



JURIDICAL REVIEW OF THE MERGER OF COMPENSATION CLAIMS IN TRAFFIC ACCIDENT CASES IN KUPANG CITY AND ITS INHIBITING FACTORS BASED ON ARTICLE 98 OF THE CRIMINAL CODE IN KUPANG CLASS 1A DISTRICT COURT

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Abstract: This thesis is entitled "Juridical Review of the Merger of Compensation Lawsuits in Traffic Accident Criminal Cases and its Obstacles Based on Article 98 of the Criminal Procedure Code at the Kupang District Court Class 1A". The regulation of the merger of compensation claims is regulated in general through the provisions in articles 98-101 of Law Number 8 of 1981 concerning the Criminal Procedure Code. Based on Article 98 of the Criminal Procedure Code, the filing of a compensation claim is submitted no later than before the public prosecutor files a criminal charge. The role of the public prosecutor in the incorporation of compensation itself is to convey the rights of the victim to claim compensation at once in the judicial process and if the victim wants a civil compensation claim then the prosecutor will incorporate it into the criminal charges at once with the highest charge limit. The title of this thesis is directed to examine and research two problem formulations, namely: (1) How is the implementation of the merger of compensation claims in traffic accident cases at the Class 1A District Court, and (2) What are the inhibiting factors in the implementation of the merger of compensation claims in traffic accident cases at the Class 1A Kupang District Court. Based on the two problem formulations, the purpose of writing this thesis is to find out the mechanism of combining compensation claims in traffic accident cases and to find out the inhibiting factors. From the results of the author's research, there are obstacles that cause victims of traffic accidents not to file a merger of compensation claims, including the lack of proper socialization of article 98 of the Criminal Procedure Code, the ignorance of victims regarding the merger of compensation claims, and the lack of explanation from the prosecutor and the court regarding the merger of compensation claims according to article 98 of the Criminal Procedure Code to victims. It is hoped that the merger of lawsuits based on Article 98 of the Criminal Procedure Code, which facilitates victims in obtaining legal certainty effectively and efficiently, can be implemented for the realization of justice based on fast, cheap and low cost justice.

Keywords: Merger of compensation claims, merger of cases, criminal offenses, traffic accidents, Class 1A Kupang District Court.

1. Introduction

Indonesia is a *civil law* country, where the implementation of law enforcement is highly dependent on the laws in force in Indonesia as a form of the principle of legality. Thus Indonesia is a State of law, as stated in the Indonesian State Constitution, namely the

1945 Constitution in Article 1 Paragraph (3) that the state of Indonesia is a state of law, where the state is obliged to ensure justice for every citizen and legal entity to obtain legal certainty and legal order in the life of the nation and state.¹

Based on how to maintain the law is divided into two, namely material law and formal law. Material law is a law that contains applicable regulations. Meanwhile, formal law is the implementation of the procedures for these regulations or the implementation of the material law itself, or more simply called procedural law. In criminal law, the material law is contained in the Criminal Code (KUHP). Meanwhile, the formal law in criminal law is contained in the Criminal Procedure Code (KUHAP).

KUHAP is a reference in regulating the course of formal criminal law or criminal procedure in Indonesia, which was enacted in Law Number 8 of 1981.² In criminal procedure law, the Criminal Procedure Code supports the implementation of the incorporation of compensation claims in the examination of criminal cases, as well as specifically regulating compensation made by the defendant to the victim at the same time as the verdict. The criminal case charged against the defendant, which is regulated in Article 98, Article 99, Article 100 and Article 101 of the Criminal Procedure Code. Therefore, the victim does not need to make a new lawsuit in the nature of civil procedure law in claiming their losses.³ Article 99 Paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) explains that if the injured party requests the merger of his lawsuit in a criminal case, the district court shall consider the authority to hear the lawsuit, the validity of the basis of the lawsuit and the penalty for reimbursement of costs incurred by the injured party. However, what happens in criminal cases is that usually the victim is satisfied if the perpetrator has been imprisoned, the victim does not demand his right in the trial of the examination of criminal cases to demand restitution (compensation by the perpetrator).⁴

