International Journal of Innovation, Creativity and Change. www.ijicc.net
Volume 15, Issue 3, 2021

Illegal Act Composition in Indonesia: a Study from Legal Responsibility Perspective

Krisnadi Nasution[a], [a]Faculty of Law, Universitas 17 Agustus Surabaya, Email: [a]krisnadin@yahoo.com

In Indonesia, composition of illegal act is always formulated based on Article-1365 of *KUHPerdata* (Code of Indonesian Civil Law) that shall meet the elements of: action violates the law, the existence of error or fault, the existence of loss and there is a causal relation between the action and the loss. On its development, such composition has undergone the changes, particularly the one related to the element of fault. In determining the fault element, it must be classified whether there is or there is not any illegal act which is absolutely determined by the liability principle implemented based on the applicable law.

Key words: *Illegal act Action, Fault, Legal Liability*

Introduction

Illegal acts are known in civil laws as *onrechtmatige daad* and in penal laws as *wederrechtelijk.* The present study on illegal acts is conducted from the civil law viewpoint.

Rosa Agustina (….) states that illegal acts (*onrechtmatige daad*) in Indonesia has normatively referred to The Civil Law Article No. 1365. The norm in this article is uniquely and distinctly formulated that it concerns more of the norm structure than a comprehensive legal stipulation, resulting in the need for constant materialization of the Article outside the Civil Law.

This viewpoint is in agreement with the illegal act composition, emerging from a simple and basic idea that whosoever commits illegal acts that cause damage to another person is obliged to compensate for the loss. This simple and basic idea is further formulated into a legal stipulation in The Civil Law Article No. 1365, which determines that any illegal act that causes damage to others requires the offender, whose fault causes the loss, to compensate for the loss. An illegal act as formulated in the The Civil Law Article No. 1365 must comply with the elements of unlawful Act , Fault, Damage and Causal Relationship between the deed and

damage. All elements of illegal act must be fulfilled, and if one of the elements is not fulfilled, then a related act cannot be qualified as an illegal act. The all element qualifications of an illegal act is a result of a long process in Indonesia legal practices, which is inseparable from the history of Indonesian law which is a legacy of the Dutch Colonial Government.

A comprehensive description of the qualification can be traced through three historical *Arrest Hoge Raad*, namely *Arrest Hoge Raad* January6, 1905 in Singer Naaimachine Case;*Arrest Hoge Raad* June10, 1910 in Zutphenese Juffrouw Case and *Arrest Hoge Raad* January31, 1919 in Lindenbaum vs. Cohen Case.

An illegal act has since referred not only to acts violating written laws, namely acts that are contrary to the legal obligations of the perpetrator and violate the rules of subjective rights of other people, but also actions that violate unwritten rules, namely rules governing decency, propriety, thoroughness and prudence that should be owned by a person in the association of life in society or against the property of citizens.

In the development of law in Indonesia, the illegal act norm structure is very likely to change, given the substance of each element is strongly influenced by the materialization of the legislation in force, in addition to other legal sources as exemplified through legislation in the field of environment and transportation.

Violation of the positive law in the field of environment and transportation adopts different legal material from the existing concept of illegal act (*vide* The Civil Law Article No. 1365). This concerns the question of legal responsibility that is closely related to one of the elements of illegal acts, namely: the element of fault, that in some cases it is considered as inexistent, even ruled out. In other words, a person may be qualified for liability (qualified of illegal act), without considering the person's guilt or innocence.

One might still recall the Surabaya-Singapore Air Asia QZ8501 Aircraft Accident on December 28th, 2014 which caused many casualties and losses. Prior to that, Sukhoi Superjet 100 Aircraft Accidentin West Java on May 9th, 2012 also caused many casualties and damage. One of the critical issues of the incidents in the Civil Law is the issue of compensation.

In various reports, the airlines (Air Asia and Sukhoi) stated that they would provide compensation (compensation) to the victims (heirs). At the time the statement was issued, there was no clarity about who was guilty of causing the disaster.

