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## Ratio Decidendi Decision No 1/Pdt.GS/2018/PN.Mjn Against Breach in Agreement

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### ABSTRACT

In the case of case decision No 1/Pdt.GS/2018/PN.Mjn, The case arose when the two parties entered into an agreement in September 2015. That the creditor did not pay the loan installments in accordance with what was agreed in the acknowledgment of debt since September 2015. Due to the position of the debtor on a non-performing loan, the creditor filed a default lawsuit to court on the basis of a letter of action. Debt Acknowledgment. Ratio decidendi The decision of the Majene District Court Number 1/PdtG.S/2018/Pn.Mjn decided that the debtor as the defendant had defaulted on the object of the claim for acknowledgment of debt. The letter of acknowledgment of debt is a Grosse Deed, not an agreement, while an agreement is an object of default. The execution of the acknowledgment of debt is carried out through the court by means of a request for execution not a lawsuit, so that the lawsuit filed is blurred in the case.

**Keywords:** *Default, agreement, Ratio decidendi*

### INTRODUCTION

Developments that occur in human life are always faced with conflicts that color life, starting from problems that accompany every activity in human life. Usually there is a dispute in the agreement from both parties, one of which is dissatisfaction or disadvantaged in the agreement. Every business activity carried out there is always an achievement that will be fulfilled by both parties who enter into the agreement. Achievement is an obligation that must be fulfilled or carried out by the parties in accordance with what was agreed. In fulfilling the achievement must also be guided by the principle of good faith. Dispute is a condition where there is a party who feels aggrieved by another party, which then the party conveys this dissatisfaction to the second party. In the legal context, especially contract law,

what is meant by a dispute is a dispute that occurs between the parties due to a violation of the agreement that has been stated in a contract, either in part or in whole.<sup>1</sup>

Book III of the Civil Code regulates *Verbintenissenrecht*, which also includes the term *Overeenkomst*. It is known from 3 *Verbentenis translations*, namely engagement, contract and agreement, while *Overeenkomst* there are 2 translations, namely agreement and agreement.<sup>2</sup>The meaning of the agreement itself is regulated in Book III and Chapter II of the Civil Code. Article 1313 of the Civil Code reads: "An agreement (agreement) is an act by which one person, or more, binds himself to one or more people."<sup>3</sup>

According to Subekti, an agreement is a concrete form of engagement while an engagement is an abstract form of an agreement, this can be interpreted as a legal relationship between two parties whose contents are rights and obligations, a right to demand something and vice versa an obligation to fulfill these demands.<sup>4</sup>With the existence of an agreement, it is hoped that everything that has been agreed upon can run normally, but in practice under certain conditions the exchange of achievements does not always work as it should, so that in other words there has been a default by the parties or one of the parties, due to non-fulfillment of the obligations that must be carried out or fulfilled which ultimately results in the other party being harmed.<sup>5</sup>Default is failure to fulfill or neglect to carry out obligations as specified in the agreement made between the creditor and the debtor.<sup>6</sup>

In the case of case decision No 1/Pdt.GS/2018/PN.Mjn, This case arose when the two parties entered into an agreement in September 2015. That the creditor did not pay the loan installments in accordance with what was agreed in the acknowledgment of debt since September 2015 and until November 14 2017, the remaining loans were in arrears with a total of Rp. 7,878,165.- (seven million eight hundred and seventy-eight thousand one hundred and forty-five rupiahs) and is a loan in the bad credit category. Due to the debtor's position as a non-performing loan, the creditor filed a lawsuit for default to the court on the basis of a letter of acknowledgment of debt. So that the problem is that the judge does not consider that the lawsuit for default originates from a concession principle agreement while the debt acknowledgment is not an agreement that fulfills the concession principle.

## METHOD

The type of research used in this research is normative by using secondary data as legal material.<sup>7</sup>The research specifications used are analytical descriptive with deductive

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12 <sup>1</sup>Nurnaningsih Amriani, *Alternative Mediation for Civil Dispute Resolution in Court*. Jakarta, 2012, p.

<sup>2</sup>Handri Raharjo,, *Contract Law in Indonesia*, Yogyakarta, Yustitia Library, 2009, p. 41

<sup>3</sup>ibid

<sup>4</sup>Treasure, *Agreement Law (In Perspective of Coal Mining Business Work)*, Vol. 2, 2016, p. 149,

<sup>5</sup>Nurnaningsih Amriani, *loc. cit*

<sup>6</sup>Salim HS, *Introduction to Written Civil Law (BW)*, Jakarta, 2008, p.180

<sup>7</sup>Peter Mahmud Marzuki, *Legal Research*, (Jakarta, Prenada Medai Grub, 2013) page 9

thinking methods, while the research approach used is *a conceptual approach and a statute approach*.