However, what happens in criminal cases is that usually the victim is satisfied if the perpetrator has been imprisoned, and the victim does not claim his or her civil rights in the trial of a criminal case to demand recompense (compensation by the defendant). The vulnerability of not implementing the merger of compensation claims based on Article 98 to 101 of the Criminal Procedure Code can occur because in Article 98 of the Criminal Procedure Code, the panel of judges waits for the submission of an application for compensation from the victim during the examination of the criminal case at the first instance. In other words, the judge is not obliged to carry out the compensation process as long as the victim does not apply for compensation. As stated in article 98

¹ Government of the Republic of Indonesia, Constitution of the Republic of Indonesia 1945, 3rd Amendment, State Gazette of the Republic of Indonesia No. 13 of 2006, Article 1 paragraph 3.

² Government of the Republic of Indonesia, Legislation, Law No. 8 of 1981 on the Criminal Procedure Code, State Gazette of the Republic of Indonesia No. 76 of 1981, Article 2.

³ Government of the Republic of Indonesia, Laws and Regulations, Law No. 8 of 1981 on the Criminal Procedure Code, State Gazette of the Republic of Indonesia Number 76 of 1981, Chapter XIII on the Merger of Lawsuits for Damages.

⁴ Government of the Republic of Indonesia, Laws and Regulations, Law No. 8 of 1981 on the Criminal Procedure Code, State Gazette of the Republic of Indonesia No. 76 of 1981, Article 99 paragraph 1 on the Merger of Lawsuits for Damages.

paragraph 1, If an act which is the basis of an indictment in a criminal case examined by a district court causes damage to another person, the presiding judge may, at the request of that person, decide to join the case for compensation to the criminal case.⁵

Compensation is the right of victims of criminal acts that are requested to the perpetrators of criminal acts, such as in traffic accidents that cause material losses. Referring to a traffic accident crime, there is Law Number 22 of 2009 concerning Road Traffic and Transportation (LLAJ Law). Article 1 point 24 of Law No. 22 of 2009 on Road Traffic and Transportation explains that a traffic accident is an unexpected and unintentional road event involving vehicles with or without other road users that results in human and property casualties.⁶ According to F.D. Hobbs, traffic accidents are events that are difficult to predict when and where they will occur. Accidents are not only trauma, injury, or disability but also death. Accident cases are difficult to minimize and tend to increase with the increase in road length and the number of vehicle movements.⁷ Soerjono Soekanto stated that a traffic accident may occur where motorized vehicles are involved on public roads, involving people, objects and hazards that may result in death, injury, damage or loss, in addition to traffic accidents. Traffic accidents may involve motorized vehicles or non-motorized vehicles only.⁸

Judging from the above definitions, the crime of accident causes not only damage and injury but also the loss of a person's life. A traffic accident can be considered a crime because the traffic accident has fulfilled the elements formulated in Chapter XXI on causing death or injury due to negligence, Articles 359 and 360 of the Criminal Code.⁹ Article 235 and Article 236 of the Law on Traffic Accidents regulate compensation for traffic accidents. Article 235 regulates the provision of assistance for medical expenses for injured victims and assistance for funeral expenses for dead victims, such assistance does not exclude criminal charges. Then Article 236 regulates compensation by the party causing the traffic accident and peaceful efforts outside the court.¹⁰

Interestingly, Law No. 2/2009 Article 236 paragraph (1) states that the party who causes a traffic accident as referred to in Article 229 is obliged to compensate the loss, the amount of which is determined based on a court decision. Thus the LLAJ Law through

⁵ Government of the Republic of Indonesia, Laws and Regulations, Law No. 8 of 1981 on the Criminal Procedure Code, State Gazette of the Republic of Indonesia No. 76 of 1981, Article 98 paragraph 1 on the Merger of Lawsuits for Damages.

