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CIVIL TORT LAWSUIT AGAINST TRAFFIC ACCIDENT CASES

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Article	Abstract
<p>Keywords: <i>Accident, Tort, UULLAJ, Lawsuit, Liability;</i></p> <p>Article History Received: July 15, 2023; Reviewed: July 19, 2023; Accepted: Aug 25, 2023; Published: Dec 10, 2023</p>	<p>In the contemporary landscape, traffic accidents stand as distressingly common events on our highways, carrying the potential to inflict significant harm on both individuals and property. Despite being frequent occurrences, traffic accidents can result in significant material and non-material losses. While the Criminal Code lacks specific regulations pertaining to traffic crimes, Law Number 22 of 2009 concerning Road Traffic and Transport (UULLAJ) addresses these issues. The research focuses on three main areas: 1) Unlawful Acts in Traffic Accidents, 2) Compensation as per Article 1365 of the Civil Code, and 3) the Settlement Process and Determination of Compensation. Through analysis of these key aspects, the study aims to provide insights into the legal framework surrounding traffic accidents and the mechanisms for addressing resultant damages within civil law.</p>

1. INTRODUCTION

Traffic accidents are one of the most frequent events on the highway that can cause great losses both materially and non-materially. Law enforcement against traffic accidents that occur between motor vehicle drivers and pedestrians in the Criminal Code is not specifically regulated about traffic crimes but traffic crimes are specifically regulated in Law Number 22 of 2009 concerning Road Traffic and Transport (UULLAJ). The focus of discussion in this research relates to traffic accidents involving motor vehicle drivers and pedestrians. Traffic accidents can be said to be a criminal offense because traffic accidents are one of the acts of

violation of traffic laws and regulations. Actions that originate from violations due to negligence can result in harm to others or oneself.¹

The question of legal liability for the perpetrator of a traffic accident who can be held responsible for his or her actions often arises in the context of civil law, in accordance with Article 1365 of the Civil Code (KUHPerdara). One of the bases of legal liability used to assess acts of violation of the rights of others is tort, which occurs when a person commits an act that directly causes harm to another person, such as an accident.²

Unlawful acts in Indonesia normatively always refer to the provisions of article 1365 BW. Mariam Darus Badruzama in the Draft Law (RUU) on Bonds attempted to formulate it as follows;

- 1) An unlawful act that causes loss to another person, obliging the person who through fault or negligence causes the loss to compensate for the loss.
- 2) Unlawful is any act that violates the rights of another person or is contrary to the propriety that must be respected in social intercourse against the person or property of another person; and
- 3) A person who deliberately does not do an act that he is obliged to do, is equated with a person who commits a prohibited act and therefore violates the law.³

This form of liability according to Article 1365 BW is a form of liability that emphasizes the factor of fault (liability based on fault). emphasizes the fault factor (liability based on fault), so that if this article is used as the basis for a lawsuit, then the injured party will be liable to the defendant. is used as the basis for a lawsuit, then the injured party has the obligation to prove the existence of the error that caused the loss. According to M.A. Moegni Djojodirdjo, the term "violating" only indicates one's active nature, while the term "resisting" includes both one's active and passive nature. prove the existence of an error that caused the loss⁴

In tort action In tort, the requirement applies that in general the plaintiff must be able to prove that the loss suffered is the result of loss suffered is the result of an unlawful act committed by the defendant. committed by the defendant. This is in line with the provisions of Articles 163 HIR, 283 Rbg and 1865 BW.

¹ Iskandar T, Ganti rugi korban kecelakaan lalu lintas akibat perbuatan melanggar hukum pengemudi. (n.d.).

