

Merger of Civil Cases and Criminal Cases Concerning the System for Implementation of Claim for Damages

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Abstract: Compensation is contained in civil law as well as in criminal law, between the two there are differences. In criminal law, the scope of compensation is narrower than that in civil law. The merging of compensation claims cases is due to the settlement of cases in a case that has two aspects, namely the civil aspect and also the criminal aspect. Compensation is the right of a person to have his claim fulfilled in the form of a sum of money for being arrested, detained, prosecuted or tried without any reason based on law or because of an error regarding the person or the law applied according to the method regulated in the law. The goal which most main merging the case for compensation is for simplify process inspection and submission lawsuit compensation itself, so that the meaning contained in it can be achieved in simple judicial principles, fast and cost light.

Keywords: Compensation, Merger of Cases, Criminal Cases, Civil Cases.

1. INTRODUCTION

Along with progress culture, science and technology, human behavior in the life socialize and the state is even more complex and even multicomplex. Such behavior when viewed from the perspective of law naturally there is behavior which could categorized according to norm and there is behavior that no according to norms (laws) apply. To behavior that no in accordance norm usually can cause problems in the field of law and harmful Public.

Regarding compensation, it is contained in civil law as well as in criminal law. However, there are differences between the two. In criminal law, the scope of compensation is narrower than that in civil law. Formerly *Inlandsch Regleman*, then *Herziene Innlandsch Regulation (HIR)*, on at first only valid in island Java and Madura and only includes examinations in courts of first instance that is *lanraad*, no there is the rules regarding the appeal event, let alone appeal.

The use of the right to demand compensation or a request for compensation is very rare. In terms of law enforcement, with the scarcity of filing requests for compensation or requests for merging cases of compensation claims, it requires careful research because after all the essence of law enforcement is upholding rights and carrying out obligations. The term compensation is not found in material criminal law. This can only be found in formal criminal law, namely Law Number 8 of 1981 concerning the Criminal Procedure Code.

Referring to the provisions of Article 1 point 22 of the Criminal Procedure Code (KUHAP) that the definition of compensation is the right of a person to obtain fulfillment of his demands in the form of compensation for a sum of money because he is arrested, detained, prosecuted or tried without a reason based on law or because of an error regarding the person or the law applied according to the method regulated in the Act. Compensation is a legal remedy that can be taken by the defendant or his family when experiencing actions taken by law enforcement officers that are not in accordance with KUHAP procedures.

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Furthermore, the Criminal Procedure Code regulates compensation in several different chapters, namely Chapter X the first part on Pretrial, then in Chapter XII the first part on Compensation and in Chapter XIII Merger of compensation claims. There is a difference between compensation as regulated in Article 77 letter b (Chapter X the first part of the Criminal Procedure Code) and compensation in Chapter XII of the second part of the Criminal Procedure Code and the merger of cases of compensation claims based on Chapter XIII, namely compensation as stipulated in Chapter X and Chapter XII of the Criminal Procedure Code. is related to the compensation filed by the suspect or convict who was forced to do so, but was decided to be free or released or because the case was not proceeded to the Court, while in the case of merging the claim for compensation, the claim for compensation was submitted by the victim to the perpetrator of a crime by entering the claim for compensation together with the demands of the public prosecutor. If classified, compensation as regulated in Chapter X and Chapter XII of the Criminal Procedure Code includes 2 (two) things, namely, First, compensation due to the case not being submitted to court, which means that the process has only reached the stage of investigation or prosecution, then a claim for compensation is filed. through pretrial. Second, compensation due to being found not guilty by a court decision with permanent legal force is required through a separate application to the court by following the pretrial examination.

The existence of a merger of lawsuits for compensation is due to the settlement of cases in a case that has two aspects, namely the civil aspect and also the criminal aspect. The existence of these two aspects in the same case can lead to a criminal case with a claim for compensation. With regard to such cases, before the enactment of the book, In the Criminal Procedure Code, it is not only regulated about the rights of suspects and defendants However, it also regulates the rights of every person who is harmed by a acts or criminal acts, this is in accordance with what is stated by Syarifuddin Pettanasse, Protection of the rights of victims of a crime is given by speeding up the process to get the compensation he suffered, is with combine case the crime with application for get compensation, which is essentially a civil case and which usually conducted through lawsuit civil with thereby willsave time and cost case. Regarding the amalgamation of compensation claims this, set in chapter 98 until with chapter 101 KUHAP, about merging case lawsuit change loss with continuation inspection case criminal which take place.

Chapter 9 8 paragraph (1) KUHAP, reads:

“ If something deed which Becomes base indictment in the something examination of criminal cases by the District Court causes harm to another person, then the trial judge at the request of that person may decide to combine case lawsuit compensation to case criminal it ” .

