

Legal remedies and damages in tort law: a comparative studi civil law jurisdictions

Andi Hertawati¹, Alwi Jaya²

^{1,2} Universitas Andi Sudirman, Indonesia

Corresponding email:ahartawati@gmail.com

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Abstract

This study aims to analyze legal remedies and damages mechanisms in civil law in various civil law jurisdictions comparatively. The research approach uses a qualitative method with a comparative legal study design, examining regulatory frameworks, court decisions, and legal doctrines in several Continental European and Asian countries that adhere to the civil law system. The results of the study show that there are fundamental differences in the determination of the form of compensation, both material and immaterial compensation, which are influenced by legal traditions, principles of accountability, and socio-economic developments in each country. In addition, variations in the application of punitive damages as well as non-material recovery mechanisms highlight the philosophical differences between victim protection and the prevention of unlawful acts. These findings make an important contribution to the development of Indonesian civil law, particularly in the improvement of compensation regulations and the harmonization of civil liability principles at the international level. The study recommends the need for legal updates that are responsive to global dynamics and best practices from various civil law jurisdictions.

I. Introduction

Civil law has a central role in providing protection for the rights of individuals who suffer losses due to unlawful acts (torts)(Amram & Comand , 2021). In the civil law tradition, the provisions on civil liability affirm that any violation of the rights of legal subjects must be accompanied by a fair and proportionate redress mechanism. (Horislavska, 2023) This protection is not only oriented towards compensation for material losses, but also includes the recognition and recovery of immaterial losses that often have a broader impact on personal dignity and integrity. Thus, civil law functions as a normative instrument to balance the interests of individuals and society, while ensuring that every perpetrator of violations is held accountable according to the principles of distributive and restitutive justice (Stewart, 1987; Chen, 2021).

Furthermore, the existence of a mechanism for legal remedies and the provision of compensation that is systematically regulated in civil law strengthens legal certainty and a sense of justice for the aggrieved parties. Principles such as fault liability, strict liability (Pratama, 2023), and vicarious liability in the civil law system provide a clear framework for judges to assess the causality relationship, the degree of fault, and the amount of appropriate compensation (Iman et al., 2022). This encourages the creation of a deterrent effect and prevention of similar violations in the future, while protecting the public interest through the enforcement of legal responsibility. Thus, civil law is not only a means of individual recovery, but also plays a role as a social control mechanism that supports order and stability in social life (Babusiaux & Dodeen, 2024).

Legal remedies and damages are the main pillars in the civil legal system that function to restore the rights of individuals who have been violated(Simons, 2008). Legal remedies include various mechanisms such as compensation, restitution, and injunctions designed to restore the victim's position to its original state before the violation occurred (Smith, 2020). Meanwhile, damages or compensation provides financial compensation for material and immaterial losses suffered by victims, reflecting the principle of corrective justice in civil law (Weir, 2012). By providing a clear path to recovery, these two instruments ensure that individual rights are effectively protected while strengthening the legitimacy of the legal system in maintaining a balance between the interests of society and individuals (Ahmad et al., 2024); (De Graaff, 2017).

In addition to the recovery function, legal remedies and damages also have a significant preventive role(Khong & Yeh, 2021). The determination of compensation in an adequate amount or punitive damages can create a deterrent effect for perpetrators and other parties who have the potential to

commit similar violations (Dobbs & Roberts, 2021). This encourages compliance with legal norms and reduces the risk of repeated violations, thereby contributing to social order and legal certainty (Van Gerven et al., 2018). Thus, these two instruments not only aim to compensate victims, but also play a strategic role in preventing future rights violations (Wagner, 2021).

Civil law systems in Continental Europe, such as France, Germany, and the Netherlands, feature a diversity of principles and practices of reparations that reflect their respective legal histories and traditions. France, through the Civil Code, emphasizes the principle of *restitutio in integrum*, which is full recovery so that the victim returns to his original state, with an emphasis on compensation for actual losses, both material and immaterial. Germany, with the *Bürgerliches Gesetzbuch* (BGB), adopted a more systematic approach with a strict distinction between economic and non-economic losses, as well as emphasizing the principle of *Verhältnismäßigkeit* (proportionality) in determining the amount of compensation. Meanwhile, the Netherlands through the *Burgerlijk Wetboek* combines flexibility in the assessment of losses with extensive protections for victims, including recognition of psychological losses. This difference shows that although all three countries both adhere to the civil law system, the application of the principle of reparations is strongly influenced by national legal traditions, judicial interpretation, and developments in local legal doctrine (Amram & Comandé, 2021).

