

# Immaterial Compensation in Tort Law Acts Judge Made Law Through Rechsvinding

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*Abstract--Burgelijk Wetboek (BW) contains two main sources of civilization, namely Binding (verbindennis) and Tort Law (onrechtmatige daad) respectively under Article 1320 BW and Article 1365 BW. This can be found in almost all legal events (rechtsgevolg) in the practice of justice sourced from it. As such, a legal subject (rechtssubject) performs an act (daad) that is contrary to his legal obligations and his faults (schuld), which can harm other legal subjects, in other words the act violates written legal rules (geschreven recht) or unwritten (ongeschreven) recht in the form of decency (goede zeden), obedience, thoroughness and caution (zorgvuldigheid). Lawsuits for disadvantaged legal subjects can claim material damages that can be valued in money and immunity (vordering van materiële en immateriële schade vergoeding), even regarding the final compensation the legislator (wetgevende macht) does not normalize in the provisions of Article 1365 BW. Because immaterial damages reflect moral values and ideals, no doubt in the practice of the Supreme Court of the Republic of Indonesia in its legal considerations (ratio decidendi) to grant claims for compensation which can be valued in nominal terms. However, there is no norm (ugeran) as a guideline for judges to grant immaterial compensation. Moving on from this legal problem, it can be formulated into a legal issue: The Lawsuit for Compensation for Immunity in Unlawful Acts should the judge grant through Rechsvinding In order to answer the legal issue, in Judicial Practice it is conducted by Rechsvinding. In casu, the method of interpretation that is by means of comparative interpretation, is the interpretation by comparing to comparing the clarity of a statutory provision.*

**Keywords:** *onrechtmatige daad, immateriële schade vergoeding, ratio decidendi*

## I. INTRODUCTION

The Unitary State of the Republic of Indonesia is a state of law that guarantees the rule of law, which is reflected in the enforcement of law and equality based on the 1945 Constitution. Hard efforts to make rules are carried out by:

- 1) Organizing a realignment of state institutions;
- 2) Increasing the qualifications of the state apparatus; and
- 3) Restructuring the applicable legislation.[1]

Without the rules disorder will occur (disorder/chaos), for that we need a rule as a guide to behave, this guideline is called the law. Soediman Kartohardiprodjo said that "a basic element of law is that the law is something that concerns human beings".[2]

While according to Jaap Hage, the law is a technique for controlling behavior (recht als techniek om gedrag te

sturen), however, it is not always thought about legislation (written law/geschreven recht) above all else (bij recht als techniek om gedrag te sturen) hoeven we dus niet per se te denken).[3] This can be understood, considering there are also unwritten laws (ongeschreven recht).

The law is a precipitate of the rules which are called the rule of law. According to Sudikno Mertokusumo, the rule of law is a provision or guideline about what should or should be done (das sollen), in other words, the rule of law manifests the formulation of an opinion or view of how a person should behave or should behave[4]. Likewise, the function of law is to obtain order in human relations. In addition to being seen as a law regulating human behavior can also be viewed in other forms. This context, in Marc van Hoecke's language, is called law as communication (law as communication). Marc van Hoecke said that:

"Human action implies interpersonal relation and, thus communication. As consequence, if law offers a framework for human action, it is also offers a framework for human communication. But law itself is essentially based on communication: communication between legislators and citizens, between courts and litigants, between the legislators and the judiciary, communication between contracting parties, communication within a trial. Most prominently, this communicational aspect is dialogue nowadays considered within the frame of the legitimation: a rational dialogue among lawyers as the ultimate safeguard for a "correct" interpretation and adjudication of the law".[5]

So the law regarding human life, in human relations is based on communication between individuals who aim to achieve order (rechtsorde) in society. Both in the public and private areas. Private law regulates the relationship between one individual and another individual.

One source of civil law is treaties and laws, the legal source of the Act can be subdivided into human law and acts and the Act only, while the source of human law and agreement is further divided into acts according to the law and Acts that are against the law.[6]

Engagement Law that was born from the Law, in the agreement that arises because the law, the rights and obligations of debtors and creditors are determined by law. Debtors and creditors must meet the provisions of the law. The law requires outstanding debtors and creditors to be entitled to achievements. This obligation is called a

statutory obligation. If the obligation is not fulfilled, it means violating the law.

In Article 1352 BW, an engagement arising from a law is broken down into two, namely an engagement that arises solely because it is determined by the law and an engagement arising from the actions of a person. Commitments arising from acts of persons in article 1353 BW are further broken down into engagements arising from legal actions (*rechtmatig*) and engagements arising from unlawful acts (*onrechtmatige daad*).

