



Analytical analysis of compensation for unlawful acts (CUA) in the civil code (Civil Law Book)

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Abstract

This study examines the forms of material and immaterial compensation for unlawful acts (CUA) regulated in the Civil law book, CUA material compensation so far refers to Article 1243 of the Criminal Code for material compensation from default. This study aims to apply material and immaterial compensation from CUA apart from Article 1243 of the Civil law book which has been widely applied in resolving compensation.

This type of research uses a normative type of research, this type of research uses a statutory approach, a comparative approach and a theoretical approach. Secondary and tertiary data sources using library data collection techniques then data analysis techniques with qualitative analysis.

The results of this study indicate that an unlawful act based on article 1365 of the Civil law book is every act of violation the law that brings harm to another person, obliges that person who because of his fault issued the loss, compensates for the loss

the. The concept of compensation for unlawful acts (CUA) regulated in the Civil law book (Civil Law Book) is regulated in article ... both material and immaterial, in addition to compensation regulated in article 1243 of the Civil law book which is more aimed at compensation due to default. The form of compensation for unlawful acts (CUA) if the compensation is in the form of material and immaterial. For material compensation, it can be done materially or in the form of money and refers to...while immaterial compensation refers to Article 1372 paragraph (1) of the Civil law book, as in addition, victims of unlawful acts are also entitled to file other claims such as demanding that the court declare that the act blamed on the perpetrator is an act against the law.

Keywords: unlawful acts, compensation

Introduction

Background

In principle, an act against civil law (onrechtmatige daad) exists if a person does or does not act that violates the rights of others or is contrary to the legal obligations of the person who did it himself or is also contrary to morals or an attitude of prudence as appropriate in the social life of the community. Because the onrechtmatige daad act has resulted in a violation of the rights of others, of course there are consequences that must be borne as a result of the onrechtmatige daad act..

Article 1365 of the Civil law book, it is stated that *“every act against the law, which therefore causes harm to another person, obliges the person who due to his/her fault caused the loss to compensate for the loss”* Based on the provisions of the article, the error resulting from an unlawful act creates an obligation to provide compensation due to the act, which can be classified as property compensation or moral compensation which can be in the form of: compensation for losses in the form of money (material), while compensation in in kind (immaterial) form is compensation intended to restore the situation to its original state; a statement that the act committed is against the law; prohibition to perform an act; negate something that is held against the law; and announcements rather than decisions or from something that has been fixed.

The application of the conception of unlawful acts is often equated with the concept of breaking a promise (wanprestasi). Though both are very different concepts from one another. Although the act of default and unlawful act

(CUA) both originate from an engagement, namely the conception of default comes from an engagement born of an agreement and the conception of an unlawful act originates from an engagement born of law.

Implicitly the Civil law book (Civil Law B) distinguishes between compensation for a breach of contract based on a contractual relationship between the plaintiff and the defendant, while compensation for an unlawful act where there is no contractual relationship between the plaintiff and the defendant. Another thing that should be underlined regarding the settlement of compensation in practice is precisely regulated in the provisions for default, until now the regulation regarding compensation is limited to material losses.

Formulation of the Problem

Starting from the background and identification of the problems described above, several problems are formulated as follows

1. What is the concept of material and immaterial compensation for unlawful acts (CUA) regulated in the Civil Law Book
2. What is the form of compensation for unlawful acts (CUA) if the compensation is in the form of material and immaterial??

Research Purposes

a. General Purpose

By knowing the Material and Immaterial Compensation for Unlawful Acts (CUA) regulated in the Civil law book and

analyzing the Form of Compensation for Unlawful Acts (CUA) if the Compensation for Losses is in the form of Material and Immaterial.

b. Special purpose

The special benefit of this research is that it becomes a recommendation material for stakeholders and the community.

