

## Analysis of the Merger of Civil Lawsuits into Criminal Lawsuits in Compensation for Victims in Fraud and Money Laundering Cases (Study of Decision Number: 196/Pid.Sus/2021/PN Jkt.Utr)

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**Abstract.** *In an effort to realize the principle of the rule of law above in the life of society and the state, the rights of the community really need to be considered. This can be seen in the development of criminal cases and compensation claims (which are civil in nature) in one criminal trial. This study aims to examine and analyze the implementation of the merger of civil lawsuits into criminal cases in compensation for victims. as well as examine and analyze the inhibiting factors and their solutions in the implementation of the merger of civil lawsuits into criminal cases in compensation for victims. In the research carried out, the writing uses an empirical juridical approach. The results of this study are the implementation of the merger of civil lawsuits into criminal cases in compensation for victims, such as in the case of defendant DW, shows the importance of integration between criminal law enforcement and protection of victims' rights. Although the provisions in Article 98 of the Criminal Procedure Code provide a legal basis for the merger of lawsuits, weaknesses in implementation, such as the absence of clarity regarding the confiscation and allocation of defendant assets for recovery of losses, create obstacles for victims to obtain compensation. This creates legal uncertainty and injustice for victims, who are at risk of not receiving adequate compensation even though the defendant has been found guilty. (2) Inhibiting factors: existing legal substance obstacles do not provide clarity and certainty regarding the mechanism for confiscation and management of assets for victim compensation, creating legal uncertainty; legal structure obstacles, weak coordination between law enforcement officers, prosecutors, and courts complicate the management of evidence, so that assets that should be used for victims are often neglected; legal culture obstacles that focus more on punishing*

*perpetrators without paying adequate attention to restoring victims' rights hinder the implementation of the principle of substantive justice. To overcome these obstacles, regulatory reform is needed, the establishment of a special unit for managing criminal assets, and increasing the capacity of law enforcement to create a fairer and more effective justice system.*

**Keywords:** Consolidation; Damages; Fraud; Money.

## 1. Introduction

The Republic of Indonesia is a state based on law, not a state based solely on power, as expressly regulated in the body of the constitution, namely in Article 1 paragraph (3) of the 1945 Constitution.<sup>1</sup>This will certainly run well when carried out properly by the legal subjects in it. In the context of Indonesian national law, recognition and protection of human rights have been recognized in the country's constitution and at the level of law.<sup>2</sup>This is as stated in the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states that Indonesia is a State of Law.

As a country based on law, Indonesia must be able to guarantee and uphold the principle of equality for everyone before the law (Equality Before the Law).<sup>3</sup>and protection of human rights. Furthermore, Law Number 39 of 1999 concerning Human Rights also regulates several basic rights protected by the state, including the right to obtain justice (Access to Justice). Often, a crime can involve three parties that are related to each other. The three parties include the perpetrator of the crime, the community and the victim of the crime. If a crime occurs involving these three parties, then all three parties should receive equal protection.<sup>4</sup>

When referring to the system of compensation and restitution for victims, the Criminal Procedure Code is closer to the system that compensation is civil in nature, given through a criminal process. In essence, compensation is a civil case. The term compensation is not found in material criminal law. This appears in formal criminal law, namely in Articles 98 to 101 of the Criminal Procedure Code. The term compensation is a term that arises as a result of default in an agreement

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<sup>1</sup>Laurensius Arliman, Realizing Good Law Enforcement to Realize Indonesia as a Legal State, Al Qadau Journal, Vol 8 No 1, 2021, pp 509-534

<sup>2</sup>Samekto, FX. Adji. Normative Legal Science in the Perspective of Neo-Kantian School of Thought. Legal Issues 44(1). 2015, p. 17

<sup>3</sup>Jimly Asshiddiqie (et. al.) Building Indonesian Constitutionality. Constitutional Journal 3(4), 2006, p. 203.

<sup>4</sup>Ismansyah. Criminal Compensation as a Manifestation of Protection for Victims of Criminal Acts (A Study of Criminal Law Reform), Legal Paper, Faculty of Law, UNAND. 2000.

or because of the law.<sup>5</sup>This is regulated in Article 1365 of the Civil Procedure Code (KUHPerdata).

