

Liability in Traffic Accidents as an Unlawful Act

Markus Suryoutomo¹, Husni Kurniawati², Amirah Dwi Subarkah³

msu.atlaw@untagsmg.ac.id¹, husni-kurniawati@untagsmg.ac.id², amirah-dwisubarkah@untagsmg.ac.id³

^{1,2,3}Universitas 17 Agustus 1945 Semarang

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Abstract

In criminal cases involving traffic accidents that result in fatalities, there is often an agreement between the victim or their heirs and the defendant (peace agreement). The content of the agreement basically states that after receiving monetary compensation from the defendant, the victim or heirs consider the accident as fate and will not pursue charges against the defendant. However, the settlement does not preclude the prosecution of the criminal case. Thus, the injured party in a traffic accident, once the criminal process is completed, can file a claim for compensation by the victim or the victim's family based on Article 1365 of the Civil Code. This research uses a normative juridical approach. Data collection and legal materials are gathered through the study of legal documents and legislation. According to Article 4 of Law Number. 34 of 1964 concerning the Road Traffic Accident Fund, road traffic victims who have received payment from the Life Insurance Fund do not forfeit their right to claim compensation from the cause of the accident or the party responsible for the actions that led to the accident. This can be done through a tort lawsuit by applying for material and immaterial compensation, provided that the amount they have received from PT. Jasa Raharja Loss Insurance is taken into account in determining the compensation to be paid.

1. Introduction

In the Big Indonesian Dictionary, an accident is defined as a misfortune or

distress. Meanwhile, the term "traffic" has a very broad meaning, encompassing movement on roads, air, water (including sea, shore, and river), and rail transportation.¹

In this discussion, traffic accidents are limited to incidents that occur on roads. According to Law Number 22 of 2009 on Road Traffic and Transportation, Article 1, point 3, the term "road" is defined as all parts of the road, along with complementary buildings and supporting facilities, intended for public traffic.

To prevent traffic accidents, laws and regulations govern how road users should behave. According to Law Number 22 of 2009, road users must adhere to the following prohibitions:

1. Violating signs and orders from officers.
2. Driving while intoxicated.
3. Driving without a license.
4. Driving at excessive speeds.
5. Using the road improperly.

Violations of criminal traffic laws can result in various types of accidents that cause losses. These accidents include not only collisions between motor vehicles but also between motor vehicles and other road users. They may also involve other incidents, such as passengers falling off a city bus or an intercity public vehicle going into a ravine.

In such situations, attention is typically focused on the punishment given to the perpetrator deemed at fault in the accident. The perpetrator, referred to as the defendant in criminal proceedings, is eventually brought before the court to be examined and have the court decide whether he or she was at fault in the accident and whether he or she can be held accountable for their actions.

Generally, victims are more concerned with the loss they have suffered and

¹ M. Karjadi, *Perundang-undangan Lalu Lintas & Angkutan Jalan Raya di Indonesia dengan komentar secara tanya-jawab* (Bogor: Politeia, 1976), p. 15.

expect to be reimbursed for that loss as quickly as possible. It is this issue – the civil aspect of traffic accidents – that is the subject of this paper.

Often, in criminal cases of traffic accidents that result in fatalities, a settlement agreement is made between the victim or their heirs and the defendant. The content of the agreement typically states that the victim or heirs, after receiving compensation from the defendant, consider the accident as fate and promise not to prolong the case by suing the defendant. On the other hand, the defendant must voluntarily provide compensation without coercion to help alleviate the suffering of the victim or heirs.

This compensation is usually provided by the defendant in the hope of reducing the sentence. For the victims or heirs, the compensation is a quick way to receive reimbursement for the losses suffered, although the amount is often far from adequate.

Peace agreements between the injured party and the defendant, as described above, are permitted by law. However, in accordance with Article 1853 of the Civil Code, such peace agreements do not preclude criminal prosecution. Therefore, what is meant by "will not prosecute the defendant" in the settlement agreement between the injured party and the defendant is that the injured party will not pursue civil litigation against the defendant.

What happens if the injured party feels that the amount received, in accordance with the settlement agreement made with the defendant, is not proportional to the loss suffered? Can the injured party still sue the defendant for the remaining amount of compensation?

