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The Implementation of Compensation for Unlawful Acts Based on Article 98 of the Code of Criminal Procedure from a Civil Law Perspective

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Abstract: Indemnity is a civil case, but damages can be pursued simultaneously with criminal cases when criminal law is applied. Although criminal law laws allow claims to incorporate damages in criminal cases, this type of case is rarely found in court as not all criminal cases can be sought for damages. This situation arises when the basis of the charges in a criminal case is an act committed by the accused. The study primarily utilizes a normative juridical approach, which entails studying existing problems based on applicable laws and regulations. In legal matters related to compensation, civil law is the governing jurisdiction. On the other hand, criminal matters are regulated by the Criminal Procedure Code. In cases involving both civil and criminal actions, the judge has the power to decide whether the compensation case should be merged with the criminal case. Based on the description provided, the paper will discuss the application of Article 98 of the Code of Criminal Procedure in compensating for unlawful acts under Article 1365 of the Civil Code. The paper will also explore the legal certainty of applying Article 98 of the Code of Criminal Procedure in compensating for unlawful acts under Article 1365 of the Civil Code.

Keyword: Application of Compensation, Unlawful Actions, Civil Law Perspective.

INTRODUCTION

to Article 1, Paragraph (3) of the Constitution of the Republic of Indonesia in 1945, Indonesia is a state governed by the rule of law. The concept and theory of the rule of law state that law is the highest power in a state, and as such, all state elements must be subject to the law.¹ The law is a set of rules and regulations that ensure order and fairness in society. When an individual violates these rules, they essentially disrupt the balance the law is meant to maintain. As a result, it becomes necessary to take corrective measures to restore order and justice. The consequences for such violations can vary depending on the offense's nature, severity, and circumstances.

¹ B Handoyo, "Hukum Tata Negara Indonesia: Menuju Konsolidasi Sistem Demokrasi," 2009.

When someone causes harm or loss to another person, the victim has the right to seek civil damages. This is because civil law regulates the personal interests of legal subjects and focuses on norms and witnesses. The legal system involves two or more parties, and the victim of someone's actions can seek compensation for their losses through civil law.

In accordance with civil law, the recognition of Unlawful Acts entails that any individual who causes losses is duty-bound to compensate for such losses commensurate with the harm incurred. Therefore, it is incumbent upon the perpetrator to ensure that the affected party is restored to their initial financial position before the occurrence of the Unlawful Act. This compensation is a legal requirement to offset the damages caused and to ensure fairness and justice in the legal system.

The term "Unlawful Acts" in Dutch is translated as "*onrechtmatige daad*" or, in English, referred to as "tort." It is interpreted as a legal action committed by a legal subject. In every action taken by a legal subject, there are legal consequences. While "tort" means wrong, in law, it is often regarded as a civil error that does not originate from a contract default.² It is defined in Article 1365 of the Civil Code, which deals with legal obligations. According to this article, an Unlawful Act is any action that causes harm to another person. The person responsible for the harm is required to compensate the affected party. It is important to note that this compensation is mandatory, even if the harm was caused by mistake.

Compensation can be charged to a person if that person is at fault and causes losses to someone else. It is mandatory for the perpetrator of an unlawful act to be held accountable for their mistake. The losses referred to in this unlawful act can be material or immaterial. Material losses generally include financial or physical losses, while immaterial losses can be due to fear, pain, or loss of enjoyment in life.³

The concept of compensation is not only found in civil law but also in the Code of Criminal Procedure, where it has been regulated for a long time. This makes it easier for victims of criminal acts to seek compensation from the defendants of the criminal case. Indemnity in criminal law is regulated in Article 98 of the Code of Criminal Procedure, which states that if an act that forms the basis of an indictment in a criminal case causes harm to another person, then the presiding judge of the trial, at the request of that person, may decide to combine the claim for compensation with the criminal case.