Usually, claims for compensation based on this article are made after there is a criminal decision that has permanent legal force. However, after the enactment of the Criminal Procedure Code, this (compensation) can be carried out simultaneously with the criminal process. However, in terms of its implementation, it is faced with Article 99 paragraph (2) of the Criminal Procedure Code which states that compensation that can be decided is only limited to reimbursement of costs that have been incurred by the injured party, so that claims other than that are declared unacceptable and must be submitted as ordinary civil cases.<sup>6</sup>This will cause problems for the victim, because if the lawsuit is not accepted, the victim must file a civil lawsuit and to file a civil lawsuit requires a lot of money and takes a long time.

Another problem that will arise is in Article 98 paragraph (1) of the Criminal Procedure Code where if an act becomes the basis for an indictment in a criminal case examination by the District Court causing harm to another person, then the presiding judge at the request of the other person can determine to combine the claim for compensation with the criminal case. Lack of public knowledge and also caused by law enforcement officers who do not explain it to the victim to obtain their right to combine the claim for compensation with the criminal case is unreasonable. Seeing in the problem of combining a criminal case with a claim for compensation there are several advantages and or benefits that have been felt to be beneficial, namely it is a shortcut that can be used by someone who has been harmed to get compensation payment as quickly as possible, because by setting aside the procedure for applying for a claim for compensation regulated in the Civil Procedure Code, a person by the Criminal Procedure Code has been allowed to claim compensation simultaneously with the examination of the criminal case concerned. Of course this combination will benefit the victim because in this way compensation for the losses borne by the victim can be implemented quickly, cheaply and simply.

The purpose of this study is to study the implementation of the Merger of Civil Lawsuits into Criminal Lawsuits in Compensation for Victims; Study and analyze the inhibiting factors and their solutions in the implementation of the Merger of Civil Lawsuits into Criminal Lawsuits in Compensation for Victims.

## **2. Research methods**

The approach method used in compiling this journal is empirical legal research. The specifications in this study are descriptive analytical. The types and sources of

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<sup>5</sup>Leden Marpaung. *The Process of Claiming Compensation and Rehabilitation in Criminal Law*. PT. Raja Grafindo Persada, Jakarta, 2007, p. 23

<sup>6</sup>Husni, Anang. *The Function of Law in Upholding Community Rights*. University of Indonesia. 2003, p. 5

data use secondary data. The data analysis used in this study is qualitative analysis.<sup>7</sup>

### 3. Results and Discussion

#### 3.1 Implementation of Merging Civil Lawsuits with Criminal Lawsuits in Compensation for Victims in Fraud and Money Laundering Cases

The consolidation of cases must cause harm to others. In this case, "harm to others" is the loss of a third party including the victim's witness. As previously stated, the consolidation of a civil case with a criminal case is none other than due to the loss suffered by the victim. The loss here is in the form of material loss. For immaterial losses, for example defamation, it has been regulated by the Criminal Procedure Code in a separate container using other legal remedies. However, the act that is the basis for the indictment as described does not always automatically cause harm to a third party.<sup>8</sup>

The claim for compensation according to Article 98 of the Criminal Procedure Code is civil in nature, but is given through criminal proceedings. In order to provide protection for victims of criminal acts, victims are given easy ways to obtain compensation by combining their civil case with a criminal case. However, the Criminal Procedure Code does not regulate in detail and completely regarding the procedures for combining these cases. Article 98 of the Criminal Procedure Code only explains when the lawsuit can be filed.

If there is a case of merging a claim for compensation against a civil case decision where the defendant accepts it, but not for the criminal case, then the civil decision cannot be implemented first, waiting until the criminal decision has permanent legal force. On the other hand, if there is a criminal case decision where the defendant accepts it, but not for the compensation decision, the defendant does not have the right to appeal. Likewise, the plaintiff. The plaintiff loses his right to appeal the compensation decision if the defendant accepts the criminal case decision. This is in accordance with the nature of the compensation claim itself which follows the criminal case.

Victims of criminal acts can turn to civil cases, if it is deemed that the judge has failed to resolve the problem because he is unable to balance the opinions of the victim and the perpetrator, as well as the victim's dissatisfaction because the victim believes that the perpetrator can provide compensation according to his ability and the losses suffered by the perpetrator.<sup>9</sup>In civil law, compensation can be awarded due to breach of contract or an unlawful act.<sup>10</sup>In the event of default, compensation may be requested if one party to the agreement violates the

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<sup>7</sup>Bambang Sunggono, *Legal Research Methodology*, Rajawali Press, Jakarta, 2010, p. 38.