## RESULTS AND DISCUSSION

The agreement is one of the two existing legal bases apart from the law that can give rise to an agreement. The conditions for a valid agreement as stipulated in article 1320 of the Civil Code are: a) The agreement of those who bind themselves b) The ability to make an agreement c) A certain matter d) A lawful cause.<sup>8</sup>Terms a and b are subjective terms because they relate to the subject of the agreement, while statements c and d relate to the object of the agreement or objective conditions. the difference between the two requirements between objective and subjective terms is also associated with being null and void and an agreement can be canceled. if the objective conditions in the agreement are not met, then the agreement is null and void or an agreement that has been canceled from the start, the law considers the agreement never existed. if the subjective conditions are not fulfilled then the agreement can be canceled where the agreement has not been or is not canceled by the court, then the agreement is still valid.<sup>9</sup>If the conditions for the validity of the agreement as stipulated in article 1320 of the Civil Code have been fulfilled, then based on article 1338 of the Civil Code, the agreement has the same legal force as a law. The provisions of article 1338 paragraph (1) of the Civil Code emphasize that: "All agreements made legally apply as laws for those who make them"

Article 1320 is also a description of the consensual principle of the agreement. The agreement contains a set of rights and obligations that must be carried out or fulfilled by the parties which is called an achievement. Keeping ( *nakoming* ) means fulfilling the contents of the agreement or in a broader sense is paying off ( *betaling* ) the implementation of the agreement, namely fulfilling perfectly all contents, objectives and provisions in accordance with the will that has been agreed upon by the parties.

In the Decision No. of the Majene District Court Number: 1/Pdt.GS/2018/PN.Mjn it is stated first that the length of the debtor's installments is 36 months, then furthermore in the same decision it is stated that the length of the debtors' installments is 48 months. So it is said that the lawsuit is *obscuur libel* , which means that the contents of the lawsuit are not clear, it is not clear in determining the actual amount of the debtor's installments. Article 1320 of the Civil Code is the principle of consensualism in agreements, Decision No. Majene District Court Number: 1/Pdt.GS/2018/PN.Mjn the object of the lawsuit is a Debt Acknowledgment Letter as default, acknowledgment of debt is not the same as an agreement. Letter of acknowledgment of debt is a letter made unilaterally. The material requirement of the grosse deed of acknowledging debt is that the grosse deed of acknowledging debt only contains questions owed a certain amount by the debtor to the creditor or the obligation to repay a certain amount of debt with certainty. In a debt

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<sup>8</sup>Johannes Ibrahim, cross default & cross collateral as an effort to settle problem loans, Refika Aditama, Bandung, 2004, page 10

<sup>9</sup>Adrian Sutedi, Legal Aspects of Bonds and Sukuk, Sinar Graphic, Jakarta, 2009, page 33

acknowledgment deed grosse is not allowed to contain other terms in the form of an agreement.

Contents of the Grosse Deed of Debt Acknowledgment: a) Unilateral acknowledgment of debt by the debtor. b) The obligation to pay a certain amount of money. c) Within a certain period of time. d) Place of payment. e) *Opeisbaarheid* (collectable). From these material requirements, it can be seen that debt acknowledgment is not the same as an agreement according to consensualism principle indicators. The debt acknowledgment letter is a Grosse deed, if it is made before a notary public, it will have executive power in its implementation if an unlawful act occurs in the execution of the debt acknowledgment letter. In the decision of the Majene District Court Number: 1/Pdt.GS/2018/PN.Mjn the judge's consideration stated that the debtor defaulted on the September 2015 acknowledgment of debt, the judge ruled out the basic concept of material terms of the acknowledgment of debt which was different from the agreement. Where default only occurs if there is an agreement, while the acknowledgment of debt is a unilateral statement and there is no agreement in it. As for the execution of the acknowledgment of debt made by the Majene branch of BRI for the debtor, it cannot also be executed, because based on SE NOSE: 25 DIR/ADK/09/2013 concerning KUPEDDES Credit Provisioning Procedures with the essence of the contents of the circular letter that the acknowledgment of debt does not need to be legalized at Notary.

## **CONCLUSION**

Ratio decidendi The decision of the Majene District Court Number 1/PdtG.S/2018/Pn.Mjn does not decide that the debtor as the defendant has defaulted on the object of the claim for acknowledgment of debt. The letter of acknowledgment of debt is a Grosse Deed, not an agreement, while an agreement is an object of default. The execution of the acknowledgment of debt is carried out through the court by means of a request for execution not a lawsuit, so that the lawsuit filed is blurred in the case.

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