In Indonesia, merging criminal cases with claims for compensation that are closely related to civil law is a new development in law enforcement. The Criminal Procedure Code allows victims of criminal acts to claim civil damages against defendants during ongoing criminal case hearings. However, this lawsuit is restricted to losses directly resulting from the criminal act committed by the defendant. The amount of damages that can be requested is also limited to the material losses suffered by the victim.⁴

Article 98 of the Code of Criminal Procedure is currently being applied in court proceedings. For example, in the jurisdiction of the Lubuk Sikaping District Court, three defendants were found guilty of violating the provisions of Article 170 paragraph (1) of the Criminal Code. This article states that anyone who publicly commits violence against persons or property shall be punished with imprisonment for a maximum of five years and six months. According to the verdict letter Number 93/Pid.B/2022/PN Lbs, the three defendants had mobbed a victim, which caused the victim to suffer injuries and bruises. The injuries were confirmed by a *visum et repertum* issued by the Bonjol Health Center on 22 August 2022. The results of this *visum* became evidence in the criminal case. In their

² LR Sofian, *Perbuatan Melanggar Hukum Dipandang Dari Sudut Hukum Perdata*, Journal Article (Yogyakarta: Mandar Maju, 2018).

³ Rosa Agustina, *Perbuatan Melawan Hukum* (Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2003).

⁴ Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP* (Jakarta: Sinar Grafika, 2000).

petition, the plaintiff demanded material losses totaling ten million rupiah in cash and immaterial losses of one billion rupiah. The panel of judges granted the plaintiff's claim in part based on the available evidence. As a result, the defendant was sentenced to pay material damages of two million rupiah. The judge made this decision because the victim's demands did not align with their actual material losses.

The application of Article 98 of the Code of Criminal Procedure is not always straightforward. There are several factors that make the implementation of this article less legally certain. For instance, in decision number 93/Pid.B/2022/PN Lbs, the Public Prosecutor declined to merge claims for compensation. As a result, the victim's legal representative (lawyer) requested the judge to consolidate the compensation claims.

It is possible that in the future, some parties involved in a crime victim's case may not have the financial means to hire a legal representative (lawyer) to oversee the proceedings in court. This could lead to the victim being unable to defend their case effectively in court. Therefore, it is essential for law enforcement officials, particularly prosecutors, to prioritize the protection and rights of crime victims.

Based on the presentation of the case that has been mentioned, if someone's actions cause harm to others, it can be considered a criminal offense. The law provides provisions to prosecute such individuals. Those harmed by the suspect's actions can also seek compensation for damages. This can be done by combining the compensation claim with the criminal case. The Criminal Procedure Code, in Article 98, allows victims to request the judges to combine the compensation claim with the criminal case if the suspect's actions are the basis of the charges.

METHOD

This study employs a normative juridical method, which involves researching legal norms present in laws and regulations, legal literature books, court rulings, and societal norms. The aim of using this method is to study legal principles and systematics. This type of research focuses on analyzing legal norms present in society and their inter-relationship with other legal rules.

RESULTS AND DISCUSSION

Legal Certainty of The Implementation of Compensation for Unlawful Acts Based on Article 98 of the Code of Criminal Procedure from a Civil Law Perspective.

Legal certainty can be achieved by providing clear, unambiguous, consistent, and accessible legal rules. Without legal certainty, people may not know what actions to take, leading to legal uncertainty. Legal uncertainty can result in negative consequences, such as violence and chaos, as a direct result of the indecision of a legal system.⁵ In order to ensure legal certainty in the implementation of criminal cases, it is important to have clear regulations governing the application of Article 98 of the Criminal Procedure Code. However, there seems to be a lack of legal certainty in the application of this article in the implementation of criminal cases, which is not in accordance with the principle of legal certainty.

1. Principles of Civil Procedure Law in the Application of Article 98 of the Code of Criminal Procedure

a. The judge is passive in the implementation of the trial

The role of a judge in a trial is to be passive. The judge's responsibility is to evaluate whether the evidence presented aligns with the principles of the case. The judge only accepts and examines the issues submitted by the plaintiff and defendant.

⁵ Mario Julyano and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Credito* 1, no. 1 (2019): 13–22.

The judge must hear all claims and cannot make a judgment on unprosecuted cases. This is outlined in Article 178, paragraph 2 and paragraph 3 HIR, Article 189, paragraph 2 and paragraph 3 R.Bg. It is not the judge's concern if the person affected by the decision appeals or not, according to Article 6 Law No. 20/1047, Article 199 R.Bg. Therefore, the functions and roles of judges in civil litigation are limited to two aspects: (1) Seek and discover the formal truth, and (2) Realize the truth in accordance with the basis of the reasons and facts put forward by the parties during the proceedings.⁶

During a trial for criminal acts, the judge takes an active role in examining the subject matter. The public prosecutor who brings charges against the accused must be able to prove their case in the course of the trial. Article 183 of the Code of Criminal Procedure states that a judge cannot convict a person unless they have at least two valid means of obtaining a conviction that a crime actually occurred and that the accused is guilty of committing it. The valid evidence referred to in Article 183 includes witness statements, expert information, letters, hints and the testimony of the accused.