Article 1858 of the Civil Code reads:

“Between the parties, a settlement shall have the force of a final judgment. The settlement cannot be challenged on the grounds of an error of law or on the grounds that one of the parties was prejudiced.”

Pursuant to Article 1858 of the Civil Code, the aggrieved party is bound by the contents of the settlement agreement made with the defendant, so they can no longer

sue the defendant for the remaining amount of compensation.

This is in accordance with the purpose of a peace agreement outlined in Article 1851 of the Civil Code, which serves as an agreement to settle a case being examined in court or to prevent the emergence of a new case. It is carried out by delivering, promising, or withholding goods, and is drawn up in writing by both parties.

What exactly motivates the injured party to enter into a peace agreement with the defendant, even though they realize that the compensation received is very small?.

Some base their consideration on the belief that compensation claims for traffic accidents can only be filed after the criminal verdict has been rendered and is legally binding. This implies a long and tedious process to obtain compensation for the losses suffered.

This opinion is incorrect, because according to Article 1918 of the Civil Code, the judge's decision in a civil case is not bound by a legally binding decision. The judge can still make a different decision if there is evidence to the contrary. Additionally, Article 1919 of the Civil Code stipulates that if a person is acquitted of a crime or offense, the acquittal cannot be used as a basis for filing a civil case in court regarding a claim for compensation.

Therefore, the injured party in a traffic accident, once the criminal process is completed, can file a compensation claim either by the victim or the victim's family.

2. Research Method

The method of approach used was normative legal research studied from the basic sitematics of adherence to a hierarchical legal structure to provide a legal opinion in the form of justification and is precritive.² Another approach used was the *Analytical Approach*. Therefore, normative legal research is studied from the basic systematic adherence to a hierarchical legal structure to provide a legal opinion in the form of

² Mukti Fajar and Yulianto Achmad, 2013, *Dualism of Normative and Empirical Legal Research*, Student Library, Yogyakarta, pp. 39.

justification and is precritical.³

3. Results and Discussion

1. Merger of Damage Lawsuit Cases

If the act that forms the basis of the indictment in a criminal case results in damage to another party, the Chief Judge may, at the request of the injured party, decide to merge the compensation claim with the criminal case, in accordance with Article 98, paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure. This article provides the injured party in a traffic accident the opportunity to request that the judge handling the criminal case also examine and decide on the compensation claim arising from the accident. According to Article 98, paragraph (2), the request to consolidate the compensation claim must be submitted before the public prosecutor presents the criminal charges, or, if a speedy trial is conducted, the request must be submitted before the judge issues a decision.

In addition to regulating the manner of filing a request to consolidate compensation claims, the Criminal Procedure Code also requires the court to consider its authority to hear the claim, the validity of the claim's grounds, and the compensation, which should only cover costs already incurred by the injured party (Article 99, paragraph (1)). Therefore, claims for costs that are yet to be incurred by the injured party (e.g., costs for an imminent operation), as well as immaterial damages, cannot be included in a consolidated compensation claim but must be filed separately in a civil lawsuit.

The institution of "consolidation of damage cases," in practice, sometimes does not produce the expected results for the injured party. In addition to the limited amount of compensation, the execution of the verdict, which often does not meet expectations, creates problems when the defendants in the criminal case are minors.

³ Mukti Fajar and Yulianto Achmad, 2013, *Dualism of Normative and Empirical Legal Research*, Student Library, Yogyakarta, pp. 39.

The defendant, who is a minor (still a child) in a criminal case, is automatically the defendant in a consolidated compensation lawsuit under Article 98 of the Criminal Procedure Code. If the defendant/respondent refuses or is unable to voluntarily comply with the verdict regarding compensation payment, which has legal force, a problem will arise regarding the execution of the verdict.

In the case of the AQJ case, this case is a traffic accident case. So, the regulation that is set aside is article 352 of the Criminal Code and special regulations apply to article 310 paragraph 4 of Law no. 22 of 2009 concerning Road Traffic and Transportation. From the above study it can be concluded that the law being treated is article 310 paragraph 4 of Law no. 22 of 2009 concerning Road Traffic and Transportation. In providing the size of criminal sanctions in cases of children under 16 years of age, provisions are different from the size of sanctions for criminal cases in general. This provision is regulated in article 47 (1) of the Criminal Code. The editorial of article 47 (1) of the Criminal Code is "if the judge imposes a sentence, then the maximum principal penalty for the criminal act is reduced by one third."