Based on article 98 paragraph (1) of the KUHAP above, it can be it is known that a person has been harmed by an act which he is accused of The defendant who is being examined can file a lawsuit for compensation together with case investigation criminal which concerned.

According to the Criminal Procedure Code, the settlement by the Court is carried out sequentially, it cannot be done simultaneously, so the criminal case is resolved first and then the settlement of the claim for compensation (civil case) is followed. The settlement of cases like this will obviously take a long time, and cost more, so that the Court will not be able to implement the principles of a good judiciary, namely a fast, simple, and low-cost judicial process as stated in Article 4 Paragraph (2) of the Law. Law Number 48 of 2009 concerning Judicial Power, and will make it more difficult for the poor who have limited funds. For this reason, it is necessary to find an appropriate way to overcome this problem, namely by merging the lawsuit for compensation.

With such a background, it makes the author interested in exploring problem lawsuit change make a loss this more far, so that on finally writing It is entitled: “Merger Of Civil Cases And Criminal Cases Concerning The System For Implementation Of Claim For Damages”

Based on from background behind as the onso get it formulated the problem as following: how system implementation demands change make a loss in amalgamation?, Explain the obstacles that occur in the implementation of claims for compensation in merging cases ?

2. RESEARCH METHODS

The writing used in this article is a normative and descriptive legal writing method. The research approach is normative by examining positive law and other legal materials including legal sources, as well as secondary legal materials to complete the reference for the results of this study. The technique used by the author to produce research outputs is through literature study. Utilization of legal materials in normative research methods to answer problems, through the management of legal materials, so that conclusions can be drawn from the results of a coherent analysis, through the arrangement of legal materials that are inventoried in a relevant and systematic manner.

3. LITERATURE REVIEW

In terms of language, the notion of "loss" in everyday life can be interpreted as an understanding of loss for a result that arises. "Compensation is the right of a person who is a victim of a criminal act who directly or indirectly receives a loss, to obtain fulfillment of his demands in the form of a sum of money according to the method regulated by law. The definition above does not explain how the form of loss suffered by a person and what is the cause. The size of the loss is only measured in terms of money, whether for moral or material losses. For example, for losses against someone's reputation or traffic accidents and so on. The definition of compensation as stated above is very broad in nature. There is no limit that an act that results in the loss of another person is a violation of the law. This means that an act that is felt to be detrimental to an individual in a particular community may be asked for compensation even though there is no legal regulation.

Today we often hear of a criminal case followed by a civil case, such as a claim for compensation suffered in connection with a criminal act committed by a criminal. In the event that the victim submits a claim for compensation and the loss can be in the form of material or immaterial losses, the claim for compensation is submitted to a civil court which will be processed in a civil manner. The victim will experience two judicial processes, namely criminal justice due to criminal acts committed by perpetrators of crimes against victims and civil justice due to demands for compensation submitted by victims. With these two court processes, court hearings will take a long time and also allow for relatively large costs to be incurred. This judicial process is not in accordance with the principles of quick, simple, and low-cost justice.

Starting from the field of civil law, sanctions regarding compensation are regulated in Articles 1365 to 1380 of the Civil Code, as a result of "default" in the engagement, either by agreement or by law. In Article 1365 it reads "Every unlawful act, which brings harm to another person, obliges the person who because of his fault published the loss, compensates for the loss". The articles mentioned above all regulate the claim for compensation in the sense of violating the law, according to Wirjono Prodjodikoro that the act causes a shock in the balance of society and this shock does not only occur if the legal regulations in a society are violated (directly) but also if the rules of morality, religion and manners in society are violated.

Based on Article 1365 of the Civil Code, if a person has violated an unlawful act and has proven a crime, then he can be prosecuted for compensation. Quoting Subekti's opinion, regarding compensation: Compensation is often broken down into 3 (three) elements, namely: costs, losses and interest (kosten, schaden en interessen in Dutch). by one party, while what is meant by loss is loss due to damage to goods belonging to the creditor caused by negligence of the debtor, what is meant by interest is loss in the form of loss of profit (winsterving). The guarantee of compensation according to the civil law system can be imposed on any party who because of his actions, whether negligent or intentionally causing harm to another party, the compensation is given in the form of money.