Research Methods

The type of research that will be used is normative legal research or what is known as library research. Where in doctrinal law research because this research is only aimed at written regulations so that this research is called library research because it will require secondary data in the library ^[1]. In a normative study, the written law is studied in a statutory approach which is used to support the writing that is carried out, namely as the initial basis for conducting an analysis. The positive law approach is a very basic preliminary activity. Therefore, before finding legal norms, it is necessary to know in advance what positive law applies ^[2].

This research uses literature study or known as legal materials, namely data obtained from the results of a literature review of various literatures or library materials related to the problem or research material. On that basis, the purpose and usefulness of library research is basically used to show the way to solve research problems ^[3].

The technique of collecting legal materials used by researchers is literature study, which is a method of collecting legal materials by conducting a search on library materials, namely collecting and reviewing legislation, legal books, opinions of legal scholars. As well as the results of previous research related to the research problem under study, namely in the form of journals, articles, the legal basis of the engagement originating from an agreement where the act is contrary to the law and other materials that support this research.

The analysis of legal materials in this study will use deductive logic analysis methods with qualitative normative analysis methods. The method of deductive logic analysis is to draw conclusions from a general problem to the concrete problem under study. While the qualitative normative analysis method, namely the discussion and explanation that is arranged logically on the results of research on norms, rules, and legal theoretical foundations that are relevant to the subject matter.

Research Results And Discussion

1. The Concept of Unlawful Acts (onrechmatige daad) in the Civil law book

An unlawful act in Dutch is called onrechmatige daad and in English it is called tort. The word "tort" comes from the Latin word "torquere" or "tortus" in French, as the word "wrong" comes from the French word "wrung" which means error or loss (injury). The word tort itself actually just means wrong (wrong) ^[4].

The term tort itself has developed in such a way that it means that civil wrongdoing that does not result from default in a contractual agreement is similar to the definition of an unlawful act called onrechmatige daad in the Dutch legal system or in other Continental European countries.

So in principle, the purpose of establishing a legal system which later became known as unlawful acts is to be able to

achieve what is said in the Latin proverb, namely *juris praecepta sunt luxec, honeste vivere, alterum non laedere, suum cuique tribuere* (The motto of the law is to live honestly, not to harm others, and to give others their rights).

At first, many people doubted whether an unlawful act was indeed a separate field of law or merely a wastebasket, which is a collection of scattered legal meanings that do not enter into one of the existing legal fields, which relates to errors in the field of law. civil law. It was only in the mid-19th century that unlawful acts began to be considered as a separate legal field, both in Continental European countries, for example in the Netherlands under the term *Onrechmatige Daad*, or in Anglo Saxon countries, known as tort ^[5].

Unlawful acts are regulated in Article 1365 to Article 1380 of the Civil law book. Article 1365 states that any unlawful act that causes harm to another person causes the person to issue a loss to compensate for the loss.

The term "violate" according to MA Moegni Djojodirdjo only reflects the active nature while the passive nature is ignored. The term "against" includes the meaning of active and passive actions ^[6]. Someone intentionally does an act that causes harm to another person, then it is clear that the active nature of the term against it is clear. On the other hand, if someone intentionally doesn't do something or stays silent even though he knows that he actually has to do something so as not to harm others or in other words, he is passive, even reluctant to do harm to others, then he has "fought" without having to move his body. This is the passive nature of the term fight ^[7].

The provisions in Article 1365 of the Civil law book are then reaffirmed in Article 1366 of the Civil law book ^[8], namely: "Everyone is responsible not only for the losses caused by his actions but also due to his negligence".

The article above emphasizes that an act against the law does not only include an act, but also includes not doing. Article 1365 of the Civil law book regulates "actions" and Article 1366 of the Civil law book regulates "not doing something".

In 1919, Hoge Raad ^[9] formulate a broad view of unlawful acts. Hoge Raad uses the formula contained in the Heemskerk draft which means an unlawful act is not the same as against the law but an unlawful act must be interpreted as "doing" or "not doing" which violates the rights of others or is contrary to the legal obligations of the maker. or contrary to the principles of decency and obedience in society, either towards oneself or other people's objects.