In this case, the perpetrator, namely AQJ, is 13 years old, so the total sanction given to AQJ in connection with this case is 4 years if the principal criminal sanction is decided. Apart from choosing which law to apply, you must also pay attention to how to criminalize the person. Regarding how to punish someone, you must pay attention to the purpose of the punishment. The aim of punishment is divided into 3, namely, absolute theory (*vergeldingstheorieën*), relative theory (*Doeltheorieën*), combined theory (*vereenigings theorie*).

Absolute theory (*vergeldingstheorieën*) focuses on viewing punishment or the purpose of punishment as revenge for someone who causes another person to suffer. Meanwhile, the relative theory (*Doeltheorieën*) focuses on looking at punishment or the purpose of punishment is the value of the benefits of the punishment, both to reform the perpetrator, prevent crime and community dissatisfaction. Meanwhile, combined theory (*vereenigings theorie*) is the union of

absolute theory (vergeldingstheorieen) and relative theory (Doeltheorieen).

When referring to article 310 paragraph 4 of Law no. 22 of 2009 concerning traffic and public transportation. In fact, the criminal sanctions formulated are for 6 years. AQJ himself had never committed any crime in his life before this incident occurred. And they have found an agreement to make peace from the victim towards AQJ through financing until they graduate from S1. Based on this, AQJ should be able to obtain Diversion. Surprisingly, the case was continued until it entered the prosecution stage and even reached a verdict.

2. Civil Lawsuit

The party harmed in a traffic accident has the right to claim compensation from the party whose fault caused the damage. The legal basis for filing such a claim is regulated in Article 1365 of the Civil Code, which states: "Any unlawful act that causes harm to another person obliges the person who, due to their fault, caused the harm to compensate for it."

Based on Article 1365, there are four elements that must be met for a compensation claim to be successful, namely:

a. Unlawful act

The law does not specifically provide a definition for a tort. However, based on jurisprudence in Indonesia (which also refers to the Lindenbaum-Cohen decision by the Hoge Raad on January 31, 1919, in the Netherlands), unlawful acts have four criteria, namely:

- 1) Actions that are contrary to the legal obligations of the perpetrator,
 - 2) Actions that violate the subjective rights of others,
 - 3) Acts that violate norms of decency, or
 - 4) Acts that are contrary to the principles of propriety, prudence, and the obligation to act with due care in relation to society or the property of others.
- In general, compensation claims filed by injured parties in traffic accidents are based on the first criterion, which is the violation of the perpetrator's

legal obligations as stipulated in written law.

b. Loss

Based on Article 1365 of the Civil Code, a claim for compensation can only be filed if actual loss arises from an unlawful act (violation of the law). If no loss is suffered, the injured party cannot claim compensation from the perpetrator of the law violation, such as a motor vehicle driver who continues to drive even though the traffic light in front of them shows red.

c. Fault

Fault is a requirement for the perpetrator of a tort to be liable for their actions. In general, a person who commits an act in violation of their legal obligations that causes a traffic accident can be considered at fault and, therefore, liable for their actions. However, in practice, this is not always the case. For example, with children who are still very young, it is not easy to determine whether there is an element of fault and, therefore, whether they can be held accountable.

d. Causal relationship between the act and the loss.

Loss is the final link in the chain of events that follow one another in a tort. Which event in the chain of events caused the loss? To determine the existence of a causal relationship between the act and the loss, several theories are known, namely:

1) *Conditio Sine Qua Non Theory (Von Buri Doctrine).*

According to this view, every event must be considered a cause. Each event acts as one link in a chain of causes that ultimately produces a certain result. Each of these events is a *conditio sine qua non*, i.e., a condition for the occurrence of the effect.

2) *Causa Proxima Doctrine*

According to this doctrine, only the last link in the chain of causes is considered the cause of the harm. This doctrine unduly limits the liability of

tortfeasors.