In order for a judge to make a fair and valid ruling, there needs to be at least two valid pieces of evidence to support the decision. During the trial, the judge will actively question witnesses to gain a better understanding of the case and to strengthen their confidence in the verdict. The panel of judges must carefully assess and consider the strength of the evidence presented during the trial in order to make a just and informed decision.⁷

According to the explanation provided earlier, there seems to be a contradiction between the principles of criminal law and Article 98 of the Criminal Procedure Code. Criminal law emphasizes that judges should play an active role in overseeing the trial process. However, Article 98 of the Criminal Procedure Code pertains to compensation, which is a norm that is closely linked to civil law. This leads to ambiguity in the principles outlined in Article 98, as criminal law requires judges to be active, while civil law principles call for judges to be passive.

According to the theory developed by Jeremy Bentham, legal certainty is not only limited to the provisions that exist in the law. Instead, it is seen from the implementation of these norms. One way to ensure legal certainty is by applying norms to the Civil Procedure Law. This supports Bentham's theory and is in line with Lon Fuller's theory of legal certainty, which states that rules should not conflict with each other. Therefore, the norms in Article 98 of the Code of Criminal Procedure must be applied in line with the norms in the Civil Procedure Code. As a result, judges must be passive in applying Article 98 of this Code of Criminal Procedure, in accordance with the norms in the Code of Civil Procedure.

b. Legal Certainty Based on Competence

Criminal lawsuits are filed in the jurisdiction where the criminal acts have been committed and where the District Court is willing to hear the case. Article 84, paragraph (1) of the Code of Criminal Procedure affirms that "The district court has the authority to try all cases concerning criminal acts committed within its jurisdiction."

The principle used in this article is called *locus delicti*, which means "the place where the crime was committed." According to M. Yahya Harahap, this principle is based on the location where the crime took place. The District Court of the

⁶ Yahya Harahap, *Hukum Acara Perdata* (Jakarta: Sinar Grafika, 2004).

⁷ Rian Saputra, "Pergeseran Prinsip Hakim Pasif Ke Aktif Pada Praktek Peradilan Perdata Perspektif Hukum Progresif," *Wacana Hukum* 2, no. 1 (2019): 10–18.

jurisdiction where the crime occurred has the authority to adjudicate the case. This principle is a general provision used to determine relative authority.

Firstly, the court must determine whether or not to examine a case assigned by the public prosecutor based on the "place where the crime occurred." If it is evident that the crime happened within the court's jurisdiction, it has the authority to examine and prosecute the case. Conversely, if the criminal act was committed outside its jurisdiction, it is not authorized to examine and try it. In this case, the Chief Justice of the District Court submits a letter of transfer to the District Court that has the authority to examine and prosecute the case. The transfer is done by issuing a determination letter.⁸

In civil law, the jurisdiction of the defendant's residence is an important factor when filing a lawsuit. Article 118 paragraph (1) HIR states that a demand letter signed by the plaintiff or their representative must be submitted to the chairman of the district court where the defendant resides or where their actual place of residence is known. This is required for civil suits that fall within the power of the district court in the first instance.

For claims filed at the defendant's place of residence, Article 142 paragraph (1) R.Bg explains that civil claims in the first instance under the authority of the district court can be made by the plaintiff or a person appointed under the provisions of Article 147. The application must be signed by the plaintiff or by the power of attorney and delivered to the chief justice of the district court who has jurisdiction over the defendant's place of residence. If the defendant's place of residence is unknown, then the application must be delivered to their actual place of residence.⁹

According to the theory developed by Jeremy Bentham, legal certainty is not limited to existing provisions but is also seen through the implementation of those provisions. Therefore, one way to support Bentham's theory is to apply existing norms, such as those in HIR and R.Bg. Lon Fuller's theory of legal certainty states that rules must not contradict each other. This indirectly confirms that Article 98 of the Code of Criminal Procedure must be in line with the norms in HIR and R.Bg. Hence, if we consider the application of Article 98 of the Code of Criminal Procedure with the norms in the Code of Civil Procedure, where the lawsuit was filed at the place where the crime was committed, the lawsuit should be filed at the defendant's residence in accordance with the provisions in HIR and R.Bg.