The formulation is stated in the "Standard Arrest" January 31, 1919 in the case of Cohen and Lindenbaum. This interpretation is unreasonable because being against the law is not the same as being against the law. According to Hoge Raad, unlawful acts must be interpreted as "doing" or "not doing" which violates the rights of others or is contrary to the legal obligations of the maker or decency or obedience in society, either towards oneself or other people's objects.

Since 1919, Hoge Raad began to interpret Unlawful Acts in a broad sense in the case of Lindenbaum Vs. Cohen said that an unlawful act must be interpreted as doing or not doing something that is contrary to the law ^[10]:

1. The subjective rights of others.
2. Legal obligations of the perpetrator.
3. Rules of decency.
4. Propriety in society.

Accountability that must be carried out based on this unlawful act is an engagement caused by the law that regulates it (an engagement that arises because of the law). In law, there are 3 (three) categories of unlawful acts, namely as follows

1. Acts against the law due to intentional
2. Actions against the law without error (without elements of intent or negligence).
3. Acts against the law due to negligence.

When viewed from the regulatory model in the Civil law book regarding other unlawful acts, and as in countries in the Continental European legal system, the model of legal responsibility in Indonesia is as follows:

1. Responsibility with elements of error (intentional and negligence), as contained in Article 1365 of the Indonesian Civil law book.
2. Responsibility with an element of error, especially the element of negligence as contained in Article 1366 of the Indonesian Civil law book.
3. Absolute responsibility (without fault) in a very limited sense as in Article 1367 of the Indonesian Civil law book.

Several other definitions that have been given to unlawful acts are as follows: ^[11]

1. Not fulfilling something that is his obligation other than a contractual obligation or a quasi-contractual obligation that issues the right to ask for compensation.
2. An act or not doing something that causes harm to another person without previously having a legal relationship in which the act or not doing it, whether it is an ordinary act or bias is also an accident.
3. Failure to fulfill an obligation imposed by law, which obligation is directed at everyone in general, and by not fulfilling this obligation, compensation can be requested.
4. A civil wrong against which an indemnity can be claimed which is not a breach of contract or a default on trust obligations or a default on other equity obligations.
5. A loss that is not caused by a breach of contract or rather, is an act that harms the rights of others created by law that does not arise from a contractual relationship
6. An act or not doing something that is contrary to the law violates the rights of others created by law and therefore a compensation can be claimed by the injured party.

Compensation for Unlawful Acts (CUA)

Compensation is part of the discussion of civil law, therefore it is necessary to first define what is civil law. Civil law is a legal regulation that regulates legal relations between one person and another. In the above understanding there are several elements, including elements of legal regulations, what is meant by legal regulations are a series of provisions regarding order and are in written and unwritten form and have strict sanctions.

The next element is the element of legal relations. What is meant by legal relations are relationships governed by law, relationships governed by law are the rights and obligations of individuals, while the last element is the element of people, what is meant by people are legal subjects, namely

supporters of rights and obligations, supporters of rights and obligations. it can be an individual person or a legal entity ^[12].

Compensation in civil law can arise due to default as a result of an agreement or may arise due to unlawful acts ^[13]. The compensation that arises from default is if there are parties to the agreement who do not carry out their commitments that have been stated in the agreement, then according to law he can be held responsible, if the other party in the agreement suffers a loss because of it ^[14].

The Civil law book (Vide Articles 1239, 1243) specifies losses (which must be replaced) in three components as follows: 1. Costs, 2. Loss. 3. Flowers. Cancellation of reciprocal agreement without compensation, cancellation of reciprocal agreement then compensation. Furthermore, in the literature and jurisprudence there are also several models of compensation for the occurrence of default, which are as follows ^[15].

Compensation specified in the agreement.

The compensation specified in the agreement is a model of compensation due to default where the form and amount of the compensation has been written and determined with certainty in the agreement when the agreement was signed, even though at that time there was no default.

Expected compensation.

