



Legal Aspects in The Process of Damages in Civil Courts

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Abstract

The development of national development must first be centered on the development of equitable human resources, therefore in an effort to fulfill this, the Indonesian government wants to strive to form an Indonesian society that is skilled, honest and prosperous, one aspect that is currently being targeted by the central government is the aspect of Indonesian legal policy. This study uses a descriptive method with a qualitative approach and data triangulation analysis, the results of the study explain that the legal system in Indonesia consists of several categories, the first is criminal law, the second is civil law, and the third is national customary law. each of these laws has different characteristics and regulations, there is one law that specifically regulates the system of compensation, disputes, and disputes in court, after a court decision comes out, it is not uncommon for new conflicts to arise and make policies new to an agreement that is not in line with expectations, these actions are called default and unlawful acts, the two legal processes were born because of a compensation that must be carried out by both parties in completing various remaining legal processes.

Keywords: Law, Compensation, Civil Court

1. Introduction

In the national development process, there are many sectors that are targeted by the government in order to accelerate the pace of economic growth and the formation of equitable human resources, one of the most emphasized aspects and a priority for the Indonesian government at this time is to create a just, prosperous and prosperous Indonesian society (Zebua et al, 2008; Weku, 2013). Through a sovereign and transparent law enforcement, it is hoped that the national development process can be realized quickly and precisely. Since the enactment of Law Number 5 of 1991, it was then reformed into a Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Basically, the change in law is very basic because the previous law is no longer in accordance with the aspirations of the people and the demands of development. Because what is desired is for the prosecutor's office to become an independent and independent body in law enforcement, meaning that the

position of the prosecutor's office becomes stronger as a government institution (Effendi, 2010).

As we already know, that the Indonesian state is included in a country that is obedient and obedient to applicable laws, while the positive law adopted by the government system and the Indonesian people is criminal law and civil law, both of which have a very high position in the eyes of the people. the public prosecutor's office as well as among the wider community, in the process several legal cases that occurred in Indonesia have always led to prolonged conflicts even though the final court decision has been issued and determined, but there are times when the problem solving process continues even out of court, the final decision in a dispute decided by a judge who examines in a trial generally contains sanctions in the form of penalties against the defeated party in a trial in court. Fulfillment of sanctions in civil procedural law is in the form of fulfilling achievements and or providing compensation to parties who have been harmed or won in court proceedings in a dispute, while in criminal procedural law the punishment is generally imprisonment and fines (Firmanda, 2017; Harahap, 2017).

One of the legal aspects that is often found in a final court decision, and sometimes it creates a new conflict that leads to a dispute is an act against the law, an unlawful act here is included in the civil realm, while what is meant by civil law itself is, according to Butje (2014), all basic laws governing individual interests. Meanwhile, according to Hidayani (2018), civil law is a set/legal rules that regulate actions or relationships between humans for the benefit of the parties themselves and other parties concerned with them, without involving the public interest.

The act against the law itself, occurred as a result of one of the plaintiffs filing a lawsuit to the court or the prosecutor's office, on several judges' decisions which were deemed to be lacking in justice and felt disadvantaged for the course of the trial that had been carried out, therefore, one of the parties ended up demanding a compensation as an effort to defend and fight the law where the lawsuit can be seen, in article 1365 of the Civil Code (hereinafter abbreviated as the Civil Code) it is stated about compensation, but there is no setting on what is the reference which is used to measure what is called compensation, so that legal practitioners seem to make an analogy for compensation in unlawful acts such as compensation in Chapter I Book III of the Civil Code (Widjajati, 2011).

The concept of civil law in Indonesia can be classified into two stages, including material losses and the second is immaterial losses, material losses are real losses suffered by the applicant, while immaterial losses are losses on benefits that are likely to be received. According to Pessak (2017) material civil law is law between individuals that regulates the rights and obligations of one individual to others in family relationships and in social life.

