

**THE SETTLEMENT ANALYSIS OF CIVIL LAWSUIT CASES FOR
TORT IN SURAKARTA DISTRICT COURT AND SURAKARTA
RELIGIOUS COURT**

ACC

Ujian Munaqasah



Mukhsin Achmad,

S.Ag., M.Ag.



Written by:

Siti Inayah

19421056

THESIS

Deliver to *Ahwal Syakhsiyyah* Department (Internasional Program)

Faculty of Islamic Studies, Universitas Islam Indonesia

to fulfill one of the requirements

for obtaining a law degree

YOGYAKARTA

2023

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2023

STATEMENT LETTER

The undersigned below:

Name : Siti Inayah
Student Number : 19421056
Study Department : *Ahwal Syakhshyyah* International Program
Faculty : Islamic Studies
Thesis Title : The Settlement Analysis of Civil Lawsuit Cases for Tort in
Surakarta District and Religious Courts According to Law No.
3/2006

Hereby declare that this thesis is the result of my own work and true originality. If in the future it turns out that the writing of this thesis is the result of plagiarism toward other people's work, then I am willing to take responsibility and at the same time be willing to accept the sanctions based on the rules of conduct that apply at Universitas Islam Indonesia.

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Yogyakarta, April 8, 2023

Undersigned,



10000
METERAI
TEMPEL
DCEETAJK709611677

Siti Inayah



FAKULTAS
ILMU AGAMA ISLAM

Gedung K.H. Wahid Hasyim
Rampas Terpadu Universitas Islam Indonesia
Jl. Kaliurang km 14,5 Yogyakarta 55584
T. (0274) 896444 ext. 4511
F. (0274) 896463
E. faqih@uii.ac.id
W. uii.ac.id

PENGESAHAN

Skripsi ini telah diujikan dalam Sidang Munaqasah Program Sarjana Strata Satu (S1) Fakultas Ilmu Agama Islam Universitas Islam Indonesia Program Studi Ahwal Al-Syakhshiyyah IP yang dilaksanakan pada:

Hari : Kamis
Tanggal : 25 Mei 2023
Judul Skripsi : The Settlement Analysis of Civil Lawsuit Cases for Tort in Surakarta District Court and Surakarta Religious Court
Disusun oleh : SITI INAYAH
Nomor Mahasiswa : 19421056

Sehingga dapat diterima sebagai salah satu syarat untuk memperoleh gelar Sarjana Strata Satu (S1) Syariah pada Fakultas Ilmu Agama Islam Universitas Islam Indonesia Yogyakarta.

TIM PENGUJI:

Ketua : Muhammad Miqdam Makfi, Lc., MIRKH. (.....)
Penguji I : Dr. YUSDANI, M.Ag (.....)
Penguji II : Dr. M. Roem-Syibly, S.Ag, MSI (.....)
Pembimbing : Dr. Mukhsin Achmad, S.Ag, M.Ag. (.....)

Yogyakarta, 5 Juni 2023



.....
Dr. Asmuni, MA

INTERNAL MEMO

(NOTA DINAS)

Subject : **Thesis**

To : The Honorable **Dean of Faculty of Islamic Studies,**
Universitas Islam Indonesia
at-Yogyakarta.

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Based on the appointment by the Dean of the Faculty of Islamic Studies, Universitas Islam Indonesia with letter number: 91/Dek/60/DAATI/FIAI/I/2023, on January 16, 2023. For our duties as supervisors of the thesis:

Name : Siti Inayah

Student Number : 19421056

The student of the Islamic Studies Faculty, Universitas Islam Indonesia

Study Department : *Ahwal Syakhsiyyah* International Program

Thesis Title : The Settlement Analysis of Civil Lawsuit Cases for Tort
in Surakarta District Court and Surakarta Religious Court

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Supervisor,



Dr. Mukhsin Achmad, S.Ag., M.Ag

SUPERVISOR'S APPROVAL

The undersigned is the thesis supervisor, certifying that:

Student Name : Siti Inayah

Student Number : 19421056

Thesis Title : **The Settlement Analysis of Civil Lawsuit Cases for Tort
in Surakarta District Court and Surakarta Religious
Court**

Yogyakarta, April 6, 2023

Supervisor,

A handwritten signature in black ink, appearing to read 'Mukhsin', with a stylized flourish at the end.

Dr. Mukhsin Achmad, S.Ag., M.Ag

HALAMAN PERSEMBAHAN

Halaman ini, dengan khusus saya persembahkan untuk keluarga kecil saya sehingga saya tulis dengan Bahasa Indonesia agar kelak dapat mamah pahami dengan baik.

Dengan halaman persembahan ini, orang pertama yang sangat saya harapkan dapat membacanya adalah Alm. Bapak (Ubaidillah) dan Mamah (Pupu Marpuah). Orang tua yang telah dengan sempurna berkolaborasi membentuk kami hingga saat ini. Meskipun sudah bukan barang mungkin Bapak dapat membaca ini, tapi ungkapan terimakasih akan selalu saya kirim melalui doa-doa panjang setiap saat dan setiap ingat. Semoga skripsi ini juga dapat menjadi salah satu *washilah* sehingga kita dapat kembali bertemu kelak di surga yang indah. Juga untuk Mamah, madrasah pertama dan selamanya. Semoga skripsi ini dapat menjadi salah satu persembahan kebahagiaan atas apa yang tak pernah henti Mamah tanamkan. Terimakasih untuk segala ilmu yang sudah dan selalu mamah ajarkan, dengan sepenuh hati akan saya coba untuk selalu mengamalkan. Serta untuk doa-doa Ajaib yang tak pernah henti mamah sertakan untuk kami, anak-anak mamah. Tanpa do'a mamah, rasanaya cukup jauh dari mungkin bagi kami untuk sampai di titik masing-masing saat ini. Semoga kelak saya dapat menjadi anak, istri, serta ibu yang baik dan penuh cinta sebagaimana yang mamah ajarkan dan perlihatkan.

Persembahan kedua, dengan penuh cinta saya dedikasikan untuk kedua kakak saya Aa Acep Azis Ansori S.Psi dan Teh Iis Istianah Lc., Dipl., Role model saya, dua orang yang tanpa kata selalu melimpahkan kasih dan cinta. Terimakasih

aa untuk selalu memastikan bahwa kami baik adanya, terimakasih untuk selalu terlibat di setiap proses perjalanan mimpi saya. Untuk waktu yang selalu aa sempatkan dan materi yang sebisa mungkin aa sisihkan. Semoga saya juga dapat berlaku sama untuk aa dan keluarga kecil aa. Pun juga Teh Iis, yang dengan halang rintang jarak sebisa mungkin tetap terlibat. Terimakasih untuk segala contoh baik yang Teh Iis persembahkan, sebuah kebenaran bahwa sampainya saya di titik ini sedikit banyak adalah karena teramat ingin menjadi pelajar yang baik sebagaimana yang saya lihat dari Teh Iis. Do'a yang sama, semoga saya selalu bisa mempersembahkan yang sama untuk Teh Iis dan keluarga kecil yang baru Teh Iis bangun.

Yang terakhir yang tentu tidak akan dilupakan, kedua adik saya Dahliawati dan Aghnia Dinarti. Tidak dapat dipungkiri bahwa kalian akan selalu menjadi sosok yang lebih kecil di mata saya, tapi tidak saya pungkiri bahwa kalian sudah tumbuh menuju dewasa dan semakin memperkuat tim kecil kita. Terimakasih adik-adik ku untuk selalu berusaha terlibat di setiap perjalanan saya, semoga kebaikan, keberkahan, dan keridhoan tuhan selalu membarsamai perjalanan panjang kalian.

Doa saya, semoga nilai-nilai ketuhanan dan kekeluargaan yang Bapak tanamkan dapat menjadi tameng perjalanan panjang kehidupan. Semoga kebersamaan kami yang tidak selalu disatukan dalam bentuk ruang akan terus terjalin, semoga segala bentuk cinta yang kita persembahkan lewat doa dan kasih yang kita hadirkan lewat sikap akan terus tumbuh dan semakin banyak. Semoga saya dapat selalu menjadi anak, adik, dan kakak yang terus tumbuh menjadi baik.

PEDOMAN TRANSLITERASI ARAB LATIN
KEPUTUSAN BERSAMA
MENTERI AGAMA DAN MENTERI PENDIDIKAN DAN KEBUDAYAAN
REPUBLIK INDONESIA

Nomor: 158 Tahun 1987

Nomor: 0543b//U/1987

Transliterasi dimaksudkan sebagai pengalih-hurufan dari abjad yang satu ke abjad yang lain. Transliterasi Arab-Latin di sini ialah penyalinan huruf-huruf Arab dengan huruf-huruf Latin beserta perangkatnya.

A. Konsonan

Fonem konsonan bahasa Arab yang dalam sistem tulisan Arab dilambangkan dengan huruf. Dalam transliterasi ini sebagian dilambangkan dengan huruf dan sebagian dilambangkan dengan tanda, dan sebagian lagi dilambangkan dengan huruf dan tanda sekaligus.

Berikut ini daftar huruf Arab yang dimaksud dan transliterasinya dengan huruf latin:

Tabel 0.1: Tabel Transliterasi Konsonan

Huruf Arab	Nama	Huruf Latin	Nama
ا	Alif	Tidak dilambangkan	Tidak dilambangkan
ب	Ba	B	Be

ت	Ta	T	Te
ث	Ṣa	ṣ	es (dengan titik di atas)
ج	Jim	J	Je
ح	Ḥa	ḥ	ha (dengan titik di bawah)
خ	Kha	Kh	ka dan ha
د	Dal	d	De
ذ	Ḍal	ḏ	Zet (dengan titik di atas)
ر	Ra	r	er
ز	Zai	z	zet
س	Sin	s	es
ش	Syin	sy	es dan ye
ص	Ṣad	ṣ	es (dengan titik di bawah)
ض	Ḍad	ḏ	de (dengan titik di bawah)
ط	Ṭa	ṭ	te (dengan titik di bawah)
ظ	Ẓa	ẓ	zet (dengan titik di bawah)
ع	`ain	`	koma terbalik (di atas)
غ	Gain	g	ge

ف	Fa	f	ef
ق	Qaf	q	ki
ك	Kaf	k	ka
ل	Lam	l	el
م	Mim	m	em
ن	Nun	n	en
و	Wau	w	we
هـ	Ha	h	ha
ء	Hamzah	‘	apostrof
ي	Ya	y	ye

B. Vokal

Vokal bahasa Arab, seperti vokal bahasa Indonesia, terdiri dari vokal tunggal atau *monoftong* dan vokal rangkap atau *diftong*.

1. Vokal Tunggal

Vokal tunggal bahasa Arab yang lambangnya berupa tanda atau harakat, transliterasinya sebagai berikut:

Tabel 0.2: Tabel Transliterasi Vokal Tunggal

Huruf Arab	Nama	Huruf Latin	Nama
اَ	Fathah	a	a
اِ	Kasrah	i	i
اُ	Dammah	u	u

2. Vokal Rangkap

Vokal rangkap bahasa Arab yang lambangnya berupa gabungan antara harakat dan huruf, transliterasinya berupa gabungan huruf sebagai berikut:

Tabel 0.3: Tabel Transliterasi Vokal Rangkap

Huruf Arab	Nama	Huruf Latin	Nama
يَـ...	Fathah dan ya	ai	a dan u
وَـ...	Fathah dan wau	au	a dan u

Contoh:

- كَتَبَ kataba
- فَعَلَ fa`ala
- سئِلَ suila
- كَيْفَ kaifa
- حَوْلَ haula

C. *Maddah*

Maddah atau vokal panjang yang lambangnya berupa harakat dan huruf, transliterasinya berupa huruf dan tanda sebagai berikut:

Tabel 0.4: Tabel Transliterasi *Maddah*

Huruf Arab	Nama	Huruf Latin	Nama
ا...ى...	Fathah dan alif atau ya	ā	a dan garis di atas
ى...	Kasrah dan ya	ī	i dan garis di atas
و...ُ	Dammah dan wau	ū	u dan garis di atas

Contoh:

- قَالَ qāla
- رَمَى ramā
- قِيلَ qīla
- يَقُولُ yaqūlu

D. Ta' Marbutah

Transliterasi untuk ta' marbutah ada dua, yaitu:

1. Ta' marbutah hidup

Ta' marbutah hidup atau yang mendapat harakat fathah, kasrah, dan dammah, transliterasinya adalah "t".

2. Ta' marbutah mati

Ta' marbutah mati atau yang mendapat harakat sukun, transliterasinya adalah "h".

3. Kalau pada kata terakhir dengan ta' marbutah diikuti oleh kata yang menggunakan kata sandang *al* serta bacaan kedua kata itu terpisah, maka ta' marbutah itu ditransliterasikan dengan "h".

Contoh:

- رَوْضَةُ الْأَطْفَالِ raudah al-atfāl/raudahtul atfāl
- الْمَدِينَةُ الْمُنَوَّارَةُ al-madīnah al-munawwarah/al-madīnatul munawwarah
- طَلْحَةُ talhah

E. Syaddah (Tasydid)

Syaddah atau tasydid yang dalam tulisan Arab dilambangkan dengan sebuah tanda, tanda syaddah atau tanda tasydid, ditransliterasikan dengan huruf, yaitu huruf yang sama dengan huruf yang diberi tanda syaddah itu.

Contoh:

- نَزَّلَ nazzala
- الْبِرُّ al-birr

F. Kata Sandang

Kata sandang dalam sistem tulisan Arab dilambangkan dengan huruf, yaitu ال, namun dalam transliterasi ini kata sandang itu dibedakan atas:

1. Kata sandang yang diikuti huruf syamsiyah

Kata sandang yang diikuti oleh huruf syamsiyah ditransliterasikan sesuai dengan bunyinya, yaitu huruf “l” diganti dengan huruf yang langsung mengikuti kata sandang itu.

2. Kata sandang yang diikuti huruf qamariyah

Kata sandang yang diikuti oleh huruf qamariyah ditransliterasikan dengan sesuai dengan aturan yang digariskan di depan dan sesuai dengan bunyinya.

Baik diikuti oleh huruf syamsiyah maupun qamariyah, kata sandang ditulis terpisah dari kata yang mengikuti dan dihubungkan dengan tanpa sempang.

Contoh:

- الرَّجُلُ ar-rajulu
- الْقَلَمُ al-qalamu
- الشَّمْسُ asy-syamsu
- الْجَلَالُ al-jalālu

G. Hamzah

Hamzah ditransliterasikan sebagai apostrof. Namun hal itu hanya berlaku bagi hamzah yang terletak di tengah dan di akhir kata. Sementara hamzah yang terletak di awal kata dilambangkan, karena dalam tulisan Arab berupa alif.

