caused must be direct in the sense that the loss must be caused by the unlawful act committed.

### **Legal Analysis of Decision Number 5/PDT.G.S/2021/PN.Praya**

In tort, the law outlines the rights and obligations when a person commits an act of error or negligence and the act causes harm to others. Unlawful acts are not only acts that violate written rules, namely acts that conflict with the legal obligations of the perpetrator and violate the subjective rights of others, but also acts that violate unwritten rules, namely rules governing morals, decency, accuracy and caution that a person should have in life in society (Asnawi, 2018).

Unlawful acts are defined as unlawful acts, namely an act that causes a disturbance in the balance of society and is also known as "onrechmatigedaad". In principle, onrechmatigedaad exists if a person acts or fails to act in a way that violates the rights of others or is contrary to the legal

obligations of the person who does the act itself or is also contrary to the ethical or prudent attitude that is appropriate in the association of this society towards oneself and others (Slamet, 2013). Based on the provisions of the Law and expert opinion, it can be concluded that an unlawful act is an act or action of a person who has bad faith against another party and provides compensation for his actions.

Unlawful acts are regulated in pasal 1365 of the Civil Code (KUHPerdara), which reads:

*"Every unlawful act which causes damage to another person obliges the person who caused the damage through his fault to compensate for the damage."*

From the wording of the pasal, the following elements of tort can be drawn (Slamet, 2013):

- a. Acts that violate applicable laws, or
- b. Acts that violate the rights of others guaranteed by law, or
- c. Actions that are contrary to the legal obligations of the perpetrator, or
- d. Acts contrary to decency (geode zeden), or
- e. Acts that are contrary to a good attitude in society to look after the interests of others (indruist tegen de zorgvultheid, welke in het maatschappelijk verkeer betaamt ten aanzien van anders person of goed).

In this analysis, the author will analyze this case by first analyzing the unlawful act argued by the plaintiff M. HADI ASROR, Male, Police Occupation, 20 years old, Address in Kopok Kenawa Hamlet, Dasan Baru Village, Kopang District, Central Lombok Regency in this case represented by his legal representative, Advocate / Lawyer and Legal Consultant at the AMANAH RAKYAT LEGAL ASSISTANCE LABOR Institute located at Jalan Bung Karno, Graha Dekopinwil NTB Building, LT 2 Mataram City, based on Special Power of Attorney Number 15. SK/LBH- AR/05/2021 dated May 10, 2021, which has been registered at the Registrar of the Central Lombok District Court with register number 209/SK-HK/2021/PN PYA, dated June 9, 2021, hereinafter referred to as PLAINTIFF, for unlawful acts committed by the 1st defendant (Sahir), male, 45 years of age, religion Islam, Indonesian citizenship, occupation farmer, address in cool, meaning village, batukliang sub-district, central Lombok district, and the 2nd defendant (PT. Nusantara Sakti Cipta Dana (Nsc Finance Motor) Central Lombok Branch, address at Pasar Renteng Shophouse Complex Praya, Central Lombok District.

Pasal 1365 of the Civil Code stipulates that if a person suffers a loss due to an unlawful act committed by another person against him, then he can file a claim for compensation with the district court.

The elements of tort regulated in Article 1365 of the Civil Code are :

- a. The act is unlawful;
- b. There must be a fault on the part of the perpetrator;
- c. There must be a loss (Schade);
- d. There must be a causal link between the act and the harm

Meanwhile, the conditions that must exist to determine an act as a tort are as follows:

- a. there must be an action, what is meant by this action is both positive and negative, meaning that every behavior is doing or not doing;
- b. the act must be unlawful;
- c. there is a loss;
- d. there is a causal relationship between the unlawful act and the loss;
- e. there is fault (schuld)

From the requirements of a tort, it will be analyzed whether the tort committed by Defendant I (Sahir), male, 45 years old, religion Islam, Indonesian citizenship, occupation farmer, address in cool, meaning village, batukliang sub-district, central Lombok district, and Defendant II (PT. Nusantara Sakti Cipta Dana (Nsc Finance Motor) Central Lombok Branch, Addressed at Pasar Renting Shophouse Complex Praya, Central Lombok District can be said to meet the elements of a tort or not by the elements contained as follows (Prodjodikoro, 1984):