² Moegni Djojodirdjo, 1982, Perbuatan Melawan Hukum, Jakarta, Pradnya Paramita, Cet. II, hlm. 27

³ Munir Faudy, 2002, Perbuatan Melawan Hukum, Cet. I, Bandung, Citra Aditya Bakti, hlm. 76

⁴ Moegni Djojodirdjo, *Op.Cit*, hlm. 27

The Civil Code does not regulate in detail about specific compensation, or about one aspect of compensation, so a judge has the validity to determine the compensation according to the principle of propriety. Determine the compensation in accordance with the principle of propriety to the extent requested by the Plaintiff. The terms of the provision of damages for tortious acts are :⁵

- 1) The existence of a loss component
- 2) The starting point of compensation, is the existence of compensation at the time of default, that the debtor continues to neglect his obligations or if the performance is something that must be given since the expiration of the grace period in which the debtor can actually make or give the performance.
- 3) The loss is foreseeable, in this case the loss must be compensated by the perpetrator of the unlawful act, the loss incurred must be expected to occur or should be expected to occur in accordance with the unlawful act.
- 4) When the loss occurs, compensation is given if it is actually in accordance with what he has suffered and for losses due to loss of profit or income that the victim could have enjoyed.
- 5) Not by reason of force majeure, is a form of damages to the victim if the event that caused the loss is not classified as an act of force majeure.

Based on the Civil Code regulates that compensation for unlawful acts is divided into 2 (two) approaches, namely:⁶

a) General compensation

This general compensation is regulated starting from Article 1243-Article 1252 of the Civil Code, and applies to all cases, both tort cases and default cases.

b) Special damages

This special compensation arises from losses to certain obligations. In the Civil Code that the provision of compensation for things Namely:

- a) Compensation for all unlawful acts (Article 1365 of the Civil Code);
- b) Compensation for acts committed by other people (Article 1366 Civil Code and Article 1367 Civil Code).
- c) Compensation for animal owners (Article 1368 of the Civil Code).
- d) Compensation for the owner of a collapsed building (Article 1369 of the Civil Code).
- e) Compensation for the family left behind by the person killed (Article 1370 of the Civil Code).

⁵ Munir Faudi, Op.Cit, hlm. 33

⁶ *ibid*, hlm. 136

Code). (Article 1370 of the Civil Code).

f) Compensation because the person has been injured or disabled limbs (Article 1371 Civil Code).

g) Compensation for acts of defamation (Article 1372 of the Civil Code - Article 1380 of the Civil Code).

2. RESEARCH METHODOLOGY

The research methodology uses qualitative normative legal methods with secondary data, meaning that it explores and provides deeper insights into real-world problems. The qualitative research method gathers participants' experiences, perceptions, and behavior. It answers the *hows and whys* instead of *how many* or *how much*⁷⁷. This approach helped to explain the complexities of the case and provide a comprehensive understanding of the legal aspects involved. Qualitative normative legal research methodology involves interpreting and analyzing legal principles and norms to understand their application in real-life situations. The methodology involves a comprehensive analysis of legal texts, relevant legislation, case law, and other legal sources to derive insights and conclusions. It aims to provide a theoretical understanding of the legal framework surrounding a particular issue or case. The qualitative normative legal research methodology with secondary data enables investigators to thoroughly examine the legal aspects of the Juliari Batubara case. The analysis involved a thorough examination of Law No. 31/1999 on the Eradication of Corruption and related regulations to comprehend the legal framework concerning corruption offenses. Additionally, investigators reviewed past corruption cases to ascertain the possible legal repercussions for the defendant.

Secondary data plays a crucial role in the methodology of qualitative normative legal research. It refers to information and data that already exist and has been collected by others for different purposes. In the investigation of the alleged corruption case of Juliari Batubara, secondary data sources such as relevant literature on the discussed topic, including legal literature (law books) written by influential experts (*de hersender leer*), were utilized. Scholars' opinions, legal journals, non-legal literature, and internet articles were used to gather relevant information and support the analysis. Valuable insights into specific charges against Juliari Batubara were obtained from secondary data collected from court records and legal journals. This enables investigators to assess the evidence and determine the validity of the defendant's actions. By examining the legal text and precedents, researchers can determine the legal basis for the

⁷ Steven Tenny; Janelle M. Brannan; Grace D. Brannan. Qualitative Study, StatPearls, Treasure Island (FL), 2022, [1] accessed on 19 December 2023

charges brought against Juliari Batubara and assess the strength of the case.

3. DISCUSSION

3.1 Unlawful Acts in Traffic Accidents.

Civil wrongful conduct is an act or omission that harms another individual without the need for a prior legal connection; this responsibility is directed toward all individuals and, should it go unfulfilled, might result in a compensation claim. A tort is referred to as **onrechtmatige daad** in civil law.