The developments are very interesting to study for the common practice has been that compensation payments have always been related to an illegal act (other than default). An act is qualified as illegal when it meets all elements of illegal act, one of them is fault.

Composition of Illegal Acts *vide* The Civil Law Article No. 1365

Illegal acts come into being with the principle that whosoever commitsan act that brings damage to another person is, due to his fault, obliged to compensate for the damage as stated in The Civil Law Article No. 1365.

The legal liability upon an act qualified as an illegal act can be charged with compensation payment when it fulfills the following elements: Act, Illegal, Damage, Fault, Causal relationship between the act and damage

The Act Element

The Act as the first element can be classified into two parts: deliberate or active act and negligence or passive/unintentional act.

An illegal act is initiallydefined only as an act that violates a person's legal rights and obligationsset out in the law alone,although there arestill rights requiring legal protection, and violation of a person's such subjective rights cannot be prosecuted in court.

Extended interpretation of illegal acts is accepted in court practices since the Dutch HogeRaad verdict on 31st January 1919, well-known as "Lindenbaum-Cohen Arrest". In the case, Lindenbaum who owned a printing companyfiled a lawsuit to Cohen who also owned a printing companythat Cohen had deceitfully attempted to obtain the secret of Lindenbaum marketing success, by giving bribes and promisesto Lindenbaum employees to divulge the company secret, causing loss to Lindenbaum.

For the loss, Lindenbaum sued Cohen on the basis of an illegal act. The case was reviewed at the *Arrondissement Rechtbank* in Amsterdam. The lawsuit was granted and Cohen was sentenced to pay for damages. Cohen did not accept the decision and appealled to *Hogerechthof* in Amsterdam. *Hof* dismissed the *Rechtbank* decision and rejected Lindenbaum's lawsuit. Lindenbaum did not accept *Hof*'s decision and filed an appeal to *HogeRaad*.

On January 31, 1919*HogeRaad* decided to overturn the *Hogerechthof* decision, *and granted* Lindenbaum's claim considering that Cohen had committed illegal act of "doing or not doing acting in violation of the rights of others, or contrary to the legal obligations of the person committing it himself, or contrary todecency or caution as appropriate in people's lives towards themselves or their properties."

The decision is an historical milestone in the success of the struggle to change a narrow stance against the notion of "unlawful acts", to become a widespread stand and view of the notion of unlawful acts. Originally interpreted as merely a violation of the law, it is now interpreted as

either doing or not acting in contravention of the conflicting legal obligations, morals, precautions, caution and justification applicable in the society.The publication of HogeRaad's verdict on January 31, 1919 opened up the widest opportunity for a person whose subjective right is violated and harmed by others to file a lawsuit.Unlawful acts are no longer interpreted as acts contrary to the laws governing the rights of a person only, but also interpreted as contrary to morality, precision, prudence and propriety that should be owned by someone in social interaction.

This change from the narrow to broadinterpretation, causing the increasing number of lawsuits on illegal acts, even in larger,individualistic cities, the friction occurring in inter-individual or group activities is often resolved by illegal act lawsuits in court. Most lawsuits, filed and processed through court, are not solicited individually but submitted together or combined with other matters.

In court practice, the legal subject in the lawsuit, whether as an offender or victim of an illegal act, may take the form of an individual or a legal entity, having its own legal standing, referred to as the plaintiff, while the other party is referred to as the defendant. If the subject is a private legal entity, such as a limited liability company, a foundation or cooperative, that in theory a legal entity is regarded as a person or person owning property separate from the property of its shareholders, then the right to represent a legal entity in case of dispute is the board specified in the statute of the legal entity.

One inevitable element to determine an illegal act is the damage to another person. Although an act has met the criterion as an illegal act, withoutitcausingdamage to another person, then it will not foster the right to demand compensationfor those who are harmed.

The definition of damage is obviousand needs no further explanation among civil law experts due to its inclusion in The Civil Law Article 1243 consisting of cost (*konten*), loss (*schaden*)and profit (*interesen*).

