

THE LEGAL CONSEQUENCES FOR BUYING MOTOR VEHICLES WITHOUT MOTOR VEHICLE AUTHORIZATION LETTER

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Abstrak: Penelitian hukum ini bertujuan untuk mengetahui akibat hukum pidana maupun akibat hukum perdata terhadap pembeli yang melakukan pembelian kendaraan bermotor tanpa surat - surat yang lengkap dan sah. Penelitian hukum ini merupakan penelitian yuridis normatif. Metode yang digunakan oleh penulis untuk menganalisis data adalah analisis kualitatif. Berdasarkan hasil penelitian dan pembahasan, akibat hukum pidana terhadap pembeli yang melakukan pembelian kendaraan bermotor tanpa surat - surat yang lengkap dan sah yaitu dapat dikenakannya Pasal 480 ayat (1) Kitab Undang - Undang Hukum Pidana tentang tindak pidana penadahan dengan harus dipenuhinya unsur subjektif dan objektif. Lebih lanjut akibat hukum perdata terhadap pembeli yang melakukan pembelian kendaraan bermotor tanpa surat - surat yang lengkap dan sah yaitu dimungkinkannya pemilik asal kendaraan bermotor mengajukan gugatan perbuatan melawan hukum berdasarkan Pasal 1365 Kitab Undang - Undang Hukum Perdata.

Kata Kunci: Penadahan; Akibat Hukum; Perbuatan Melawan Hukum

Abstract: This legal research aims to determine the consequences of criminal law and civil law consequences for buyers who purchase motorized vehicles without complete and valid documents. This legal research is a normative juridical research. The method used by the writer to analyze the data is qualitative analysis. Based on the results of research and discussion, the consequences of

criminal law against buyers who purchase motorized vehicles without complete and valid documents are that Article 480 paragraph (1) of the Criminal Code on criminal acts about fencing must be fulfilled with subjective and objective elements. Furthermore, the effect of civil law on buyers who purchase motorized vehicles without complete and valid documents is that the owner of the motor vehicle can file a lawsuit against the law based on Article 1365 of the Civil Code.

Keywords: Fencing; The Consequences of Law; Tort

INTRODUCTION

Fulfilling each individual's needs is inseparable from economic activities, one of which is the consumption of goods and services. Consumption is defined as the use of goods and services that will directly meet human needs.¹ Consumption is one of the three main components of the economy apart from production and distribution. The activity of using goods and services is considered to have great urgency in every economy. Classical theory regarding the hierarchy of human consumption is divided into 3 (three) groups, namely primary needs, secondary needs, and tertiary needs.²

As it is well known that primary needs are the main needs or the most important needs to be fulfilled.³ Secondary needs are

needs that fulfill after primary needs.⁴

Meanwhile, tertiary needs are the last needs that serve as a compliment.⁵

During its development, the theory of consumption has begun to evolve. Things that used to be secondary needs can turn into primary needs. This is because there are factors that influence consumer buying behavior. According to Kotler, the factors that influence consumer purchasing behavior are influenced by:⁶

1. Cultural factors.

Cultural factors have the broadest role, including a shift in culture and values in the family.

2. Social factors.

Social factors include small groups, families, roles, and the social status of consumers.

¹ Suherman Rosyidi, *Pengantar Teori Ekonomi: Pendekatan kepada Teori Ekonomi Mikro & Makro*, (Jakarta: Rajawali Press, 2011), p. 163

²ZulfikarAlkautsar, Meri Indri Hapsari, "Implementasi Pemahaman Konsumsi Islam Pada Perilaku Konsumsi Konsumen Muslim", *Jurnal Ekonomi Syariah Teori dan Terapan*, 1, No.10 (2014): 740-741.

³Muh.Syarifuddin, "Analisis Tentang Aktivitas Buruh Tani Dalam Memenuhi Kebutuhan Pokok Di Kelurahan Bukuan Kecamatan",

PALARAN KOTA SAMARINDA", *eJournalSosiatri-Sosiologi*, 4, No.3 (2016): 1001-101.

⁴*Ibid.*

⁵*Ibid.*

⁶ Philip Kotler dan Kevin Lane Keller, *Manajemen Pemasaran*, Edisi 13 Jilid 1 dan 2, Alih Bahasa : Bob Sabran. (Jakarta: Erlangga, 2011), p. 78

3. Personal factors.

Personal factors related to individual decisions to buy goods or services are influenced by personal characteristics such as age and stage of the buyer's life cycle, position, economic situation, lifestyle, personality, and self-concept of the buyer concerned.

4. Psychological factors

The last factor is the psychological factor which is influenced by motivation, perception, learning process as well as beliefs and attitudes.