3) Adequate Theory

Loss is considered the result of an act in a chain that can be expected to cause loss. This means the loss was reasonably foreseeable (*het ontstaan der schade redelijkerwijze was te voorzien*). This theory of causality (*de leer van de toerekening naar redelijkheid*) is reflected in the decision of the High Court dated March 20, 1970, NJ 1970, 251 (*Waterwingebied*).⁴

The case stems from an oil tanker accident that caused 7,000 liters of oil to spill onto the ground in a water storage area near Leeuwarden. The water management company immediately took steps to prevent contamination of drinking water. When sued for damages, the tanker driver argued that he did not know he was in a water storage area (*voor hem niet voorzienbaar was dat hij zich in een waterwingebied bevond*). However, the High Court ruled that the driver was liable for the damages, as the water pollution resulting from the accident was not exceptional. Therefore, it was reasonable for the damages to be charged to the driver.

3. Personal Liability and Loss to Others

Article 1365 of the Civil Code stipulates that the party who commits an illegal act is obliged to bear the losses arising from their actions. Based on this provision, the perpetrator is personally responsible for their actions (*persoonlijke aansprakelijkheid*), so they are obliged to compensate for the losses caused by their mistake. In other words, the perpetrator's responsibility is also based on the element of fault (*schuld aansprakelijkheid*).

In addition to the element of fault, the act committed must also be attributable to the perpetrator. Article 44, paragraph (1) of the Criminal Procedure Code states that a person who is mentally disturbed or has a growth defect cannot

⁴ Mr. G.H.A. Schut, *Onrechtmatigedaad Volgens BW en NBW*, (Tjeenk Willink – Zwolle, 1995), p.89.

be held responsible for their actions and thus cannot be sentenced.

This reasoning removes the element of guilt (*schulduitsluitingsgrond*), in contrast to legal justification (*rechtvaardigingsgrond*), which removes the unlawful nature of an act.

Can an unlawful act committed by a person who is mentally ill (*geestelijk gestoorden*) be held liable? Most scholars are of the opinion that, due to the absence of the element of fault, such a person is not liable.⁵

Apart from personal liability as outlined in Article 1365 of the Civil Code, legislation also recognizes forms of liability imposed on parties other than the perpetrator of the tort. For example, Article 1367, paragraph (1) of the Civil Code states that a person is not only liable for losses caused by their own actions but also for losses caused by the actions of persons under their responsibility or by goods under their supervision.

According to Prof. Schut in his book *Onrechtmatige daad volgens BW en NBW* (p. 127), this provision serves as a bridge or introduction to the subsequent provisions, which regulate, in a limited manner, “who is responsible for whom.” Liability, as mentioned in the first case, refers to the liability of a person of a certain quality (*kwalitatieve aansprakelijkheid*).

This can be clearly seen in paragraph (2) onwards of Article 1367, which reads:

“Parents and guardians are liable for damages caused by minor children who reside with them and over whom they exercise parental or guardianship authority.

Employers and those who appoint other persons to represent them in their affairs are liable for damages incurred by their employees or subordinates in the performance of the work for which these persons are employed.

Schoolteachers and master craftsmen are liable for damages incurred by their pupils and apprentices during the time these persons are under their supervision.

The aforementioned liability is final, unless the parents, guardians,

⁵ Mr. P.A. Stein, et.al., *Klapper BW, Deel II, Verbintenissen en Bewijsrecht*, 1986, p. 88.

schoolteachers, or master craftsmen can prove that they could not prevent the act for which they are liable.”

In general, parties who are liable based on certain qualities (Article 1367 of the Civil Code) can only be held liable if their dependents commit unlawful acts.

A claim for damages filed by the injured party must refer to Article 1365 of the Civil Code. Since a minor child cannot act before the court, the claim is filed by the child's parents as representatives.

The main difference between these two grounds for claims is that in a claim under Article 1367, paragraph (2) of the Civil Code, the child's parents or guardians are given the opportunity to disculpate in accordance with paragraph (5).

As for the liability of schoolteachers and master craftsmen, according to paragraph (4) of Article 1367 of the Civil Code, it applies only as long as the pupils and apprentices are under their supervision.