<sup>8</sup>M. Karyadi and R. Soesilo, *Criminal Procedure Code with Explanations and Comments*, Politiea, Bogor, 1983. p. 34

<sup>9</sup>Riskyanti Juniver Siburian, *Renewal of Mechanisms in Efforts to Compensate Victims of Criminal Acts*. *Indonesia Criminal Law Review*, Vol. 1, No. 2. 2022, pp. 56-71

<sup>10</sup>MA Moegni Djojodirdjo. *Unlawful Acts First Edition*, Pradnya Paramita. 1979, p. 34

obligations stipulated in the agreement, then that party may be held legally responsible if the other party suffers a loss.

In relation to the merger of the compensation lawsuit case at the North Jakarta District Court in criminal case Number 196/Pid.Sus/2021/PN Jkt.Utr, the chronology of the fraud and money laundering case can be known. In this writing, the author conducted research on a case, namely criminal case Number 196/Pid.Sus/2021/PN Jkt.Utr, which based on the results of the author's research, the position of the case is as follows:

Defendant DW from May to July 2019 committed a series of fraudulent acts using a Facebook account under the name "(GS)" and a related email account to offer gold bullion at relatively low prices. Through social media, the defendant made attractive promotions with live broadcasts displaying price lists and bullion, and guaranteed the availability of goods. Interested buyers were asked to transfer money to an account under the name of Rohimah, but in several transactions, orders were not sent even though payment had been received, so that the victims suffered financial losses. In carrying out these activities, the defendant was assisted by several people, including admins with weekly and monthly payments.

The defendant obtained precious metals from several gold shops in Jakarta and sent the goods to the buyers for the initial transaction, in order to increase trust. However, after paying a large amount, the defendant did not send the ordered goods, and the money that had been received was not returned, resulting in losses for many victims in varying amounts, ranging from tens of millions to hundreds of millions of rupiah. The funds that entered Rohimah's account were used by the defendant for various purchases of luxury goods and property. The defendant bought branded bags and clothes such as Louis Vuitton, Gucci, and Christian Dior, and transferred funds to several other parties' accounts. In addition, the defendant bought several properties, including land and houses in North Jakarta, Bogor, and motor vehicles, such as Toyota Fortuner and Rush cars, both in cash and in installments. In the account transfer records, the defendant also transferred funds to accounts in his own name and other parties, including for the settlement of the property purchased. This action was taken to disguise the source of the fraudulent funds. The money received from the victims was not used according to the promise of sending the precious metals, but was diverted for the defendant's personal purchases. The losses suffered by the victims were quite large and involved many parties. Some victims suffered losses of up to hundreds of millions of rupiah, with total losses from all victims reaching billions of rupiah. This case involved a number of transactions and systematic patterns to deceive victims by giving the impression of a legitimate and trusted business. For this action, the defendant DW was charged with Article 378 of the Criminal Code concerning fraud, because his actions fulfilled the elements of a criminal act with trickery and a series of lies to obtain personal gain against the law.

In this case, the Panel of Judges has declared the defendant guilty of two crimes, namely fraud under Article 378 of the Criminal Code and money laundering under Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. However, there are significant weaknesses in this decision, namely there is no clear decision regarding the seizure and transfer of the defendant's assets to fulfill compensation for the victims. The decision states that the defendant is obliged to pay compensation to the victims, but there is no explicit direction regarding how the defendant's assets that have been proven to have been purchased using funds from crime will be used for this purpose.

This is a serious problem because the victim's losses are very large, reaching a total of Rp6,898,519,808, involving many parties with varying levels of losses. The victims are very dependent on the return of the defendant's assets as an effort to obtain justice. Without an order to seize assets or confirmation regarding the allocation of seized evidence, there is a risk that the obligation to compensate cannot be realized.

In the perspective of Hans Kelsen's theory of justice, an ideal legal system should aim to provide justice through the consistent and effective application of legal norms. In this case, justice for the victims should be realized through the restoration of material losses due to the defendant's criminal acts. However, the weakness in the decision that does not confirm the confiscation and allocation of the defendant's assets to compensate for the victim's losses shows an imbalance between the interests of law enforcement and the restoration of victims' rights. The absence of concrete steps to restore victims' rights reflects a violation of the basic principle of justice promoted by Kelsen, namely providing equal protection to all parties affected by the law.

The absence of an order to seize the defendant's assets to compensate the victims creates a dilemma in the implementation of the verdict, because without an explicit order to seize the defendant's assets, there is no guarantee that the victims will receive compensation for their losses. Meanwhile, defendants who have been proven guilty can continue to control the assets resulting from the crime, which is contrary to the principle that profits from criminal acts must be returned to the injured party. This uncertainty not only has the potential to harm the victims directly, but also damages public confidence in the ability of the legal system to uphold justice effectively.