The regulation of unlawful acts in the Civil Code is only 15 Articles, namely articles 1365-1380 BW, but in reality shows that civil lawsuits in the Court are dominated by lawsuits against illegal acts in addition to claims regarding other disputes. Acts that violate the law can be directed at the property of others and can be directed at the personal self of others, which results in harm to that other person. In Anglo Saxon law, illegal acts are termed words "tort".[7]

Violation of the Law (*onrechtmatige daad*), article 1365 BW determines that: Every act that violates the law that causes harm to another person, requires that the person guilty of causing the loss, compensate the loss.

Based on Article 1365 BW, an action is said to be an act that violates the law if it meets the elements of:

- 1) The existence of an Act;
- 2) The act violates the law;
- 3) There is an error on the part of the perpetrator;
- 4) There are losses for victims and;
- 5) There is a causal relationship between actions and losses.[8]

If one of these elements is not fulfilled, then the act cannot be said to be illegal. The word "deed" includes positive deeds, which were originally in Dutch "*daad*" (article 1365 BW) and negative actions, which in the original Dutch language "*natigheid*" (negligence) or "*onvoorzigtigheid*" (careless) as determined in article 1366 BW. Thus, article 1365 is for people who really do, while article 1366 is for people who do not do. Violation of these two articles has the same legal effect, namely compensating for damages.

The formulation of positive actions in article 1365 BW and the negative actions in article 1366 BW only meant before the decision of the Dutch Supreme Court January 31, 1919, because at that time the notion of "breaking the law" was still narrow. After the Supreme Court's ruling, the definition of breaking the law initially contained a narrow understanding as the influence of the teachings of legism. The understanding adopted is that the act of breaking the law is an act that is contrary to legal rights and obligations according to the law. In other words, an act that violates the law (*onrechtmatige daad*) is the same as an act that violates the law (*onwetmatigedaad*).

The view of legism was later changed in 1919 with the decision of Hoge Raad January 31, 1919 in the Lindenbaum vs. case. Cohen is known as Drukker Arrest. In this case, Cohen, a printing businessman, had persuaded Lindenbaum's printing staff to provide copies of orders from customers. Cohen took advantage of this

information so that *Lindenbaum* lost because his customers ran to the Cohen company.

Next *Lindenbaum* sued Cohen to pay compensation to him. The lawsuit was granted by the District Court (*Rechtbank*). The Court of Appeal (Hof) reversed the Decision of the District Court on the basis that even if the employee committed an act contrary to the law that violated a legal obligation, it did not apply to Cohen because the Act does not explicitly prohibit that stealing information is against law.

Hoge Raad canceled Hof's decision on the basis of the consideration, that in the High Court's decision the meaning of unlawful acts (*onrechtmatige daad*) was viewed narrowly so that it included only those acts which were directly prohibited by law. Whereas acts which are not prohibited by law, even if these acts are contrary to the necessity and obedience, which is required in the association of the community is not an illegal act.

With the presence of this Arrest, the understanding of illegal acts becomes wider. Acts against the law are then interpreted to mean not only acts that violate written rules, namely acts that are contrary to the legal obligations of the offender and violate the subjective rights of others, but also acts that violate unwritten rules, namely gifts that regulate moral conduct, propriety, carefulness and caution that should be owned by someone in the association of life in the community or the property of citizens.

If it is addressed to someone else's personal self, acts that violate the law can cause physical harm or loss of good name (dignity). Physical losses such as injuries, injuries, disabilities. Damage to good name, for example, shunned by friends in relationships, lost authority in society because no longer respected people, broke up good relations because of slander of others.

If a person experiences an injury or defect in one of the limbs caused by intentional or inadvertent treatment by another party, the law gives the victim the right to receive medical expenses, compensation for the injury or disability. This compensation is assessed according to the position and ability of both parties and according to the circumstances. This measure generally applies to assess the loss arising from a crime against a person.

Humiliation is an act that is contrary to decency, so it can be included in actions that violate someone's defamation law. In considering the severity of compensation demanded, the Judge must consider the severity of insult, rank, position, ability of parties and circumstances.

A lawsuit about insults cannot be granted by the Judge, if there is no intention to insult. The intention to insult is deemed absent, if the perpetrator has clearly acted in the public interest or defended himself (Article 1375BW). The Defendant thus must prove that it is in the public interest or an emergency defense.