According to the Civil Code's Article 1365, Unlawful Acts include:

Any illegal act that injures someone else entails a duty on the part of the one who inflicted the harm—if it was his fault—to make amends.

According to the explanation previously provided, a civil tort must contain the following elements: a tort must exist; blame must exist; there must be a causal relationship between the act and the loss; and there must be a loss.⁸⁸

Aiming to achieve safe, smooth, orderly, comfortable, and efficient road traffic and transportation, as well as integrating other transportation capital, reaching every corner of the land area, supporting equitable growth and stability, and acting as a driver, driver, and supporter of national development, vehicles, and drivers are some of the key components of road transportation. Accidents still happen no matter how hard traffic is to be secure, smooth, and orderly. An accident is a bad situation that affects the driver, other passengers, and pedestrians.

Traffic accident victims must be held legally responsible because it is evident that they may face legal repercussions. Drivers are the main focus of discussion in traffic accidents. The reason for this is that the driver's actions bear the responsibility for any civil liability that may come from the traffic collision, for both the driver and other parties. These other parties work as employers in public transit.

⁸⁸Renata Christha Auli, S.H. and Hukumonline (no date) Perbedaan Perbuatan Melawan Hukum Dalam Hukum Perdata Dan Pidana, Pusat Produk & Jasa Hukum Terpercaya di Indonesia. Available at: https://www.hukumonline.com/klinik/a/perbedaan-perbuatan-melawan-hukum-dalam-hukum-perdata-dan-pidana-lt5142a15699512?utm_source=website&utm_medium=internal_link_klinik&utm_campaign=pmh_pidana_perdata#_ftn2 (Accessed: 25 February 2024).

According to Government Regulation No. 43 of 1993, it states that:

"A driver is a person who drives a vehicle or a person who directly supervises a prospective driver who is learning to drive a vehicle".

Collisions involving persons, property, and infrastructure are the usual result of traffic accidents. Losses to the individual struck, damage to the road's infrastructure and amenities, injuries to passengers or cargo being transported, and collisions between cars can all arise from a collision. As previously said, a tort arises when there is a loss and the resulting obligation on the part of the party who suffered the loss to make up for it. For this reason, a traffic collision that results in damage is classified as a tort (Onrecht matige daad).

3.2 Compensation According to Article 1365 of the Civil Code.

The Civil Code divides obligations derived from agreements and laws into two categories: obligations derived from laws due to human actions and obligations derived from laws due to human actions, where the article of tort is mentioned in Article 1365 of the Civil Code which reads "Every act that violates the law and brings harm to another person, obliges the person who caused the loss through his fault to compensate for the loss". According to M.A. Moegni Djojodirdjo in his book entitled *Unlawful Acts* (p. 102), there are several types of prosecution that can be carried out under Article 1365 of the Civil Code, namely:

- 1) Compensation for losses in the form of money;
- 2) Compensation for losses in kind or restoration of the situation to its original state;
- 3) A statement that the act committed is contrary to law;
- 4) Prohibition to perform an act;
- 5) To nullify something that was unlawfully done;
- 6) The announcement of a judgment or of something that has been corrected.

Therefore, money does not always have to be used to compensate for damages. According to a Hoge Raad decision dated May 24, 1918, a return to the original situation is the best way to compensate for the loss. In this case, restoring the situation is when the cafe asks the customer to replace the same item.⁹⁹

Loss in civil law can be divided into 2 (two) classifications, namely material loss and/or immaterial loss. Material losses are losses that are actually suffered. What is meant

⁹⁹Wahyuni, W. (2022, June 22). Tuntutan Ganti Rugi dalam Perbuatan Melawan Hukum. [hukumonline.com. https://www.hukumonline.com/berita/a/tuntutan-ganti-rugi-dalam-perbuatan-melawan-hukum-lt62b2c95064cfa/](https://www.hukumonline.com/berita/a/tuntutan-ganti-rugi-dalam-perbuatan-melawan-hukum-lt62b2c95064cfa/)

by immaterial loss is the loss of benefits or profits that may be received in the future. In practice, the fulfillment of immaterial loss claims is left to the judge, which then makes it difficult to determine the amount of immaterial loss that will be granted because the benchmark is left to the subjectivity of the judge who decides.¹⁰