Compensation is contained in Article 1 Number 22 of Law Number 8 of 1981 which states that compensation is the right of a person to obtain fulfillment of his demands in the form of compensation for a sum of money because he is arrested, detained, prosecuted or tried without any reason based on the law or because of a mistake. regarding the person or the law which is applied according to the method regulated in this Law. From this definition it is very clear that someone who is a victim of a criminal act is justified by law to sue for the loss. The issue of compensation is subject to civil law, therefore the court authorized to examine this claim for compensation is a civil court with a Civil Judge. Meanwhile, Law No. 8/1981 and Law No. 31/1997 regulates criminal matters. But with the positive relationship in Article 98 of Law No. 8 of 1981 and Article 183 of Law No. 31 of 1997 which combines claims for compensation in criminal cases at the same time, what is in civil law and criminal law can be met by. Merged, three conditions are needed, namely the existence of the defendant's actions, the defendant's actions as the first condition that it must cause harm to other people and there is a request and the party who feels aggrieved to the court to combine the compensation case. The goal which most main merging compensation case, between other:

1. For simplify process inspection and submission lawsuit compensation itself, so that the meaning contained in it can be achieved in simple judicial principles, fast and cost light.
2. So that as soon as possible possible person which get change loss without through the ordinary civil lawsuit process. And you don't have to do it more wait decision criminal new submit lawsuit change loss through ordinary lawsuits. Thus the merger of the lawsuits compensation is a shortcut that people can take advantage of which harmed for as soon as possible get payment change loss.

The merging process is a new system in judicial life In Indonesia before the Criminal Procedure Code, we only knew an inspection system that was separated by absolute Among case criminal with civil. It is said above that the merger of cases must cause harm to other people. In this case, "loss to others" is the loss of third parties including victim witnesses. As has been said previously, the merging of civil cases with criminal cases is nothing but the loss suffered by the victim. Losses here are in the form of material losses.

4. DISCUSSION

Compensation System in Merging Compensation Cases

The guidebook for the implementation of Law Number 8 of 1981 which distinguishes the compensation system into five, namely:

1. Compensation of a civil nature and given in civil procedures

Through civil procedures, all types of losses suffered by victims, both material losses and immaterial losses, can be demanded to be fulfilled. Victims of criminal acts can also use civil procedures to claim compensation for the losses they have suffered. But there is one thing with this civil procedure that will be a consideration for the plaintiff to be reluctant and lazy because the settlement usually takes a long time, so that by itself it will take quite a lot of time and costs. The long time and the increasing costs by itself cannot fulfill the principle of a fast, simple, and low-cost trial. A civil lawsuit caused by a civil claim is not only a legal act committed alone but can also be prosecuted for an unlawful act. The law in question is an unlawful act related to a criminal case, the consequences of which cause harm to other people.

Based on the provisions of Article 1365 of the Civil Code, the perpetrator of the loss can be sued to compensate for the loss he has caused. " Every act that violates the law, which brings harm to another person, obliges the person who, because of his fault, published the loss, compensates for the loss." losses caused by his actions but also for acts committed due to his negligence or carelessness. In addition, each person is not only responsible for losses caused by his own actions but also for the actions of other people who are under his care or people under his responsibility or caused by goods that are under his control. This responsibility can only be declared terminated if the actual loss caused cannot be prevented by the person responsible for it. In this system, a separation is made between compensation and the criminal case. Criminal acts are viewed solely as crimes against the public interest while the interests of the victim as individuals settled civilly.

2. Compensation of a civil nature but given a criminal procedure.

Through the criminal procedure the victim can file a criminal complaint and also ask for compensation for the actions committed by the perpetrator of the crime. With the criminal procedure, the victim does not need to file a claim for compensation separately and this is known as merging the lawsuit for compensation so that at the same time the claim for compensation will be examined and decided together with the decision of the criminal case, thus saving time and money. cost incurred.

3. Compensation that is civil in nature but is intertwined with a criminal nature and is given in criminal procedures.

In this system, compensation is determined by the Court in the form of a substitute criminal (for example in a corruption case) and by payment of compensation to the victim, but the case is not prosecuted.

4. Compensation that is civil in nature and is given in a criminal procedure but the payment is the responsibility of the State, but the State can request a refund (reimbursement) from the convict.

5. Compensation that is neutral in nature and is given by criminal procedure.

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This fifth system does not include civil procedures and criminal procedures. This procedure is applied because the victim is a person who is in dire need while the convict is also an incapacitated person, so the State takes over the responsibility by replacing the losses that become the burden of the convict, this system applies in Switzerland.

Through the criminal procedure the victim can file a claim for compensation for the actions committed by the perpetrator of the crime. With the existence of a criminal procedure, the victim does not need to file a claim for compensation separately and this is known as merging the lawsuit for compensation so that at the same time the claim for compensation will be examined and decided together with the decision of the criminal case, thereby saving time and money cost incurred.

Of the various existing compensation systems, in Indonesia more adheres to the first system, namely civil compensation is given in civil procedures, as well as the second system, where civil claims for compensation from victims are combined in criminal cases, while compensation claims from victims are civil. accountable to the perpetrators of the crime. while losses that are "immaterial" cannot be claimed through this procedure.