Contoh:

- تَأْخُذُ ta'khuẓu
- شَيْءٌ syai'un
- النَّوْءُ an-nau'u
- إِنَّ inna

H. Penulisan Kata

Pada dasarnya setiap kata, baik fail, isim maupun huruf ditulis terpisah. Hanya kata-kata tertentu yang penulisannya dengan huruf Arab sudah lazim dirangkaikan dengan kata lain karena ada huruf atau harkat yang dihilangkan, maka penulisan kata tersebut dirangkaikan juga dengan kata lain yang mengikutinya.

Contoh:

- | | |
|--|---|
| - وَ إِنَّ اللَّهَ فَهُوَ خَيْرُ الرَّازِقِينَ | Wa innallāha lahuwa khair ar-rāziqīn/
Wa innallāha lahuwa khairurrāziqīn |
| - بِسْمِ اللَّهِ مَجْرَاهَا وَ مُرْسَاهَا | Bismillāhi majrehā wa mursāhā |

I. Huruf Kapital

Meskipun dalam sistem tulisan Arab huruf kapital tidak dikenal, dalam transliterasi ini huruf tersebut digunakan juga. Penggunaan huruf kapital seperti apa yang berlaku dalam EYD, di antaranya: huruf kapital digunakan untuk menuliskan huruf awal nama diri dan permulaan kalimat. Bilamana nama diri itu

didahului oleh kata sandang, maka yang ditulis dengan huruf kapital tetap huruf awal nama diri tersebut, bukan huruf awal kata sandangnya.

Contoh:

- الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ Alhamdu lillāhi rabbi al-`ālamīn/
Alhamdu lillāhi rabbil `ālamīn
- الرَّحْمَنُ الرَّحِيمُ Ar-rahmānir rahīm/Ar-rahmān ar-rahīm

Penggunaan huruf awal kapital untuk Allah hanya berlaku bila dalam tulisan Arabnya memang lengkap demikian dan kalau penulisan itu disatukan dengan kata lain sehingga ada huruf atau harakat yang dihilangkan, huruf kapital tidak dipergunakan.

Contoh:

- اللَّهُ غَفُورٌ رَحِيمٌ Allaāhu gafūrun rahīm
- لِلَّهِ الْأُمُورُ جَمِيعًا Lillāhi al-amru jamī`an/Lillāhil-amru jamī`an

J. Tajwid

Bagi mereka yang menginginkan kefasihan dalam bacaan, pedoman transliterasi ini merupakan bagian yang tak terpisahkan dengan Ilmu Tajwid. Karena itu peresmian pedoman transliterasi ini perlu disertai dengan pedoman tajwid.

ABSTRACT**THE SETTLEMENT ANALYSIS OF CIVIL LAWSUIT CASES FOR
TORT IN SURAKARTA DISTRICT COURT AND SURAKARTA
RELIGIOUS COURT**

SITI INAYAH

19421056

This thesis explores the topic of “The Settlement Analysis of Civil Lawsuit Cases of Tort in Surakarta District Court and Surakarta Religious Court” through a comprehensive literature review and original research. The objectives of this study are to know the judge's consideration in determining and deciding the trial of a civil case for an unlawful act (Tort) at the Surakarta District Court and the Surakarta Religious Court. The methodology used to achieve these objectives of this research is a qualitative method with an empirical juridical approach, namely an approach in the form of an understanding of the role of the object of research activities with the implementation of laws governing legal aid. From the data that has been obtained, then carry out an analysis to be able to answer the questions in the focus research that are about how tort cases occur, how is the settlement, and how the judge's consideration in deciding the trial of tort cases. The results of the study indicate that the majority of tort civil cases that occurred in the Surakarta District Court and the Surakarta Religious Court had the same pattern, namely

between creditors and debtors that began with *wanprestasi* committed by one of the parties. Meanwhile, there are significant differences in the type and amount of tort registered to each court, as well as the understanding of court officials regarding tort. As for the settlement in court, both District Court judges and Religious Court judges are based on the same procedural law.

Keywords: Settlement Analysis, Tort, District Court, Religious Court

PREFACE

All praise be to Allah SWT who has bestowed His grace and mercy on us so that we can continue to feel physically and mentally healthy until today. Also never forget to send *shalawat* and greetings to the great prophet Muhammad who has brought Islam from the age of ignorance to this age full of knowledge.

We always offer our endless gratitude to Allah SWT, for His will, Allah has given us the grace of strength so that we can complete this thesis in a short time and many things have been made easy by Allah. And hopefully this thesis will be able to provide benefits for many parties.

In the process of compiling this thesis the author received help, and guidance from various parties, and on this occasion the author would like to express his deepest gratitude to the honorable:

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9. All my KKN friends who have been dedicated and contributed a lot to my thesis process, may you always with Allah's blessing also you guys all can be done your bachelor very well.

As an author, I wish that their good deeds will be accepted by Allah Swt and I hope that they will always be blessed by Him, Amen. The author is fully aware that writing is not a perfect thesis, therefore criticism, suggestions, and comments are very much expected by the author. Hopefully, this thesis can get scientific treasures for readers in general and especially for the author herself.

Yogyakarta, 8 April 2023

A handwritten signature in black ink, appearing to read 'Siti Inayah', with a stylized flourish at the end.

Siti Inayah

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CHAPTER I

INTRODUCTION

A. Research Background

As social beings, humans must be prepared to follow the norms and rules that exist in society. These rules are written, and unwritten which today are known as law, where the purpose of the law itself is to regulate social life in society. In this case, society needs a forum that is a state with a government that will run the system.

In this case, judicial institutions are in the spotlight for reviewing the application of the law itself, considering the existence of the judiciary as a place to exercise judicial power, and for people who want to seek justice based on the laws that govern it. In Indonesia itself, the judiciary is divided into several units, according to Law no. 48 article 18 of 2009 that judicial power is exercised by a Supreme Court and several judicial bodies under it in the General judiciary, Religious Courts, Military Courts, State Administrative Courts, and by a Constitutional Court.

The District Courts (as a part of the General Judiciary) and the Religious Courts are the judiciary institutions that are more likely to be highlighted by the general public. Considering their task is more complex because it handles community groups and wider cases. It is quite different from the Military Court or State Administrative Court which handles the community and cases with a smaller scope. Seeing that human activities are increasingly diverse, the

opportunities to violate the existing laws are also increasing. The law in question is of course not only written but also unwritten law that applies in society.

The violation of law occurs partly because people do not understand the law, many cases of torts are brought to court because people still lay so they do not know what legal consequences will arise from every action they take. This is where the law needs to be presented, and the application is carried out in court with a panel of judges as the executor of justice under applicable laws. However, in addition to carrying out the law, the judge also has the full function and authority to consider his decision. Considering that the written law in the constitution does not always have a clear meaning she judge must interpret it, or sometimes the constitution does not contain regulations that directly regulate the case to be decided, then the judge must seek a decision from the law with a logical explanation. It has become an obligation of judges, as stipulated in article 5 paragraph 1 of Law no. 48 of 2009 that judges and constitutional judges are required to explore, follow, and understand legal values and a sense of justice that lives in society. So that in this case, apart from the existence of the law, the role of the judge in giving decisions is also the main instrument in realizing justice.

Meanwhile, if a tort occurs, it can be resolved through litigation and arbitration. Nonetheless, the litigation route is the most widely used method in the process of settling tort cases that is through a judicial institution that has the authority to resolve them. In this case, the District Court and the Religious

Court are judicial institutions that have the authority to settle tort cases committed by civil society.

The duties of the District Court itself stated in article 50 of Law No. 2 of 1986 that are to examine, decide and resolve criminal cases and civil cases at the first level. Whereas the duties and powers of the Religious Court were previously regulated in article 49 paragraph 1 of Law No. 7 of 1989 which reads "The Religious Court have the duty and authority to examine, decide and resolve cases at the first level between people who are Muslim in the field of: a. marriage; b. inheritance, wills, and grants, which are carried out based on Islamic law; c. waqf and *sadaqah*". This task is clarified in paragraphs 2 and 3, that matters which become the authority of the Religious Court are "The field of marriage as referred to in paragraph (1) letter a is matters regulated in or based on the applicable law regarding marriage. Inheritance as referred to in paragraph (1) letter b is determining who will become the heir, determining the inheritance, determining the share of each heir, and carrying out the distribution of the inheritance. From those two laws, it can be concluded that the District Court and the Religious Court have different duties and authorities, whereas the Religious Court has the duty and authority to resolve smaller and specific cases for Muslims.

After the promulgation of Law No. 3 of 2006 as an amendment to Law no. 7 of 1989 further expands the authority of the Religious Court in resolving civil cases which in this case the Religious Court has the same authority as the District Court in dealing with types of civil cases with the fields as stated in

Article 49 of Law No. 3 of 2006 namely in the fields of marriage, inheritance, wills, grants, *waqf*, *zakat*, *infaq*, *shadaqah*, and sharia economics, as long as the legal subject is a Muslim. According to the reason above, the researcher intends to conduct a comparative analysis of how the settlement of civil cases in the tort lawsuit in the Surakarta District Court and the Surakarta Religious Court in terms of Law No. 3 of 2006.

Even though the duties and authorities of the District Court and the Religious Court have been determined in the Law, in practice there are still many mistakes and obstacles that occur, both come from external (litigants) and internal courts. As is the case with the District Court and the Religious Court in the city of Malang in handling sharia economic civil cases. Even though the contract stipulates that the settlement of sharia economic civil cases is finalized at the Religious Court, the majority of customers still file them at the District Court and the problem, in this case, is that the Malang District Court accepts these applications. In addition, other problems in the settlement of Islamic economic civil cases according to BRI *Syari'ah* Malang advisors are that the Religious Courts are considered not sufficiently prepared to deal with Islamic economic cases¹. Reporting to an article on the website of the Palangkaraya Higher Religious Court, the mistake that often occurs is during the Riel execution where it is often found that the condition of the land is wider than the judge's decision.

¹ M Zulhefni, "Kendala Penyelesaian Sengketa Perbankan Syariah Melalui Pengadilan Agama Kota Malang," *Jurisdictie* 8, no. 2 (2018): 175.

The choice of the Surakarta District Court as the object of research is because the Surakarta District Court is a Class IA Special First Level court. Class division at the District Court itself is a division based on the number of cases handled and the location of the Court². The types of cases handled by the Surakarta District Court include³:

1. Civil Case

Civil Claims, Civil Claims Simple, and Civil Claims.

2. Criminal Case

Types of Criminal Cases include Ordinary Crime, Speedy Crime, Special Crime: Juvenile Crime, Traffic Crime, and Criminal: Pre-trial.

Another reason is related to the cases handled, in which cases of lawsuits that have entered the Surakarta District Court from 2019 – 2020 have decreased every year, with the mediation success rate increasing in those years. This is an indication of the success of the Surakarta District Court in resolving incoming lawsuit cases.

As the selection of the Surakarta District Court become the object of research, the selection of the Surakarta Religious Court as the object of research was also due to various academic reasons. The Surakarta Religious Court is a class 1A Religious Court that has approximately 1500 cases per year. In addition, as reported by the SIPP (*Sistem Informasi Penelusuran*

² K Wantjik Saleh, *Kehakiman Dan Peradilan*, (Jakarta: Ghalia Indonesia, 1977).

³Pengadilan Negeri Surakarta Laporan Kegiatan tahun 2021,quoted from <https://drive.google.com/file/d/1NrE9CU5hfx3LT6OGHqFNYhbR8tLhlc/view> accessed on 20 Desember 2022.

Perkara) of the Surakarta Religious Court, civil lawsuit cases registered to the Surakarta Religious Court vary each month. In 2022 itself, there were 17 civil lawsuits (Tort) that entered the Surakarta Religious Court with various fields. So that this is the reason for the author to examine how the settlement is carried out by judges in every civil lawsuit (Tort) registered to the Surakarta Religious Court.

B. Focus Research

1. How do civil cases of unlawful acts (Tort) occur in society?
2. How is the settlement of civil cases of unlawful acts (Tort) in court?

C. Research Objectives & Benefits

1. Objectives

- a. To know the judge's consideration in determining the trial of a civil case for an Unlawful act (Tort) at the Surakarta District Court and the Surakarta Religious Court?
- b. To know the judge's consideration in deciding civil cases of an Unlawful act (Tort) in the Surakarta District Court and the Surakarta Religious Court?
- c. To know the legal consequences after the decision regarding the civil case lawsuit for the Unlawful act (Tort) in the Surakarta District Court and the Surakarta Religious Court?

2. Benefits

By conducting this research, the authors hope to provide benefits both academically and practically.

a. Academic Benefits

- 1) To acknowledge how the civil case lawsuit for the unlawful act (Tort) rise in Indonesia.
- 2) Adding insight regarding the settlement of civil lawsuits, especially unlawful act (Tort) in District Court and Religious Court.
- 3) As a comparison material for further studies.

b. Practice Benefits

Can be used as a benchmark for quality improvement in resolving civil lawsuits at the Surakarta District Court and Surakarta Religious Court.

D. Systematic Discussion

The discussions in this study will be set in 5 chapters, in which there is a connection between one chapter and another.

CHAPTER I Introduction, in this first chapter the author will explain the background of conducting this research, then the author will also describe the focus research, research purpose, research benefits, and systematic discussion intended to measure the rationality and interrelation of all chapters in this thesis.

CHAPTER II, in this chapter the author will present previous studies as a form of comparison to test the validity of the research. This discussion will be devoted to the Literature Study sub. Besides that, the other discussion in this chapter is the theoretical framework. Writing the theoretical framework aims to raise the variables or main issues contained in the research.

CHAPTER III methods, specifically in chapter III, only discusses the methods used in this study which include: the type of research and approach, place or location where the research will take place, research informants, techniques in determining informants to obtain the valid and desired information. Then this chapter also discusses data collection techniques, data validity, and techniques used to analyze data.

CHAPTER IV result and discussion, in this 4th chapter the author will present a discussion in the form of the results of the research that has been done.

CHAPTER V closing. In this chapter, the author presents several points of conclusion from the results of the research that has been written.

CHAPTER II

LITERATUR REVIEW & THEORETICAL FRAMEWORK

A. Literature Review

After outlining the research problem, the author then reviews and briefly describes previous scientific studies or works related to the settlement of civil cases. This is a form of comparison and an effort to avoid repetition or duplication in the preparation of this research. These studies include:

The first study is a journal with the title "***Mediasi dalam Penyelesaian Perkara Perdata di Pengadilan***". The study written by Ivana concludes that mediation is a stage in court that must be passed by a person when pursuing a civil case. Based on the 2016 Supreme Court Regulation (PERMA) that mediation in court has binding power and coercive power for the parties to the litigation in court so if the mediation process is not carried out, the court's decision will be null and void by law. The existence of mediation is intended so that both parties to the litigation can reconcile by the power of law and there is no need to go through a lengthy litigation process, the mediation process is assisted by a neutral mediator who helps the parties to look for the best possibilities so that an agreement can be reached. The results of the study also state that mediation is the right stage because it is in accordance with the Indonesian culture which is orientally eastern and prioritizes deliberation in resolving a problem. The difference between mediation outside and inside the

court is the existence of legal force for the agreement that was agreed during the mediation process in court⁴.