The liability of employers and those who appoint others to handle their affairs, like the liability of parents, guardians, teachers, and master craftsmen, is based on the presumption of fault on their part. However, since employers and those who appoint others are not listed in Article 1367, paragraph (5) of the Civil Code, meaning they cannot defend themselves (*disculpatie*), their liability is at their peril (*risico aansprakelijkheid*).

According to Article 1367, paragraph (3) of the Civil Code, the employer (*werkgever*) is the first party liable for the fault of a subordinate, provided that there is a sufficient connection between the subordinate's fault and the task assigned to him.⁶

Thus, losses arising from traffic accidents due to the fault of the driver of a motor vehicle who is performing his duties are the responsibility of the employer.

⁶ Asser – Hartkamp III, cetakan kedelapan, W.E.J, Tjeenk Willink, Zwolle, 1990, p. 125 and 128.

The Supreme Court, in its June 22, 1988 decision Number 2559 K/Pdt/1986, ruled that the truck driver (defendant II) had committed a tort and ordered the employer (defendant I) to pay compensation to the plaintiff.

Similarly, if the car being driven is an official vehicle and the accident occurs during the course of carrying out duties, not for personal use, then the government, as the employer of the official car driver, is liable under Article 1367, paragraph (3) of the Civil Code. The boundary between carrying out duties and personal interests must be examined on a case-by-case basis.

What if the loss incurred is due to the fault of the driver of a public motor vehicle, such as a city bus, taxi, and so on? These public vehicles are generally driven by drivers who must pay a certain amount of money to the vehicle owner every day.

Some taxi owners only receive a fixed amount of money from the driver, without knowing the route or schedule of the taxi. In fact, the owner does not even pay attention if the taxi is not being operated by the driver, as long as the driver hands over the deposit to the owner.

Unlike taxis, city buses have schedules and travel routes that must be followed. Although the driver of a city bus is obliged to deposit a certain amount of money every day to the owner of the bus (whether an individual or a company), he is still not allowed to deviate from the schedule and travel route that has been determined for the bus. Therefore, the position of the city bus driver, even though there is no employment agreement between the owner/bus company and the driver, is subordinate (*ondergeschikte*) as intended by Article 1367, paragraph (3) of the Civil Code.

To whom is the claim made?.

According to Article 1367, paragraph (2) of the Civil Code, the claim can only be filed against A's parents. If A's parents are capable people, the realization of the compensation claim is not a problem. But what if A's parents are poor? Is it

enough for the court's decision, which already has permanent legal force, to be framed and hung in the victim's rented house? If the victim's parents had been able to file a claim against the owner of the car, as intended by Article 31 WvW – namely, B's father, who was so careless in placing the keys in the car that the children could easily use it – this would have alleviated the victim's suffering.

4. Liability for Damages Due to Unlawful Acts by Several Persons

If damages are incurred as a result of unlawful acts committed by more than one person, each perpetrator is liable for the entire loss. If one of the perpetrators pays the damages, the other perpetrators are relieved of the obligation to pay. However, the actor who has paid the damages has the right to demand a share of the payment (*regress*) from the other actors.

The injured party may sue all the liable persons but may also sue just one of them. The liability of this person does not depend on whether there are other liable persons besides this one.

Liability for the entire loss by each tortfeasor is not a passive form of joint and several liability, but rather a “*samenloop van verbintenissen*” (*concursum actionum*).

5. Loss and Compensation for Loss

The final link in the chain of traffic accidents, and the most important part for the injured party, is the compensation for the losses caused by the accident. Once it is determined who is responsible for the loss – whether the perpetrator himself is responsible (*persoonlijke aansprakelijkheid*) or if the responsibility lies with a person of a certain quality (*kwalitatieve aansprakelijkheid*) – and how much responsibility they bear, the question arises: which losses can be compensated and how much?.

In accordance with the purpose of Article 1365 of the Civil Code, which is to eliminate losses, all types of losses must generally be fully compensated, except in the case of immaterial (*ideële*) losses. However, due to limiting provisions, not

all losses are compensated in practice. This can be seen, among others, in the following cases:

- a. In cases of violations of personal integrity, such as injury, death, or humiliation, special provisions apply. Compensation must be assessed based on the position and economic conditions of both parties and the prevailing circumstances (Articles 1370, 1371, and 1372 of the Civil Code).
- b. In the event of death, the only form of damages that can be sought is compensation for the loss of maintenance that the survivors of the deceased would normally receive (Article 1370 of the Civil Code).