In the Indonesian dictionary by Suharso and Retnoningsih, loss is defined as: "getting something that is unfavorable or with no benefit". This definition explains that someone will suffer loss when one gets something unfavorable or with no benefitfor themselves. The concept of compensation in civil law is divided into 2 forms: Compensation for defaults and Compensation for illegal acts.

The Illegal Acts

Compensation for illegal acts known in legal practice may take the following forms : Nominal Damages, Compensatory Damages Punitive Damages. In the case Nominal Damages of any serious offense, such as an act which contains intentional elements but does not incur a real

loss to the victim, the victim may be given a certain amount of money in accordance with the sense of justice without counting the actual loss. This is called nominal damages. Compensatory damages constitute payment to the victim over and at the actual expense suffered by the victim from illegal acts. Therefore, such compensation is also called actual compensation. For example, compensation for all costs incurred by the victim, loss of profit, pain and suffering, including mental suffering such as stress, shame, reputation loss, etc. Punitive damagesconstitute a substantial indemnity that exceeds the amount of actual loss. The amount of compensation is intended as a punishment for the perpetrator. Such punitive damages are reasonable to apply to severe or sadistic cases of intent, for example, in cases of severe inhuman maltreatment of a person.

The Damage Element

Damages are an inevitable element of illegal acts, without which there can be no illegalacts. The loss suffered by a person due to an illegal act entitles him to claim for compensation. Compensation in illegal act is not specifically regulated in terms of types and amount, as well as compensation in the act of default, which consists of fees (*kosten*), loss (*scaden*) and profit (*interesen*), as stated in The Civil Law Articles 1345to 1347,complicating the determination for the amount of compensation.

Regarding damages caused bythis illegal act, the Dutch HogeRaad Decision in the HR Arrest June 23, 1922 argued: "... [the law] regarding the compensation for the loss in the default act, cannot bedirectlyimplemented, but to allow for the possibility of an analogical application."
In Indonesia there has been no single institution officially recognized as an appraisal agency with the authority to assess material losses, so it is difficult for judges to assess and grant the amount of material losses demanded by a person. In judicial practice, the form of loss a person can demand includes both material and immaterial loss. Criteriafor the amount of the material loss are uncertain and difficult to determine, and one of the guidelines for determining the value of this immaterial loss is the person'sstatus or socialposition.

A person's high social status determines appreciation of him, yet regardless of appreciation to the person being sued, the judge will determine based on the principles of propriety, decency and justice. In the civil law that regulates illegal acts, a person is not only obliged to compensate as a result of his own actions, but is also liable for damages incurred by others, including Parents towardstheir underage children, and a guardian towards the person under his/her guardianship, a teacher to his/her students, an employer to his/her employees, a person against animals under his/her power

The Fault Elements

Faults have been an important element to determine that a person is accountable for his/her deeds. In criminal law,fault becomes the determinant element for a sentence. The credo in criminal law teaches a legal principle of "no conviction without finding fault" (*geenstraffzonderschuld*) which is a general principle that must be adhered to and implemented in the criminal justice process.

This principle means that even if a person has been convicted of a crime, but when there is no evidence of an offense, then he cannot be held accountable of the act and he is not punishable. Moeljatno prefers a rather long formulagiven by Simons about the offense in criminal law which is defined as a certain psychological state of the person committing a criminal act and the existence of such a relationship with the act done so, that person may be reproved for the deed. This formula illustrates the existence of a person's inner state and a certain relationship between the inner state and the act that is done to cause reproach.

The embodiments of the two elements in a criminal act committed by a person are, the act is either done deliberately or with negligence. Deliberateness is defined both as certainty and possibility, in order to protect the security and the well-being of one's body and soul from the attacks and threats of others.

Fault as an element of illegal acts has no extended interpretationin the Civil Codeas it does in the doctrine of Criminal Law, although for this illegal act a person is liable for illegal deeds due to negligence or lack of caution.

The fault proves the relationship between the consequences of loss with the unlawful actions of others. However,it is not basically interpreted as the relationship between the inner state of the perpetrator and the deed. Still, if someone commits an illegal act under the pressure(*overmacht*) from another person, he cannot be liable for the fault.