The absence of firm steps regarding the confiscation and recovery of assets resulting from crime also risks creating the perception that the law does not adequately protect the rights of victims. In fact, one of the main objectives of criminal law is to ensure that the impact of criminal acts can be minimized, including through the recovery of losses. In this case, concrete steps to confiscate and allocate the defendant's assets are an important part of the implementation

of legal certainty, which not only provides protection to victims, but also creates certainty that court decisions have real utility.

### **3.2 Inhibiting Factors and Their Solutions in the Implementation of the Merger of Civil Lawsuits with Criminal Cases in Compensation for Victims in Fraud and Money Laundering Cases**

The means provided by the Law to combine criminal cases with lawsuits for damages will certainly make it easier for parties who have been harmed by the criminal acts committed by the defendant to regain their rights. However, it should be noted that although the Law aims to facilitate steps for justice seekers, especially for victims of criminal acts who have suffered losses due to the actions of the defendant, it turns out that from the results of the author's research on the means provided by the Law, there are also several obstacles in its implementation.<sup>11</sup>

Based on the results of the research and interviews that the author has conducted with Mr. Subhan Noor Hidayat, SH., MH as the Head of the Prosecution and Execution Sub-Division of the Criminal Division of the North Jakarta District Attorney's Office, the things that become obstacles in cases of fraud and money laundering, such as those that occurred in the case of the defendant DW, will be analyzed using Lawrence M. Friedman's legal system theory to provide a relevant framework through three main elements, namely structure, substance, and legal culture. These three elements are interrelated in creating an effective legal system that is able to achieve its goals.

#### **a. Legal Substance**

The weakness of the legal substance in this case is the lack of firmness and clarity in the regulation regarding the management of assets resulting from criminal acts to fulfill the obligation to compensate victims. Law Number 8 of 1981 concerning Criminal Procedure Law has provided a legal basis for the incorporation of civil lawsuits into criminal cases through Articles 98 to 101. However, this regulation does not detail how the mechanism for confiscation and allocation of the defendant's assets originating from criminal acts can be used directly to compensate victims' losses.

In this case, the defendant DW was proven to have committed fraud and money laundering with total losses to the victim reaching billions of rupiah. Although the defendant is required to pay compensation to the victim, the absence of clear regulations regarding how the defendant's confiscated assets will be allocated to fulfill this obligation creates legal uncertainty. This provides an opportunity for the defendant to continue to control or utilize the assets resulting from the crime, so that the victim does not receive the compensation that should be their right.

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<sup>11</sup>Fauzy Marasabessy, Restitution for Victims of Crime: An Offer of a New Mechanism, *Journal of Law and Development*, Vol. 45, No. 1, 2023, pp. 53-75

In an interview with Mr. Subhan Noor Hidayat, SH., MH., as Head of the Prosecution and Execution Sub-Division of the Criminal Division of the North Jakarta District Attorney's Office, he explained that the main obstacle in implementing the consolidation of civil lawsuits is the lack of coordination between law enforcement officers regarding the execution of evidence or the defendant's assets.

"There is a need for harmonization of the rules so that assets that are proven to be the proceeds of crime can be immediately allocated to fulfill the rights of victims, but existing procedures are often too complicated and do not directly support this goal,"<sup>12</sup>

This reflects that existing regulations do not fully support the principle of restorative justice, which aims to restore victims' losses as part of restoring justice.

#### b. Legal Structure

Coordination between law enforcement officers, prosecutors, and judges in managing confiscated evidence is often a fundamental problem in the process of recovering losses from victims of criminal acts. Based on an interview with Mr. Subhan Noor Hidayat, SH., MH., as Head of the Prosecution and Execution Sub-Division of the Criminal Division of the North Jakarta District Attorney's Office, he explained that the current evidence management system focuses more on its use for the purpose of providing evidence in court. After the case is completed, the confiscated evidence is often only executed according to the verdict without considering the strategic allocation for recovering losses from victims, especially in cases of fraud and money laundering.

In many cases, evidence in the form of assets of the defendant that have been proven to originate from the proceeds of crime are not directly directed to compensate the victim's losses. Mr. Subhan emphasized that this weakness is caused by the absence of a special institution tasked with managing assets from crime professionally, so that the management tends to be administrative and less oriented towards the interests of the victim. This creates a situation where victims must file separate lawsuits in civil courts to obtain their rights, even though the relevant assets have actually been made available through the criminal process.<sup>13</sup>

#### c. Legal Culture

Legal culture consists of values and attitudes that influence the working of the law, or by Friedman called legal culture. This legal culture functions as a bridge connecting legal regulations with the legal behavior of all citizens.