This research more specifically examines mediation as a process in resolving civil cases in court, the results of this research explain how mediation should be carried out in accordance with PERMA 2016 and how the reality is in court. This research is clearly different from the research that the author wants to do in this thesis. Where the author wants to conduct research with a more general object and a different approach, that are Law No. 3 of 2006.

The second study is the Journal of Legal Analogy entitled "***Peranan Hakim untuk Mendamaikan Para Pihak yang Bersengketa dalam Perkara Perdata di Pengadilan Negeri Denpasar***". This study focuses on the role of judges in adjudicating civil disputes in the District Courts. In carrying out the process of examining civil cases in District Courts, judges are obliged to offer peace to the litigants. The examining judge also has the authority to determine the time and provide an additional mediation period if necessary. Based on HIR and Rbg that there is no limit for the examining judge to seek peace, this shows that the judge has a huge authority to strive a peace at any time, not only at the beginning but even at each trial. It aims to raise awareness, as well as the desire of the parties to end the dispute peacefully. As also mentioned in previous research that the results of mediation in court have legal force, it is regulated in article 132 (20) HIR and article 154 (20) RBg that a peace

⁴ Ivana Gloria Ompusunggu, "Mediasi Dalam Penyelesaian Perkara Perdata Di Pengadilan," *Nuevos sistemas de comunicación e información* 9, no. 2 (2021): 2013–2015.

agreement reached in court must be made a deed to be obeyed by both parties⁵.

In contrast to the previous studies, where the previous studies examined mediation as a peace process, in this study the authors examined the parties who reconcile, namely judges. This study provides results regarding the role of judges in resolving civil cases. This is also not the same as the research that will be carried out in this thesis, where the author will examine all civil case settlement processes, both mediation and other processes, as well as parties who settle them as material for comparison.

The next previous study is the results of a thesis with the title ***“Penyelesaian Perkara Perdata di Pengadilan Negeri Sinjai Berdasarkan PERMA Nomor 4 Tahun 2019 Tentang Perubahan atas PERMA Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana”***. The results of the thesis conclude that the application of PERMA No. 4 of 2019 concerning the settlement of simple lawsuits at the Sinjai District Court in theory is considered to have fulfilled the provisions contained in the PERMA. According to the review results of the decision Number.2/Pdt.G.S/2020/PN.Snj that the decision was in accordance with PERMA, even though in the process there was a time discrepancy as stated in Article 5 paragraph (3) PERMA Number. 4 of 2019 that the duration of completing the case is 25 days starting from the first trial, while in practice the decision takes 37 days. However, this was caused by factors beyond our

⁵ I Nyoman Gede Sugiarta Made Rai Diascitta Hardi Sentana & I Wayan Wesna Astara, “Peranan Hakim Untuk Mendamaikan Para Pihak Yang Bersengketa Dalam Perkara Perdata Di Pengadilan Negeri Denpasar,” *Jurnal Analogi Hukum* 2, no. 2 (2020): 203–208.

control, namely due to the presence of Covid-19 so the Sinjai District Court was locked down and the trial had to be postponed. Things out of control like that have not been regulated in PERMA, so according to one of the judges at the Sinjai District Court if there is something that has not been regulated in PERMA then return to general civil law, and if general civil law has not been regulated then this It is the duty and authority of judges to fill legal voids. The judge's statement is in line with Article 32 PERMA No.4 of 2019 "The provisions of the civil procedural law remain in effect as long as they are not specifically regulated in this Supreme Court Regulation".

As for the obstacles in the implementation of PERMA No. 4 of 2019, among others, the community does not understand the proceedings of the trial, so the judge has to provide a lot of explanations at each stage of the trial. Apart from that, another factor was the absence of the parties which resulted in the trial being postponed⁶.

Even though the research that was carried out was related to the settlement of civil lawsuits, the research that was carried out in this thesis was research related to simple lawsuits that is different from the research that the author wanted to do which related to lawsuits against acts of violating the law (tort). The approach used in this research is PERMA No. 4 of 2019 while the approach that the author will use in this thesis is Law No. 3 of 2006.

⁶ Wawang. "Penyelesaian Perkara Perdata di Pengadilan Negeri Sinjai Berdasarkan PERMA Nomor 4 Tahun 2019 Tentang Perubahan atas PERMA Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana". *Skripsi*. Sinjai: Institut Agama Islam Muhammadiyah Sinjai, 2021.

The fourth study is a journal by Herowati Poesoko entitled "***Penemuan Hukum Oleh Hakim dalam Penyelesaian Perkara Perdata***". From the results of the research conducted by Herowati it can be concluded that in carrying out a case in court it must be based on the principles of civil procedural law which are binding in nature, including in civil cases. Therefore, a judge as a legal stabilizer who has the right and authority to resolve cases submitted to them must certainly be proficient in civil procedural law. Because, if a judge does not master civil procedural law in resolving a case, then this will have an impact on the judicial process and on the decision as well. Because the existence of civil procedural law is the basis for judges to be able to think juridically in determining a case. Civil procedural law includes the stages of litigation that start with a lawsuit, then answers each other of both parties, evidence, then after that the judge gives legal considerations to each *petitum* submitted by the Plaintiff, then gives a verdict. The discovery of law in a case by a judge is carried out through an objective selection process of legal events with related laws. In this process the judge must be based on substantive and procedural sources of law, the law used is commensurate with social conditions, in accordance with legal customs and providing justice. The legal findings by judges in a case can be found in the legal considerations of each *petitum* which are characterized by: a). Legal considerations are the obligation of the judge in adjudicating each *petitum*, b). Legal considerations contain detailed reasons for the rejection or acceptance of a *petitum*, c). Legal considerations are constructed after the main case; d).

Legal considerations as one of the principles in the Court Decision; e). Legal considerations include legal discovery and law creation; f). There is a difference between the legal considerations of *judex facti* and *judex jurist*; g). Legal considerations are the basis for the rise of a decision⁷.

In this fourth previous study, the author specifically examines how a judge makes legal discoveries in every civil case they handle. In this research, there is no review of how the process of solving civil cases is carried out, the authors only focus on how legal discovery can be achieved by a judge to give a fair decision.

Subsequent literature is the result of research with the title ***“Kendala Hakim dalam Menciptakan Kepastian Hukum, Keadilan, dan Kemanfaatan di Peradilan”***. From the results of this study it can be concluded that in an effort to realize legal certainty, justice, and expediency in court, a judge often experiences several obstacles, both internal and external constraints. The internal problems include the appointment of judges, where the appointment of judges in Indonesia is based on a law that is considered not to be based on the norms of professionalism or the personal abilities of judges which then often results in irregularities. Apart from that, other internal obstacles are the judge's education, mastery of the science of law, the judge's morale, and the judge's welfare.

In addition to the internal obstacles as previously mentioned, other obstacles experienced by a judge in creating justice also often come from

⁷ Herowati Poesoko, “Penemuan Hukum Oleh Hakim Dalam Penyelesaian Perkara Perdata,” *Adhaper* 1 (2015).

external parties. Among these obstacles are 1). The independence of the judicial power, according to the literature the independence of the judicial power is divided into three: the independence of the institution, the independence of the process, and the independence of the judges. The principle of independence of judicial power is actually universal so that a judge has huge powers in examining and adjudicating cases. However, this freedom is not absolute because on a micro level, the independence of judges is limited by the Constitution, legislation, Pancasila, and the parties which results in outside interference. This research also includes real facts about a judge named Sahlan said who was ostracized by his environment because he did not want to carry out the orders of his leader. According to the author, in overcoming this matter a judge must maintain his independence which is supported by adequate capabilities. 2). Formation of *Undang-Undang*, because civil procedural law in Indonesia still uses Dutch products so sometimes it is found that some things are no longer relevant to the current situation. So that in order to create a judge's decision that reflects legal certainty, justice, and expediency, it is necessary to reform the regulations relating to judicial power and civil procedural law. 3). Applicable Justice System 4). Community participation. 5). The judge's supervisory system, according to this study, states that there are 3 types of judge's supervision: legal supervision, administrative supervision, and political supervision. 6). Efforts to overcome the obstacles of judge⁸.

⁸ Fance. W. Wantu, "Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan

If the previous study discussed how a judge can make legal discoveries, on the other hand, this research examines what obstacles a judge encounters in resolving civil cases and how to overcome them. This research is certainly different from the research that will be carried out for this thesis, where the object of the research is narrower and there is no specific legal or statutory approach.

The next previous study was a study entitled "***Penyelesaian Perkara Perdata di Pengadilan Berdasarkan Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016***", the conclusion of the research results explained that based on article 4 PERMA no. 1 of 2016 a civil case submitted must be resolved through negotiations assisted by a mediator. The PERMA was issued with the aim of optimizing the civil settlement process and obtaining the formal truth. Some of those optimizing is to reduce the accumulation of cases in court, to provide a fast, simple, and inexpensive process, and to provide legal certainty for the parties. Mediation is a process of obtaining a win-win solution that is agreed upon by both parties and does not benefit or harm either party so that the mediation process is not limited to *posita* and *petitum* lawsuits. Mediation also aims to provide a decision that is not only complete, but also legally, socially, and morally complete. If an agreement has been reached in mediation, according to PERMA article 27 no. 1 of 2016, the parties are required to formulate the agreement in writing signed by the parties. The agreement can then be submitted to the judge to be

made into a deed that has the same legal consequences as an ordinary decision⁹.

The research conducted in this study is almost similar to the research that the author will conduct, it's just that the research that the author will conduct in this thesis is more specific to civil lawsuits against the law. In addition, the two research use different approaches. Where the author will use the approach of Law no. 3 of 2006 while the study used the PERMA No. 1 of 2016.

The seventh study is a thesis with the title ***“Penyelesaian Sengketa Perdata Menurut Peraturan Mahkamah Agung Nomor 1 Tahun 2016 di Pengadilan Negri Tarakan”***. The conclusion of this thesis is that the Tarakan District Court has implemented it in accordance with the HIR/RBG, namely making peaceful efforts in the form of mediation in every dispute resolution. Reviewing from the decision letter of the chairman of the Tarakan District Court Number: W18-U3/58/KP.02.14/I/2017 that the Tarakan District Court has determined the composition of mediator judges with a total of 9 judges and has a mediation room and special caucus room based on article 1 paragraph 4 Supreme Court Regulation Number 1 of 2016 regarding mediation procedures in court. As for the practical implementation, from PERMA Number 1 of 2016 to 2017, there was only one case at the Tarakan District Court which could be resolved through mediation and ended peacefully. The mediation process that has not been successful is due to the

⁹ I Komang Wiantara, “Penyelesaian Perkara Perdata Di Pengadilan Berdasarkan Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016,” *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 7, no. 4 (2018): 456.

lack of public understanding of mediation so the parties go through it forcefully¹⁰.

This study has similarities with several previous studies, namely examining the mediation process as a process for resolving civil cases in court. In addition, in this study, the authors also specified the object of the research which was only carried out on mediation in the Tarakan District Court, not in all courts.

The last study was a thesis by Mitha entitled ***“Implementasi Peraturan Mahkamah Agung Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana (Studi Kasus Perkara Nomor 8/Pdt.G.S/2017/PN.SDA)”***. Whereas, the implementation of article 5 paragraph 3 of the PERMA at the Sidoarjo District Court class 1A has not been fully implemented. This can be seen from the fact that there are cases that have been resolved for more than 25 days. The delays in settling the case are the judge's policy based on the parties who are still unfamiliar with simple lawsuits, thereby hampering the litigation process in court. Another reason for the delay in the settlement of this simple lawsuit is the unclear Supreme Court regulation Number 2 of 2015 and the judge's leeway in granting additional time. Even though this leniency is the authority of the judge, he also sees the

¹⁰ R Maydi Usat, “Penyelesaian Sengketa Perdata Menurut Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Di Pengadilan Negeri Tarakan,” 2017.

side of justice, certainty, and benefits for the parties, so that peace can be realized for both parties¹¹.

The research conducted by Mitha is almost similar to the research that the author will conduct, except that the previous research conducted by Mitha was carried out on simple lawsuits, not on Torts (tort) lawsuits. Thus, it is still very necessary for the authors to carry out this research because so far no research has been found on the settlement of civil cases of torts (tort) in the District Courts and Religious Courts using the approach of Law no. 3 of 2006.

B. Theoretical Framework

1. Lawsuit Cases in Civil Law

Civil law is the whole rule of law that regulates behavior between individuals and others, the behavior of members of society in family relationships, and in social interactions in society¹². As conflict theorists have long held that individuals or groups with greater social power are best able to create and enforce laws for their own benefit¹³. In addition, the definition of civil law according to Collin's dictionary is "the part of a country's set of laws which is concerned with the private affairs of

¹¹ Mitha Ratnasari et al., "Implementasi Peraturan Mahkamah Agung Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana (Studi Kasus Perkara Nomor 8/Pdt.G.S/2017/PN.SDA)", *Skripsi*, Semarang: Universitas Negeri Semarang, 2018.

¹² Nur Rohim Yunus, Fitriyani Zein, and Amrizal Siagian, "Civil Law System in Indonesia and Its Comparison with Other Legal Systems," *Jurnal Sosial dan Budaya Syar-i* 9, no. 5 (2022): 1629–1650.

¹³ Gary Lafree and Christine Rack, "The Effects of Participants' Ethnicity and Gender on Monetary Outcomes in Mediated and Adjudicated Civil Cases" *Law and Society Review* 30, no. 4 (1996): 767–798.

citizens, for example, marriage and property ownership, rather than with crime.” From these two definitions of civil law, it can be concluded that civil law is a rule in a country that regulates cases related to personal interests whether there is a dispute or not.

As the definition of cases according to Lila and Herinawati in their book entitled "*Pengantar Hukum Acara Perdata*" states that cases can be concluded in two conditions, that are a condition with the dispute and without dispute. It is said that there is a dispute if there is something that is disputed between two parties, then the task of the judge, in this case, is to adjudicate the dispute. As can be said there is no dispute, it means that there is nothing to dispute, in this case, the party concerned does not ask for justice from the judge, but instead requests a judge's decision regarding the status of a thing or object so that it has legal certainty¹⁴. Based on this understanding, a case in the civil field is not always a dispute but can be in the form of a request for a legally enforceable decision such as the determination of guardians, the determination of children and adoptive parents, etc. This is included in a civil case even though there is no dispute in it.

As for cases where there is a dispute in it, a person must submit a lawsuit to the Court to resolve the dispute. A lawsuit is a process of claiming rights by the Plaintiff against the Defendant through the courts¹⁵.

¹⁴ Laila M. Rasyid and Herinawati, *Hukum Acara Perdata*, (Sulawesi: Unimal Press, 2015).

¹⁵ Mardios, "Pengertian Gugatan Dan Bentuk Gugatan Dan Tuntutan Di Pengadilan Tata Usaha Negara" (2019).