The regulation and implementation of lawsuits in violation of law in Indonesia in the Civil Code regulates damages from material losses that can be valued with money, and does not regulate compensation from losses that are immaterial, immaterial (moral), ideal).

Jurisprudence,[9] agreeing to provide compensation for Immaterial losses, acts that violate the law in Indonesia normatively always refer to the provisions of Article 1365 BW. Formulation of norms in article 1365 BW is more a norm structure than the substance of legal provisions. Therefore the substance of the immunity loss based on the provisions of article 1365 of BW requires the formulation of norms outside BW. From the description above, in this study a problem will be formulated as the focus of the study of the norms of giving Immaterial compensation.

Arrangement and implementation of lawsuits in violation of law in Indonesia BW regulates damages from material damages that can be valued with money, and does not regulate damages from losses that are immaterial, immaterial (moral, ideal ).

The focus of the study of the discussion about the Criteria for Immune Loss Complaints in Unlawful Actions Based on the Decisions of the Indonesian Civil Judge, is a legal remedy in the fulfillment of compensation in the form of immaterial losses, if material compensation is easily proven, while Immaterial compensation is not legally regulated, however from various Jurisprudence of the judge's decision to grant Immaterial Lawsuit. In the study there was a judge's decision that granted Immaterial compensation.

What is the basis for a judge granting Immaterial compensation, to answer Immaterial's compensation for unlawful acts, the Judiciary is based on the interpretation of the law in its Legal Discovery efforts. Legal discovery is the main activity of the judge in implementing the Act in the event of a concrete event, the method of legal discovery by the judge consists of:[10]

- 1) The use of interpretation as a judge's instrument in adjudicating and deciding a dispute is very important, because interpretation is not only useful in discovering the law, but also beneficial in the development and renewal of the law. As is known, that the textual formulation of a law is generally made in accordance with the consensus of the legislators in his day.
- 2) In the context of examining, deciding, and resolving cases, the application in analogy of *In casu*, the method of interpreting *argumentum by analogy* and *argumentum a contrario*

From the description that underlies the background of the problem, in this study the formulation of the problem with the theme of the Immaterial Compensation In Tort Law Acts Judge Made Law Through *Rechtsvinding*.

## II. RESEARCH METHOD

In research with the object of the study of the Proof of Compensation Immunity System for Unlawful Actions Based on the Decision of the Indonesian Civil Judge is a legal research in the form of legal discovery (*rechtsvinding*) relating to the substance of the author, the research is applied using legal construction methods through interpretation. In research with the object of the

study of the Proof of Compensation Immunity System for Acting Violating the Law Based on the Decision of the Indonesian Civil Judge, it is a legal research using the Statute approach, a case approach and a conceptual approach, the use of three approaches in This research is to complement one approach with another approach.

## III. FINDINGS AND DISCUSSION

The responsibility for the act of breaking the law is there to protect one's rights. Laws in action Violating the law outlines the rights and obligations when someone commits an act of wrongdoing or negligence or injuring another person and the act causes harm to others.

Normative Violation of law in Indonesia always refers to the provisions of Article 1365 of the Civil Code. The formulation of norms in this article is unique, unlike the provisions of other articles. The formulation of norms of article 1365 of the Civil Code is more a norm structure than the substance of the complete legal provisions, therefore the substance of the provisions of article 1365 of the Civil Code always requires materialization outside the Civil Code.

Article 1365 of the Civil Code determines that any act that violates the law results in a loss to another person, requiring the person who commits the act to compensate.

What are the rules about acts that violate the law in Indonesia, for the case of material and immaterial damages filed by the plaintiff if the law or customary law does not clearly regulate. The court must still decide the case. Because everyone has the right to submit an application to the court regarding what is regulated or not regulated by law, based on general legal principles, a person has the right to obtain legal advice on problems arising from daily life.[11]

The principle of a judge may not reject a case on the grounds that there is no legal basis (legal vacuum or unclear law). The basis of the validity and position of legal discovery in positive law in Indonesia certainly cannot be released about the recognition of the Indonesian people regarding the existence of customary law (customs) that have long lived and developed in Indonesian society.

This basis refers to the rules contained in Article 18 B paragraph (2) of the UUD 1945. "The state recognizes and respects the customary law community units along with their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which regulated in law. "

From the rules that provide space for the existence of judges as a milestone in legal discovery given the space and authority to make legal discoveries based on the authority regulated in the law.