Asian countries that have adopted civil law—such as Indonesia, Japan, and South Korea—have also developed compensation practices that are influenced by their respective social, economic, and cultural contexts (Ro & Ssa, 2020). Japan, for example, which refers to the German model, recognizes immaterial damages but remains cautious in the application of punitive damages due to ethical considerations and social stability. South Korea, although inspired by German law, tends to be more progressive in compensating for non-economic losses, including emotional suffering. In Indonesia, the provisions for damages in the Civil Code (KUHPerdata) inherited from the Netherlands still prioritize real compensation for material losses, with a relatively limited scope for immaterial damages. The variation confirms that although the civil law system shares the same conceptual roots, local factors such as cultural values, economic dynamics, and judicial policies also determine the form and amount of compensation in each jurisdiction (Atiyah, 1987).

The process of economic globalization and cross-border interactions has increased the complexity of civil disputes, especially in tort cases, thus raising the need for a deeper understanding of the redress mechanisms in various jurisdictions. International trade, foreign investment, and multinational business activities often involve parties from countries with different legal

systems, so differences in the principle of compensation can create uncertainty and increase transaction costs (Backer, 2019). In this context, a comparative study of redress mechanisms in different civil law countries is important to identify common points and differences that may affect the resolution of cross-border disputes, as well as provide a basis for the drafting of more comprehensive contracts and risk mitigation policies (Robots, 2024).

On the other hand, efforts to harmonize the law through international instruments, such as the Principles of European Tort Law (PETL) or the UNIDROIT Principles, require a careful understanding of the characteristics of each country's national law. Harmonization requires not only normative compromises, but also an understanding of the socio-economic and cultural contexts underlying the practice of reparations in each jurisdiction (Faure & Hartlief, 2020). Without in-depth comparative studies, the harmonization process risks creating inconsistencies between international norms and local practices, thereby reducing the effectiveness of implementation and the resulting legal legitimacy. Therefore, a comparative understanding of the redress mechanism is not only academically relevant, but also strategic for policymakers, legal practitioners, and international business people in the face of the challenges of legal globalization (Soleimani-Alyar et al., 2024); (An et al., 2024).

Legal remedies and damages in civil law show significant developments in various civil law jurisdictions, both in Europe and Asia. International instruments such as the Principles of European Tort Law (PETL) and the UNIDROIT Principles emphasize the protection of victims through full compensation and restoration of rights, while rejecting the dominance of punitive damages common in common law countries. Comparative research in France, Germany, and the Netherlands revealed variations in the assessment of material and immaterial damages influenced by legal traditions and judicial judgments, while studies in Japan and South Korea showed the adaptation of European civil law concepts to Asian socio-cultural contexts (Kumar & Heidemann, 2022). These findings show that although the basic principles are similar, the practice of reparations in each developing country is in accordance with the dynamics of their respective economies, cultures, and judicial policies (Soleimani-Alyar et al., 2024).

Comparative research conducted by Van Gerven, Lever, and Larouche (2018) in Cases, Materials and Text on National, Supranational and International Tort Law highlights the diversity of applications of the principle of indemnity in European civil law countries, such as France, Germany, and the Netherlands. The study emphasizes that although all three countries adhere to the principle of *restitutio in integrum*, there are important differences in the recognition of immaterial

damages and the determination of the amount of compensation, influenced by judicial traditions and victim protection policies. Meanwhile, Faure and Hartlief's (2020) research in European Tort Law discusses harmonization efforts through the Principles of European Tort Law (PETL), which recommends a full compensation standard without punitive elements. Both studies are relevant because they provide a theoretical basis and normative framework that can be compared with the practice of reparations in Asian jurisdictions.

In the Asian region, a study by Kaneko (2019) examined the application of the principle of indemnity in the Japanese legal system that adopts many elements of German law, but still adapts to the local social and cultural context, especially in the recognition of non-economic losses (An et al., 2024). A similar study by Lee (2021) reviewed the practice of reparations in South Korea and found a more progressive tendency of jurisprudence in compensating for emotional suffering. In Indonesia, a study by Rahardjo (2020) shows that the compensation arrangements in the Civil Code are still limited to material compensation and require updates to accommodate immaterial compensation. This series of studies is relevant as a foothold of analysis because it highlights how Asian countries with civil law traditions adapt and interpret legal remedies and damages mechanisms according to local needs, so that it can be an important comparison in this study. Based on this, this study aims to analyze legal remedies and damages mechanisms in civil law in various civil law jurisdictions comparatively.