How to properly assess damages depends on the type of loss incurred and the satisfaction that can be provided. The simplest case is if the loss incurred is a reduction in wealth (*vermogensvermindering*), in which case the solution is reimbursement in the form of money. However, there are also interests that, in a dispute, may be demanded to be reimbursed in the form of reimbursement in kind (*natura*) or restoration to its original state, or the act of taking/eliminating the consequences of unlawful acts.

In a traffic accident, the loss arising from the tort can also be in the form of loss of wealth (*vermogensschade*), which includes damage to objects and people, as well as immaterial losses.

a. Loss to Property

Loss to property refers to the loss in monetary value caused by damage, destruction, or loss of property. This type of loss can also be classified as material loss, as the physical property is either damaged or lost.

Loss to property is not only a decrease in the value of the property but also includes indirect losses such as repair costs and the loss of expected profits. These losses, like other property losses, must be fully compensated, covering both direct and indirect losses.

Indirect losses caused by traffic accidents can be seen in the case of

Waterwingebied, as discussed in the Hoge Raad ruling dated March 20, 1970, NJ 1970, 251. The issue was whether the safety measures and the costs arising from them taken by the water management company to prevent damage to the water in the area were a direct result of the accident. The High Court ruled that the driver of the tank truck was liable for the losses suffered by the water management company.

b. Human Harm (Persoonsschade)

The law specifically regulates events such as the death of a person and the injury or disability of a limb caused by the actions of another person. Article 1370 of the Civil Code reads:

“In the case of an intentional killing or due to lack of care, the husband or wife left behind, the children, or parents of the victim, who usually receive their livelihood from the victim's work, have the right to demand compensation, which must be assessed according to the position and wealth of both parties, as well as the circumstances.”

Then, Article 1371 of the Civil Code regulates the cause of injury or disability to a person's body, whether intentional or due to negligence, giving the victim the right to demand reimbursement for the cost of healing, as well as for losses arising from the injury or disability. This compensation is assessed based on the position and capacity of both parties, as well as the circumstances. This provision is generally applied in assessing damages arising from crimes against persons.

Both articles limit liability, both in terms of who can sue for damages and what can be sued for in the event of bodily injury, disability, or death, as well as the amount of damages.

In the case of a traffic accident that causes death, Article 1370 of the Civil Code states that the parties entitled to file a claim for compensation are the victim's surviving spouse, children, or parents who usually receive

maintenance from the victim. Compensation that can be claimed includes losses due to loss of maintenance (*gederfd levensonderhoud*), the value of which is determined based on the position, economic conditions of both parties, and the existing situation.

According to settled jurisprudence in the Netherlands, the heirs of the victim mentioned above are not entitled to claim *smartegeld* (mourning money, immaterial compensation) for the death of the victim.⁷

In contrast to the jurisprudence in the Netherlands, Supreme Court Decision Number 2559 K/Pdt/1986, dated June 22, 1988, has provided compensation for immaterial losses in the form of the loss of the right to enjoy life due to the death of the plaintiff's husband/father of her children.

There are several things that can be concluded from the Supreme Court's decision:

- a. Western Civil Law (*Kitab Undang-Undang Hukum Perdata*) is used in handling claims for compensation for losses arising from traffic accidents between parties for whom customary law applies;
- b. Defendant I is liable for the damages caused by the negligence of Defendant II, who was a subordinate of Defendant I;
- c. The Supreme Court determined the compensation for the loss of livelihood normally received from the victim's work *ex aequo et bono*, taking into account the following matters:
 - 1) The family left behind by the deceased consisted of a wife and 7 children, all of whom were minors at that time.
 - 2) The salary of the deceased, who was a teacher, was Rp. 60,000 (sixty thousand rupiah) a month.

⁷ Mr. P.A. Stein – Mr. H.B.M.H.Boitelle, *Op.cit*, p. 103.