Some factors cause human needs to change along with the times, so the classification of individual needs based on their intensity is not absolute because the primary needs between one individual and another can be different.

One of the shifting needs can be seen from motorized vehicles, which used to be secondary, even tertiary for some people can be said to be primary needs. This can be seen from the social facts, that today more and more people need motorized vehicles. This is due to the increasing mobility of the community due to the demand for work transportation, business, and other social activities.⁷

It cannot be denied that with the increasing demand for motorized vehicles, the competition between automotive companies in marketing their products is very tight. In addition to the official party as an automotive company that makes motorized vehicles as the object of selling them, some people sell motor vehicles with various factors. Therefore, people can choose to buy new or used motorized vehicles. On the other hand, it turns out that there are still many people who have not been able to meet the needs of motorized vehicles due to economic constraints.

One alternative that can be chosen by people who have not been able to fulfill the need for a motorized vehicle is to buy a motorized vehicle that does not have a complete motor vehicle authorization letter. The rise of the purchase of motorized vehicles without complete legal documents is also based on the fact that the price of these motorized vehicles is much cheaper than the price of motorized vehicles with complete documents. This is because there are times when the owner of the motorized vehicle does not want to take care of vehicle documents or needs money quickly, so he continues to sell the vehicle, even though the vehicle documents are incomplete. Another possibility that allows the owner to

⁷ Fajar Suryatama, "Strategi Promosi Massal untuk Meningkatkan Penjualan dan Market Share" *Jurnal ASET* 20, No.1 (2018): 47-55.

sell his motorized vehicle is because the motorized vehicle is stolen so that the seller does not have the complete certificate of the motor vehicle.⁸

Ubi Societas Ibi Ius (where the is society, there are laws)⁹ From this legal principle, it can be understood that in social life, people must obey the applicable legal rules because one of the functions of law is as *social control* which is equipped with various sanctions as a means of coercion so that the rules are obeyed.¹⁰ Buyers who in this case indeed know that the motorized vehicle does not have complete valid documents because as a result of the criminal act, the buyer may be subject to the article of fencing crime (*heiling*)¹¹ which is regulated in Article 480 paragraph (1) of the Criminal Code (KUHP) which regulates the following:

“Shall be punished with imprisonment of up to four years or a maximum fine of nine hundred thousand rupiah:

1) Anyone who buys, rents, exchanges, accepts a pledge, receives a gift, or to profit, sells, rents, exchanges, pawns, transports, keeps or hides an object, which it is known or reasonably presumed to have obtained from a crime of fencing”

The interesting thing is if the person who buys a motorized vehicle without the complete motor vehicle authorization letter does not know that the vehicle is the result of a criminal act. If we look at Article 480 paragraph (1) of the Criminal Code (KUHP), it can be seen that one of the elements of the criminal act of fencing is "it should be presumed that it was obtained from the crime of fencing". Given these elements, it is necessary to further investigate the actions of motorized vehicle buyers without complete legal documents to qualify the element of fencing or not. Even more so if the buyer has asked about the origin of the motor vehicle, but the seller could have lied to make the buyer believe. This should be investigated further because the buyer has asked the origin of the vehicle, whether the activity can be said to be presumptive, and does not fulfill the elements contained in Article 480 paragraph (1) of the Criminal Code (KUHP)?

⁸Tyas YuniawatiSuroto, I Made Sarjana, “Perjanjian Jual Beli Buku Pemilik Kendaraan Bermotor Tanpa Kendaraan Pada Aplikasi Facebook.”, *Jurnal Magister Hukum Udayana* 9, No. 3 (2020): 633-634.

⁹Ridwan Arifin, “Legal Development And Globalization: Some Contemporary Issues In Indonesia And Global Context”, *Journal of Law and Legal Reform* 1, No. 3 (2020): 1-2.

¹⁰Rustam, “Analisis Yuridis Penerapan Sanksi Dari Instansi Kepolisian Terhadap Anggota Kepolisian Yang Menyalahgunakan Narkotika”, *Jurnal Petita* 3, No. 2 (2016): 116 – 132.

¹¹Giovani Sumapow, “Tindak Pidana Mengambil Keuntungan Dari Penjualan Barang Yang Diperoleh Karena Kejahatan Menurut Pasal 480 Ke 2 Kuhp (Kajian Terhadap Putusan Mahkamah Agung Nomor 548 K/Pid/2017)”, *LexCrimen* 7, No. 7 (2018): 107-108.