The Indonesian Civil Law Article 1323

The Indonesian Civil Law Article 1323 grants rights to those who enter into agreements due to coercion to cancel the agreement, while the Indonesian Criminal Code Article 48 states "whoever commits an act because of the influence of force is not convicted". If the relationship between actions and their consequences remains questionable, the form of the relationship in question is a physical relationship. While the measure used to determine the existence of the relationship is a general or objective view. The emergence of the teaching about fault is closely related to a person’s liability for the consequences of his deeds to others that cause damages.

In the doctrine of illegal acts, not only that a person can be sued for damages due to actions

caused by his own faults, but also faults caused by the actions of certain people who are under his responsibility--such as parents are responsible for the actions of their underage children, teachers of their students, employers of their laborers, owners of their animals--, such an accountability is called "liability" (*aanprakelijkheid*), and is categorized as vicarious liability, as recognized and regulated in the Indonesian Civil Law Articles 1367 to 1369.

The principle of responsibility regulation in the Articles should be selectively case-sensitively implemented in order to obtain maximum results in the prosecution of the indemnification process. Any mistake in the use of the Articles as a legal basis will result in the compensationclaim not being granted.

Causal relation between the act and damage

Causal relationships are very important in the discussion of illegal acts, because this is related to the responsibility of someone who has committed an act and caused damage to others. For a person to be accountable for the actions, s/he must have a certain form of relationship with the consequences of the damagehe caused.

The formulated forms of causation relationship include a causation in fact(or the fact), a probablecausation(or proximate) and too remotecausation (Fuadi, 2005).

According to Munir Fuady, causation in fact is only a matter of “fact.” Any cause of damage can become causation in fact, provided the damage (result) will never exist without the cause. The law of this kind ofillegal acts is often called the "*but for"* or *"sine qua non*" law. Von Buri is one of the conservative European lawyers who strongly support this causal doctrine.

The determination of the factual causation ismore difficult in multiple causes rather than that in a single cause. The determination is not simple either, since each act has its own part or portion of responsibility according to the quality of its consequences. The causal relationship in illegal acts may comprise both factual cause and a probable or predictable or proximate cause. According to Munir Fuady, the predictable causality relationship means:"accountability for actions that cause predictable outcomes," and placing the predictable suspect element or forseeability as the main factor.

A clear understanding ofthe predictable causal theory is Mexger’s theory of "*inkaufnehmen*" which Moeljatno translates into the theory of "what can one do" to mean "the effects or circumstances known to be likely to be disapproved, but to achieve the intentions, the risk of the occurrence of consequences or circumstances in addition to their intentions is accepted ".

For an illegal act to exist, the occurrence of damage must have a causal relationship with the act, meaning that the damage is a direct result of one's act. The Civil Law determines the causal

relationship between the consequences of damage and a person'sact in a simple way,when compared to the more complicated and extended application of the causal relationship theory in the Criminal Law, yet deeper and more extended consideration of the causal relationship is necessary in the case of the occurrence of damages caused by more than one single act.

Legal Liability in Illegal Acts

The Comprehensive Indonesian Dictionary (KBBI) defines liability as the obligation to bear everything and if something goes wrong onemay be prosecuted, blamed, and charged. In the legal dictionary, liability is a person's obligation to carry out what has been obliged to him. Regarding legal liability Purbacaraka believes that: legal liability arises based on the use of facilities in the application of the ability of individuals to exercise their rights and/or carry out their obligations. Thus, every implementation of obligations and any use of rights, either inadequately or adequately done, must basically be accompanied by accountability, as well as the exercise of power (Purbacaraka & Aditya, 2010).

Peter Salim divides responsibility into 3 (three) major groups, namely: accountability, responsibility, and liability. Accountability is usually related to issues of financial responsibility or bookkeeping (Black, 2003). Responsibility can be interpreted asto share the burden, have the obligation, the obligation to improve (Martono, 2010). Liability means to bear all losses that result from certain actions (Salim, 1985). Liability can also mean the obligation to pay for the losses, for example in the field of transportation; the carrier is responsible for the passengers' safety. Therefore, in the event of loss sufferred by the passengers, the carrier shall be liable of paying compensation.