- 3) At that time, the widow of the deceased had no job, except as a farmer, according to the available evidence. It could be expected that the widow of the deceased would be able to earn a living as the head of the family after being abandoned by her deceased husband for 5 years.
- d. In addition to material damages, immaterial damages (due to the loss of the right to enjoy life with the death of the plaintiff's husband/father of her children) are to be determined *ex aequo et bono*;
- e. The compensation from PT. Jasa Raharja Loss Insurance received by the plaintiff is also taken into account as part of the amount of compensation she has received.

If a traffic accident causes injury or disability to the victim, Article 1371 of the Civil Code states that the victim is entitled to receive compensation for all material and immaterial losses suffered. The amount of compensation is determined based on the position, economic conditions of both parties, and the situation that occurred.

There are 4 loss factors that play a role in terms of the consequences of the injury, namely: healing costs, invalidity, loss of income, and “*smartegeld*”.⁸

c. Immaterial Loss

The law only provides for reimbursement of two types of immaterial losses: losses resulting from injury or disability to the body (Article 1371 of the Civil Code) and losses due to insult (Article 1372 of the Civil Code).

The characteristic of this form of loss is that for the injured party, immaterial loss does not constitute a reduction in wealth. Reimbursement in the form of money here means an addition to wealth, not compensation for the loss of wealth.

⁸ Ibid, p. 88.

6. Compensation in the Event of Fault on the Part of the Injured Party (*Eigenschuld van de Benadeelde*)

The fault or contributory fault (*eigenschuld/medeschuld*) of the injured party is an influential factor when determining liability for the loss incurred, so the obligation to compensate is limited to a part of the loss.

The issue of “medeschuld” and “eigenschuld” has only become jurisprudence in the Netherlands since the decision of the Hoge Raad on December 4, 1916, NJ 1916, 450 (*Treinongeval*).⁹

In that case, the Hof (High Court) determined that the pedestrian who was hit by a moving train was 50% at fault (*medeschuld*) because the person crossed the railroad track in an unsafe manner.

The Hoge Raad rejected the appeal and held that Article 1401 BW does not prohibit the judge from considering the facts, even though it is preferable, in the case of damages caused by the unlawful acts of several persons, to measure the obligation to compensate according to the degree of their fault in contributing to the damage.

Since that decision, it has been established that in cases of *medeschuld/eigenschuld*, the liability to compensate is limited to a part of the loss. However, if the *eigenschuld* of the injured party is so small compared to the fault of the perpetrator, then the perpetrator remains fully liable.

In Indonesian jurisprudence, considerations regarding *eigenschuld* have also been studied by judges in determining responsibility for losses resulting from traffic accidents. This is reflected in the Supreme Court Decision dated November 27, 1975, Number 199 K/Sip/1973, which states:

“The negligence of the driver of the plaintiff-appellant's own motorcycle

⁹ Mr. G.H.A. Schut, Op.cit, p. 202.

reduces the liability of the defendant-appellant for the consequences of the collision, so it is fair if the cost of repairing the plaintiff-appellant's motorcycle is charged to him for 1/3 of the cost and to the defendant-appellant for 2/3 of the cost."

(Summary of Jurisprudence of the Supreme Court of Indonesia II, page 60).

7. Jasa Raharja Loss Insurance

- a. Law Number 33 of 1964 on the Compulsory Insurance Fund for Passenger Accidents and Government Regulation Number 17 of 1965 regulating the Provisions for the Implementation of the Compulsory Insurance Fund for Passenger Accidents

The government recognizes that modern technological advances in social life add greater risks to accidents that occur without individual fault.

To deal with such risks, every citizen basically needs protection, especially for losses arising from such risks. This idea of social security, due to the economic and financial limitations of the government, is realized through a mechanism of mutual cooperation with the establishment of a fund. This fund is collected from mandatory contributions from passengers of public vehicles, trains, planes, and ships nationwide and is used to protect passengers from accidents that occur while using public transportation.