2. Certainty of compensation in the application of Article 98 of the Code of Criminal Procedure based on Article 1365 of the Civil Code

Legal certainty, according to experts, is achieved by providing clear, unambiguous, consistent, and accessible legal rules. To achieve this goal, norms that govern the application of Article 98 of the Criminal Procedure Code must be clear. However, in practice, there is no certainty of compensation regarding the application of Article 98 of the Code of Criminal Procedure in criminal cases. This lack of clarity goes against the principle of legal certainty, as described above.

Article 98 of the Code of Criminal Procedure only allows claims for material damages and not for immaterial damages. Yahya Harahap, in his book, has explained that the compensation amount that can be requested is limited to the actual financial losses

⁸ Bobby R Tamaka, "PENTINGNYA TEMPAT KEJADIAN PERKARA MENURUT HUKUM PIDANA INDONESIA," *LEX ET SOCIETATIS* 2, no. 5 (2014)..

⁹ Ilva Kurniyatin Nuroini, "Asas Forum Domisili Dalam Perkara Perceraian: Relevansi Antara Pasal 118 Ayat (1) HIR Atau Pasal 142 Ayat (1) RBg Dengan Pasal 66 Dan Pasal 73 UU No. 7 Tahun 1989" (Universitas Islam Negeri Maulana Malik Ibrahim, 2010)..

suffered by the victim.¹⁰ If Article 98 of the Criminal Procedure Code is applied in relation to the norms described in Article 1365 of the Civil Code, it becomes ineffective. This is because the victim would need to file a civil case against the suspect separately, which creates confusion and lack of clarity, as previously explained.

The victim is the one who suffers the most in a criminal case against them, from the unlawful acts committed by suspects to the implementation of the judicial process. According to Jeremy Bentham's theory, legal certainty is not only limited to the provisions that exist in the law, but it is also seen from the implementation of existing norms. This theory supports the application of norms to the Civil Law, particularly Article 1365 of the Civil Code. Lon Fuller's theory of legal certainty says that rules with one another should not be mutually contrary. This indirectly confirms that the existing norms of Article 98 of the Code of Criminal Procedure must be applied in line with the norms in Article 1365 of the Civil Code, especially regarding the application of compensation. To achieve legal certainty in the process of claiming compensation in the application of Article 98 of the Code of Criminal Procedure based on the norms in Article 1365 of the Civil Code, it is proposed to apply claims for material and immaterial damages.

3. Procedural Certainty of Application of Article 98 of the Code of Criminal Procedure

Legal certainty refers to the provision of clear, unambiguous, consistent and accessible legal rules. Experts believe that it can be achieved if the content of the law can meet the needs of the wider community. However, despite this, there is still a lack of legal certainty in the application of Article 98 of the Criminal Procedure Code in the mobbing case that occurred in the Lubuk Sikaping area, as evidenced by decision number 93/Pid.B/2022/PN.Lbs. This lack of legal certainty is not in line with the principle of legal certainty as explained by the experts.

As mentioned earlier, in this case, there is a lack of legal certainty due to the prosecutor's unclear application of Article 98 of the Code of Criminal Procedure. This was demonstrated by the prosecutor's refusal to read the petition of the victim, who had requested to combine the claim for damages into a civil case, citing instructions from superiors. As a result, the victim's lawyer read the petition directly in front of the judge, and the judge accepted the claim for compensation filed by the victim's lawyer.

Therefore, It is necessary to make changes to Article 98 of the Criminal Procedure Code to better regulate the role of prosecutors in the application of Article 98. The proposed change is that in every criminal case where the victim suffers an unlawful act and incurs losses, whether material or immaterial, the prosecutor must ask the victim whether they want to combine the claim for compensation into their criminal case. This will ensure procedural certainty in the application of Article 98 of the Code of Criminal Procedure.

Implementation of Article 98 of the Code of Criminal Procedure and Its Relation to Unlawful Acts Based on Article 1365 of the Civil Code

The relationship between Article 98 of the Code of Criminal Procedure and Article 1365 of the Civil Code is reflected in the compensation method. Article 98 of the Code of Criminal Procedure outlines the compensation process in criminal cases. Paragraph (1) states that if an act, which forms the basis of a criminal case, causes harm to another person, then the presiding judge of the session can decide to combine the claim for compensation into the criminal case if requested by that person.