Peter Mahmud Marzuki translates liability from *aansprakelijkheid*, a specific form of legal liability in the civil law. The definition of liability refers to the position of a person or a legal entity that is deemed to have to pay compensation after a legal event.

Legal liability according to the civil law is the responsibility of a person for his actions that are unlawful, causing harm to others. Based on Peter Mahmud Marzuki's definition, the obligation to pay compensation is carried out after the occurrence of a legal event, the legal event in question is an event indicated to qualify as an illegal act. The obligation to pay compensation is a manifestation of legal liability to be fulfilled as long as it meets the required qualifications to be legally responsible.

As stated in the previous section, the norm formulation in the Civil Law Article 1365 is more of a norm structure than the substance of a comprehensivestipulation of the law. This resulted in the substance of the Article always requires materialization outside the Civil Law. For an event to be qualified as an illegal act, all elements of illegal acts (the 5 elements: act, illegal,

fault, damage and causality) should be fulfilled. One of the 5 (five) elements is the element of fault.

Materialization of the elements of fault in the doctrine of legal liability is not something that must always be fulfilled. Some laws and regulations in Indonesia impose legal provisions that exclude this element. An act or event can be burdened with the obligation to be responsible and then pay compensation, without considering any existence or absence of fault. The existence of the element of fault as a condition for liability is largely determined by the principle of responsibility that is used under the provisions of the applicable law. This is in accordance with E. Saefullah Wiradipradja in one of his writings on air transportation: that the central point of each discussion of the transporter'sresponsibility generally lies in the application of liability principle.

There are two principles of liability adopted in the positive law in Indonesia. There are *Liability Based on Fault Principle* and *Liability Without Fault Principle*. The Liability based on fault principle can be divided into several principles, including Fault Liability Principle and No Fault Liability Principle

1) *Fault Liability Principle in Narrow Sense*.

This principle can be seen in Law no. 22, 2009Article 234 section (1) on Road Traffic and Transportation, which specifies that: Motorists, Motor Vehicle Owners, and/or Public Transport Companies are responsible for losses suffered by Passengers and/or owners of goods and/or the third party due to Driver's negligence.

This Article formulates the application of the liability principle based on faults (the narrow sense), where the carrier must be responsible for the losses suffered by passengers, shippers/recipients or third parties, due to his fault in carrying out transport (Soedjono, 1980). The element of fault in this principle is a central issue to be considered, when it comes to claiming the liability of the carrier. Carrier liability is initiated with a conception of the obligation of the carrier to carry the transport to the destination safely (Purwosutjipto, 1987). If the operation of the transport does not survive and incurs any loss to the passenger, the sender/recipient of the goods or any third party, then the carrier may be liable for the loss. The claim to liability of the carrier for such loss under this principle of fault liability may be met if the loss is caused by the fault of the carrier in carrying out the transport.

2) *Presumption of Liability Principle*.

This principle can be seen in Law no. 17 of 2008 Article 40 on waters transportation, which states that:

(1) Waters Transport companies are responsible for the safety and security of passengers and/or the goods they transport.

(2) Waters transport companiesare responsible for the cargo of the vessel in accordance with the type and amount stated in the cargo document and/or the agreed transport agreement or contract.

Furthermore, Law no. 17 of 2008 Article 41 on waters transportation determines that: (1) The responsibilities referred to in Article 40 can be the result of the ship operation, include:

a. death or injury of the passengers being transported;
b. destruction, loss or damage of goods being transported;
c. delay in transporting passengers and/or goods; or
d. third party losses.

(2) If evidencecan be provided that the losses as referred to in subsection (1) letters b, c, and d are not caused by its fault, the waters transport company may be partially or fully acquitted from its responsibilities.

(3) Waters transport companies are obliged to insure their responsibilities as referred to in subsection (1) and carry out basic protection insurance for public passengers in accordance with the provisions of the legislation.