- a. That at the end of September 2020 the 1st respondent came to the plaintiff's house to offer cooperation in a cattle business with a profit-sharing system with a shared capital of approximately 40,000,000 (forty million rupiah), after hearing the explanation from the 1st respondent, the plaintiff agreed to the cooperation but at that time the plaintiff only had Rp. 10,000,000 (ten million rupiah), and after that the respondent told the 1st respondent 'Later I will help pawn Mr. Hadi's motorcycle to my brother for Rp. 10,000,000 (ten million rupiah), so that Mr. Hadi will have enough money to pay Rp. 20,000,000 (twenty million rupiahs), and after that, the plaintiff gave the 1st respondent, the original bpkb, and the original bpkb to my brother. 10,000,000 (ten million rupiah), so that Mr. Hadi would have enough money for Rp. 20,000,000 (twenty million rupiahs), That after that the plaintiff gave defendant 1 the original bpkb, and after a few weeks defendant 1 came to the plaintiff's house and said I will take the motorbike to my brother for inspection after that the plaintiff gave the motorbike to the defendant, That the next day the plaintiff's motorbike was delivered by the defendant 1 to his house and said my brother was trying to get the money. just wait for information from me.

- b. the act is unlawful (Salam, 2018);

The category of an act can be classified as unlawful requires 4 conditions, namely:

- a. Contrary to the perpetrator's legal obligations
- b. Contrary to the subjective rights of others
- c. Contrary to decency
- d. Contrary to propriety, accuracy, and prudence.

that Defendant I and Defendant II have committed an unlawful act by pawning and accepting the pawn of the disputed object in the form of BPKB motorcycle type Honda/V1J02Q32L0 A/T, Model SPM R2, Year of Assembly 2020, color TNKB black, police number DR 6432 UG, frame number MH1KF2117LK28190, engine number KF21E1327855 in the name of M. HADI ASROR to Defendant II, so that in relation to the case a quo Defendant I and Defendant II are the parties that must be held accountable by returning the disputed object in the form of BPKB motorcycle type Honda/V1J02Q32L0

A/T, Model SPM R2, Assembly Year 2020, TNKB color black, Police number DR 6432 UG, frame number MH1KF2117LK28190, engine number KF21E1327855 in the name of M. HADI ASROR to the Plaintiff as the owner.

As mentioned above, the act referred to here is the pawning of the plaintiff's motorcycle by the 1st respondent. From the explanation of the 4 elements above in this case, all of the elements have been fulfilled, so it can be concluded that this act was an unlawful act committed by the 1st and 2nd respondents.

- c. there was harm to the victim; Plaintiff was harmed by Defendant I and Defendant II in the amount of Rp. 100,000,000.00 (one hundred million rupiah) in moral damages and Rp. 25,000,000.00 (twenty-five million rupiah) in material damages.
- d. the existence of a causal relationship between the tort and the loss.

The loss suffered by the Plaintiff (as mentioned above is clearly a direct result of the unlawful act committed by the 1st Defendant (Sahir) and the 2nd Defendant (PT. Nusantara Sakti Cipta Dana (Nsc Finance Motor) Central Lombok Branch, Located at Pasar Renteng Shophouse Complex Praya, Central Lombok Regency.

- e. the existence of fault (schuld).

Fault in Article 1365 of the Civil Code can include elements of intent or negligence committed by the parties in carrying out the unlawful act.

That from the above explanation, which contains 5 elements, the author can conclude that the acts committed by the 1st and 2nd respondents constitute tortious acts as set out in Article 1365 of the Civil Code.

## CONCLUSION

The concept of Unlawful Acts (onrechmatigdaad) in Civil Law, Unlawful Acts as stated in Article 1365 of the Civil Code must contain elements, namely the existence of an act, the act is against the law, the existence of fault on the part of the perpetrator, the existence of losses for the victim, the existence of a causal relationship between the act and the loss and the existence of acts that are contrary to prudence or necessity in good public relations.

The basis for the Judge's consideration in Decision Number 5/Pdt.G.S/2021/Pn. Praya, the decision is clear that the actions of defendant 1 and defendant 2 have been proven to have committed an unlawful act because they have fulfilled the elements of Article 1365 of the Civil Code, there must be an act, and the act must be against the law, there is a loss, there is a causal relationship between the unlawful act and the loss, and there is a fault (schuld).

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