In civil law, it is also explained about the compensation action that was sent to one of the parties to claim a right to an agreement that had previously been mutually agreed upon, but sometimes the agreement was not realized properly, due to a default by one of the parties. , the word default itself comes from the Dutch language which means bad performance, while according to the law the default agreement is a condition where a person does not carry out the performance as previously agreed, and if there is a default, it is certain that there will be a violation of legal interests, an

interest that regulated and protected by law, then compensation can actually be submitted by one of the parties because they feel cheated and do not get fair resistance. Compensation due to default is regulated in Book III of the Civil Code from Article 1243 to Article 1252, while compensation due to crime An against the law is a form of compensation that is charged to people who have made mistakes that cause harm to other parties (Article 1365 of the Civil Code) (Suparmi et al, 2015; Achmad, 2021).

Compensation itself is an act that arises because of an error not on the agreement, in the process of fulfilling sanctions in the civil procedural law itself, the punishment can be in the form of fulfilling achievements and providing compensation to one party who has been harmed by another party, Losses in the Civil Code can come from Default as regulated in Article 1238 and Article 1243 and unlawful acts as regulated in Article 1365. However, in this paper what will be discussed is Losses in Unlawful Acts. As emphasized in Article 1365 of the Civil Code, in the event that a person commits an unlawful act, he is obliged to pay compensation for his action, which is different from the claim for damages in Default, in the lawsuit for an unlawful act there is no clear regulation regarding the compensation but as regulated in Article 1371 paragraph (2) of the Civil Code implied guidelines which contain "Also this compensation is assessed according to the position and ability of both parties, and according to the circumstances (Jamilah, 2015).

As we know that unlawful acts and defaults have different meanings and characteristics, although basically the two issues have different legal grounds, including in the settlement process, so that the accumulation of the two in one lawsuit cannot be simply put together, default itself regulated in article 1243 of the Civil Code while unlawful acts are rewarded with article 165 of the Civil Code (Amalia, 2012), Talking about unlawful acts is important in the field of civil law. The application of the conception of an unlawful act is often equated with the concept of breaking a promise (*wanprestasi*). Even though both are very different conceptions from one another, even though they both originate from an engagement, namely the conception of default comes from an engagement that is born from an agreement and the conception of an unlawful act comes from an engagement that is born from a law.

2. Approach Method

This research uses descriptive analysis research using qualitative methods. The researcher also wants to examine a phenomenon that discusses the Legal Aspects of the Compensation Process in the Civil Court, qualitative research is aimed at a very detailed and detailed study where the results of the research are studied in depth and then interpreted clearly. There are two sources of data used in this study, where the data includes primary data and also secondary data, then the facts of the findings are described in a very easy form of discussion so that researchers can find a complex and structured understanding in a directed manner.

3. Result and Discussion

3.1 The Concept of Compensation in Unlawful Acts and Default in Indonesia

In terms of civil law, the concept of compensation is grouped into two areas, including the following, the first is the concept of compensation due to contract

default, and the second point is the concept of compensation due to an engagement based on the 1945 Constitution. According to Article 1244, Article 1245 and Article 1246 of the Civil Code, compensation consists of costs, losses and interest. because basically the concept of compensation that can be implemented and accepted in an Indonesian statutory system is that if it mentions the term loss then it includes real and suspected losses or has been estimated at the time the engagement mechanism was implemented (Hayuningtyas, 2015).

Whereas in the concept of default, in solving a problem it should be done with a legal mechanism of agreement, because it is often found, new problems are solely carried out outside an agreement that was once bound, it is based on negligent acts and is inherent in nature. deliberately so that one of the parties benefits, the practice is part of a response to the actions of the opposing party having defaulted first, especially in terms of implementing binding agreements. in its development the problems contained in a court claim are basically increasingly complex and dynamic, meaning that the function of a law must always adapt to various circumstances that occur in the social environment, so that the level of disputes and misunderstandings can be minimized as early as possible, while in the case of compensation a judge is required to be able to act fairly and fairly in accordance with the evidence and information that has been determined, because the function of the court itself is to adjudicate a problem case fairly and wisely, because actually the court is prohibited from being selfish and refuses to examine and decide every case that is currently rolling in a court, this is of course very in accordance with the sound (Article 1 point 11 of the Criminal Procedure Code). According to the 2006 Draft Law on Civil Procedure, a court decision is a judge's decision which is set forth in written and spoken form in a trial that is open to the public and aims to resolve and/or end a lawsuit.