¹⁰ Harahap, *Pembahasan Permasalahan Dan Penerapan KUHP..*

Victims of criminal acts are eligible for compensation, which can only be claimed by the victims themselves. Compensation claims under Article 98 of the Code of Criminal Procedure are limited to material losses, such as those suffered by victims of criminal fraud. If the victim requests the merger of their lawsuit with a criminal case as per Article 99 paragraph (2) of the Code of Criminal Procedure, the district court will assess its authority to adjudicate the suit, the truth of the basis of the lawsuit, and the penalty for reimbursement of costs incurred by the injured party.

Compensation claims can only be merged if the victim requests it. To merge cases of compensation claims, the application should be filed before the public prosecutor files criminal charges or before the judge renders his decision. This application is filed before the court decision, during the investigation or prosecution stage. Additionally, this application can be submitted through the LPSK following the provisions of the Witness and Victim Protection Law.

There is a difference between compensation according to Article 98 of the Code of Criminal Procedure and Article 1365 of the Civil Code. The variation is in the elements involved in illegal actions as defined by Article 1365 of the Civil Code. These elements comprise of the presence of an act, a mistake, a loss, and a causal relationship between the unlawful act of the offender and the victim's loss. Article 1365 of the Civil Code establishes that anyone who perpetrates an illegal act will be held accountable for compensating for any losses that arise from their mistake. Those who commit illegal actions will have to pay for material and/or immaterial losses that the victims have incurred based on court decisions that have permanent legal force.

When comparing Article 98 of the Code of Criminal Procedure and Article 1365 of the Civil Code, both articles deal with claims for compensation resulting from criminal acts. Article 98 of the Code of Criminal Procedure only covers material damages, while Article 1365 of the Civil Code covers all types of claims, including both material and immaterial compensation. Essentially, Article 98 deals with formal unlawful acts, while Article 1365 deals with all forms of claims, whether material or immaterial.

CONCLUSION

The implementation of Article 98 of the Code of Criminal Procedure in the criminal justice system has been mostly successful. However, when it comes to the norms outlined in Article 1365 of the Civil Code, there are inconsistencies in the application of Article 98 of the Code of Criminal Procedure. Examples of cases related to Article 1365 of the Civil Code show that the application of compensation in Article 98 of the Code of Criminal Procedure is still inefficient, as it only covers material damages. This is problematic because civil law recognizes both material and immaterial damages in the context of compensation. As a result, there is a discrepancy between the norms outlined in Article 98 of the Code of Criminal Procedure and the principles of civil law. If a victim wishes to claim immaterial damages, they must file a separate civil case. This additional burden on the victim is unfair and unjust. Victims of criminal acts already suffer enough, and the current application of Article 98 of the Criminal Procedure Code only adds to their difficulties.

To make the application of Article 98 of the Code of Criminal Procedure more effective, it should include both immaterial and material claims. There is currently no legal certainty in the application of Article 98 of the Criminal Procedure Code. The principles of civil law dictate that judges should be passive, but in the application of Article 98 of the Criminal Procedure Code, the presiding judge is an active criminal judge. This is a source of confusion and further undermines legal certainty. Therefore, judges must be passive in applying Article 98 of the Criminal Procedure Code to ensure its effectiveness. Victims of criminal acts deserve better, and we must work towards a more just and efficient system that takes into account both material and immaterial damages. In criminal law, the lawsuit is filed

where the criminal incident occurred within its jurisdiction. In civil law, the lawsuit is filed at the defendant's place of residence. To make the application of Article 98 of the Code of Criminal Procedure clearer, the proposal for compensation should be filed at the defendant's place of residence. There is legal uncertainty in applying compensation. Article 98 of the Criminal Procedure Code only covers material damages, but the application of Article 1365 of the Civil Code necessitates immaterial compensation. Therefore, the application of Article 98 of the Code of Criminal Procedure should include immaterial compensation to be more effective. In Decision Number 93/Pid.B/2022/PN.Lbs, the legal counsel of the victim read the claim for compensation as the prosecutor refused to do so. However, not all victims have legal representation, which is not in line with procedural legal certainty. Therefore, it is necessary to clarify the role of the prosecutor in the application of Article 98 of the Criminal Procedure Code. The prosecutor should ask the victim of an Unlawful Act whether they are willing to sue the suspect with a lawsuit under Article 98 of the Criminal Procedure Code.

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