According to Wiwoho Soedjono, the liability principle based on the presumption of guilt is that the carrier shall be liable for damages suffered by passengers, shippers or third parties, unless it can prove that the carriage has been properly conducted.

Wiwoho Soedjono's opinion on the definition of the liability principle based on the presumption of guilt seems to be in line with the provisions in Law Number 17 of 2008Article 40 juncto Article 41 paragraph (1) letter b, letter c and letter d and Article 41 paragraph (2) on waters transportation.

Based on the above-mentioned Wiwoho Soedjono's opinion, the assumption that the carrier is obliged to take responsibility for the loss is effective if there is a loss in a transport operation. Such assumption may be nullified if the carrier can provide evidence that the loss occurred outside the carrier or its employees' faults or offenses, which Wiwoho Soedjono put forth in the sentence unless the carrier can provide evidence that the carriage has been properly conducted.

According to R. Soekardono, evidencefor the carrier's proper conduct of transportation is sufficed with documents or letters related to transport safety such as driver's license, Seaworthy Permit Certificate, etc.

E. Suherman conveys his thoughts as stipulated in the Air Transport Ordinance (Staatblad 1939 No. 100) article 29 subsection (1) that: ... the carrier is not liable for damages if he proves that he and all those employed have taken all the actions necessary to avoid losses or that it is impossible for them to take those actions.

No Fault Liability Principle can be divided into Strict Liability Principle and Absolute Liability Principle. Both the absolute liability principle and strict liability principle are interchangeablyused in various literature. E. Saefullah Wiradipradja quotes Bin Cheng stating: the terms strict liability and absolute liability (sometimes 'no-fault liability') in English literature are frequently used interchangeably. Despite the difficulty of firm distinction between the two terms both theoretically and practically, Bin Cheng points out the main difference between them.

John Salmond's concept of absolute liability principle emerged from a court decision in Rylands v. Fletcher Case and made it a prime example of the use of absolute liability principle. Salmond's opinion wasopposedby W.H. Winfield and G.H.L. Fridman. In his paper W.H. Winfield argued, as quoted by E. Saefullah Wiradipradja, that the description of the rule in Rylands v. Fletcher as an example of absolute liability in tort is unhappy in view of some half dosen exceptions which are admitted as qualifications of it. Strict liability seems to be a better term.

Though stated as a rule of absolute liability, there are so many exceptions to it that it is doubtful whether there is much of the rule left. The liability may be strict, but it is not absolute as the exceptions to the rule indicated by Blackburn J. him self show.

Winfield is supported by G.H.L. Fridman considering the great number of reasons that can be used forexempt from responsibility or usual defences in the implementation of the absolute liability principle, although no element of fault is required. According to G.H.L. Fridman, as quoted by Carrie da Silva, a faultless system of responsibilities withvarious exceptions which have been generally recognized as grounds for exemptfrom responsibility or usual defenses, more appropriately called strict liability principle.

The objection to the term absolute liability principle does not diminishitscontinuing use, as stated by C. Conrad Claus that Absolute liability" is the modern term for the type of liability that the Exchequer Chamber imposed on Rylands. Courts and commentators frequently refer to this type of liability as "strict liability.

The fundamental question of a term in fact lies in the meaning contained in it. In this regard, a French scholar of Mircea Mateesco-matte, as quoted by E. Saefullah Wiradipradja, uses the term objective liability principle as equivalent to strict liability principle to distinguish it from the absolute liability principle, which states that: in 'objective liability' it is possible forthe defendant to release himself from the responsibility of 'force majeure' or 'contributory negligence of a third party', which is impossibleto do in 'absolute liability'.

Mircea Mateesco-matte's thought presentsa fundamental question of a term lies on the meaning contained therein, thus the alternate use of the terms the strict liability principle and absolute liability principle is not appropriate due to their different meanings.

Rosa Agustina's opinion on liability without fault principle, that a person must be responsible when a loss occurs, regardless of whether there is a fault in him, so that the fault factor is no longer an element that must be proven in court, is in respect of the different meanings between the strict liability principle and the absolute liability principle.