In the book *Discovery of Law* by Sudikno Mertokusumo. If summarized, the basis for a positive legal discovery is contained in Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, namely:

- 1) Article 1 paragraph (1) of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, which is meant by: Judicial Power is the power of an independent state to administer justice in order to enforce law and justice based on Pancasila and the Constitution of the Republic of Indonesia In 1945, for the sake of the implementation of the Republic of Indonesia State of Law.
- 2) Article 5 (1) of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power Judges and Constitutional Justices are obliged to explore, follow, and understand the legal values and sense of justice that lives in society. This article stipulates that judges must not leave the legal system and must find the law.
- 3) Article 10 (1) of the Law of the Republic of Indonesia Number 48 Year 2009 concerning Judicial Power: The court is prohibited from refusing to examine, try, and decide on a case filed under the pretext that the law does not exist or is unclear, but it is obligatory to examine and try him.

The main problem faced by the judiciary is the judge's perspective on the normative procedural law in concretizing the law. The judge only captured what was called "legal justice", but failed to capture the justice of the community, the judge had abandoned the just legal considerations in his decision. As a result the court's performance still shows a thicker "procedural formalism" than a "sense of procedural justice." More closely is the "sense of justice of the citizens"

In a lawsuit for violating the law as described above, it can request material and immaterial damages, material losses can be proven/already done while Immaterial losses are limited to aspects of death, serious injury and humiliation, such as the contents in Articles 1371, 1372 and 1373 BW. Beyond the provisions of the aspects of death, serious injuries and humiliation, there is an expansion of meaning not regulated in articles 1371, 1372 and 1373 of the Civil Code in which in its decision the judge granted Immaterial losses, as can be examined in this study, including:

- 1) Semarang District Court Decision Number 304/Pdt/2011/PN.Smg. which was corroborated by Decision of Appeal Rate Number 254/Pdt/2012 /PT.SMG Jo Cassation Decision Number 820 K/Pdt/2013 Jo Decision PK Number 632 PK/Pdt/2014. This dispute is related to the loss of Lion Air passenger baggage that has been entrusted entirely to the airline from Medan to Semarang with a material loss value of Rp19,115,000 and a claim for immunity loss of 100 (one hundred) times the total material loss of Rp1,911,500,000, 00 The Semarang District Court granted the plaintiff's claim by declaring the Defendant to have committed an unlawful act, the Judge's decision granted a material loss of Rp.19,115,000 and also granted an Immaterial loss of Rp.19,115,000.
- 2) Decision of Tangerang District Court No.305/Pdt.G/2009/PN.Tng which was corroborated

by Decision of Appeal Rate Number 54/Pdt/2010/PT. BTN Jo Cassation Decision Number 1391 K/Pdt/2011 Jo Decision PK Number 334 PK/Pdt/2014. in this Decision between Hasto Boedi Wibowo and PT Indonesia Air Asia for violating the law, canceling flights unilaterally through Short Message Service (SMS). Whereas the Plaintiff will be the sole speaker of the Communication Design Study Program Workshop so that the Plaintiff is very disappointed with the services provided by the Defendant. Subjectively then the panel of judges considered appropriateness and justice by granting Immaterial a loss of Rp 50,000.000.00

The description above has the same rules as the Decision Number 305/Pdt.G/2009/PN.Tng with Decision Number 304/Pdt/2011/PN.Smg that the act of breaking the law due to the disappointment of the flight services is included in the matter that can be granted a claim for immaterial loss. Judges in this case broke through the scope of the scope of the Supreme Court Decree No. 650/PK/Pdt/1994 with the approach of judicial activism for a sense of justice that is alive and thriving in the community and a reasonable Immune loss.

Based on the decision, it can be seen the activeness and courage of the judges to break away from the provisions of the Law (Justicial Activism). This consideration is a direction for the judge in deciding a case concerned because of the existence of new mining or different from previous decisions in the same case.