In general, a default is an action that does not fulfill the elements and achievements that have been promised, then performs an achievement but only does it partially, the third performs an achievement and promises to fulfill it, but in reality it is too late and the promise cannot be fulfilled. fulfilled, then inconsistent in doing a real achievement, and the last is doing what should not be done based on the initial agreement and agreement, an explanation of the default can be seen in Article 1238 of the Civil Code which contains "The debtor is negligent if he with a warrant or with a similar deed has been declared negligent, or for the sake of his own engagement, if he applies that the debtor must be considered negligent by the lapse of the specified time (Rompas, 2018).

As for what is included in the elements of an unlawful act according to the view of civil law, the first is an act committed by a legal subject, both an intentional act or an unintentional act, then the act turns out to be against the law. The act that is included in being against the law is not only contrary to the law, but the act can actually harm other people and violate the rights and obligations contained in the wider community, then the third point is the existence of an error, an act is considered against the law if it contains elements of error and can later be held accountable by applicable law, and the next point is the existence of a loss, someone has intentionally carried out a legal fight if it has caused a loss in the form of material or in kind. in the form of trust, then the legal consequences that must be borne are, to

compensate for the loss, in accordance with article 1365 of the Civil Code that any losses that are caused and are against the law must be judged with procedures that have been adjusted, because in fact acts against the law are not only harm the material, more than that the act can harm a person's morale (Purwadi, 2017).

In accordance with the contents of article 1365 of the Civil Code, it explains that every act that violates the law and harms other people requires that person to compensate for the loss by controlling the loss or being able to replace it with several options in accordance with the will of the applicable law, including the following: , normal compensation, meaning that if there is an act against the law that is serious in nature, then it should be replaced with a sum of money or with a sense of justice without calculating how much damage has been done before, then compensation compensation, where this compensation requires someone to make a payment method to one of the parties who have been harmed, for example to replace all costs incurred by the victim, lost profits/salaries, illness, and suffering, including mental suffering such as stress, shame, loss of good name, and others , and the last one is replace ru In the case of punishment, where in the process of this compensation the emphasis is on someone to replace all the losses that have occurred, and replace it with an amount or nominal that is more than the original loss, this punitive compensation is appropriate to be applied to cases of serious intent.

From various explanations regarding the concept of compensation law and default, basically it has different legal procedures and studies, but as wise citizens we should always instill commendable traits by always being responsible for every action we have done before (Politon, 2017), There are several stages in the implementation of civil procedural law, including the preliminary stage, then the implementation stage, and the last stage is the preparation stage. In addition to the several stages of civil proceedings, basically considering the large number of cases that enter the trial stage, the update must of course be supported by the role of the government and the wider community, to oversee each ongoing case implementation by understanding civil procedural law as one of the a dignified legal basis and provide justice for the Indonesian nation and state.

3.2 Compensation System in Civil Law

There are several compensation systems contained in Article 1365 of the Civil Code, including:

- a. Replacing it in the nominal form of money
- b. return in the form of goods in accordance with the original form
- c. replace it with a statement basically acknowledging that the action is indeed against the law and will harm a lot of people
- d. receive a ban not to do various activities and activities

Basically the return of compensation is not always in the form of money or material, but replacing it with goods that are almost similar to the original is a return that is considered very perfect, so the application of article 1365 does want to provide an input on the appropriate compensation process mechanism (Asnawi, 2018). with the ethics and morals that exist in Indonesian society, if indeed our actions are contrary to the law, it would be better if we always apply a life that always upholds the values of unity and integrity, as one of the law books most adhered to by Indonesian citizens of civil law In addition, according to the Civil Code, the provisions

for compensation due to the consequences of unlawful acts are not much different from compensation due to default. In Article 1249 of the Civil Code, it is determined that compensation for losses caused by default is only determined in the form of money. However, in its development, according to experts and jurisprudence, losses can be divided into two types, namely material compensation and immaterial compensation. (Asser's 1988:274). Material loss is a loss suffered by creditors in the form of money/wealth/objects, while immaterial losses are losses suffered by creditors that are not worth money, such as pain.