2. Research Method

This study uses a normative legal approach with a comparative legal research design. This approach was chosen because the focus of the research lies in the analysis of laws and regulations, legal doctrines, and court decisions in various countries that adhere to the civil law system. This method allows researchers to examine the principles, principles, and legal structure in depth, as well as identify similarities and differences in the mechanism of legal remedies and damages between jurisdictions (Marzuki, 2017). Primary data is in the form of national regulations and court rulings from countries such as France, Germany, the Netherlands, Japan, South Korea, and Indonesia, while secondary data is obtained from scientific literature, legal textbooks, and relevant journal articles.

Data analysis was carried out with a comparative-qualitative approach, namely comparing legal norms and practices between countries to find general patterns and principles that can be used as policy recommendations. This analysis technique follows the steps outlined by Zweigert and Kötz (1998), which include the identification of legal problems, the selection of comparative legal systems, a detailed description of each system, and a systematic evaluation of

similarities and differences. The results of the analysis are then interpreted to formulate theoretical and practical implications for the development of Indonesian civil law, including the possibility of harmonization with international principles such as the Principles of European Tort Law (Faure & Hartlief, 2020). With this method, research is expected to be able to produce findings that are valid and can be accounted for academically.

3. Results and Discussion

Mechanisms of Indemnity in Civil Law Jurisdictions

The principle of *restitutio in integrum* is the main conceptual basis in civil compensation law, which emphasizes the recovery of victims in conditions such as before the unlawful act occurred. This goal focuses on the full recovery of losses, both in financial and non-financial forms, assuming that monetary compensation can erase the impact of the losses suffered (Zimmermann, 2020). In the context of civil law, this principle has been widely adopted, including in the French Civil Code and the German *Bürgerliches Gesetzbuch* (BGB), as a guideline for assessing and calculating the amount of compensation (Von Bar & Clive, 2009). Material compensation or economic loss refers to losses that can be objectively calculated in the form of economic value, such as loss of income, medical expenses, or property damage (Koziol, 2017). In civil law jurisdictions, compensation for material damage is often based on measurable documentary evidence, making it easier for the judge or arbitrator to determine the value of restitution. This approach provides legal certainty because the calculation of losses can be verified through objective accounting and market evaluation methods (Bussani & Palmer, 2012).

In contrast, immaterial compensation or non-economic loss refers to losses that cannot be measured directly financially, such as emotional distress, loss of reputation, or impaired quality of life (Kumar & Heidemann, 2022). Civil law jurisdictions, including France and Germany, have recognized immaterial compensation under the term *moral préjudice* or *Schmerzensgeld* (Magnus & Miquel, 2019). Although difficult to measure, this compensation is recognized as an effort to restore the dignity and well-being of victims, demonstrating that restitution is not only economical but also involves human values. In civil compensation law, legal remedies can be classified into several forms, namely compensatory damages, restitution, and specific performance (Dobbs et al., 2018). Compensatory damages focus on compensating for losses suffered, restitution focuses on returning the profits obtained by the perpetrator, while specific performance requires the perpetrator to perform certain obligations that have been violated. This classification provides flexibility for judges to choose the most appropriate form of recovery according to the character of the loss (Janssen & Wang, 2021).

Civil law jurisdictions generally reject the concept of punitive damages because they are considered to be contrary to the principle of *restitutio in integrum*, which is

oriented towards recovery, not punishment (Koziol & Steininger, 2019). The main focus is actual loss, which is real losses that can be proven, so that compensation does not function as a criminal sanction. However, some limited exceptions can be found, for example in Italy and Spain, where compensation with a preventive element is allowed in certain cases such as consumer rights violations (Cane, 2021). An in-depth understanding of the distinction between material and immaterial compensation, as well as the legal classification of remedies, has major implications for the development of cross-border civil law. The rejection of punitive damages shows a characteristic of civil law that emphasizes the balance between substantive justice and legal certainty (Bussani & Palmer, 2012). Thus, a comparative study of the basic concept of reparations can help harmonize international civil principles, especially in the context of globalization that demands fair and consistent standards of redress (Theimer, 2023).