Besides that, against the verdict which rejected the lawsuit against the Civil Decision between the Civil case: PT. Natura Herbalindo, located at Jl. Sunter Indah No.14 KG2/16, Jakarta; The Cassation Appellant is the Plaintiff/Compared before; m e l w a n: PT. Air Mancur, located at Jl. Raya Solo-Sragen Km.7, Jaten Karanganyar; Respondent Cassation was previously Defendant/Comparator; Considering, that the legal considerations and the decision of the Supreme Court Decree No: 811 K/Pdt/2006 September 21, 2006 Jo No.363/Pdt/2004/PT.Smg. On February 23, 2005 Jo No.01/Pdt.G/2004/PN. Kray dated July 7, 2004, which granted Materiel's loss but refused immaterial losses because the Plaintiff's Immaterial loss did not specify clearly, in the chart below a Decision is granted that does not grant or does not grant material or immaterial losses:

The focus of the study of the discussion about the Immunization Compensation Proof System in Unlawful Acts Based on the Decision of the Indonesian Civil Judge, is a legal remedy in the fulfillment of compensation in the form of Immune losses, if material compensation is easily proven, while Immaterial compensation is not legally regulated, but from various Jurisprudence the judge's decision granted Immaterial's Lawsuit. In this study, a review of the ratio of judges to the decision of the judge regarding the fulfillment of Immaterial's compensation is examined.

Legal responsibility is the type of responsibility that is charged to legal subjects or perpetrators who commit acts against the law, so that the person concerned can be sued

to pay compensation and/or carry out a crime. while administrative responsibility is an administrative error, such as a doctor who has committed an administrative violation, then the person concerned can revoke his license to practice. Legal liability can be categorized in 3 areas of responsibility:

- 1) Civil;
- 2) Criminal; and,
- 3) Administration.

The emergence of civil liability is caused by legal subjects not carrying out achievements and/or committing acts against the law. Achievement of legal subjects in the form of doing something, doing something and not doing something. If the legal subject does not carry out his achievements, then he can be sued or asked for civil liability, namely carrying out the achievement and/or paying compensation to the injured legal subject as stated in article 1346 of the Civil Code, namely:

- 1) Losses he suffered, in the form of reimbursement of costs and losses, and
- 2) Profits that would have been obtained;

Likewise in the event that a legal subject commits an unlawful act, the legal subject concerned may be required to pay compensation, as stipulated in article 1365 of the Civil Code. The emergence of this compensation is due to the relevant legal subjects making mistakes against other legal subjects. His mistake was in the form of legal subjects committing acts against the law. According to H.R, 1919, which was interpreted as a statement against the law is to do or not do that:

- 1) Violating the rights of others, what is meant by the rights of others, is not all rights but only personal rights, such as the integrity of the body's freedom, honor and others. And absolute rights, such as material rights, trade names, copyright and others;
- 2) Contrary to legal obligations, legal obligations are only obligations that are formulated in the rule of law;
- 3) Contrary to decency, it means that the deed done by someone is contrary to unwritten manners that grow and develop in society; and
- 4) Contradicting the carefulness that must be heeded in society.

The rules about accuracy consist of two groups, namely:

- 1) Rules that prevent others from falling into danger, and
- 2) Rules that prohibit harming others when they want to carry out their own interests

The principle of legal responsibility can be divided into 2 types, namely:

- 1) Liability based on fault; dan
- 2) Strict Liability.[12]

Liability based on fault, will only get compensation if he succeeds in proving a mistake on the part of the defendant. Mistakes are an element that determines accountability, which means that if there is no evidence of

error, there is no obligation to provide compensation. The order to prove it in *Introdusir* in article 1865 of the Civil Code. Article 1865 of the Civil Code reads: "Any person who claims to have a right, or appoints an event to confirm that right or to deny someone else's rights, is obliged to prove the existence of that right or the stated event".

This provision requires the plaintiff to prove the existence of wrongdoing that has been committed by the defendant to prove the existence of the error, then the plaintiff must prove it based on the evidence, as introduced in article 1866 of the Civil Code, the evidence consists of five types, namely:

- 1) Writing;
- 2) Witnesses;
- 3) Estimates;
- 4) Recognition;
- 5) Oath. (1866 BW)

Proof of writing is done by authentic deed and deed under the hand. An authentic deed is a deed made by or in the presence of a ruling public official for that at the place where the deed was made (article 1868 BW). While the deed under the hand is a deed made by the parties, without the help of a notary.

Witnesses are people who know about an event or unlawful act carried out by the defendant or the plaintiff, which is defined as Strict Liability (absolute responsibility) as an absolute obligation related to the damage caused. One of the main features of absolute responsibility is the absence of requirements about the need for mistakes. The plaintiff does not need to prove the Defendant is guilty, but the defendant proves.

In connection with the settlement of compensation as a consequence of responsibility, the provisions that are commonly used are as in the Civil Code, namely Article; 1243 and Article 1365.

Article 1243 states as follows: "Reimbursement of costs, losses and interest due to the non-fulfillment of an engagement begin to be compulsory, if the debtor, even though it has been declared Default, is still default to fulfill the agreement, or if something that must be given or done can only be given or done in time that exceeds the determined time".