In Indonesian legislation, the application of the strict liability principle and absolute liability principle can be seen in the laws on the environment and transportation, namely:

Result and Discussion

Strict liability principle

The strict liability principle is adopted in the legislation on environment with the term absolute responsibility (in the sense of the strict liability principle), as regulated in Law no. 23 of 1997 on Environmental Management which was later replaced by Law No. 32 of 2009 on Environmental Protection and Management.

The strict liability principle (absolute liability according to Law No. 23 1997Article 35 on Environmental Management) is adopted in the formulation which reads:

> (1) Person in charge of a business and/or activities whose business and activities cause large and important impacts on the environment, which uses hazardous and toxic materials, and/or produces hazardous and toxic material waste, is absolutely liable for losses incurred, with responsibility to pay compensation directly and instantly in the event of environmental pollution and/or damage.
>
> (2) The party responsible for the business and/or activities may be exempt from the obligation to pay compensation as referred to in paragraph (1) if the concerned can prove that the pollution and/or damage to the environment is caused by one of the following

reasons:
a. natural disasters or wars; or

b. the existence of circumstances beyond human capability; or

c. the existence of third-party actions that cause the occurrence of environmental pollution and/or damage.

d. In the event of any loss caused by the party as intended in subsection (2) letter c, a third party shall be liable for the damages.

The Explanation section of Law No. 23 of 1997 Article 35 section (1) on Environmental Management explains that: The definition of absolute liability or strict liability, ie the element of fault does not need to be proven by the plaintiff as the basis of payment of compensation ....

The strict liability principle (absolute liability) is also applied in Law No. 32 of 2009Article 88 on Environmental Protection and Management, which is a substitute for Law No. 23 of 1997 on Environmental Management.

Absolute liability principle

The application of absolute liability principle in the legislation in the field of transportation is conducted through Law no. 17 of 2008 concerning waters transport (especially in Article 41 section (1) a) and Law no. 1 of 2009 on Aviation.

Law No. 1 of 2009 Article 141 on Aviation states:

(1)The carrier is liable for the damagedue to passenger's death, permanent disability, or injuries resulting from the incidents of air transport in the aircraft and/or aircraft landing and take off.

(2)Where the damage referred to in section (1) occurs due to the deliberate or wrongful act of the carrier or the person employed, the carrier is liable for the damageand cannot utilize the provisions of this law to limit its liability.

(3) Heirs or casualties as a result of the air transport incident referred to in section (2) may file a damage suit for additional damagesother than the prescribed damages.

Illegal Act Composition

An extended interpretation to illegal acts was done in 1919, through Arrest Hoge Raad on January 31, 1919 in Lindenbaum vs. Cohen case. Illegal acts are not only interpreted as acts

that violate the written rules, namely acts that are contrary to the legal obligations of the perpetrator and violate the rules of the subjective rights of others, but also the actions that violate the unwritten rules, the rules governing morality, decency, precision and caution that should be owned by someone in the association of life in the community or the property of citizens.

The existence of a number of laws in the field of environment and transportation encourages a study on the norm structure of illegal acts. The composition of the elements contained in anillegal act, especially the element of fault, can be studied in relation to its existence.

It has been previously noted that, in carrying out legal analysis of an event that indicates an illegal act, attention should be paid to the positive legal provisions related to the event in question. Identification of legal facts and legal application of these events can be carried out by taking into account the liability principle that is applied based on the existing provisions, as plainly (and partially) shown in Table 1:

Table 1. Scope: Law No. 1 of 2009 on Aviation

No	OBJECTS OF LIABILITY	LIABILITYPRINCIPLE	ELEMENT OF FAULT
1	Passenger	Absolute Liability Principle (Article 141)	unnecessary
2	Goods / CabLuggage	Fault Liability Principle (Article143)	necessary
3	Goods / Checked Baggage	Absolute Liability Principle (Article144)	unnecessary
4	Goods / Cargo	Absolute Liability Principle (Pasal 145)	unnecessary
5	Delays	Presumption of Liability (Article 146)	necessary
6	III Party	Absolute Liability Principle (Article 184)	necessary

table 1 describes the necessity of the fault element, namely:

1. for passengers who suffer damages in the form of death, permanent disability, or injury, qualification forillegal actdoes not necessitatethefault element.
2. for passengers who suffer damages in the form of lost or damaged cabin luggage, qualification for illegal acts necessitatesthefault element.
3. for passengers who suffer damages because the checked luggage is lost, destroyed or damaged, qualification of illegal acts does not necessitatethefault element.
4. the losses suffered by the cargo shipper because the cargo is lost, destroyed or damaged, qualification of illegal acts does not necessitatethefault element.
5. losses incurred due to delays in passenger, baggage, or cargo transport, qualification of illegal acts necessitatesthefault element.

6. losses suffered by any third party due to aircraftoperation, aircraft accidents, or fallen objects from theoperated aircraft, qualification of illegal acts does not necessitatethefault element.

Conclusion

1. Qualifications of illegal acts have changed from the necessity of the fault element to exist in order that an event qualifies as an illegal act in the early development, to the absence of the fault element for illegal act qualifcation in the current development.

2. The composition of illegal acts lies in the necessity of fault elements. The necessity of the fault elementin qualifying illegal acts is determined by the liability principle to be applied based on the existing regulation.

REFERENCES

Agustina, Rosa, "*Perbuatan Melawan Hukum",*Graduate Study Program, Faculty of Law,University of Indonesia, Jakarta, 2003.

Agustina, Rosa,et al. –First Edition, "*Hukum Perikatan (Law of Obligations)"* – Denpasar: Pustaka Larasan; Jakarta: University of Indonesia, University of Leiden, University of Groningen, 2012.

Black, Henry Campbell, "*Black's Law Dictionary*", West Publisher, Minnesota, 2003.

Fuady, Munir, "*Perbuatan Melawan Hukum Pendekatan Kontemporer*", Bandung, PT. Citra Bakti 2005.

Hamzah, Andi, "*Kamus Hukum"*, Ghalia Indonesia, 2005.

Martono, HK., "*Hukum Angkutan Udara*", Rajawali Pers, Jakarta, 2010.

Marzuki,Peter Mahmud, "*Pengantar Ilmu Hukum*", Kencana Prenada Media Group, Jakarta, 2008.

Moeljatno, "*Asas-asas Hukum Pidana*", Sixth Printing, Rineka cipta, Jakarta, 2000.

Purbacaraka, "*Perihal Kaedah Hukum"*, Citra Aditya, Bandung, 2010.

Purwosutjipto, HMN., "*Pengertian Pokok Hukum Dagang Indonesia Jilid III",* Djambatan, Jakarta, 1987.

Salim, Peter, "*Contemporary English –Indonesian Dictionary*", Modern English Press, Jakarta, 1985.

Silva, Carrie da, "*The Continuing Life of Rylands v Fletcher : a comparative analysis of the development and enduring use of the rule in Rylands v Fletcher in England and Wales and the common law world*", Wadham College, Oxford, 2006.

Soedjono, Wiwoho, "*Hukum Perkapalan dan Pengangkutan laut Di Indonesia*", Bina Aksara, Jakarta, 1980.

Suharso - Ana Ratnaningsih, "*Kamus Besar Bahasa Indonesia*".Tenth Printing, Semarang, Widya Karya, 2012.

Suherman, E.,*"Hukum Udara Indonesia dan Internasional"*, Alumni, Bandung, 1980.

Wiradipradja, E. Saefullah, "*Tanggung Jawab Pengangkut Dalam Hukum Pengangkutan Udara Internasional dan Nasional*", Liberty, Yogyakarta, 1989.

Indonesia Civil Law

Indonesia Penal Code

Air Freight Ordinance(*Staatblad*Year 1939 no. 100)

Law No. 23 Year 1997 onEnvironment Management

LawNo. 32 Year2009 On Environment Protection and Management

LawNo. 17 Year2008 on Waters Transportation

LawNo. 1 Year2009 on Aviation

LawNo. 22 Year2009 on Traffic and Road Transport

http://kamusbahasaindonesia.org/tanggungjawab