The risk that may occur is if it turns out that the owner of a motorized vehicle who is not equipped with complete valid vehicle certificates then files a lawsuit to the district court against the buyer of the motorized vehicle who is not equipped with these complete motor vehicle authorization letter. Surely there is confusion as to who has the right to be considered the owner of the motorized vehicle, between the original owner of the vehicle or the buyer of a motorized vehicle that is not equipped with a complete motor vehicle authorization letter who have paid in full to the seller. From the background explanation that has been described above, the formulation of the problem that will be carried out in this articles are:

- 1) What are the consequences of the criminal law on the sale and purchase of motorized vehicles without motor vehicle authorization letter?
- 2) What are the consequences of civil law on the sale and purchase of motorized vehicles without motor vehicle authorization letter?

METHOD

This study uses a normative juridical approach. Normative juridical research is literature-based research that is carried out by examining library materials or secondary

data.¹² This research was conducted to obtain materials in the form of theories, concepts, legal principles, and legal regulations related to the subject matter.¹³ The method used by the writer to analyze the data is qualitative analysis. Based on the nature of the research, this research uses a descriptive analytical research method. Analytical description is a method used to describe an ongoing state or situation as data for the object of research so that it can explore things - ideal things which can then be analyzed based on legal theory or applicable laws and regulations.¹⁴ In this research, the author uses the Criminal Code and Civil Code as primary data. Besides, this research also uses secondary legal materials such as books, scientific papers, and previous research results.

RESULTS AND DISCUSSION

1. The criminal law consequences on the sale and purchase of motorized vehicles without motor vehicle authorization letter

Before discussing the consequences of the criminal law on the sale and purchase of motorized vehicles without vehicle authorization letter, it is proper to consider

¹²SoerjonoSoekanto dan Sri Mahmudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, (Jakarta: Raja Grafindo Persada, 2003), p. 13

¹³ Ibid, p. 14

¹⁴Zainudin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2009), p. 107

the definition of motorized vehicles first. Article 1 paragraph (8) of Law Number 22 of 2009 concerning Road Traffic and Transportation (LLAJ Law) explains that a motorized vehicle is any vehicle driven by mechanical equipment in the form of a machine other than a vehicle running on rails. Every motorized vehicle must be registered. The registration includes:

1. New motor vehicle registration in the form of new motor vehicle registration; publishing vehicle ownership documents (BPKB); Vehicle Registration Certificate (STNK) and Vehicle registration plates of Indonesia (TNKB).
2. Register change of identity of motor vehicles and owners;
3. Motor vehicle registration renewal and/or
4. Registration of motor vehicle ratification.

Based on Article 65 paragraph (2) of the LLAJ Law, a sign that a motorized vehicle has been registered by the police is evidenced by the issuance and provision of BPKB, STNK, and TNKB to motorized vehicle owners. The need for motor vehicle registration has the following important meanings:

1. Orderly administration;
2. Control and supervision of motorized vehicles operated in Indonesia;

3. Make it easier to investigate violations and/or crimes;

4. Planning, operational management, and engineering of traffic and road transport; and

5. National development planning

Furthermore, proof of motor vehicle ownership can be proven if the owner has a BPKB. According to the explanation of Article 1 paragraph (8) of the Regulation of the Head of the National Police of the Republic of Indonesia Number 5 of 2012 concerning Registration and Identification of Motor Vehicles (Perkapolri Number 5 of 2012), the BPKB is a document that gives legitimacy to ownership of a motor vehicle issued by the National Police and contains the identity of the motorized vehicle and owner, which applies as long as the motor vehicle is not transferable. So, it can be concluded that BPKB is proof of motor vehicle ownership, while STNK and TNKB have a function as evidence of the legitimacy of operating a motorized vehicle.

In the case of buying and selling a motorized vehicle without a motor vehicle authorization letter, the buyer may potentially be subject to Article 480 paragraph (1) of the Criminal Code concerning fencing. From Article 480 paragraph (1) of the Criminal Code, there

are two types of classifications of fencing, namely:¹⁵

1. Parties who receiving things by hand, namely receiving a pledge, receiving a gift, buying, renting, or exchanging.

2. Parties who release goods from their hands, namely selling, exchanging, renting, pawning, giving gifts, keeping, hiding, transporting.

Based on criminal law theory, in general, an act is considered to have violated the law and can be subject to criminal sanctions if it meets 2 (two) elements, namely the existence of an objective element and a subjective element.¹⁶ According to Lamintang, the subjective element is an element that is inherent or related to a person and includes everything that is contained in his heart, while the objective element is an element that has something to do with circumstances, namely in a state when the person's actions are carried out.¹⁷ In common law criminal law, this subjective element is better known as *mens rea* (*mental element*) and the objective element itself is known by *actusreus* (*physical element*).¹⁸ , it can be

concluded that *actusreus* or this objective element is the essence of the crime itself or the action committed, while the element *mens rea* or the subjective element is a person's inner attitude when doing an action. So it needs to be understood that a person is punished not only because of his evil deeds (*actusreus*), but also because himself reprehensible for his wrong thoughts (*mens rea*).¹⁹