Article 1365 of the Civil Code states: "Every act that violates the law brings harm to another person, obliging the person who because of his mistake to issue the loss, compensates for the loss."

The principle used in both articles is the liability Based On Fault with the burden of proof which burdens the sufferer. He will only get compensation if he manages to prove the existence of an element of error on the Defendant's party. Error here is an element that determines accountability, which means that if there is no evidence of error, there is no obligation to compensate.

In view of the foregoing, the theory of legal liability used is the Liability based on fault theory. In connection with the evidence it should be stated, that whoever submits the events above will base a certain right, is obliged to prove events based on a right, is obliged to

prove the events, on the other hand whoever submits events in order to defend the rights of others, are required to prove these events. Judicial Discretion theory was developed by Ronald Dworkin, Thomas L. Constable in Indonesia Dedy Muchti Nugroho:

Article 10 (1) In the Law of the Republic of Indonesia Number 48 Year 2009 Concerning Judicial Power: The court is prohibited from refusing to examine, try, and decide on a case filed under the pretext that the law does not exist or is unclear, (the legal vacuum or the law is unclear) but it is obligatory to examine and try it. are legal values and a sense of justice that lives in society. From the provisions of the Law provide space for the existence of judges as a milestone in the discovery of the law given the space and authority to make legal discoveries based on the authority regulated in Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power.

There is a tendency for the judges to date to be safe and easy to apply the articles in the legislation to legal events, he is more inclined to think logically, be mechanically linear and just sound the law, he is more focused on legal certainty than the sense of justice what the public wants. Judges in carrying out their duties are guided by applicable laws and systems, this method is also not prohibited, in the sense that if a judge does not obey will be subject to sanctions or punishment, for example demoted or dismissed as a judge.

There are several reasons that give opportunities for judges to be creative in making legal discoveries or creating laws:[13]

- 1) Judges are not bound by system precedents;
- 2) The judge must try all parts of the lawsuit;
- 3) Judges may not refuse to examine and try a case on the grounds that the law is unclear or does not exist at all.

Satjipto Rahardjo[14] put forward the concept of progressive law which bases the assumption "law is for humans", has a great goal in the form of human well-being and happiness, then the law is always at the status of law in the making. The legal paradigm for humans, members of the discretion of judges are free to search and find the format, basic thoughts and appropriate actions to make it happen, the method of law not only uses ratio (logic), but is also loaded with conscience or compassion.

This is the entrance to morality, which is empathy, honesty, commitment, and courage. That the law is in the law but must be found, thus, the moral intelligence of a judge gives birth to the Judicial Discretion and changes the mindset of the legism judge into legalistic and prismatic.

According to Roscoe Pound[15] there are three steps taken by the judge in hearing a case:

- 1) Finding the Law, establishing the Rules of the many rules within the legal system to be applied, or if nothing can be applied (which may or may not be used as one of the rules for other cases thereafter) based on the material that already exists in some way indicated by the legal system.

- 2) Interpreting the rules chosen or established, namely determining their meaning as when the rules were formulated;
- 3) Applying to cases that are being faced by rules found and interpreted as such.

The legal discovery by the judge is intended that the judge must have the courage to interpret to get out of the meaning of the text of the Act in order to function in realizing and providing protection for the community of justice seekers. various studies and deconstructive criticism carried out through various social movements concerned with the law, so that national law can function as one of the life-mobilizing forces of the new Indonesian people who are able to act responsively in the public interest.[16]

From this definition the judge's obligation to uphold justice comes from his authority, namely the judge's policy/Judicial Discretion. Therefore, if a judge grants material compensation to a lawsuit in violation of the law, as long as it fulfills the elements of Article 1365 of the Civil Code, which brings legal consequences, the judge can grant Immateriel compensation based on the evidence found that can be justified. The granting of the Immune Loss was based on the legal liability of the offender against the victim. The judge's obligation to uphold justice comes from his authority, namely the Judicial Discretion, as the Moral Principle of The Foundation of Law.

#### IV. CONCLUSION

In view of the increasingly broad implementation of regional government, the increasingly heavy responsibilities of regional heads due to the unavoidable demand for disclosure of information and public services, the practice of organizing government especially regional government leaders consisting of regional heads and vice regional heads still needs to be maintained. . The issues are the *power sharing* between the regional head and vice regional head and how to fill them is what needs to be reconstructed.

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