The lawsuit is made and filed by a person or party who feels harmed both materially and immaterially. Another opinion from Sudikno Mertokusumo in his book "*Hukum Acara Perdata Indonesia*", interprets a lawsuit as a demand for rights, it is an act of providing protection by the court to prevent acts of taking the law into their own hands¹⁶. Another definition come from Peni Rinda Listyawati in her journal, which defines a lawsuit as a claim for rights that contains a dispute so that are two opposing parties that are the Plaintiff and the Defendant¹⁷.

A lawsuit in the civil case is filed by the injured party towards the party or group that caused the loss or caused the dispute. In addition to being able to be resolved, a lawsuit filed in court aims to gain legal force against the results of settlement efforts carried out in court. Civil lawsuits can be in the form of lawsuits for *wanprestasi* and lawsuits for tort. The difference between a lawsuit for *wanprestasi* and tort is that a lawsuit for *wanprestasi* places the Plaintiff in a position where the compensation given is the loss of the expected profit, while a lawsuit based on an tort (tort) places the Plaintiff in a position before the tort occurs so that the compensation given is a real loss. Nevertheless, in positive law, there are no rules that prohibit or allow the combination of *wanprestasi* and torts. So it is legal to do so as long as it is not rejected by the judge.

¹⁶ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty Jogjakarta, 2009).

¹⁷ Peni Rinda Listyawani, "Small Claim Court: Pinciple Concretization in Lawsuit Settlement," *JPH: Jurnal Pembaharuan Hukum* 8, no. 3 (2021): 339–356.

The form of a lawsuit can be made orally and in writing, verbal claims as stipulated in Article 120HIR, Article 144 Rbg). However, the current development of verbal lawsuits is no longer common, even according to Supreme Court Jurisprudence dated 4-12-1975 Number 369 K/Sip/1973 the person receiving the power of attorney is not allowed to file a lawsuit verbally. A lawsuit will be accepted if it meets the requirements as stipulated in the HIR and Rbg:

a. Formal Requirements

1) Place and date

A lawsuit must include the place and date the lawsuit was made, whether the letter was made at the domicile place of the Plaintiff or the domicile place of the attorney.

2) Stamp

Before a lawsuit is filed in court, it should be accompanied by a stamp.

3) Signature

A lawsuit must be signed by the Plaintiff or his attorney, in this case an attorney may not file a lawsuit in oral form.

b. Terms of Substance

1) Identity of the parties

The lawsuit must describe the identity of the Plaintiff and the Defendant, such as:

- Full name

- Age/Place and Date of Birth
- Work
- Address and Domicile

2) *Posita*

Posita are concrete arguments regarding the existence of a legal relationship which is the basis and reasons for the claim. The things that are set forth in *posita* include:

- The object of the case, namely a detailed description regarding the matters on which the lawsuit was filed.
- Legal Facts, namely descriptions that explain the matters which led to the dispute.
- The qualifications of the Defendant's actions, which are the description that formulates the material or formal qualifications of the Defendant's actions which can be in the form of torts.
- Description of the loss, that delivers the details regarding the loss suffered by the Plaintiff as a result of the Defendant's actions, both in the form of material and formal losses.
- The relation between *posita* and *petitum*

2. Tort/*Perbuatan Melawan Hukum* in Civil Cases

Onrechtmatige Daad or unlawful acts in article 1365 of the Indonesian Civil Code is defined as an act that violates the law and causes harm to another person, obliging the person who caused the loss because of his mistake to compensate for the loss. In addition, unlawful act in English also known as tort, as how in the law match dictionary tort as wrongful acts or infringements of rights, other than those under contracts, which result in civil liability.

Acts against the law in civil cases are often equated with the concept of *wanprestasi*, the term *wanprestasi* itself comes from the Dutch language *wanprestatie*, which means non-fulfillment of obligations in an agreement. As how stated by I Ketut Oka Setiawan, in general, the rights and obligations arising from the agreement are fulfilled by the parties, both debtors and creditors. However, in practice sometimes the debtor does not comply with their obligation, and this is what is called as '*wanprestasi*'¹⁸. According to D G Cracknell, contracts and torts exist to protect different interests. According to him "the law of contract is supposed to protect the expectation of interest, that is, an award of damages in contract is supposed to put the Plaintiff in the position he would have been in had the contract been performed", while "an award of damages in tort is supposed to protect the reliance interest, that is, supposed to put the victim of the tort

¹⁸ I Ketut Setiawan, *Hukum Perikatan*, 3rd ed. (Jakarta: Sinar Grafika, 2018).

in the position he would have been in had the tort never been committed”¹⁹.

The concept of Acts Against the Law in Indonesia has existed since the colonial era, the concept first developed from the Netherlands before 1838. Subsequent developments occurred between the period 1838 to 1919, although at that time BW (*Burgerlijk Wetboek*) had been codified and it had been interpreted that in Legal actions have an active nature (*culpa in commitendo*) and passive nature (*onrechmatigenalaten*) but prior to 1919, those that were classified as acts against the law were limited to actions that were contrary to law. Meanwhile, actions that are contrary to decency or existing rules in society are not included in acts against the law. Furthermore, after 1919 the concept of torts experienced rapid development. This development occurred with the acceptance of a broad interpretation of torts by the *HogeRaad* (Supreme Court) of the Netherlands, namely the interpretation of Article 1401 BW of the Netherlands which is the same as the provisions contained in Article 1365 of the Indonesian Civil Code²⁰. Thus, the term tort today is not limited to acts that violate the law, but all acts that are contrary to and violate custom, decency, and the rules that apply in society. Since 1919, the definition of an tort has broadly applied not only in the Netherlands but

¹⁹ D G Cracknell, *The Law of Tort*, (London: Old Bailey Press, 1997).

²⁰ Gita Anggreina Kamagi, “Perbuatan Melawan Hukum (Onrechtmatige Daad) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata Dan Perkembangannya,” *Jurnal Lex Privatum* 6, no. 5 (2018): 57–65.

also in Indonesia. This is based on the principle of concordance, namely the rule of law that applies in the Netherlands also applies in its colonies, including Indonesia²¹. So that since then, the actions referred to as acts against the law include:

- a. Actions that conflict with the rights of others:
 - 1) Personal Rights
 - 2) Property Rights
 - 3) Right to Freedom
 - 4) Right to Honor and Good Name
- b. Actions that are contrary to their own legal obligations
- c. Actions that are contrary to decency
- d. Acts that are contrary to prudence or necessity in good social relations

Between *wanprestasi* and tort, there are very different conceptions from one another, even though both are sourced from an engagement, namely the breach of contract originates from an agreement born of an agreement and the conception of tort originates from an agreement born from a law²². Winfield emphasizes the fact that liability in torts arises from the breach of an obligation established by law, but in a contract, the obligation is established by the parties themselves. In the Civil Code, there is a clear

²¹ Munir Fuady, *Perbuatan Melawan Hukum Pendekatan Kontemporer*, (Bandung, 2002).

²² Sri Redjeki Slamet, "Tuntutan Ganti Rugi Dalam Perbuatan Melawan Hukum," *Lex Jurnalica* Volume 10, no. Nomor 2 (2013).

distinction between agreements born from agreements and agreements born from laws. Default is an agreement born because of an agreement, so the key to the occurrence of default is the existence of an agreement. An agreement is an act of one or more people binding himself to one or more people. Thus, the agreement issues a contract of rights and obligations between the parties in the agreement, that obligation is said to be an achievement, so that parties who do not fulfill the agreed obligations (achievement) are declared default. So, if the agreement never existed, there would never have been any act of default even if there were parties who were harmed and harmed. Of course, the clauses in the agreement must first be conveyed, negotiated if necessary, and agreed upon by all parties bound to the agreement.

M. Yahya Harahap in his book *Segi-Segi Hukum Perjanjian* says that *wanprestasi* is a special form of tort. However, even though *wanprestasi* is said to be a special form of tort, the two are clearly different concepts and because in practice between *wanprestasi* and tort have different legal consequences. So, it can be concluded that both tort and *wanprestasi* can be filed for compensation. While the difference is, a person is said to be in *wanprestasi* if he violates an agreement that has been agreed with another party, while a tort is a violation committed outside the agreement. The basic difference in the settlement of *wanprestasi* and tort is, if a lawsuit is against the law, the Plaintiff must prove the elements of the tort. In addition to being able to prove that there was a mistake (*schuld*) that was

made. Whereas in a breach of contract, it is enough for the Plaintiff to show that there was a default or that the agreement was violated.

The sources of law related to unlawful act (tort) are regulated in article 1365 BW, in which the elements that must be fulfilled for an tort are formulated:

- a. There must be action.
- b. The act is against the law.
- c. The perpetrator must have a fault.
- d. The act caused a loss.
- e. There is a causal relationship between actions and losses.

Hoffman explained the same opinion that an tort can exist, by four elements, that are: a. *Er moet een daad zijn verricht* (someone must do the deed); b. *Die daad moet onrechtmatig zijn* (the act must be against the law); c. *De daad moet aan een ander schade heb bentoeg gebracht* (the action must cause harm to others); d. *De daad moet aan schuld zijn te wijten* (the act is due to a mistake which can be harmed to him). However, a slightly different opinion was expressed by Rosa Agustina in her book *Perbuatan Melawan Hukum*, Post-Graduate FH UI formulates that torts (torts) must meet the following requirements: First, the act is contrary to the legal obligations of the perpetrator. Second, the act is contrary to the subjective rights of others. The third is contrary to decency. Fourth,

contrary to decency, thoroughness, and prudence²³. If the elements mentioned above have been fulfilled, then the act can be submitted to the court with a lawsuit that has been made.

In the science of law there are 3 categories of acts against the law namely²⁴:

- a. A Tort on purpose, that is, an element of intent is considered to exist if a person intentionally commits an act and by doing so has caused certain consequences for the physical and mental or property of the victim. The element of intention is considered to exist in an action if it fulfills the following elements:
 - 1) There is awareness to do.
 - 2) There are consequences to actions so it's not just actions.
 - 3) Awareness to do not only cause consequences, but also the existence of a belief that these actions can certainly lead to these consequences.
- b. Tort without fault (without intention or negligence)
- c. A tort due to negligence is different from a legal act with an intentional element, which is there is an intention in the heart of the perpetrator to cause certain losses to the victim or at least to be able to know for sure that the consequences of his actions will occur. In negligence, the intention or mental attitude is not important, what

²³ Rosa Agustina, *Perbuatan Melawan Hukum* (Jakarta: Program Pasca Sarjana, Fakultas Hukum, Universitas Indonesia, 2003).

²⁴ Fuady, *Perbuatan Melawan Hukum Pendekatan Kontemporer*.

is important in negligence is the outward attitude of the deed that is carried out without too much consideration of what is in his mind. In legal science, an act is considered as negligence if it fulfills the following basic elements:

- 1) There is an act or neglect of something that should be done.
- 2) The existence of a prudential obligation.
- 3) The precautionary obligation is not carried out.
- 4) There is a loss for others.
- 5) There is a causal relationship between the act or inaction and the losses that arise.

d. The Settlement of Civil Lawsuit in the Court

A lawsuit in its settlement is divided into two types, namely ordinary lawsuits and simple lawsuits. According to article 3 paragraph (1) PERMA No.4 of 2019 that a simple lawsuit is filed against a case of breach of promise and/or tort with a maximum material claim value of 500,000,000. In the case of a simple lawsuit, land disputes are not included, while in an ordinary lawsuit, there is no limit to the value of the claim for losses. Based on the differences in the types of lawsuits, both of them have their ways of solving them.

1. Ordinary Lawsuit

- 1) If at the first trial the Plaintiff is not present and does not send a valid attorney, then the lawsuit is dismissed.

- 2) If a collateral confiscation has been carried out, then the confiscation shall also be void.
- 3) The Plaintiff can file the lawsuit again by paying a down payment.
- 4) If the Plaintiff is not present with a valid reason, the judge may summon the Plaintiff again.
- 5) If the Plaintiff is not present at the first trial, but is present at the second trial, and is no longer present at the third trial, Then the case cannot be dismissed (article 124 HIR).
- 6) If at the first trial, the Defendant is absent without a valid reason, while the Plaintiff is present. So, the case was decided *verstek*.
- 7) The objection or objection submitted by the Defendant is examined and decided together with the subject matter of the case, unless the exception concerns the inability of the District Court to examine the case.
- 8) Changes and/or additions to lawsuits are permitted as long as they are filed during the first trial.
- 9) Changes and/or additions to lawsuits are not allowed if the material that is the cause of the case is out of the question.

2. Simple Lawsuit

Summarizing from PERMA No. 4 of 2019 regarding the procedures for settling simple lawsuits are as follows

- 1) The Plaintiff and the Defendant in a simple lawsuit are not more than one person unless they have the same legal interest.
- 2) The Plaintiff and the Defendant must be domiciled in the same jurisdiction of the Court.
- 3) A Defendant whose residence is unknown cannot be filed for a simple lawsuit.
- 4) If the Plaintiff is outside the jurisdiction where the Defendant resides or is domicile, the Plaintiff can file a lawsuit by appointing a power of attorney, proxy, or representative with an address at the jurisdiction or domicile of the Defendant with a letter from the Plaintiff's institution.
- 5) The Plaintiff and the Defendant must attend the trial in person, either accompanied or unaccompanied by an attorney.
- 6) If the Plaintiff does not appear at the first trial without a valid reason, then the lawsuit is declared null and void.
- 7) If the Defendant is not present at the first trial, then the judge does the second summons.
- 8) If the Defendant is still not present at the second hearing after being summoned, then the judge decides the case in *verstek*.
- 9) If the Defendant objects to the decision (*verstek*), the Defendant may submit an application within 7 days of the reading of the decision.

- 10) If the Defendant is present at the first trial but is absent at subsequent sessions without a valid reason, then the lawsuit is examined and decided in a contradictory manner.
- 11) If the Defendant objects to the *contradictoir* decision, the Defendant can file a resistance.
- 12) In the investigation process, the judge can confiscate collateral against objects belonging to the Defendant or the Plaintiff which are in the possession of the Defendant.
- 13) The argument for the claim admitted by the Defendant does not need proof, while the argument for the lawsuit that for the Defendant denies, the judge examines the evidence in accordance with procedural law.
- 14) Towards a decision that is not challenged, the decision has permanent legal force and must be implemented voluntarily.
- 15) The head of the court issues a decision on *aanmaning* no later than 7 days after receiving the request for execution.
- 16) The head of the court determines the date of implementation of *aanmaning* no later than 7 days after the determination of *aanmaning*.
- 17) If certain geographical conditions do not allow the implementation of *aanmaning*, then the head of the court can deviate from the provisions of the time limit.

Both in the process of resolving a lawsuit or a simple lawsuit, there must be an effort to reconcile the parties. In this case, the peace efforts made in court are mediation. As stipulated in PERMA No. 1 of 2016 Mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a Mediator.