Article 480 paragraph (1) of the Criminal Code (KUHP), which is formulated in the original text as follows: “*alsschuldigaanbeling, hij die eenigvoorwerpwaarvanhijweet of redelijkerwijsmoetvermoeden dat het door misdrijf is verkregen, koopt, huurt, inruilt, in pandneemt, alsgeschenkeanneemt, of uit wintbejagverkoopt, verhuurt, verruilt, in pandgeeft, vervoert, bewaart of verbergt*” then translated by P.A.F Lamintang and C.D. Samosir in Riski David Welan is as follows²⁰ :

"Due to wrongdoing, whoever buys, rents, exchanges, accepts as pawns, receives as a gift or in the hope that he will get a profit selling, renting, exchanging, pawning,

[pertanggungjawaban-pidana/](#) diakses pada 17 Maret 2021

¹⁵ H. Cecep Wiharma, Perspektif Penegakan Hukum Terhadap Barang - Barang Ilegal di Pasar Bebas, *Jurnal Mimbar Justitia* 2, No. 01 (2019): 759-773.

¹⁶ Zainal Abidin Farid, *Hukum Pidana 1*, (Jakarta: Sinar Grafika, 2014), p. 35

¹⁷ Leden Marpaung, *Asas Teori Praktik Hukum Pidana*, (Jakarta: Sinar Grafika, 2009), p. 10

¹⁸ Infohukum.com, Teori Pertanggungjawaban Pidana, <https://info-hukum.com/2019/04/20/teori->

¹⁹ Septa Candra, “Pembaharuan Hukum Pidana; Konsep Pertanggungjawaban Pidana dalam Hukum Pidana Nasional Yang Akan Datang” *Jurnal Cita Hukum* 1, No. 1 (2013): 39-56

²⁰ Riski David Welan, “Tindak Pidana Penadahan Dalam Pasal 480 ke-1 KUHP (Kajian Terhadap Putusan Mahkamah Agung Nomor 1220 K/PID/2016)”, *Jurnal LexCrimen* VII, no. 6 (2018): 74-81

transporting, storing or hiding something that he knows or properly must be able to. it is suspected that the object has been obtained due to a crime.”

Furthermore, the regulation of the criminal act of fencing in Article 480 paragraph (1) of the Criminal Code contains the following elements:²¹

1. Subjective element: whoever. The element of "whoever" is a person or person who is a legal subject (supporters of rights and obligations). Contains the intention that someone has to commit a criminal act and his actions can be accounted for according to law

2. Objective element: the existence of an object or goods

3. Action element: *kopen* or buys; *buren* or rents ; *inruilen* or exchanges; *in pandnemen* or pawns; *alsgeschenkeannemen* or receive as a gift, *uit winstbejag* or motivated by the intention of making a profit; *verkopen* or sells; *verhuren* or rents; *in pandgeven* or pawns; *vervoeren* or transport; *bewaren* or deviate and *verbergen* or hide.

4. The mental element to the object (*mens rea*), which consists of: that he knows or *waarvanhijweet* and which he should

reasonably be able to guess or *wanneer hij redelijk kernwijs moet vermoeden*

Looking at the reality that exists in society, in the context of purchasing a motorized vehicle without valid documents, there are 2 (two) potentials, namely: 1) The person who buys a motorized vehicle without the motor vehicle authorization letter **knows** that the motorized vehicle is it is originating from a criminal act or 2) The person who purchases a motorized vehicle without the motor vehicle authorization letter **does not know** that the motorized vehicle is the origin of a criminal act.

The following is an illustration of the two possibilities for motorized vehicle buyers without valid documents.

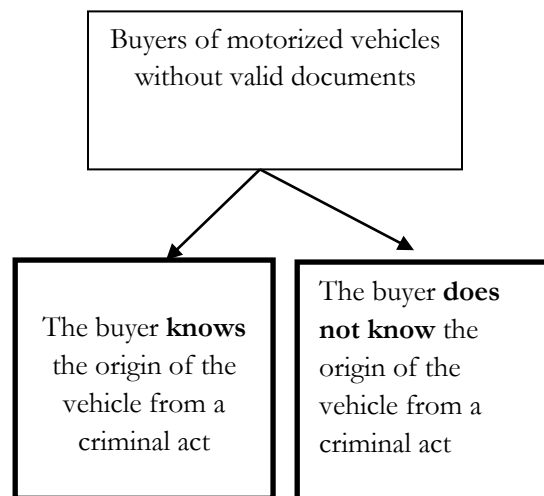


Figure 1. Classification of buyers of motorized vehicles without valid documents

Source: Author Management Results

Reviewing the first potential, namely, when the person knows that the motorized

²¹ M. Kholil, "Tinjauan Empiris Pasal 480 KUHP Tentang Penadahan Menyangkut Hak - Hak Konsumen Dalam Pasal 4 Undang - Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen", *Jurnal Hukum Bisnis Bonum Commune* 1, no. 1 (2018): 53-60

vehicle purchased originated from a criminal act, it can be said that the person has carried out the arrest as regulated in Article 480 paragraph (1) of the Criminal Code, because it has fulfilled the following elements:

1. Buy things
2. What is known;
3. Obtained from fencing crime.

Then it can be seen that a person who has fulfilled these elements can be punished with a maximum imprisonment of four years or a maximum fine of nine hundred rupiahs.

Reviewing the second potential is if the person who purchases a motorized vehicle without legal motorized vehicle certificates does not know the origin of the motorized vehicle was obtained. This is what is interesting and so many people control this. Many people buy motorized vehicles without motor vehicle authorization letters. This completely does not know that the motorized vehicle originated from a criminal act so that he feels that it cannot qualify as a collector, however, in fact, it should be noted that there is an element of "or it should be reasonably suspected that it was obtained from the crime of fencing". So that a person who purchases a motorized vehicle without a complete motor vehicle authorization letter should have suspected

that the motor vehicle was the result of a criminal act.

On the other hand, there is an opinion which states that if the person buys a motorized vehicle without the complete motor vehicle authorization letter, when asking about the origin of the vehicle, then that person is deemed to have guessed the origin of the vehicle so that it is not can be convicted under the article of restraint. This argument is not quite right, because even though that person has asked the origin of the vehicle, however, **if the person has purchased a motor vehicle that is not equipped with a motor vehicle authorization letter, this is a manifestation of *mens rea* in Article 480 paragraph (1) of this Criminal Code.** The act of buying a motor vehicle that is not equipped with a motor vehicle authorization letter is also under legal principles *communiobservantia non est recedendum* (Actions are taken by a person signify the intentions in his mind).²² From the existence of this legal principle, it can be seen that a person who buys a motorized vehicle without the complete documents is a manifestation of "malicious intent" to buy a vehicle that is

²²Stefano Leardi, Nicola Vassallo, *Contextualism, Factivity and Closure An Union That Should Not Take Place?* (Switzerland: SpringerBriefs in Philosophy, 2018), p.70.

not under the prevailing laws and regulations.

Judging by R. Soesilo's opinion in his book entitled "The Criminal Code (KUHP) and its Comments" in M. Kholil, an important element of Article 480 paragraph (1) of the Criminal Code is: "the defendant must know or should be able to suspect", that the goods are from what crime (theft, embezzlement, fraud, extortion or other things), but it is sufficient if he can reasonably suspect (think, suspect), that the goods are "dark" not "bright" goods.²³ prove this element is indeed difficult, but in practice, it can usually be seen from the circumstances or the way the item is purchased, for example, bought at a lower price, purchased at night in hiding which according to the size in that place is indeed suspicious or other methods which are automatically purchased. generally not commonly done.

The argument related to the statement that if someone buys a motorized vehicle without being equipped with valid vehicle certificates, that person should suspect that the vehicle originated from the above crimes, is strengthened by the existence of Supreme Court Jurisprudence Number 3 / Yur / Pid / 2018. In this jurisprudence, it is motivated by the fact that Article 480

paragraph (1) of the Criminal Code states that certain acts, including selling and buying, of goods known or reasonably suspected to have originated from criminal acts categorized as criminal fencing. However, the Criminal Code does not provide a limitation or explanation on the condition of goods such as what can be said to be "reasonably suspected to have originated from a criminal act", including goods in the form of motorized vehicles. Of course, this condition causes uncertainty regarding when a person can be said to have sold or purchased a motorized vehicle that is reasonably suspected to have originated from a criminal act so that it can be punished by this article.

The Supreme Court further provides certainty for the aforementioned problems through the Supreme Court Jurisprudence Number 3 / Yur / Pid / 2018, which is consistent if a motorized vehicle is obtained without being equipped with vehicle documents, then it is fitting to suspect that the motorized vehicle was obtained from a criminal act. The judge's view can be found in Decision No. 1586 K / Pid / 2022 and Decision No. 1750 K / Pid / 2012 which states that:

“The defendant was aware of this and it should be suspected that the motorcycle was

²³ M. Kholil, *op.cit*

the result of a crime without valid documents”.

The same opinion can be found in Decision No. 1056 K / Pid / 2016 which states that:

“Whereas the Defendant should have been able to suspect when buying a motorcycle that was not equipped with documents that the motorbike purchased was the result of a crime or was in a problematic situation.”