Compensation in the form of expectations is a form of compensation for the loss of expected profits (in the future), if the agreement is not in default. so, in this case, the party who is harmed due to default is placed as if there was no default with various benefits that will be obtained.

Replacement fee.

Compensation in the form of reimbursement of costs is compensation in the form of replacement of all costs that have been incurred by one party that must be paid by the other party, who has defaulted on the agreement. Because the calculation of the costs that have been incurred is generally done by looking at the evidence of expenditure in the form of receipts.

Restitution

Compensation in the form of restitution is a compensation model that also places the agreement in a position as if there was no agreement at all. However, in this case, what must be done is to return all added value in its original form that has been received by one party or both parties from one party to the other. The added value referred to here is an excess value that has been received by the parties as a result of the implementation of the agreement, the added value must be returned in its original form as a form of compensation.

Quantum meruit

Quantum Meruit is a compensation model that is almost similar to the restitution model, the difference is that the added value that must be returned in this model is not added value in its original form but the price of the added value that has been received, because the object in its original form is no longer in a position to be returned. For example, cement that has been used for a building cannot be returned in the form of a building, what can be done is the estimated value of the cement price that must be returned.

Execution of the agreement.

The provision of compensation in the form of the implementation of the agreement is the obligation to carry out the agreement even though it is too late, with or without compensation.

In addition to losses arising from default, losses can also be caused by unlawful acts, unlawful acts are regulated in Article 1365 and 1366 of the Civil law book, Article 1365 of the Civil law book provides provisions regarding unlawful acts which explicitly state that:

“every unlawful act, which causes harm to another person, obliges the person who caused the loss to pay compensation for the loss”

After conducting a search on the meaning of the unlawful act, it must be completed by discussing the elements contained in the unlawful act in accordance with the provisions of Article 1365 of the Civil law book, which are as follows ^[16]:

There is an Action.

An act against the law begins with an act of the perpetrator. It is generally accepted that the action here is intended, either to do something (in an active sense) or not to do something (in a passive sense), for example, not to do something, even though he has a legal obligation to make it, which obligations arise from the applicable law (because there are legal obligations). also obligations arising from a contract). Therefore, for acts against the law, there is no element of agreement or agreement and there is also no element of causa that is allowed as contained in the contract.

The act is against the law.

This act must be against the law. Since 1919, this unlawful element has been defined in the broadest sense, which includes the following: acts that violate applicable laws, violate the rights of others guaranteed by law, acts that are contrary to the legal obligations of the perpetrator, actions that are contrary to decency and actions that are contrary to decency ^[17].

There was an error on the part of the perpetrator.

In order to be subject to Article 1365 concerning Unlawful Acts, the law and jurisprudence require that the perpetrator must contain an element of error in carrying out the act. Therefore, liability without error does not include responsibility based on Article 1365 of the Civil law book. even if in certain cases the responsibility is imposed without fault. This is not based on Article 1365 of the Civil law book, but is based on other laws.

There is a loss for the victim.

The existence of a loss for the victim is also a condition for a lawsuit based on Article 1365 of the Civil law book to be used. In contrast to losses due to default, which only concerns material losses. Therefore, losses due to unlawful acts in addition to material losses, jurisprudence also recognizes the concept of material losses, which will also be valued in money. Compensation in the concept of civil law due to an unlawful act can be divided into two (2) approaches, namely general compensation and special anti-indemnity. What is meant by general compensation in this case is compensation that applies to all cases, both for cases of default, contracts, and cases related to engagements, including those due to unlawful acts.

Apart from general compensation, in civil law, special compensation is also known, namely compensation issued due to certain engagements. compensation for all unlawful acts (Article 1365), compensation for actions committed by others (Article 1366 and Article 1367), compensation for animal owners (Article 1368), compensation for owners of collapsed buildings (Article 1369) , compensation for the family left behind by the person who was killed (Article 1370), compensation for injuries or limb defects (Article 1371), compensation for acts of humiliation (Article 1380) ^[18].