According to D.Y. Witanto, mediation based on the procedure is divided into two parts, among others²⁵:

- 1) Mediation conducted in court (litigation) as regulated in Article 130 HIR/154 RBG in conjunction with Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts.
- 2) Mediation conducted outside the court (non-litigation) which is regulated in Law Number 30 of 1999 Arbitration and Alternative Dispute Resolution.

The difference between mediation conducted in court and outside the court is that mediation conducted in court has the same legal force as an intrinsic decision, while mediation conducted outside the court does not have permanent legal force.

²⁵ D. Y. Witanto, *Hukum Acara Mediasi*, (Banten: Alfabeta, 2011), 18

CHAPTER III

RESEARCH METHOD

In carrying out this research on the above problems, the author uses the following research methods:

A. Types of Research and Approaches

This research is qualitative research that requires the data from the research object²⁶. This research is field research, where the author went directly to the place as the object of research to obtain the required data. So, the author obtained the data needed directly from observations while in the field.

The approach used by the author in this study is an empirical juridical approach²⁷. Because this research requires an understanding of the role of research object activities with the implementation of laws governing legal aid.

B. Research Location

This research will be conducted at the Surakarta District Court which is located at St. Slamet Riyadi No.290, Sriwedari, Laweyan, Surakarta and the Surakarta Religious Court which is located at St. Veteran No.273, Serengan, Serengan, Surakarta. The reason the author chose the object of research at that court is because both the District and the Religious Court in Surakarta city are

²⁶ H.B Sutopo, *Metodologi Penelitian Kualitatif: Dasar Teori Dan Terapannya Dalam Penelitian* (Surakarta: UNS Press, 2006).

²⁷ Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Hukum Empiris* (Yogyakarta: Pustaka Pelajar, 2010).

class 1A courts which of course have more than 1500 cases each year, besides that Surakarta city is also an advanced city in terms of the economy and the community life. So that becomes an indicator of the variety of civil cases handled by the Surakarta District Court and the Surakarta Religious Court.

C. Research Informants

The informants in this study are judges who were on duty at the Surakarta District Court and the Surakarta Religious Court, as people who handled the civil cases in question. The other informants are the clerks (*panitera*) who were on duty at the court, as people who fully understood the case files so that perfect information would be obtained and the officer of PTSP (*Pelayanan Terpadu Satu Pintu*):

1. Dra. Hj. Amroh Zahidah, S.H., M.H.
2. Drs. Jaenuri, M.H.
3. Subagyo, S.H., M.Hum.
4. Mohamad Dardiri, S.H., M.H.
5. Suci (PTSP officer)

D. Data Collection Technique

1. Observation

Observation is a method of collecting data by observing the case to be studied. In this study, the author went directly to the place (court) to make non-participant observations that requires researchers to observe the

settlement process of tort at the object research²⁸. Through this observation method, the author obtained data through observations of processes, procedures, and decisions from the object of research.

2. Interview

The second data collection method used by the author is by conducting interviews with judges at the Surakarta District Court and Surakarta Religious Court, as well as interviews with the court clerks (*panitera*) at these courts. Interviews in qualitative research is an absolute must as a premier data source in research²⁹.

3. Documentation

As a secondary data source, the next method used by the author is the documentation method. Namely the collection of additional data from related documents to strengthen the data in research, such as:

- a. Supreme court decision.
- b. Constitution.

E. Data Validity

In order to obtain the validity of the data from this study, the author use Triangulasi method by comparing the result of the research with previous studies. The other additional tests were carried out by re-reading the results of the research and the results of the interviews³⁰.

²⁸ Ishaq H, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis Serta Disertasi* (Bandung: Alfabeta, 2017).

²⁹ Ibid.

³⁰ Ahmad Tanzeh, *Metode Penelitian Praktis* (Yogyakarta: Teras, 2011)

F. Data Analysis Technique

Data analysis in this study was carried out during the data collection process and after the data was collected, to obtain accurate data results. The analysis that was carried out after the data was collected is to classify the data, analyze it, then conclude it and arrange it systematically.

CHAPTER IV

RESULT AND DISCUSSION

A. Surakarta District Court and Surakarta Religious Court

Surakarta District Court Class 1A Special address at Jl. Slamet Riyadi No. 290, Sriwedari, Laweyan, Surakarta. During the independence era, the building which is currently the Surakarta Court also became the courthouse for the people of Sragen, Wonogiri, Karanganyar and Sukoharjo. However, since 1966 the Sragen District Court, Wonogiri District Court, Karanganyar District Court, and Sukoharjo District Court have been separated and have offices in their respective regions. Until today, the Surakarta District Court has undergone several grade increases, based on the Decree of the Minister of Justice of the Republic of Indonesia dated 21 September 1999, Number. M.08.AT.01.05 In 1999 the Surakarta District Court was upgraded from Class IB to Class IA. Then based on the Decree of the Minister of Justice and Human Rights R.I. dated 2 September 2003, Number: M.4725.Kp.04.04 of 2003 Surakarta District Court from Class I to Special Class IA until now. The vision of the Surakarta District Court is to realize the great Surakarta District Court, while there are 4 missions:

1. Maintain the independence of the judiciary
2. Provide justice legal services to justice seekers
3. Improving the quality of leadership of the judiciary

4. Increase the credibility and transparency of the judiciary

As one of the judicial institutions that provide services to the public, the Surakarta District Court must always improve its quality, especially for justice seekers. In this case, the Surakarta District Court is guided by the Decree of the Chairman of the Supreme Court No. 026/KMA/SK/II/2012 concerning standards of judicial services. So that there is a clear benchmark for the Surakarta District Court in implementing justice. As for the special jurisdiction of the Surakarta District Court class 1A are:

- Banjarsari : Timuran, Keprabon, Ketelan, Punggawan, Kestalan, Setabelan, Giligan, Nusukan, Kadipiro, Banyuanyar, Sumber, Manahan, Mangkubumen.
- Jebres : Sudiroprajan, Gendekan, Sewu, Jagalan, Pucang sawit, Jeberes, Mojosongo, Tegalharjo, Purwadiningratan, Kepatihan wetan, Kepatihan kulon.
- Laweyan : Bumi, Jajar, Karangasem, Kerten, Laweyan, Pajang, Penularan, Penumping, Purwosari, Sondakan, Sriwedari.
- Pasar Kliwon : Baluwarti, Gajahan, Joyosuran, Kampung Baru, Kauman, Kedung Lumbu, Pasar Kliwon, Sangkrah, Semanggi.
- Serengan : Danukusuman, Jayengan, Joyotakan, Kemlayan, Kratonan, Serengan, Tipes.

Apart from the District Court, since the founding of the Surakarta kingdom (1738 AD) it has also been known as the porch court. A body that deals with religious affairs as well as being a legal institution related to matters such as Divorce, inheritance, Wills, Marriage, or goods Gono - like this, etc. However, after the arrival of the Dutch (VOC) in 1882 the porch court became known as the Religious Court or Religious Court through *ordonantie stbl.1882-152* concerning the Javanese-Madura Religious Court. Until now it is known as the Surakarta Religious Court which is located on Jl. Veteran No.273, Serengan, Serengan, Surakarta. Since 1970, in line with the start of Pelita I to Pelita III, now the Surakarta Religious Court has experienced many improvements both in the field of personnel, infrastructure, and facilities as well as the volume of cases. Since the birth of Law. No. 1/1974, concerning marriage and since the enactment of this Law effectively on October 1, 1975, the volume of cases at the Surakarta Religious Court, which was originally an average of 15-20 cases in one month, increased by 3-4 times to an average of average 45 – 55 cases per month.

B. The Power of Court in Indonesia

As specified in Law No. 8 of 2004 in conjunction with Law No. 49 of 2009 that the main task of the court is to receive, examine, decide, and settle every case. Likewise with the Religious Court, in principle, the examination of cases at the Religious Courts refers to the Civil Procedure Code in general, except

for matters which are specifically regulated. The authority or competence in each court has its own authority or competence.

Competence comes from the Greek, namely *Competia* which means *hetgeen an iemand toekomt* which means "what is become someone's authority"³¹. The authority according to H.D Stoud is "*bevoegheid wet kan worden omscreven als het geheel van bestuurechtelijke bevoegheden door publiekrechtelijke rechtssubjecten in het bestuurechtelijke rechtsverkeer*" which means that authority is the whole of the rules relating to the acquisition and use of government authority by public law subjects in public law. In the realm of competence, the court is defined as the authority to try something in court with the basic principle of the power to try in each court that is under the principle of court specifications and specialization of cases³². Concerning civil law, judicial competence is divided into two, namely absolute competence (*attributie van rechtsmacht*) and relative competence (*distributie van rechtsmacht*).

1. Absolute Competence

Absolute competence is the authority of a court body to adjudicate a case according to its material (object)³³. In Indonesia, there are 4 judicial institutions that exercise judicial power, namely the general

³¹ Sjachran Basah, *Eksistensi Dan Tolak Ukur Badan Peradilan Administrasi Di Indonesia*, 3rd ed. (Bandung: Alumni, 1997).

³² Zulkarnain, *Hukum Kompetensi Peradilan Agama : Pergeseran Kompetensi Peradilan Agama Dalam Hukum Positif Di Indonesia*, 1st ed. (Jakarta: Prenada Media Group, 2021).

³³ Budi Aspani, "Kompetensi Absolut dan Relatif Peradilan Tata Usaha Negara Menurut Undang-Undang Nomor 5 Tahun 1986 Jo. Undang-Undang Nomor 9 TAHUN 2004.," *Solusi* 16, no. 3 (2018): 344–352.

court, Religious Court, military court, and state administrative court, the four jurisdictions of which have their respective scopes or limitations. Among the powers of each of these judicial institutions is absolute authority or competence, which means authority covering types of cases and disputes over court power in terms of deciding certain cases from certain groups of people³⁴.

Absolute competence for the judiciary is an attribution of judicial power based on Article 50 of Law Number 2 of 1986 in conjunction with Article 2 paragraph (1) RO (*Reglement op de Rechtelijke Organisatie in het Belied der Justitie in Indonesia – Regulation on the judicial organization*). Regarding the absolute competence referred to, what becomes the absolute authority of the District Court is all cases regarding criminal acts committed within their jurisdiction as referred to in the provisions of Article 84 paragraph (1) of the Criminal Procedure Code. based on Law no. 2 of 1986 that the authority of the District Court as a general court is not only on criminal acts but also on civil cases and commercial courts. As stipulated in article 118 HIR that the District Court has the authority to resolve civil cases whose jurisdiction includes the Defendant's residence. Meanwhile, what falls under the authority of the District Court in the scope of marriage is anything that is not regulated within the scope of the Religious Court.

³⁴ Hasan Bisri, *Peradilan Agama Di Indonesia*, 1st ed. (Jakarta: Raja Grafindo Persada, 1996).

Furthermore, the absolute competence of the Religious Court was previously regulated in Law no. 7 of 1989 which reads “*Peradilan agama merupakan salah satu pelaksana kekuasaan kehakiman bagi rakyat pencari keadilan yang beragama islam mengenai perkara perdata tertentu yang diatur dalam Undang-undang ini*”. Currently the regulation is amended into article 2 of Law no. 3 of 2006 which contains “*Peradilan Agama adalah salah satu pelaku kekuasaan kehakiman bagi rakyat pencari keadilan yang beragama Islam mengenai perkara tertentu sebagaimana dimaksud dalam Undang-Undang ini*”. The change in clause (from certain civil cases to specific cases) shows that the Religious Court has the potential to examine and decide on a wider range of civil cases.

As for the cases that are currently under the power or authority of the Religious Court concerning matters of marriage, inheritance, wills, grants, endowments, zakat, *infaq*, *shadaqah* as stipulated in article 49 of Law No.3 of 2006. Outside of these areas, it is not the authority of the Religious Court as stated in article 50 of Law No.7 of 1989 that the settlement of the object in dispute does not mean stopping the judicial process in the Religious Court for objects that are not in dispute. This case is pre-judicial that usually occurs in the Religious Court, so it

does not reduce the independence of the Religious Court in deciding cases³⁵.

2. Relative Competence

Relative competence or authority (*relative competentie*) or often referred to as *Distribute van Rechtsmacht* is the authority of a court to hear a case relating to the territory or jurisdiction of a court³⁶. Relative authority or competence is given to a judicial institution of the same type with the same level but determined by the boundaries of the jurisdiction under its authority, meaning that a court has the authority to resolve a case if one of the parties, whether the Defendant or the Plaintiff resides in the area which is the jurisdiction of the court.

In this case, the jurisdiction of the District Court as stated in Law No. 2 of 2006 states that the District Court is domiciled in the municipality or district capital, and its legal area covers the area of the municipality or district in question. Regarding relative authority or competence of the District Court, it refers to article 118 HIR and article 143 Rbg, which are then referred to by article 66 and article 73 of Law No. 7 of 1989 concerning the Religious Court. In determining this relative competence, the starting point is the regulations that

³⁵ Ladina Rosalinda, "Kompetensi Pengadilan Agama Dan Pengadilan Negeri Dalam Memutuskan Perceraian Akibat Kawin Beda Agama", *Skripsi*, Jakarta: UIN Syarif Hidayatullah, 2019).

³⁶ Ibid.

stipulate a lawsuit filed must meet formal requirements. Relative competency for the District Court adheres to the *Actor Sequitur Forum Rei principle*, namely the District Court where the Defendant lives (has an address, is domiciled) which has the authority to examine claims for rights, this principle is contained in Article 118 paragraph (1) HIR. So, in order to be in accordance with the relative competence of the District Court, a lawsuit should be filed in the Court where the Defendant resides. However, in its application in the District Court, this relative competence is not always applied in every case. There are several deviations in its application, the exceptions of which are regulated in article 118 HIR paragraphs (2), (3), and (4):

- a. If there is more than one Defendant, the lawsuit shall be filed with the court whose jurisdiction covers the residence of one of the Defendants.
- b. If the place of residence of the Defendant is unknown, the lawsuit shall be filed with the court at the place of residence of the Plaintiff.
- c. If the lawsuit concerns an immovable object, then the lawsuit is filed with the court in the jurisdiction where the object is located;
And
- d. If there is a residence chosen by means of a contract, a lawsuit can be filed with the court of residence chosen in the deed.

Furthermore, related to the relative competence of the Religious Court, each Religious Court has a certain jurisdiction. As for determining the relative competence of each Religious Court, it is based on the provisions of civil procedural law, article 54 of Law no. 7 of 1989 which states that the procedural law applies to the scope of the Religious Court is the civil procedural law that applies to general courts, the copy as stipulated in article 118 HIR and article 142 Rbg also applies to the Religious Court.

C. Tort Cases in Surakarta Religious Court

Since the promulgation of Law No. 3 of 2006, the Religious Court as a court of first instance has broader authority in resolving cases, namely in the areas of marriage, inheritance, wills, grants, waqf, *zakat*, *infaq*, alms, and the sharia economy. All of these cases are civil cases which include civil cases of tort. Based on the directory of decisions of the Supreme Court of the Republic of Indonesia that from 2018 - February 2023. From the decision of Supreme Court read by the author, there were 21 tort cases in the sharia Economy sector that had been handled by the Surakarta Religious Court, which either ended up to a decision or was rejected with legal considerations³⁷.