Obstacles Occur in the Implementation of Claims for Compensation in Criminal Cases

Judgment regarding compensation automatically has permanent legal force if the decision is the crime has get strength law permanent. During decision the crime has not yet obtained permanent legal force, as long as the compensation decision is not yet obtain permanent legal force.

Article 100 of the Criminal Procedure Code is clearer show linkages decision civil and decision criminal, which formulated as follows:

1. If there is a merger between a civil case and a criminal case,so merging that with alone in progress ininspection appeal level.
2. If to something case criminal no submitted Request appeal, then the request for an appeal regarding the award for compensation does not allowed.

In principle, the parties to a civil dispute may submit a request appeal on decision court country, right?. But with provision which gluing nature assessors, decision civil to decision criminal in amalgamation of criminal and civil cases. Article 100 of the Criminal Procedure Code only provides right appeal to defendant just, currently to victim or party which harmed, however no give right submit appeal ondecision compensation that imposed by the district court.

Every decision change loss which submitted by party victim orthe aggrieved party in the merging of criminal and civil cases, has eliminate right party plaintiff request appeal. With so, share someone who is a plaintiff who filed a claim for compensation loss in inspection case criminal by together, since has voluntarily relinquished its right to file Request appeal on decision handed down by the court country. Right appeal on merging case criminal and civil only given Constitution to party defendant or party defendantOf course, only the defendant can appeal the verdict case the crime. The above statement is unfair. Even though the victim (the injured party) does not agree with the compensation decision handed down by the court, he does not have effort law to challenge the decision Furthermore, to implement the decision on the claim for compensation, no set by special in in KUHAP, only in in Chapter 101 KUHAP determine that which used is law program civil. With Thus, the implementation of the decision in the lawsuit for compensation is carried out according to civil proceedings. This is clarified by the attachment to the Decree Minister Justice RI Number.M.14.PW.07.03 Year 1983 about additionguidelines implementation of the Criminal Procedure Code on point 15, p court decision declaring criminal verdict and restitution decision loss. There is indecision in in implementation decision court which contains criminal decisions and compensation decisions as intended in Chapter XIII KUHAP. is decision change the loss implementation its own decision and what is the role prosecutor in civil case which combined, are given the following instructions:

1. lawsuit the civil no given number alone.
2. Implementation decision about loss which combined the,conducted according to the procedure civil judgment.
3. Implementationcompletion decision change loss the no assigned to prosecutor.

Thus, the implementation of the decision in the lawsuit for compensation This is done by means of civil law, namely through a court that has decide case that, if defendant which burdened obligation for To do change loss in accordance with amar decision, no obey decision that. If decision has have strength law permanent, party which burdened obligation in amar

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decision the, no with volunteer fulfill its obligations as contained in the decision, the plaintiff submit Request to chairman court country which decide case, so that the decision is enforced. The request can be done with oral or written.

Based on the request for implementation of the decision. District court or judge which cut off case that, ordered call party convict / defendant, at the latest within eight days to be ordered that Fulfill verdict the. If the convicted party does not comply with the summons or not heed the warning that has been notified, the court/judgewill publish letter order for confiscate goods move belongs to si condemned which estimated amount of liability which decided for fulfilled. If goods move the, no sufficient, so goods no move belongs to si condemned that confiscated. The confiscation is called an *executorial confiscation* carried out by clerk assisted 2 (two) witnesses. After foreclosure the, so follow sale goods which confiscated that, done through the auction office.

5. CONCLUSION

Based on from description chapters before so could drawn conclusion as follows :

The issue of compensation is actually subject to civil law, therefore the courts authorized to examine claims for compensation are civil courts and civil judges. While the Criminal Procedure Code regulates issues related to criminal matters. With article 98 of the Criminal Procedure Code which combines lawsuits for compensation in criminal cases at the same time, then what is in the civil and criminal world can be brought together that was not originally subject to the Criminal Procedure Code, with article 98, the Criminal Procedure Code becomes regulated by criminal procedural law. This merger occurs at the request of the person who feels aggrieved.

Obstacle which occur in implementation demands change make a loss in case criminal is if party condemned (party which burdened obligation) as loaded in amar decision no with volunteer Fulfill his obligations for pay change loss to victim party.

6. SUGGESTION

It is necessary to hold socialization by conducting legal counseling about demands compensation in amalgamation, cooperation between universities with the department of justice, so that the public can know it.

To maintain a balance between the rights of the accused and the victim, the Criminal Procedure Code should not put article 100 paragraph (2). Even though the defendant has received his criminal or civil decision, the victim's right to appeal or cassation should be respected as appropriate in the legal process through a pure initial lawsuit. Regarding whether or not the victim's appeal or cassation is granted, it is left to a higher judicial level on the condition that the criminal case is not linked.

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