3.3 Settlement Process and Amount of Compensation

The following can be used to demonstrate how compensation claims resulting from illegal activities are resolved:

- 1) In the case that the illegal act leads to a criminal act, the compensation claim may be included in the criminal prosecution. By merging the criminal case with an application for compensation, which is essentially a civil case and is typically filed through a civil lawsuit, the rights of victims of criminal acts are protected and the process of receiving compensation for the damages incurred is expedited. To achieve the concept of quick, inexpensive, and straightforward justice, the compensation claim case and the criminal case in question have been combined. This allows for the case to be reviewed and decided concurrently with the criminal case in question. Article 98 paragraph (1) of the Criminal Procedure Code (KUHAP) gives the Criminal Judge the authority to review and decide civil rights claims about compensation by merging them with criminal proceedings. This is a "tracee" that the legislator has opened in the Public Judiciary¹¹.
- 2) Compensation claims in tort proceedings may be brought by a lawsuit under civil procedural law, which is the standard legal process. Due process requires that those who bring lawsuits be given legal protection as they are the ones who submit the case to the court. The lawsuit essentially includes:
 - a) Parties' identities.

Name, address, place of residence, occupation, and other details that identify the plaintiff and defendant together constitute the parties' identification.
 - b) Two sections make up the *fundamentum petendi* or the basis of the claim: the one that details the incident or event and the section that describes the law.

The amount of damage produced is taken into consideration when determining the amount of material damage that must be compensated. Experts in the subject are typically consulted to make this determination. In the meanwhile, the judge may decide the amount of immaterial loss based on a feeling of justice, even when it is

¹⁰ Pengayoman, L. B. H. (2022, August 15). Apakah itu perbuatan melawan hukum? - LBH "Pengayoman" UNPAR. LBH "Pengayoman" UNPAR. <https://lbhpengayoman.unpar.ac.id/apakah-itu-perbuatan-melawan-hukum/>

¹¹ Law Reform, 3(2), 82. Wahyuni, S. (2010). Kebijakan Hukum Pidana Dalam Memberikan Perlindungan Hukum Terhadap Korban Tindak Pidana Kejahatan Dalam Sistem Peradilan Pidana Di Indonesia (Wahyuni, 2010).

hard to show. May 23, 1970, Supreme Court of the Republic of Indonesia Decision No. 610/K/SIP/1968, which establishes: Article 178 paragraph (3) HIR does not conflict with the judge's authority to decide how much compensation to award if the plaintiff continues to pursue his claim, even if the sum asked is deemed improper. Reducing the loss is the victim's obligation if it is feasible and reasonable.

4. CONCLUSION

In conclusion, civil tort lawsuits against traffic accident cases serve as a crucial mechanism for addressing unlawful acts and ensuring accountability for the resulting harm. As outlined, the Civil Code delineates the obligations arising from such acts, emphasizing the duty to compensate for losses caused by wrongful conduct. Traffic accidents, despite efforts to promote safety and orderliness on roads, inevitably occur, impacting drivers, passengers, and pedestrians alike. In these situations, drivers bear primary responsibility, as their actions can lead to civil liabilities for themselves and other involved parties.

The legal framework, including Government Regulation No. 43 of 1993, defines drivers' roles and underscores their accountability in accidents. The compensation process, guided by Article 1365 of the Civil Code, offers various avenues for restitution, encompassing financial reimbursement, restoration of the original state, and judicial declarations. Notably, the resolution of compensation claims may intersect with criminal proceedings, facilitating streamlined justice and protection for victims. Through civil lawsuits, the settlement process ensures due process, safeguarding the rights of both plaintiffs and defendants. Moreover, the determination of compensation considers both material and immaterial losses, with expert input and judicial discretion guiding the assessment. Ultimately, these legal mechanisms underscore the importance of accountability and restitution in mitigating the adverse effects of traffic accidents within the realm of civil law.

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