With several decisions that have been mentioned, the Supreme Court has been consistent in the use of these opinions, which in turn has become jurisprudence in the Supreme Court. It can be concluded that to be said to be a collector, the goods must be suspected of having been obtained due to a crime, in this sense that a buyer is deemed to have known that goods sold at unreasonable prices are goods that originate or are reasonably suspected of being the result of theft or crime so that it can be said to be a receptacle because it has fulfilled the elements in Article 480 paragraph (1) of the Criminal Code (KUHP).²⁴

2. The effect of civil law on the sale and purchase of motorized vehicles

²⁴ Dimas Hutomo, Dapatkah Menghukum Penadah Sebelum Pencuri Tertangkap?, <https://www.hukumonline.com/klinik/detail/ulasan/lt58c4da7150c4e/dapatkah-menghukum-penadah-sebelum-pencuri-tertangkap/>, diakses 23 Maret 2021

without a motor vehicle authorization letter

In connection with the sale and purchase of motorized vehicles without complete and valid documents, it means that legally the act refers to Article 1457 of the Civil Code (KUHP) which explains:

“Sale and purchase is an agreement whereby one party binds himself to deliver an item, and the other party to pay the promised price”

In this case, the sale and purchase are deemed to have occurred between the two parties, if the parties have reached an agreement on the goods and the price, even though the goods have not been delivered and the price has not been paid.²⁵ There are four conditions for an agreement (agreement) to be valid, namely:²⁶

3. agreed those who tied themselves (*de toestemming van degenen die zichverbinden*);
4. the ability to make an engagement (*de bekwaamheid om eeneverbintenis aan te gaan*);
5. a certain thing (*eenbepaaldonderwerp*);
6. a cause that is allowed (*eenegoorloofdeoorzaak*)

²⁵Aan Handriani, “Keabsahan Perjanjian Jual Beli Secara Tidak Tertulis Berdasarkan Hukum Perdata”, *Rechtsregel: Jurnal Ilmu Hukum* 1, no. 2 (2018): 275-304

²⁶Xavier Nugraha, John EnoPrasito Putra, Krishna DarariHamonangan Putra, “Analisa Daluarsa Gugatan Pembatalan Perjanjian Akibat Adanya Penyalahgunaan Keadaan (Misbruik Van Omstandigheden)”, *Jurnal Ilmiah Galuh Justisi*8, no. 1 (2020): 54-55.

Based on the applicable law, the sale and purchase of motorized vehicles cannot only use the STNK or use only one letter, because each motor vehicle authorization letter has its respective functions as described above.

Seeing the reality, there are not a few motorized vehicle sales and purchases that only use the STNK as if it were proof of a motor vehicle authorization letter.²⁷ If you look at the existing regulations, the function of STNK is not as proof of ownership, but only as proof of the legitimacy of a motorized vehicle operating on the road. Evidence of ownership in the sale and purchase of motorized vehicles is only shown by the existence of a BPKB. With the existence of BPKB, it can be used to avoid legal risks. may occur, such as possible fraud. If there is a fraud, it means that a forbidden cause has occurred, thus causing the non-fulfillment of the elements of the agreement as in Article 1320 of the Civil Code. With the occurrence of such fraud, it can be used as a basis for canceling a sale and purchase. Then it can be concluded that if the motor vehicle originates from a crime,

²⁷ Harun Rasyid, *Jual Beli Kendaraan Surat Sebelah Masih Terjadi, Apakah STNK Sah Sebagai Bukti Kepemilikan?*, <https://www.gridoto.com/read/221915592/jual-beli-kendaraan-surat-sebelah-masih-terjadi-apakah-stnk-sah-sebagai-bukti-kepemilikan> diakses 23 Maret 2021

then the sale and purchase of the motor vehicle is illegal or deemed non-existent.²⁸

The sale and purchase of motorized vehicles without a complete and valid vehicle authorization letter can also create the potential that the original owner (what is meant here is the original and legal owner before the sale and purchase) of the vehicle is filing a civil suit against the person who purchased a motorized without vehicle complete and valid vehicle authorization letter. The potential lawsuit filed by the original owner is a lawsuit against the law (*onrechtmatigedaad*) which is regulated in Article 1365 of the Civil Code.²⁹ Based on this article, several elements can be described, namely:³⁰

1. The existence of an act;
2. The act is against the law;
3. There is an error on the part of the perpetrator;
4. There is a loss for the victim;

²⁸ Hendy dan Firman Wijaya, "Analisis Yuridis Pertimbangan Hakim dalam Kasus Jual Beli yang Dikenakan Pasal 480 KUHP (Studi Kasus: Putusan Nomor 1291/PID.B/2018/PN.JKT.PST.)", *Jurnal Hukum Adigama* 2, No. 2 (2019): 1-22

²⁹ Bagus Oktafian Abrianto, Xavier Nugraha, Nathanael Grady, "Perkembangan Gugatan Perbuatan Melanggar Hukum oleh Pemerintah Pasca-Undang-Undang Nomor 30 Tahun 2014", *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 11, no. 1 (2020): 49-50.