Based on this idea, Law Number 33 of 1964 on the Compulsory Passenger Accident Insurance Fund was enacted. This law regulates the relationship between the contribution payers and the fund manager, PT. Jasa Raharja Loss Insurance, appointed by the Minister in accordance with Article 8 of Government Regulation Number 17 and 18 of 1965. These regulations govern the legal relationship between the state company and legal passengers, including the rights, obligations, and guarantees of personal accident coverage for passengers. It also functions as a special law

that applies outside the scope of personal accident agreements.

In contrast to the definition of coverage according to Article 246 of the Commercial Code, which states:

“Insurance or coverage is an agreement by which an insurer binds himself to an insured by receiving a premium to provide compensation to him because of a loss, damage, or loss of expected profit, which he may suffer due to an unspecified event.”

Where the insurer who has compensated the insured, based on subrogation, can then claim it back from the perpetrator of the unlawful act that caused the loss, in the compulsory coverage of passenger accidents, PT. Jasa Raharja Loss Insurance, as an insurer who pays compensation for the coverage whose amount is determined by the Minister, does not replace the rights of passengers who suffer losses due to the accident (subrogation).

Although passengers have received compensation from PT. Jasa Raharja Loss Insurance, they still have the right to demand liability from the carrier or other parties deemed guilty. This is in accordance with Article 14 of Government Regulation Number 17 of 1965, which allows for claims under criminal, civil, or international law related to the accident.

- b. Law Number 34/1964 on the Road Traffic Accident Fund and Government Regulation Number 18/1965 on Provisions for the Implementation of the Road Traffic Accident Fund.

In line with the rationale behind the enactment of Law Number 33 of 1964, victims of traffic accidents involving motor vehicles and trains also require protection in the form of social security. The funds for this protection are derived from compulsory contributions by owners or employers of motor vehicles and are intended to provide protection to the general public who are not passengers for accidents caused by these means of transportation. This gave rise to Law Number 34/1964 on the Road Traffic

Accident Fund.

Under Article 4, victims who die or suffer permanent disability as a result of accidents caused by road transportation, such as motorized vehicles and road or rail transportation, are entitled to receive compensation in accordance with the provisions of government regulations. This right applies regardless of whether the victim was at fault in the accident. Compensation is provided through a fund managed by PT. Jasa Raharja Loss Insurance, except for the exceptions stipulated in Article 13 of Government Regulation Number 18 of 1965.

The amount of compensation, referred to as the “Fund payment” in Government Regulation Number 18 of 1965, is determined by the Minister (Article 11). Additionally, the payment of compensation to the victim does not eliminate the criminal or civil liability of the party at fault for the accident (Article 15 of Government Regulation Number 18 of 1965).

Thus, even though a road traffic victim has received a payment from the Fund, this does not deprive them of the right to claim compensation from the person or party responsible for the accident. The amount received from PT. Jasa Raharja Loss Insurance must be taken into account when determining the total compensation to be paid.

Conversely PT. Jasa Raharja Loss Insurance has the right to demand the return of compensation paid to the victim or the heirs from the owner or operator of the motor vehicle if the accident was caused by:

- 1) The vehicle is being driven by a person without a valid driving license;
- 2) The driver being under the influence of conditions such as illness, fatigue, alcohol, drugs, or other substances that impair driving ability;
- 3) Intentional violations of road traffic regulations; or
- 4) Failure to fulfill obligations stipulated in Article 2, paragraph (1), in conjunction with Article 3 of this Government Regulation.

However, such claims shall not apply if the owner or operator of the motor vehicle can prove that the accident occurred outside their responsibility or fault (Article 14 of Government Regulation Number 18 of 1965).

4. Conclusion

As with Law Number 33 of 1964, victims of road traffic accidents involving motor vehicles and trains also require social security protection. Funds for this protection are derived from mandatory contributions paid by motor vehicle owners or entrepreneurs and are used to protect the public at large. Law Number 34 of 1964 concerning the Road Traffic Accident Fund stipulates, based on Article 4, that victims who die or suffer permanent disability due to a traffic accident are entitled to receive compensation in accordance with the amount specified in the Government Regulation, either for themselves or their heirs.

Thus, even though a road traffic victim has received payment from the Fund, this does not preclude their right to claim compensation from the party responsible for the accident or the actions that caused the loss. The amount they have received from PT. Jasa Raharja Loss Insurance must also be taken into account when determining the total compensation to be paid.

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