Tabel I

The data of unlawful act cases in Surakarta Religious Court

2018-2023

³⁷ Supreme Court, "Supreme Court Decision," quoted from <https://putusan3.mahkamahagung.go.id/>

No.	Year	incoming Cases	Verdict	Rejected	Revoked	Not Accepted	Mediated	Other Explanation
1.	2018	8		2		1	2	1 NO
2.	2019	4		3	1			
3.	2020	2			2			
4.	2021	6	2	2	1			1 Unpublish
5.	2022	4	1	3				
6.	2023	1	1					

Data Source: Supreme court decision repository

Based on these data and interviews with judges at the local Religious Court, it is clear that lawsuits for tort filed at the Surakarta Religious Court occur a lot between customers and banks, while the factor in the occurrence of tort in cases submitted to the Surakarta Religious Court including:

1. Actions that are contrary to legal obligations

The most frequent factor in tort cases of the Surakarta Religious Court is the factor of acts that are against or contrary to the legal obligations of a person or institution. *Misfeasance*, is an act that is done wrong, which action is an obligation or an act that he has the right to do. As happened in case Number 973/Pdt.G/2018/PA.Ska where the litigant is the owner of CV. DIAN PUTRA KARYA as the Plaintiff and *Kantor Pelayanan Kekayaan Negara Lelang Surakarta & PT. Bank Syariah Mandiri* Solo branch as Defendant I and

Defendant II. Based on the case that there has been a financing agreement between the Plaintiff and the Defendant with a nominal amount of Rp. 1,000,000,000 (one billion rupiah) of which the Plaintiff has made repayments from 19 June 2017 to 22 December 2017 in the amount of Rp. 505,000,000 (five hundred and five million rupiah) from Rp. 1,000,000,000 (one billion rupiah) so the remaining installments are less than Rp. 495,000,000 (four hundred and ninety-five million rupiah). However, in February 2018 the Plaintiff experienced difficulties in making installments, so the Plaintiff attempted to negotiate with the Defendant but was unsuccessful. On July 10, 2018, the auction was announced by Defendant I and Defendant II without any negotiation talks with the Plaintiff resulting from mediation, in this case, Junaidi CS from LPKSM (*lembaga perlindungan konsumen syariah mandiri*) was ignored by Defendant I and Defendant II. Then on July 24, 2018, Plaintiff gave power of attorney to Teguh Budi Santoso as the coordinator to mediate with Defendant II for a request for a delay payment until December 2019 but the result was nil instead of info from Defendant II that Plaintiff remaining dependents were back to Rp. 1,000,000,000 (one billion rupiah).

For his actions it is considered that Defendant II did not comply with BANK INDONESIA REGULATION Number: 7/2/PBI/2005 Jo SEBI Number: 15/28/DPNP dated 31 July 2013 concerning Credit

Restructuring policy stated that Credit Restructuring is an attempt to improve the Bank's credit to Debtors who experience difficulties in fulfilling their obligations include:

- Decrease in lending rates.
- Extension of the credit period.
- Reduction of loan interest arrears.
- Reduction of loan principal arrears.
- Additional credit facilities and or
- Credit compensation to temporary equity participation

Defendants I and Defendants II have also violated SEBI Number: 26/4/BPP in their mandate that rescheduling, reconditioning, and restructuring be carried out prior to the auction. So, from this description it can be concluded that there was an element of tort committed by the Defendant in the form of an act that conflicted with his legal obligations³⁸.

2. Actions that conflict with the rights of others

One of the factors that also cause many torts between the Plaintiff and the Defendant is an act that is contrary to the rights of other people, whether those rights are regulated by written law or not. As is the case when the creditor/debtor does not ask for a third party's approval when making him a guarantor in a contract. This is a form of violating the rights of others which can cause harm. One example of a

³⁸ Ibid.

case that occurred in the Surakarta Religious Court was case Number 1/Pdt.G/2023/PA.Ska where an addendum to the *musyarakah* financing agreement (Revolving Fund Financing) had occurred between a husband and wife (Indriyanti & Subanto) and *Bank Syari' ah Mandiri* on October 30, 2018. However, at the time of the contract, neither Indriyanti nor Subanto as guarantors were asked for approval nor were they included as guarantors. So that in this case the Plaintiff (customer) feels harmed both morally and materially³⁹.

From the examples of these cases, it can be said that there is tort factor because it has fulfilled the elements of tort stated in article 1365 BW. It can be said that the act is tort if there is an act, in which the act is unlawful, the perpetrator has a fault, the act causes a loss, and there is a causal relationship between the act and the loss. Judging from the 2 examples of cases above and other cases that the author analyzed, many legal actions that occurred in the Surakarta Religious Court occurred because there were parties who defaulted (*wanprestasi*) first, so that those who feel violated feel compelled to commit acts that are against the law. This was also confirmed by the clerk of the Surakarta Religious Court. As for the factors that cause a tort caused by a lack of understanding of the law, it rarely occurs in the Surakarta Religious Court, this was also stated by Jaenuri as a member of the assembly that handles sharia economic cases in which there are cases of tort.

³⁹ Ibid.

According to Jaenuri, in the realm of sharia economics, it is impossible for people not to understand each other's obligations, whereas tort occur due to negligence of the parties or due to circumstances where a party violates an agreement which in the end makes the other party intentionally commit a tort.

D. Tort Cases in Surakarta District Court

Based on article 50 of Law No. 2 of 1986 that the District Court has the duty and authority to examine, decide and resolve criminal cases and civil cases at the first level. This includes tort cases in both the criminal and civil realms. According to the Supreme Court's decision directory readed by the author, from 2018 to 2023 there were 392 civil cases of tort entered and examined by the Surakarta District Court⁴⁰.

Tabel II

The data of unlawful act cases in Surakarta District Court

2018-2023

No.	Year	incoming Cases	Verdict	Rejected	Revoked	Not Accepted	Mediated	Other Explanation
1.	2018	73	12	10	12	14	2	2 NO
2.	2019	115	30	16	27	13	8	1 Gugur 2 NO
3.	2020	81	15	9	17	28	3	1 NO

⁴⁰ Ibid.

								1 Gugur 3 wewenang
4.	2021	69	14	11	19	19	4	1 Gugur 1 wewenang
5.	2022	54	11	5	15	17	3	3 wewenang
6.	2023	1				1		

Data Source: Supreme court decision repository

From these data, the author tries to analyze the decision files one by one, so the author obtains the result that the majority of civil tort cases in the Surakarta District Court as well as in the Surakarta Religious Court occur between creditors and debtors or in accounts payable cases. Although it cannot be denied that District Court have more diverse civil tort cases than Religious Court, this is because District Court have the authority to deal with a wider range of cases. From the analysis and results of the interviews the author did, the tort occurred between the creditor and the debtor in the Surakarta District Court has the same pattern as the Surakarta Religious Court⁴¹, namely that there was a prior default (*wanprestasi*) committed by one of the parties resulting in the party feeling the agreement was violated then commit tort. One example of tort that occurred due to a prior default (*wanprestasi*) is⁴²:

1. No.91/Pdt.g/PN.Skt

⁴¹ Interview with Subagyo, S.H., M.Hum. on March 3, 2023

⁴² Court, "Supreme Court Decission."

In this case, Plaintiff I is the debtor of Defendant I as stated in the credit agreement letter No. 004 / KRDBCI / I / 2015 dated 19 – 01 – 2015 in the amount of IDR 500,000,000 million (five hundred million rupiah) and in the amendment of agreement No. 004 / ADD – BCI / II / 2015 dated 25 – 02 – 2015 the amount of credit plus Rp. 500,000,000 million (five hundred million rupiah) totaling Rp. 1,000,000,000 (one billion rupiah) with collateral for 3 assets in the form of land, which in this case Plaintiff II is the husband of Plaintiff I who acts as a guarantor. However, in the credit agreement No. 004 / KRD-BCI / I / 2015 dated 19 – 01 – 2015 and amendment of agreement No. 004 / ADD – BCI / II / 2015 dated 25 – 02 – 2015 is a standard agreement made by one party, and there was no bargaining between the two parties regarding the contents of the agreement. So, in this case the Defendant is considered to have committed a tort.

In addition, from his statement, the Plaintiff had made 11 installments, and when the Plaintiff requested information from OJK (*Otoritas Jasa Keuangan*) Solo regarding the amount of the loan on January 5, 2019, information was obtained that the remaining unpaid loan by the Plaintiff was Rp. 97,250,000 (Ninety Million Two Hundred Fifty Thousand). However, the data provided by the Defendant stated that the amount of Plaintiff's loan as of January 25, 2019 was Rp. 1,248,572,570.59 (one billion two hundred forty-eight million five hundred seventy-two thousand five hundred seventy

rupiah fifty-nine cents); Thus there is a loss for the Plaintiffs, namely the difference of Rp. 1,248,572,570.59 - Rp. 97,250.000, - = Rp. 1,151,322,570.59 (one billion one hundred fifty-one million three hundred twenty-two thousand five hundred and seventy rupiahs five twenty-nine). Whereas on June 19, 2020, Plaintiff I experience payment difficulties due to Covid-19. Then the Plaintiff filed for restructuring but was rejected by the Defendant, and instead, the Defendant made a *Akta Pemberian Hak Tanggungan* (APHT) for collateral in the form of land. In addition, in the course of time, SHM No. 2441 area of 895 m² on behalf of, NGADINO was auctioned off by Defendant I through Defendant IV on 8-9-2020 for Rp. 972,000,000, - (Nine hundred and seventy-two million rupiah) with the winner of the Defendant III auction, and SHM No. 2441 with an area of 895 m² under the name, NGADINO which is located in Bulusulur Village, Wonogiri District, Wonogiri, different from the name Ngadino Siswo Utomo (Plaintiff II) according to KTP. Regarding the difference in names, Plaintiff II has never provided information or asked for the determination of the existence of the 2 (two) names at the Wonogiri District Court.

When viewed from these cases, it can be concluded that there is a similar pattern in civil cases of torts in the Surakarta Religious Court and Surakarta District Court, namely, there is an agreement between the creditor and the debtor. Based on various factors, there are defaults

(*wanprestasi*) committed by the debtor so it becomes a trigger for torts. Even though in the verdict, the lawsuit for torts may be paid just like the Plaintiff who has committed a tort, this depends on the trial process such as evidence, and the judge's considerations. As for other cases related to civil cases against the law that occurred at the Surakarta District Court outside of debts and receivables, they include:

2. Shared Property

Cases against the law related to joint assets usually occur between husband and wife who divorced. As in case Number 174/Pdt.G/2022/PN.Skt, the case number explained the case that at first Plaintiff and Defendant I were a legally married couple who married on July 16, 1983, according to the Islamic religion in Surakarta City, so the Plaintiff and Defendant I have submitted themselves to the applicable marriage law in Indonesia. One of the joint assets owned by the Plaintiff and Defendant I is a piece of land with an area of $\pm 1,032 \text{ m}^2$ (one thousand thirty-two square meters) located on Jl. Dr. Moewardi No. 25, RT 001/RW 001, Purwosari Kelurahan, Laweyan District, Surakarta City, Central Java Province, as previously listed in the Property Rights Certificate Number 990/Purwosari Village on behalf of Gunarjo In Casu Defendant I and has now been changed to Property Rights Certificate Number 1366 /Purwosari village registered in the name of Anton Harnoko SE bin H. Ardjosudarmo In Casu Defendant II (“Case Object”). On January 26,

1995, Plaintiff and Defendant were divorced, since the divorce, Plaintiff has never married anyone and has never filed for the distribution of Joint assets, so the Joint assets as mentioned have never been divided. However, when the Plaintiff's and the Defendant's biological children asked about the status of the joint assets to Defendant I, Defendant I explained that the joint assets (dispute object) had been sold as stated in the sale and purchase deed No. 87/Laweyan/1993 made before Defendant III on dated September 2, 1993. In this case, the Plaintiff also confirmed to the Defendant I regarding the sale of the disputed object and it was acknowledged by the Defendant, it was proven that the object of the dispute was joint assets that was sold without the knowledge of the Plaintiff who at that time was still the wife of the Defendant.

When selling the disputed object, Defendant I sold it to an old relative who later became Defendant II because he was not careful when he became a buyer. Considering that Defendant II is an old relative who knows the family of the Plaintiff and Defendant I, Defendant II should have checked first when making a purchase transaction for the disputed object. So, from the sitting of the case, it is considered that there was a tort, namely the act of Defendant I who sold joint assets without the wife's knowledge, and a tort based on negligence committed by Defendant II by not checking when he was about to buy the disputed object from Defendant I.

3. Inheritance

In addition to the cases above, torts (tort) in the Surakarta District Court also often occur in inheritance cases. As happened in case Number 76/Pdt.G/2022/PN.Skt, in this case, it was stated that R Mochamad Imam had died and left heirs, namely his wife and three daughters. During his lifetime, the late R. Mochamad Imam owned several movable and immovable properties, one of which was land & a house located in Sragen Kulon Village, Sragen District, Sragen Regency and recorded on a certificate of ownership number 424 with an area of + 525 M2 in the name of the rights holder R. Mochamad Imam who later became the object of the dispute. However, without the knowledge of the other heirs of Defendant III or R.Dewi Novita Kurniawati, S.Psi, M.Psi., (the late biological child) made the object of the dispute as collateral for credit applications at PT. *Bank Perkreditan Rakyat* (BPR) Kartadhani Mulya (Defendant II). Then in the course of their journey, the Plaintiffs only found out that the object of the dispute was in fact in the stage of the auction process at the *Kantor Pelayanan Kekayaan Negara dan Lelang* (KPKNL) Surakarta (DEFENDANT I) on April 8, 2022, at the SURAKARTA KPKNL office.

So, from this case, it can be seen that there was an intentional tort committed by Defendant III, namely by selling the inheritance that had not been divided and without the knowledge of the other heirs, which of course would result in material and immaterial losses. While the

other is tort in the form of negligence committed by Defendant II who asked to hold an auction and Defendant III who conducted an auction without confirming the status of the object.