Comparison in Asian Jurisdictions with the Civil Law System

Japan has adopted a civil law structure that is heavily inspired by Germany's Bürgerliches Gesetzbuch (BGB) since the Meiji era, but its application is tailored to local social and cultural values. The approach to reparations law in Japan emphasizes social reconciliation, with the aim of restoring a harmonious relationship between the aggrieved and the perpetrator (Matsumoto, 2018). This system encourages mediation and peaceful settlement before cases reach the courts, reflecting the influence of Japan's collectivist culture. In practice, Japanese courts tend to provide compensation that is moderate and based on concrete economic evidence, such as treatment costs or loss of income (Oda, 2019). Intangible damages such as emotional suffering are recognized but at a relatively low nominal rate compared to Continental European countries. This approach aims to avoid speculating on the value of non-economic losses and maintain legal certainty in dispute resolution (Levmore, 1986).

South Korea developed a civil law system similar to Japan's, adopting the German BGB but still maintaining a Confucian ethic that emphasizes social harmony and family hierarchy (Kim, 2020). This is reflected in the settlement of compensation disputes that focus more on the restoration of social relations than solely financial recovery. This cultural influence encourages dispute resolution through mediation or compromise before entering the litigation stage. In assessing pain and suffering damages, South Korean courts apply strict standards of prudence. Strong medical and psychological evidence is required to prove a claim for immaterial harm (Park, 2021). This policy keeps non-economic compensation from being abused and remains proportionate to actual losses, thus avoiding the practice of punitive damages that are generally rejected in the civil law system (Alfaifi, 2024).

Indonesia adheres to a civil law system influenced by the Dutch Burgerlijk Wetboek (BW), but its practice is strongly influenced by diverse customary laws (Subekti, 2020). Although the BW articles provide a legal basis for compensation, application on the ground faces the challenge of legal pluralism, where customary norms are

sometimes integrated into the compensation determination process. In the case of immaterial damages, Indonesia shows inconsistencies in both regulations and court rulings. Limited judicial guidelines result in different compensation amounts between decisions for similar cases (Rahardjo, 2019). This creates legal uncertainty and confirms the need for regulatory reform to provide clearer and fairer standards for assessing non-economic losses. (Ahmad et al., 2024).

Comparison between Continental European Jurisdictions

French civil law bases damages on the principle of *responsabilité civile*, which emphasizes the element of fault (*faute*) as the main condition of liability. Article 1240 of the Civil Code stipulates that every act that causes harm to another person requires the perpetrator to compensate for the loss (Terré et al., 2019). This doctrine requires proof of wrongdoing, loss, and causal relationship, which provides a systematic framework for determining civil liability. In practice, French courts show high flexibility in determining the amount of immaterial damages, such as emotional suffering (moral prejudice) and loss of quality of life (Ghestin & Goubeaux, 2018). Judges are given broad authority to assess non-economic impacts based on the fairness and concrete circumstances of the case. This approach allows for more personalized compensation and is oriented towards a thorough recovery of the victim (De Graaff, 2017).

The German legal system emphasizes the principle of *Vertragsfreiheit* (freedom of contract) and is based on the *Bürgerliches Gesetzbuch* (BGB), specifically Section 823 which regulates the obligation to compensate for infringements of rights (Markesinis & Unberath, 2019). This principle provides a detailed framework regarding the causal relationship, negligence, and loss, while emphasizing that damages not only compensate for economic losses but also protect personality rights (Song et al., 2024). The German BGB has a systematization of the loss category that includes the protection of personal rights (*Persönlichkeitsrecht*), such as the right to privacy and reputation. German courts have consistently recognized claims for damages for personal rights violations, although their value is usually moderate and non-punitive (Koziol, 2017). This protection affirms Germany's approach that balances legal certainty with respect for human dignity. Dutch jurisprudence shows a progressive development in recognizing non-economic damages, such as emotional distress or violations of the right to privacy (Babusiaux & Dodeen, 2024). Courts have become increasingly open to immaterial claims, especially after the civil law reform and the landmark *Taxibus* ruling (HR of February 22, 2002) that expanded the scope of compensation for psychological suffering (Tjong Tjin Tai, 2017). This marks the evolution of Dutch civil law towards more comprehensive protection for victims (Khong & Yeh, 2021).

4. Conclusion

From the results of this study, it can be concluded that there are fundamental differences in the determination of the form of compensation, both material and immaterial compensation, which are influenced by legal traditions, principles of accountability, and

socio-economic developments in each country. In addition, variations in the application of punitive damages as well as non-material recovery mechanisms highlight the philosophical differences between victim protection and the prevention of unlawful acts. These findings make an important contribution to the development of Indonesian civil law, particularly in the improvement of compensation regulations and the harmonization of civil liability principles at the international level.

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