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<sup>12</sup>Results of an interview with Mr. Subhan Noor Hidayat, SH., MH as Head of the Prosecution and Execution Sub-Division of the Criminal Division of the North Jakarta District Attorney's Office, on October 12, 2024

<sup>13</sup>Results of an interview with Mr. Subhan Noor Hidayat, SH., MH as Head of the Prosecution and Execution Sub-Division of the Criminal Division of the North Jakarta District Attorney's Office, on October 12, 2024



The legal culture in the criminal justice system in Indonesia still tends to focus on the aspect of punishing the accused without giving adequate attention to the mechanism for restoring the rights of the victim. In this case, although the accused has been found guilty of fraud and money laundering, no concrete steps have been taken to confiscate and transfer the assets resulting from the accused's crime to compensate the victim's losses. As a result, the accused's obligation to pay compensation is difficult to realize, so that the victim remains in a disadvantaged position.

In an interview with Mr. Subhan Noor Hidayat, SH., MH, as Head of the Prosecution and Execution Sub-Division of the Criminal Division of the North Jakarta District Attorney's Office, he stated that one of the obstacles in merging civil lawsuits into criminal cases is the lack of technical guidance and coordination between institutions related to the confiscation and allocation of evidence.

"This merger process requires synergy between investigators, public prosecutors and judges, especially in ensuring that evidence can be allocated for the benefit of victims,"<sup>14</sup>

The solution in implementing the consolidation of civil lawsuits into criminal cases in compensation for victims in fraud and money laundering cases:

a. Revising the Criminal Procedure Code

Revision of Law Number 8 of 1981 concerning Criminal Procedure Law, especially Articles 98 to 101, is needed to provide more specific provisions regarding the mechanism for confiscation and allocation of defendants' assets. This revision must include clear and structured procedures starting from the stage of identifying assets suspected of originating from criminal acts, the confiscation process by law enforcement, to the management of these assets during the trial process. This guideline will help ensure that defendants' assets can be traced and managed transparently for the benefit of victims.

b. Formation of a special unit or agency for managing criminal assets

The establishment of a special unit or criminal asset management agency is an urgent strategic step to overcome weaknesses in the management of evidence from criminal acts. This unit can function as an independent institution that works together with law enforcement officers, prosecutors, and courts to ensure that assets from crime, especially in cases of fraud and money laundering, are managed professionally and used to fulfill compensation obligations to victims. With this unit, confiscated assets are not only used as evidence in court, but also have a direct impact on the recovery of victims' losses.

c. Training and education for law enforcers

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<sup>14</sup>Results of an interview with Mr. Subhan Noor Hidayat, SH., MH as Head of the Prosecution and Execution Sub-Division of the Criminal Division of the North Jakarta District Attorney's Office, on October 12, 2024

The solution to the legal culture that still focuses on punishing the accused is to integrate a more holistic approach to justice, which not only punishes the perpetrator but also effectively restores the rights of the victim. One of the main steps is to introduce and apply the principle of restorative justice more widely in the criminal justice system. Restorative justice allows the justice process to include efforts to restore the victim's losses, either through the return of assets, compensation, or other forms of restitution. In this way, justice is not only retributive but also provides direct benefits to the victim.

#### **4. Conclusion**

The implementation of the merger of civil lawsuits into criminal cases in compensation for victims, such as in the case of defendant DW, shows the importance of integration between criminal law enforcement and protection of victims' rights. Although the provisions in Article 98 of the Criminal Procedure Code provide a legal basis for the merger of lawsuits, weaknesses in implementation, such as the lack of clarity regarding the confiscation and allocation of the defendant's assets for the recovery of losses, create obstacles for victims to obtain compensation. This creates legal uncertainty for victims, who are at risk of not receiving proper compensation even though the defendant has been found guilty. Inhibiting factors include: The existing legal substance does not provide clarity and clarity regarding the mechanism for confiscation and management of assets for victim compensation, creating legal uncertainty. In terms of legal structure, weak coordination between law enforcement officers, prosecutors, and courts complicates the management of evidence, so that assets that should be used for victims are often neglected. A legal culture that focuses more on punishing perpetrators without paying adequate attention to the restoration of victims' rights hinders the implementation of the principle of substantive justice. To overcome these obstacles, regulatory reform, the establishment of a special unit for managing criminal assets, and increasing the capacity of law enforcement to create a fairer and more effective justice system are needed.

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