As for some forms of compensation, which are contained in unlawful acts, including nominal compensation, in this aspect the act contains an element of intent and is considered serious in the eyes of the court, but does not cause real harm to the victim, then the level of the consequence is to give some money as a guarantee for the occurrence of the act, without calculating the amount of loss that has been done, then compensation compensation, this action is a payment to the victim, for how much loss has actually been experienced by the related party, In other terms, compensation compensation is also often referred to as the actual compensation process, because all forms of costs incurred by the victim such as loss of money, lost objects, including mental suffering, indirectly this loss reduces the dignity and image of the victim. , and finally punitive damages, forms of compensation This loss includes a very large amount, exceeding the actual amount of loss, including cases with serious and sadistic acts, so that the effects on the victims are considered to be very severe, such as mental disorders, stress, and tarnishing one's reputation victim.

As we know that some of the losses contained in civil law stem from the process of default and unlawful acts, then the consequence of an agreement always places an obligation with several applicable legal principles, so if the action has indeed harmed many people, the court should give a waiver and if possible the agreement can be canceled, with a request for compensation in accordance with applicable legal procedures, the explanation of the default contained in article 1238 of the Civil Code is, the party who owes is included in the negligent act, if by a warrant or through a deed kind, then the action is said to be negligent. then if one party has committed an act of default, then one of the other parties will feel disadvantaged, as contained in article 1246, which contains that, the process of compensation resulting from the act of default includes, three elements of which are, the element of cost , including expenses and costs, then loss, in that process a person is greatly harmed because he experiences a damage/loss of goods or services, which are owned by one of the parties who have been harmed, and the last is, bank interest, of course the nature of bank interest in here is very torturous and provides a suffering for those who have been harmed, in default activities and crimes against the law.

Acts against the law are basically an equation that is seen in the meaning of default, even though both have very different materials and contexts, from the provisions and elements to propose several unlawful acts including through, an error, then a loss, and the most The main thing, of course, is that there is a legal policy that is processed informally and not based on the 1945 Constitution, while according to the HR (Hoge Road) formulation, the formulation of an unlawful act does not actually cover various problems and applicable legal processes, against the law is just an act

that violates the subjective rights of others that arise because of the law or all of them are contrary to the legal obligations of the law maker himself (Pane, 2017).

After observing the various similarities and differences contained in default and unlawful acts, then legal actions are indeed very contrary to the rights of others, what is meant here is to violate the law which is certainly very contradictory and has a very subjective understanding, then acts against the law. The law also turns out to be very contrary to its own legal obligations, in this case the legal obligations must be in accordance with appropriate norms and ethics in the community and of course not to harm others, furthermore acts against the law are very contrary to decency, and the last act is contrary to several must be heeded.

The civil law was born and states that an attachment to the legal process grows and develops through various articles of the law and forms a pattern of legal systems that are integrated with each other, in the civil law there are also several demands for the birth of several actions which in fact very contrary to the norms of goodness that exist in the wider community, basically there are actions against the law and defaults, it is hoped that all components included in the Civil Code can provide peace and prosperity for the Indonesian nation and state, because the law in Indonesia is stands to provide a sense of justice and humanity are all oriented to the values of the 1945 Constitution and Pancasila as the highest level of legal standing in Indonesia.

4. Conclusion

As a state of law, Indonesia has a sovereign legal basis and greatly provides welfare for its people, one of which is civil law, civil law itself is a positive law in Indonesia and has been applied in Indonesian legal government even before this country became independent, because in The civil law process is a court law inherited by the legacy of Dutch colonialism, besides that in civil law there is a right of compensation which is divided into two categories, the first is compensation caused by default and the second is compensation caused by acts against the law, both stand for different reasons, but basically the two rights of compensation have been regulated and formulated into various articles and laws. Default itself is regulated in articles 1240 to 1252, while unlawful acts are regulated in article 1365 of the Civil Code. when viewed from the type of compensation action, it is included in, two categories, the first is material compensation and the second is immaterial compensation.