E. The Settlement of Tort Cases at the Surakarta District Court and Surakarta Religious Court After the Birth of Law no. 3 of 2006

1. Procedural Law Sources

Based on article 50 of Law no. 8 of 2004 as an amendment to Law no. 2 of 1986 regarding the competence of the general court that the general court which in this case includes the District Court has the authority to examine, decide and resolve criminal and civil cases at the first level. As also regulated in Law no. 3 of 2006 as an amendment to article 49 of Law no. 7 of 1989 that Religious Courts have authority regarding certain civil cases in the fields of marriage, inheritance, wills, grants, endowments, zakat, *infaq*, alms, and sharia economics. The sources of procedural law used in resolving civil cases in the Surakarta District Court are the *Herzeinee Inlandsch Reglement* (HIR) for Java and Madura, *Rechtrelement Voor De Buittengewesten* (R.Bg) for outside Java and Madura. The source of the procedural law that applies in the Surakarta Religious Court is the same as the source of the procedural law that applies in the scope of the District Court. This is based on Article 54 of Law Number 7 of 1989 in conjunction with

Law Number 3 of 2006. Sources of additional procedural law in civil cases are still scattered in various laws, including:

- a. Rv (*Reglement op de Burgerlijke Rechtsvordering*), Civil Procedure Code for European Groups.
- b. BW (Book of Civil Law), especially Book IV.
- c. WvK (Book of Commercial Law).
- d. Various related laws such as:
 - 1) Law on Repeat Trials/Appeal Procedures (Law No. 20/1947).
 - 2) Law on Judicial Power (Law No. 48/2009).
 - 3) Law on General Courts (Law No. 2/1986, jo. Law No. 8/2004, jis. Law No. 49/2009).
 - 4) Law on the Supreme Court (Law No. 14/1985, jo. Law No. 5/2004, jis Law No. 3/2009).
 - 5) Law on Advocates (Law No. 18/2003).
 - 6) Law on Marriage (Law No. 1/1974) and its implementing regulations such as PP No. 9/1975 and PP No. 10/1983. 3.
 - 7) Law on Bankruptcy and Suspension of Debt Payment (UU No. 37/2004).
- e. Jurisprudence.
- f. Supreme Court Regulation (PERMA).
- g. Instructions and Circular of the Supreme Court (SEMA).

- h. International Agreements.
- i. Doctrine.
- j. Customs.

2. Principles of Civil Procedure Law

In the implementation of civil procedural law in court, the judge as a person who has a role to exercise judicial power is certainly the main character in exercising it. As stipulated by law, the judge has to receive, examine and adjudicate, as well as settle cases submitted to him. In this case, the judge has broad powers and independence in resolving cases submitted to him. However, to achieve justice and avoid arbitrariness, in resolving these cases the judge must be based on the law. Even though not everything is currently contained in the law, such as circumstances the judge can use his power and discretion. In this case, several principles are used as guidelines by judges at the Surakarta District Court and Religious Court:

- a. The characteristic of judge is waiting (*Iudex no Procedat ex Officio*)

This principle is contained in article 10 paragraph (1) of Law no. 48/2009 and article 142 RBg / article 118 HIR which stipulates that a civil lawsuit at the first level whose examination is the authority of the district (and religious) court is filed by the Plaintiff or by an attorney. So that it can be interpreted that the judge is waiting, the

judge will only work if there is a lawsuit filed by the Plaintiff against him. However, if a lawsuit is filed, the judge or court is prohibited from refusing to examine, try, and decide on the case.

b. The characteristic of judge is passive (*lijdelijkeheid van rechter*)

What is meant by passive in this case is that judges may not have the initiative to hold civil proceedings other than at the initiative of interested parties. In addition, judges are also not allowed to decide more than the petitum required as contained in (article 189 RBg / 178 HIR) and pursue formal truth as proven in the trial without involving the judge's beliefs.

c. Trial open to the public (*Openbaarheid van rechtspraak*)

This principle is contained in Article 13 paragraph (1) of Law no. 48/2009 that basically all hearings in court are open to the public, unless the law determines otherwise. The court's decision must be pronounced in a hearing that is open to the public. The decision is invalid and null and void if it is not pronounced in a hearing that is open to the public.

d. *Audi Et Alteram Partem*

This principle is contained in 4 paragraph (1) of Law no. 48/2009, articles 145 and 157 RBg, articles 121 and 132 HIR, namely the principle that the court must treat both parties equally, be impartial and provide equal opportunities.

- e. The decision must be accompanied by reasons (*motivering plichtvoelende gemotiveerd*)

This principle is contained in Article 195 RBg, Article 184 HIR, Article 50 dqn 53 of Law no. 48/2009, article 68 A Law no. 49/2009 which stipulates that:

- 1) In examining and deciding, the judge is responsible for the decisions and decisions he makes.
- 2) The stipulation and decision as referred to in paragraph (1) must contain the judge's legal considerations based on the right and correct reasons and legal basis.

So, it can be concluded that this principle requires judges to include reasons for each decision they make as material for the judge's accountability to the community, the parties, a higher court, and legal knowledge⁴³. As is the case in rejected cases, the judge's decision must include legal considerations as to why the case was rejected.

- f. Litigate fee (in all decisions)

This principle is contained in article 2 paragraph (4) of Law no. 48/2009, article 145 paragraph (4), article 192, article 194 RBg, article 121 paragraph (4), article 182, and article 183 HIR. For proceedings in court, it is required to pay fees used for clerkship fees, summons, notifications, stamp duty, and others. As for parties

⁴³ Mertokusumo, *Hukum Acara Perdata Indonesia*, (yogyalarta: Liberty Jogjakarta, 2009).

who cannot afford it, as stipulated in article 273 RBg / 237 HIR, the Plaintiff or Defendant who cannot afford to pay court fees can be allowed to litigate without charge.

g. Simple Fast and Low Cost

This principle is contained in article 2 paragraph (4) of Law no. 48/2009, that simple means that the examination and settlement of cases is carried out in an efficient and effective manner. Then the principle of speed (*adigum justice delayed justice initiated*), that the litigation process must be completed quickly without delaying the case. Meanwhile, according to Sarwono, if "simple" and "fast" can be implemented through technical-concrete actions in the trial, the costs to be incurred by the parties will be lighter⁴⁴.

h. The principle of freedom from outside interference

As it is inherent, that the judge is independent. Cannot and should not be affected by matters outside the court. As is regulated in article 3 paragraph (2) of Law no. 48/2009 regarding judicial power all interference in judicial matters by other parties outside the judicial power is prohibited.

3. Lawsuit

⁴⁴ Sarwono & Tarmizi, *Hukum Acara Perdata: Teori Dan Praktik*, (Jakarta: Sinar Grafika, 2016).

In civil procedural law, the initiative, namely whether or not a case exists, it should be by a person whose rights have been violated⁴⁵. So, if someone feels harmed or their rights are violated by another party, then he has the right to file a claim in the form of a lawsuit to court. However, for contracts that have been regulated in it, the institution authorized to resolve a dispute occurs is resolved at the place as agreed. In the judicial environment, lawsuits related to tort are often referred to as *jurisdiction contentiosa*, namely party cases in which there is a Plaintiff and a Defendant. Lawsuits in the realm of tort can be submitted to court if there is a dispute between two or more parties which because of the dispute causes loss or violates the rights of one of the parties.

The form of a lawsuit can be made orally and in writing, verbal claims as stipulated in Article 120HIR, Article 144 Rbg). However, the current development of oral lawsuits is no longer common, even according to Supreme Court Jurisprudence dated 4-12-1975 Number 369 K/Sip/1973 the person receiving the power of attorney is not allowed to file a lawsuit verbally. A lawsuit will be accepted if it meets the requirements as stipulated in the HIR and Rbg:

a. Formal Terms

1) Place and date

⁴⁵ M. Rasyid and Herinawati, *Hukum Acara Perdata*, (Sulawesi: Unimal Press, 2015).

A lawsuit must include the place and date the lawsuit was made, whether the letter was made at the place of domicile of the Plaintiff or the place of domicile of the attorney.

2) Stamp

Before a lawsuit is filed in court, it should be accompanied by a stamp.

3) Signature

4) A lawsuit must be signed by the Plaintiff or his attorney, in this case, an attorney may not file a lawsuit in oral form.

b. Substance requirements

1) Identity of the parties

The lawsuit must describe the identity of the Plaintiff and the Defendant, such as:

- a) Full name
- b) Age/Place and Date of Birth
- c) Work
- d) Address and Domicile

2) Posita

Posita are concrete arguments about the existence of a legal relationship which is the basis and reasons for the claim (middelen van den eis). The things that are set forth in posita include:

- a) The object of the case, namely a detailed description of the matters on which the lawsuit was filed.
- b) Legal Facts, namely descriptions that explain the matters that led to the dispute.
- c) Qualification of the Defendant's actions, namely descriptions that formulate the qualifications of the Defendant's material or formal actions which may be in the form of Torts.
- d) Description of the loss namely details regarding the loss suffered by the Plaintiff as a result of the actions of the Defendant, both in the form of material and formal losses.
- e) Posita relationship with petitum

3) Petitum

The petitum is the conclusion of the contents of the lawsuit which is submitted in writing and contains requests to be granted by the judge.

4. Examination of Lawsuits at the Surakarta District Court and Religious Court

As a *jurisdictio contentiosa*, the settlement of torts in court is limited to the requests of the parties, the court cannot exceed what the parties requested. So that in this case, the parties are led to be more active because the judge does not have the freedom to use his discretion as *in perka*

volunteer (jurididictio voluntaria). Meanwhile, the processes involved in resolving cases of torts in court include:

a. Registration

Following the principle of a judge waiting, there will be no litigation process related to tort if no party registers the case to the court. Likewise, what the author found from the results of his research at the Surakarta District Court and Religious Court, to resolve a tort dispute, the first thing that must be done is to have a lawsuit registered with the Court by its jurisdiction through *Pelayanan Terpadu Satu Pintu* (PTSP). However, the author encountered different things at the Surakarta Religious Court where specifically for sharia economic cases which included tort case, the initial screening was not carried out at *Pelayanan Terpadu Satu Pintu* (PTSP) but directly by the clerk (*panitera*)⁴⁶. This is due to a lack of understanding of the officers of *Pelayanan Terpadu Satu Pintu* (PTSP) regarding sharia economic cases, especially tort cases so that to minimize errors if there are parties who register cases of tort at the Surakarta Religious Court, PTSP officers will hand over the case directly to the clerk⁴⁷. As for a lawsuit that is registered, it will be accepted if it meets the formal requirements and substance requirements for a lawsuit, and for a

⁴⁶ Interview with Suci on February 27, 2023.

⁴⁷ Interview with Dra. Hj. Amroh Zahidah, S.H., M.H. on February 9, 2023

lawsuit that is authorized, it must be accompanied by an official power of attorney under the provisions in article 123 HIR jo. In addition, the provisions of the power of attorney at the Surakarta Religious Court are also based on the circular letter of the Supreme Court of the Republic of Indonesia No. 6 of 1994 concerning special power of attorney, and article 30 of Law no. 18 of 2003. Apart from the judge's discretion, the application of the law related to the granting of power of attorney in court can also be seen in the legal considerations in the verdict that has been made by the panel of judges on a civil case that was settled by the District Court and the Surakarta Religious Court⁴⁸. As in the legal considerations of the panel of judges in case Number 935/Pdt.G/2023/PA.Ska which reads "Considering that the Panel of Judges has examined the Special Power of Attorney of the Plaintiff and Defendant I which have been registered at the Registrar's Office of the Surakarta Religious Court, it turns out that they are following the provisions of Article 123 HIR jo. RI Supreme Court Circular Letter Number 6 of 1994 concerning Special Power of Attorney, and the Panel of Judges have also examined the Advocate Identity Card (KTPA) of the Attorney of the Plaintiff and Defendant I and found that it complies with the provisions of Article 30 of Law Number 18 of 2003 concerning Advocates, therefore the Panel of Judges must

⁴⁸ Court, "Supreme Court Decision."

state that the Attorneys of the Plaintiff and Defendant I are legal aid providers so that the Panel of Judges can accept and give permission to the Attorneys of the Plaintiff and Defendant I to proceed in the aquo case as professional advocates.”⁴⁹

If the case has been registered through *Pelayanan Terpadu Satu Pintu* (PTSP), then the Head of the District Court and the head of the Religious Court will determine the time of the trial and appoint the composition of the assembly that will resolve the case, as well as order the appointed bailiff to summon the parties to attend the trial according to the set time. Summons are made by submitting a summons to the Plaintiff and the Defendant, especially for the Defendant accompanied by a copy of the lawsuit. Summons were made properly, as indicated by the return of the minutes (*relaas*) of the summons to the Panel of Judges. If the person summoned lives outside the jurisdiction of the District Court examining the case in question, the summons shall be made through the chairman of the District Court whose jurisdiction covers the residence of the summoned person.

b. Litigation

If the processes above have been carried out, then the next process is to conduct a trial according to the specified time. In the first trial, the judge made sure that the Plaintiff and the Defendant,

⁴⁹ Ibid.

or the proxies for both attended the trial. If at the first trial, the Plaintiff is not present, both the judge at the District Court and the judge at the Surakarta Religious Court are guided by the same guidelines in article 150 Rbg/article 126 HIR, namely by not passing a decision at the first trial and ordering the bailiff to return to summon the Plaintiff. Furthermore, if after the summons the two Plaintiffs are still not present, the judge will decide to abort the lawsuit and charge the Plaintiff court costs. Although in practice in the District Court and the Surakarta Religious Court it is very rare to find Plaintiffs who do not attend a trial, those who are not present in person will be represented by their attorney. In contrast, if the Plaintiff is present at the first trial but is not present at subsequent trials, the case will be decided in a contradictory manner as stipulated in 149 Rbg/article 125 HIR.

c. Mediation

It will also be different if, at the first trial, the Plaintiff and the Defendant are present, and the judge must try to reconcile the parties. In this case, the judge has broad powers to seek peace, there is no limit to the number of times the judge can do it. One of the efforts to reconcile that can be offered by a judge in a trial is to seek mediation. As regulated in PERMA No. 1 of 2016. If in the mediation process, a settlement can be reached, then a deed is

made which must be carried out by both parties. The deed has the same legal force as an ordinary decision.

However, in civil cases, tort in both the Surakarta District Court and the Surakarta Religious Court is still very rarely resolved by employing mediation. According to Jaenuri's presentation, who is also a mediator judge at the Surakarta Religious Court, this is because both parties want their wishes to be followed, it is rare to find parties who are both willing to find a middle ground. According to him, whether or not peace is achieved depends on the parties, because the mediator has no rights other than accompanying⁵⁰. A different opinion was expressed by Amroh who is also a judge at the Surakarta Religious Court, according to him the skill of the mediator as a neutral third party was very influential in efforts to reconcile the parties⁵¹. So, if the peace process is not successful then it will continue with the stages of answering, proving, concluding, and court decisions. Meanwhile, according to the Surakarta District Court judge, both the litigants and the mediator have an equally important role in seeking peace, so both of them must sincerely carry out the mediation process so that the

⁵⁰ Interview with Drs. Jaenuri, M.H. on February 16, 2023.

⁵¹ Interview with Dra. Hj. Amroh Zahidah, S.H., M.H. on February 9, 2023.

best solution can be found, even though the best solution is not always in the form of peace⁵².

d. Answers and exceptions

The process of giving answers is carried out in court, where these answers are the place where the Defendant can present his arguments. The answer given by the Defendant can be delivered orally or in writing. As previously mentioned, in cases of torts, the judge is waiting, so the activity of both the Plaintiff and the Defendant in giving answers (exceptions) will greatly affect the proceedings of the trial and even the decision.