³⁰ Gita Anggreina Kamagi, "Perbuatan Melawan Hukum (*onrechtmatigedaad*) Menurut Pasal 1365 Kitab Undang - Undang Hukum Perdata dan Perkembangannya" *Jurnal LexPrivatum* VI, No. 5 (2018): 57-65

5. There is a causal relationship between actions and losses.

In the following, the author will explain the fulfillment of the elements contained in Article 1365 of the Civil Code relating to a lawsuit against the law by the owner of the motor vehicle

1. The existence of an act

An act against the law must be preceded by a bandage from the perpetrator. The action referred to here is doing something (in the active sense) or not doing something (in the passive sense). If a person deliberately commits an act that causes harm to others, the act is active. On the other hand, if a person is deliberately silent, even though he knows that he has to do an action so as not to harm others, then the act of fighting is passive.³¹ In the case of filing a lawsuit, the first element of the 1365 Civil Code must be fulfilled, namely the existence of an act committed. The action referred to here is to buy a motorized vehicle without complete and legal documents. This action is an active act because the person knowingly and deliberately makes a purchase of the motor vehicle.

³¹ Fuji Aotari Wahyu Anggreini, "Perbandingan antar Unsur Kesengajaan dengan Unsur Kelalaian dalam Perbuatan Melawan Hukum Menurut Hukum Indonesia dan Hukum Inggris" <http://www.lib.ui.ac.id/naskahringkas/2018-09/S60897-Fuji%20Aotari%20Wahyu%20Anggreini> diakses pada 23 Maret 2021

2. The act is against the law

The actions mentioned above must be against the law. Since 1919, the element against the law has been interpreted in the broadest sense, which includes the following matters:³² acts that violate applicable laws; violates the rights of others guaranteed by law, or acts contrary to the legal obligations of the perpetrator, or acts contrary to decency (*goodenzeden*), or actions that are contrary to good attitudes in society to show the interests of others.

As has been explained, when the action has been fulfilled, the action must be against the law. In this case, it is fitting for someone who will buy an item to know the origin of the item that will be his control. When a person consciously **knows** the origin of a motorized vehicle from a crime, then that person has fulfilled the element of an act against the law. Seeing the reality, there are still many people who do not know the origin of these motorized vehicles, so it is difficult to prove the elements of an illegal act. However, what should be understood is that when a person buys a motorized vehicle without the complete and valid documents, he should be suspicious of the origin of the motorized vehicle. The positive law has not

³² Indah Sari, "Perbuatan Melawan Hukum (Pmh) Dalam Hukum Pidana Dan Hukum Perdata" *Jurnal Ilmiah Hukum Dirgantara* 11, No. 1 (2020): 64-65.

yet regulated in detail and related to the limitations or explanations of the conditions of goods such as "reasonably suspected to have originated from a criminal act". According to R. Soesilo's opinion in M. Kholil, the important element is: "a buyer must know or should be able to suspect" that the goods are from what crime (theft, embezzlement, fraud, extortion, or others), but it is sufficient if he should be able to think (think, suspect), that things are "dark", not "bright" things.

Furthermore, in relation to motor vehicle purchase transactions without complete and valid documents, the buyer should be aware that the act is an act that violates the applicable law. This has been implicitly regulated in Article 65 paragraph (2) of the LLAJ Law which explains that the proof of the legitimacy of motor vehicle ownership is proven by the existence of a BPKB which is then necessary for road operations to be equipped with STNK and TNKB. This is also reinforced by the opinion of the Supreme Court through the Supreme Court Jurisprudence Number 3 / Yur / Pid / 2018, which has consistently argued that if a motorized vehicle is obtained without being equipped with vehicle certificates, it is reasonable to suspect that the motorized vehicle was obtained from a criminal act.

The buyer's actions, in this case, have violated their legal obligations

3. There is an error on the part of the perpetrator

To be subject to Article 1365 of the Civil Code concerning Acts against the Law, the law and jurisprudence indicate that the perpetrator must contain an element of error in carrying out the act. By requiring an error (*schuld*) in this article, legislators want to emphasize that the perpetrator of an illegal act is only responsible for the damage caused, where the action for the loss can be blamed on him.³³ An action is deemed by law to contain an element of error so that it can be held accountable if it meets the following elements:³⁴ there is an element of intent; there is an element of neglect; and there is no justification or excuse, such as circumstances *overmacht*, self-defense, insane, and so on.