Meaning of Material and Immaterial Losses in the Civil law book

Immaterial losses cannot be separated from the existence of an unlawful act. Therefore, talking about limitations in filing claims for immaterial compensation means covering what things are the scope or basis for filing the claim itself. This is so that the lawsuit filed does not become blurred when the things that are used as the basis for filing a claim are not in accordance with the provisions of the legislation. Acts against the law can cause immaterial/ideal losses such as fear, illness and loss of pleasure in life. In other words, immaterial losses are losses on benefits that are likely to be received by legal subjects in the future or losses from loss of profits that may be received by someone in the future.

As emphasized in Article 1365 of the Civil law book, in the event that a person commits an unlawful act then he is obliged to pay compensation for his action, which is different from the claim for damages in a Default, in the lawsuit against the law there is no clear regulation regarding the compensation but as regulated in Article 1371 paragraph (2) of the Civil law book implied in the guideline which reads "Also this compensation is assessed according to the position and ability of both parties, and according to the circumstances".

Prof. Rosa Agustina in his book "*Unlawful Actions*" explains that losses due to unlawful acts are only "scades" (losses), while losses due to Default by Article 1246 of the Civil law book are called "Constant, scaden en interessens" (costs, losses and interest). Then, in the same book Prof. Rosa Agustina also explained that the loss in an unlawful act according to the Civil law book, the party who feels that his rights have been harmed can ask the perpetrator to compensate for the actual loss he has suffered (material) as well as the profits to be obtained in the future (immaterial).

The author's analysis that compensation for unlawful acts is not regulated by law. Therefore, the rules used for this compensation are analogous. Regarding this matter, it uses the compensation rules due to broken promises as regulated in Article 1243-1252 of the Civil law book in addition, restoration is back to its original state.

To determine the extent of the loss that must be compensated, it must generally be done by assessing the loss, for this reason, in principle, the injured person must be placed in a situation similar to the situation in the event of an unlawful act. The aggrieved party has the right to claim compensation not only for the losses he has suffered at the time the claim is filed but also for what he will suffer in the future.

In a lawsuit or claim based on legal reasons for default, it is different from a lawsuit based on an unlawful act. Lawsuits based on default only recognize material losses, while in lawsuits against the law, in addition to containing material

losses, they also contain immaterial losses, which are valued in money.

Closing

Conclusion

1. The concept of compensation for unlawful acts (CUA) as regulated in the Civil law book (KUHPerdata). An act against the law based on article 1365 of the Civil law book is every act of violating the law.

Law that causes harm to another person, obliges that person who because of his fault in issuing the loss, compensates for the loss.

The form of compensation for unlawful acts (CUA) if the compensation is in the form of material and immaterial. For material compensation, it can be done materially or in the form of money. Meanwhile, immaterial compensation refers to Article 1372 paragraph (1) of the Civil law book.

2. Compensation for losses due to unlawful acts is not regulated by law. Therefore, the rules used for this compensation are analogous. Regarding this matter, it uses the compensation rules due to broken promises as regulated in Article 1243-1252 of the Civil law book in addition, restoration is back to its original state.

To determine the extent of the loss that must be compensated, it must generally be done by assessing the loss, for this reason, in principle, the injured person must be placed in a situation similar to the situation in the event of an unlawful act. The aggrieved party has the right to claim compensation not only for the losses that he has suffered at the time the claim is filed but also what he will suffer in the future, in a lawsuit or claim based on legal reasons for default which is different from a lawsuit based on an unlawful act. Lawsuits based on default only recognize material losses, while in lawsuits against the law, in addition to containing material losses, they also contain immaterial losses, which are valued in money.

Suggestion

1. In deciding if there is a CUA case, the judge should be able to prove the occurrence of material losses. In addition to the causal relationship between errors that cause harm, judges' decisions also play a very important role in proving mistakes that cause immaterial losses.
2. The form of compensation, both material and immaterial, it is necessary to determine the criteria through jurisprudence in determining the amount of compensation for immaterial losses in unlawful acts.

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