In addition to providing answers, the Defendant can also file a counterclaim or known as a counterclaim as regulated in Articles 157 and 158 RBg, Articles 132 a and 132 b HIR. According to these articles, the examination of counterclaims can be carried out simultaneously. Although it is also possible for the judge to examine the suit separately.

e. Proof/evidence

If an exception and answer have been made, then a counterclaim has been filed or not filed. So, the next process that must be carried out in court is proof. As with the previous process, the stage of proof is very important considering that each activity or initiative of the parties in an tort case greatly influences the

⁵² Interview with Subagyo, S.H., M.Hum. on Marc 3, 2023.

decision and the trial process. As stated by Sudikno Mertokusumo, juridical evidence is nothing but "historical" evidence. This historical proof tries to establish what has happened concretely⁵³. Proving essentially means why certain events are considered true. So that from this evidence the judge can assess and find the truth so that an appropriate and fair decision is reached. As explained by Jaenuri a judge at the Surakarta Religious Court, in civil cases the truth sought is formal so it is very dependent on evidence that has formal strength. The rules regarding evidence that were used as the basis by the judges of the Surakarta District Court and Religious Court in the trial were:

1) Article 283 Rbg

Whoever thinks that he has a right or a circumstance to strengthen his rights or deny the rights of another person must prove that right or condition.

2) Article 163 HIR

Whoever claims to have a right, or mentions an action incident to confirm that right or to disprove the rights of others, then he must prove the existence of that right or the existence of that event.

3) Article 186 BW

⁵³ Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty Jogjakarta, 2009).

Every person who argues that he has the right to uphold his rights or refute the rights of others, designating an event is required to prove the existence of said right or event.

In the trial process of civil cases, torts that must be proven are matters that are disputed by both parties, as for matters that are acknowledged by the opposing party or that are known to the public, it does not need to be proven.

As for which can be evidence in a civil trial include:

1) Written Evidence

The legal basis for this written evidence is contained in Article 164, Article 285 to Article 305 RBg, Article 138, Article 165, and Article 167 HIR, Article 1867 to Article 1894 BW. From these articles, it is concluded that what is categorized as written evidence are authentic deeds, private deeds, and letters not deeds. In practice, this written evidence is evidence that is always present in almost every case examined. Especially in cases where there is a contract or agreement, this written evidence has formal strength so that if the evidence cannot be proven during the trial it can determine whether a person/institution wins or loses in court. Even though the judge has confidence in the case he is handling, if it does not have formal force then the judge cannot decide it is an tort. Or it results in another decision,

such as an inadmissible decision because there is a legal consideration of error-in persona, where the Plaintiff, with proof of his identity papers, is known to have no clauses related to the lawsuit.

2) Witness Evidence

Witness evidence is evidence in the form of testimony from a person who is not from the litigation party. The testimony presented at trial may not be in the form of an opinion but facts that are correctly known by the witness regarding the case that occurred. The legal basis for witness evidence is regulated in Article 165 to Article 179, Article 309 RBg, Article 139 to Article 152, Article 169 to Article 172 HIR, Article 1895, Article 1902 to Article 1908 BW.

3) Presumptive Evidence

The legal basis for alleged evidence is regulated in Article 195 BW, this alleged evidence is indirect evidence at trial, where judges can find conclusions drawn from a well-known event to an unknown event. The evidence for prejudice can be divided into two:

- Prejudice to the law or based on the law (*wettelijk vermoeden*)
- Allegation based on facts or judge's conjecture (*feitelijke vermoeden, rechterlijke vermoeden*)

4) Evidence of Recognition (*bekentenis, confession*)

The legal basis for confession evidence is regulated in Article 311, Article 312, Article 313 RBg, Article 174, Article 175, Article 177 HIR, and Articles 1923 to Article 1928 BW.

5) Oath Proof

Evidence of oath is regulated in Article 182 to Article 185, Article 314 RBg, Article 155 to Article 158, Article 177 HIR, Article 1929 to 1945 BW. From these articles there are several kinds of oaths:

- Complementary oaths
- Oath of appraisal
- Oath breaker

6) Local inspection (*Destence*)

7) Expert statement (*Expertise*)

F. Settlement Analysis of Tort at Surakarta District Court and Surakarta Religious Court

According to Martokusumo, that the judge's decision is a statement by the judge as a state official who is authorized to do so, uttered in court and aims to end or resolve a case or dispute between the parties, in which the decision has

legal force. In court, the judge decides a lawsuit as a tort if it is proven to fulfill the elements of a tort. Meanwhile, if it is not proven to fulfill the elements of a tort or evidence states otherwise, then the verdict reads differently. This depends on the results of the examination, as is the case with civil cases of tort which are the authority of the Religious Court but are registered at the Surakarta District Court.

So, in this case, after being examined and finding evidence showing that the case is not within the jurisdiction of the District Court or vice versa, the judge and the court cannot hear and decide on the case with appropriate legal considerations. One example is in case Number 84/Pdt.G/2022/PN.Skt, in the verdict the judge stated that the court had no authority to try based on legal considerations "Considering, that based on Article 49 of Law Number 7 of 1989 concerning the Religious Courts which has amended by Law Number 3 of 2006 concerning Amendment to Law Number 7 of 1989 concerning Religious Courts which was amended by Law Number 50 of 2009 concerning Second Amendment to Law Number 7 of 1989 concerning Religious Courts stated that the Religious Court has the duty and authority to investigate, decide and resolve cases at the first level between people who are Muslim in the fields of marriage, heir, will, grant, waqf, *zakat*, *infaq*, *shadaqah* and sharia economics.

Another example is from the Surakarta Religious Court, namely case Number 1/Pst.G/2018/PA.Ska where the ruling reads that the Plaintiff's claim is declared NO (*Niet Ontvankelijke Verklaard*) with the legal consideration

that in the two contracts it is regulated that if a dispute occurs, it is resolved through arbitration. Likewise in case Number 170/Pdt.G/PA.Ska where the decision stated that the lawsuit was rejected, this was not because there was no evidence of tort, but when the examination was found in the contract that the party handling if a dispute occurs is the Pekalongan District Court, although in this case, it reads Religious Court. However, according to the relative authority of the court, this case is not the relative authority of the Surakarta Religious Court, but the relative authority of the Pekalongan Religious Court.

Table III

Comparative Table of settlement of Tort

in Surakarta Religious Court and Surakarta District Court

Based on the data and	No.	Surakarta District Court & Surakarta Religious Court	
		Equations	Differences
	1.		The number of incoming cases
	2.		Types of cases registered and handled
	3.	Mediation	
	4.	Sources of procedural law	
	5.	Litigation process	
	6.		Screening at PTSP

information provided by the author, it can be seen and was concluded that the

process of resolving civil cases of tort was carried out in the Surakarta District Court and the Surakarta Religious Court. The most prominent differences that the author has obtained after conducting research and direct observation at the District Court and the Surakarta Religious Court are:

1. The type of incoming cases

The types of tort that registered to the Religious Courts only revolve around the sharia economy, while the tort cases that registered to the Surakarta District Court are more complex, such as the economy, joint assets, inheritance disputes, etc⁵⁴. This certainly had an impact on the number of cases that were filed, where according to the results of the decisions of the supreme court directories, the comparison of tort civil cases that went to the Surakarta Religious Court and the Surakarta District Court was 1:19.

2. The understanding of *Pelayanan Terpadu Satu Pintu* (PTSP) Officer

From the results of interviews and direct observations⁵⁵, the authors found very significant differences regarding the understanding of *Pelayanan Terpadu Satu Pintu* (PTSP) officers at the Surakarta Religious Court and at the Surakarta District Court regarding civil cases of tort. Where the understanding of *Pelayanan Terpadu Satu Pintu* (PTSP) officer of the Surakarta Religious Court is still inadequate, some of them are even unfamiliar with the term tort. So if there are cases of tort that enter to Surakarta Religious Court, they

⁵⁴ Court, "Supreme Court Decision."

⁵⁵ Observation at PTSP (*Pelayanan Terpadu Satu Pintu*) of Surakarta District Court and Surakarta Religious Court on February 9, 2023 to March 3, 2023

must be submitted directly to the clerk without screening at *Pelayanan Terpadu Satu Pintu* (PTSP). Quite different with the *Pelayanan Terpadu Satu Pintu* (PTSP) officers of the Surakarta District Court, where matters related to tort have become daily consumption so that if the community wants to register a civil case related tort, the first aid in court will be provided by *Pelayanan Terpadu Satu Pintu* (PTSP) officer.

These differences occur because the authority to deal with tort in Religious Courts is relatively new, and as we can see from the repository of supreme court decisions from 2018 – 2023 there were 392 civil tort handled by the Surakarta District Court, while only 21 cases were entered and handled by the Surakarta Religious Court. It can be seen that there is a very large difference in the cases handled, this is also due to factors of relative competence and absolute competence of the Surakarta District Court and Religious Court. Where the Religious Courts only deal with civil disputes of tort between Muslims (the principle of Islamic personality) but sharia contracts also apply to Islamic personality even though the contract actor is not a Muslim, while the Surakarta District Court has a broader absolute competence in resolve the case so that it will certainly affect the number and type of cases that come in.

In this case, the author still finds overlapping authorities between the Religious Court and the Surakarta District Court outside of sharia economic cases. As in the case of Muslim communities resolving inheritance disputes in the District Court, this shows that there is no legal certainty because the

District Court and the Religious Court according to their respective perspectives have the authority to accept, examine, and decide on inheritance disputes in Muslim communities even though this is actually the opposite with the principle of Islamic personality, apart from that the impact is if a Muslim resolves cases that are actually regulated in Islamic law but the (Islamic) community chooses to settle it in a District Court, then the community cannot apply the law that it should obey as a Muslim. However, due to the lack of firm clarity, the court cannot refuse people who want to settle their cases at the District Court or at the Religious Court. However, historically this is a debate over authority between the two judiciary institutions that have not been resolved until today.

As the theory put forward by Ilham Tohari that the law still provides a choice of law and this means that the state has given the freedom to its citizens and does not discriminate against other religions in Indonesia⁵⁶. This theory is then reinforced by Afdol's theory that in the case of a choice of inheritance law, it can be understood through two arguments. *First*, the view that starts from the doctrine teaches that in general, every field of civil law is regulatory or *regelend* in nature and not coercive or *dwingend*. Therefore, according to this teaching, civil law rules including inheritance law can be set aside through an agreement between the disputing parties. This regulatory rule of law cannot be imposed even by a judge or the state. Thus, the judge is not authorized to impose certain legal choices whose legal nature regulates. For this reason, the

⁵⁶ Ilham Tohari, "Menyoal Kewenangan Pengadilan Negeri Dalam Menyelesaikan Perkara Waris Masyarakat Muslim Pasca Lahirnya Undang-Undang No. Tahun 2006 Tentang Peradilan Agama," *Jurnal Pemikiran Hukum dan Hukum Islam* 9, no. 1 (2018): 36.

author sees the need for certainty in the division of tasks that are specific and clear between the Religious Courts and District Courts which are included in the law, so that there is no debate and overlapping as is currently happening.

Meanwhile, in the settlement process, there is no difference between the District Court and the Surakarta Religious Court. Both the District Court and the Surakarta Religious Court derive from the same source of civil procedural law. Likewise, in efforts to reconcile, both judges at the Surakarta District Court and judges at the Surakarta Religious Court put forward mediation as an attempt at reconciliation, while the percentage of success is not far apart where the success of mediation at the Surakarta District Court has reached around 5.1% since 2018 -2023, while the achievements at the Surakarta Religious Court were around 9.5% from 2018-2023. Both show that the results of the mediation carried out in the Surakarta District Court and the Surakarta Religious Court are equally small, meaning that mediation is rarely successful. There were no differences in the trial process, such as examination, evidence, and other matters carried out in the trial, from the two courts.

CHAPTER V

CLOSING

A. Conclusion

1. The enactment of Law No. 3 of 2006 as an update to Law No. 7 of 1989 has expanded the authority of the religious court, where cases that were previously under the authority of the Surakarta District Court are now also under the authority of the Surakarta religious court as long as the legal subject is a Muslim and in accordance with the relative competence of each court.
2. Between the Judges of Surakarta District Court and Surakarta Religious Court, there is no overlapping understanding regarding the authority of each court. But, it is still common to file civil lawsuits for torts between Muslims or cases that are subject to a sharia contract submitted to Surakarta District Court.
3. Because the judge may not refuse a case submitted to him for any reason, the civil lawsuit for torts between Muslims or cases that are subject to a sharia contract submitted to Surakarta District Court is usually accepted.
4. Civil cases of torts submitted to the Surakarta District Court are more diverse than cases submitted to the Surakarta religious court.

5. The understanding of *Pelayanan Terpadu Satu Pintu* (PTSP) officer of the Surakarta Religious Court is still inadequate.
6. The majority of civil torts submitted to the Surakarta District Court and the Surakarta religious court have in common that they are disputes between creditors and debtors.
7. The pattern of unlawful civil disputes that were submitted to the Surakarta District Court and the Surakarta religious court, because there was a default committed by one of the parties, causing the other party to commit a tort.
8. The number of cases that were submitted to the Surakarta District Court are much more than cases that were submitted to the Surakarta religious court. This is because the Surakarta District Court has broader absolute competence than the Surakarta religious court.
9. There is no difference in the sources of law regarding civil torts in the Surakarta District Court and the Surakarta religious court, both of which are based on article 1365 BW (*KUHPerdata*). Likewise in the settlement process or litigation process in court, both are based on the same source of procedural law as stipulated in Article 54 of Law Number 7 of 1989 in conjunction with Law Number 3 of 2006 where the source of procedural law that applies in religious courts is the same as the source of law procedures that apply in the scope of the District Court. The legal sources are the *Herzeinee Inlandsch Regulation* (HIR)

for Java and Madura, *Rechtspraak Voor De Buitengewesten* (R.Bg)
for outside Java and Madura and additional legal sources.

B. Suggestion

1. Create the more specific law regarding the authority of cases handled by district courts and religious courts.
2. Provide counseling to employees of the religious court regarding of tort cases.

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CURRICULUM VITAE

Name : Siti Inayah

Place/Date of Birth Tasikmalaya, 01 Juli 1999

:

Phone Number : 08139081360

Email Inayahinaytsm21@gmail.com

:

Adress : Gurawan 002/009, Pasar Kliwon, Surakarta.

Education Background MI Nur Hidayah Tasikmalaya (2006-2008)

:

SD Muhammadiyah Surakarta (2008-2012)

MTs Muhammadiyah Blimbing (2012-2015)

MAPK Surakarta (2015-2018)

Organization Background Vice President of El Markazi UII

:

Secretary of PIK-M Aushaf UII

Head of Internal Division EDS UII

Human Resource of Organisasi Santi OSPP PP

UII

Secretary of Media Santri PP UII