5. Reference

- Achmad, W. RW (2021). Conflict Resolution of Remote Indigenous Communities (Overview of The Sociology Communication). *LEGAL BRIEF*, 10(2), 280-286.
- Amalia, R. (2012). Perlindungan Hukum Bagi Pemegang Hak Atas Tanah dalam Penetapan Ganti Rugi Terkait dengan Pengadaan Tanah untuk Kepentingan Umum. *Yuridika*, 27(3), 267-280.
- Asnawi, M. N. (2018). Perlindungan Hukum Kontrak Dalam Perspektif Hukum Kontrak Kontemporer. *Masalah-Masalah Hukum*, 46(1), 55-68.
- Butje, T. (2014). KUHAP DAN PENGATURAN GANTI RUGI PIHAK KORBAN DALAM PERADILAN PIDANA. *Jurnal Hukum Unsrat*, 2(2), 24-35.
- Effendi, M. (2010). Tuntutan Ganti Rugi pada Peradilan Administrasi. *Perspektif*, 15(4), 412-440.
- Firmanda, H. (2017). Hakikat Ganti Rugi Dalam Perspektif Hukum Ekonomi Syariah dan Hukum Perdata Indonesia. *Jurnal Hukum Republica*, 16(2), 236-251.

- Harahap, M. Y. (2017). Hukum acara perdata: tentang gugatan, persidangan, penyitaan, pembuktian, dan putusan pengadilan. SinarGrafika.
- Hayuningtyas, I. S. (2015). Aspek hukum ganti rugi secara perdata terhadap perbuatan melawan hukum yang dilakukan oleh pejabat negara= Legal aspect of compensation in civil matters in regard to unlawful act conducted by states officials (Doctoral dissertation, Universitas Pelita Harapan).
- Hidayani, S. (2018). Aspek Hukum pada Proses Persidangan di Badan Penyelesaian Sengketa Konsumen. *Anthropos: Jurnal Antropologi Sosial dan Budaya (Journal of Social and Cultural Anthropology)*, 3(2), 93-102.
- Jamillah, J. (2015). Pertanggungjawaban Hukum dalam Pengembalian Aset Hasil Korupsi di Indonesia. *JurnalMercatoria*, 8(2), 163-175.
- Pane, M. D. (2017). Aspek Hukum Pengadaan Barang dan Jasa Pemerintah, suatu Tinjauan Yuridis Peraturan Pengadaan Barang dan Jasa Pemerintah. *Jurnal Media Hukum*, 24(2), 147-155.
- Pessak, R. O. D. (2017). Penerapan hukum standar ganti rugi pengadaan tanah untuk pembangunan demi kepentingan umum. *Lex Administratum*, 5(3).
- Politon, R. (2017). Pemenuhan Hak dan Kewajiban Sesuai Kesepakatan Para Pihak dalam Kontrak Ditinjau dari Kitab Undang Undang Hukum Perdata. *Lex Crimen*, 6(3).
- Purwadi, A. (2017). Tuntutan ganti rugi terhadap pengelola keuangan daerah berdasarkan instrument hukum perdata.
- Rompas, J. D. (2018). HAK PEMEGANG PATEN DALAM GUGATAN GANTI RUGI MELALUI PENGADILAN NIAGA MENURUT UNDANG-UNDANG NOMOR 13 TAHUN 2016 TENTANG PATEN. *LEX PRIVATUM*, 6(3).
- Suparmi, N. M., Surata, I. G., & Mariadi, N. N. (2015). TUNTUTAN GANTI RUGI AKIBAT PERBUATAN MELANGGAR HUKUM DALAM KECELAKAAN LALU LINTAS (Studi Kasus di Kejaksaan Negeri Singaraja). *KerthaWidya*, 3(2).
- Weku, R. (2013). Kajian Terhadap Kasus Penyerobotan Tanah Ditinjau Dari Aspek Hukum Pidana dan Hukum Perdata. *Lex Privatum*, 1(2).
- Widjajati, E. (2011). Ganti Rugi Perbuatan Melawan Hukum dalam Gugatan Perwakilan Kelompok di Indonesia. *Jurnal Hukum IUS QUIA IUSTUM*, 18(1), 97-114.
- Zebua, F. R. P., Jauhari, I., & Siregar, T. (2008). Tanggung jawab Pelaku Tindak Pidana Korupsi dan Ahli Warisnya Dalam Pembayaran Uang Pengganti Kerugian Keuangan Negara Ditinjau Dari Aspek Hukum Perdata (Studi Kasus Pada Pengadilan Negeri Medan). *Jurnal Mercatoria*, 1(2), 150-162.