Buyers of motorized vehicles who have known the origin of the motor vehicle from a crime and are aware that buying a motor vehicle without complete and valid documents is an act that violates the law,

³³Intan Suriani. "Tanggung Gugat Pejabat Pembuat Akta Tanah (Ppat) Atas Kelalaian Menindaklanjuti Surat Kuasa Membebaskan Hak Tanggungan (Skmht) Menjadi Akta Pemberian Hak Tanggungan (Aph)", *Tesis*, Fakultas Hukum Universitas Sumatera Utara (2016): 109-110.

³⁴Fitrah Rizqy. "Tinjauan Yuridis terhadap Perbuatan Melawan Hukum dan Sanksinya" *Jurnal Justisia*3, NO. 2 (2018): 239-255

then the element of intent has been fulfilled. This is possible because of a crime that was committed without the knowledge and permission of the legal owner of the motorized vehicle. If a person does not know the origin of the motor vehicle and that person has suspected or should have guessed, then he has fulfilled the element of negligence. The terms "to suspect", "as appropriate to suspect", were originally terms used in criminal law as a measure of negligence, that is, one indicator of the blame for the perpetrator of the crime. In this case, it is deemed negligent, if that person ignores a "legal obligation" for something, namely: "suspects as required by other people to suspect."³⁵ Waiver of such legal obligations is considered a form of negligence if it gives rise to certain prohibited events.

4. There is a loss for the victim

The existence of losses for the victim is also a condition so that a lawsuit based on Article 1365 of the Civil Code can be used. Theoretically, losses arising from illegal actions consist of loss of property or material and ideal or immaterial losses.³⁶ In other words, each of these acts of breaking

the law does not only result in material loss but can also cause immaterial losses that cannot be valued in money. Material loss incurred to the owner of the motorized vehicle or the plaintiff, namely in the form of loss of the motor vehicle or something else that can be finalized. Meanwhile, the immaterial loss is that the original owner can experience severe psychological conditions such as disappointment, heartache, and reduced joy in life associated with the loss of his motorized vehicle. To be accounted for or obliged to pay compensation, the element of guilt on the part of the perpetrator of an illegal act must be fulfilled.

5. There is a causal relationship between actions and losses

The causal relationship between the actions committed and the losses incurred is also a condition of an act against the law.³⁷ Based on the reality, the buyer of a motorized vehicle without a complete certificate is of course through an intermediary as the seller. In this case, the seller can be said to be a collector who releases goods from his hands because that person has committed his actions including selling, exchanging, renting, pawning, giving gifts, keeping, involving, and hiding. Of course, this seller can also be sued for his actions so that he can say to be a defendant.

³⁵ Putusan Nomor 1056/Pid.B/2019/PN.Bdg tentang Tindak Pidana Penadahan <https://putusan3.mahkamahagung.go.id/> diakses pada 24 Maret 2021

³⁶ Fitrah Rizqy, *Op.cit*

³⁷ *Ibid*

Furthermore, the clause relationship referred to here is that if the seller does not commit his actions, there will certainly be no material or immaterial loss to the owner of the vehicle. It is possible for the seller to carry out his actions based on certain motives such as to obtain or withdraw profits for himself or others by committing a criminal act so that the act causes material and immaterial loss to others.

Based on the reality, the buyer of a motorized vehicle without a complete motor vehicle authorization letter then the perpetrator is through an intermediary as a seller. In this case, the seller can be said to be a collector who releases goods from his hands because that person has committed his actions including selling, exchanging, renting, pawning, giving gifts, keeping, involving, and hiding. Of course, this seller can also be sued for his actions so that he can say to be a defendant. Furthermore, the clause relationship referred to here is that if the seller does not commit his actions, there will certainly be no material or immaterial loss to the owner of the vehicle. It is possible for the seller to carry out his actions based on certain motives such as to obtain or withdraw profits for himself or others by committing a criminal act so that the act causes material and immaterial loss to others.

CONCLUSIONS

A person who buys a motorized vehicle without complete and valid documents may result in criminal and civil law consequences against him. The consequence of the criminal law on a person who buys a vehicle without a complete and valid certificate is that a fencing article can be imposed based on Article 480 paragraph (1) of the Criminal Code. Even though the buyers do not know the origin of motorized vehicles, but that person should think or suspect that the goods came from Crime, this is reinforced by the existence of the Supreme Court Jurisprudence Number 3 / Yur / Pid / 2018. The consequence of the civil law is the person can be sued based on Article 1365 of the Civil Code, it must fulfill the elements of an act, that act is against the law, an error on the part of the perpetrator, a loss for the victim, and a causal relationship between acts and losses.

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