⁶ Government of the Republic of Indonesia, Legislation, Law Number 22 of 2009 concerning Road Traffic and Transportation, State Gazette of the Republic of Indonesia Number 96 of 2009, Article 1 Number 24.⁷ Suprpto T.M. and Wadjiono, 1995, Traffic Planning and Engineering, Second Edition, Gadjah Mada University Press, Yogyakarta, p. 5.

⁷ Suprpto T.M. and Wadjiono, 1995, Traffic Planning and Engineering, Second Edition, Gadjah Mada University Press, Yogyakarta, p. 5.

⁸ Soerjono Soekanto, Police and Traffic, CV. Mandar Madju, Bandung, 1990, p. 21

⁹ Chapter XXI of the Penal Code on Causing Death or Injury by Wrongful Death.

¹⁰ Government of the Republic of Indonesia, Legislation, Law No. 22 of 2009 on Road Traffic and Transportation, State Gazette of the Republic of Indonesia No. 96 of 2009, Articles 235 and 236

articles 235 and 236 strongly supports the incorporation of compensation in criminal cases.¹¹

In cases of traffic accidents, the victim often makes civil remedies by filing a lawsuit for compensation separately or after the accident the issuance of a criminal case verdict. This was deemed inefficient, ineffective and did not provide legal certainty for the victim as well as not realizing the principles of a speedy, simple and low cost trial. Based on the above background, prospective researchers are interested in taking a title to be the target of research, namely with the title: Juridical Review of the Merger of Compensation Lawsuits in Traffic Accident Criminal Cases and its Obstacles Based on Article 98 of the Criminal Procedure Code at the Kupang District Court Class 1A.

2. Method

This type of research is Normative Juridical, an approach that is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. This research was conducted at Kupang District Court Class 1A. this study uses Legislative Approach is an approach taken by reviewing all laws and regulations related to the legal issues¹² and Conceptual approach which is an approach carried out by studying the bibliography conceptualized in the form of books, writings, articles and essays from other essays that have a connection with this research. The data is collected through observation, interview, and library research

3. Implementation of the merger of compensation claims in traffic accidents at the Kupang District Court Class 1A.

The crime of traffic accident is a criminal offense caused by a traffic accident due to the negligence of the driver resulting in losses in the form of property loss, injury, injury or loss of life of the victim. The victim has the right to claim compensation from the perpetrator, and the victim does not need to wait for a criminal case to be decided in court before filing a civil lawsuit for compensation, but the victim does not need to wait for a criminal case to be decided in court.

This can go hand in hand with filing a merger of compensation during the trial of the criminal offense because it is regulated in Article 98 of the Criminal Procedure Code. Merger of compensation can only be filed no later than before the public prosecutor files criminal charges. The existence of the process of combining compensation lawsuits, it appears that there is attention to victims of criminal acts, namely to accelerate the process of obtaining compensation for the losses suffered as a result of the defendant's actions by combining criminal cases with compensation lawsuits, which in fact the issue of compensation is a civil matter.

The regulation regarding the merger of compensation lawsuits for the crime of embezzlement is a written rule stipulated according to the hierarchy of legislation that

¹¹ Ibid

¹² Peter Mahmud Marzuki, Legal Research, Jakarta, Kencana Prenada Media Group, 2011, p. 93.

has been agreed upon in Indonesia. As a legal state that adheres to a positive legal system, of course Indonesia is always guided by existing rules, as well as the merger of compensation claim cases found in Article 98 paragraph (1) of the Criminal Procedure Code which states that if an act that is the basis of an indictment in a criminal case examination by a district court causes harm to another person, then the presiding judge at the request of that person may determine to merge the compensation claim case with the criminal case.

Based on the description of Article 98 paragraph (1) above, it can be concluded that if an act underlying the prosecutor's indictment then causes harm to another person, then the victim in this case can request compensation for the losses he has suffered. The victim of the crime of embezzlement is one of the objects that can be combined with the compensation claim case to the embezzlement crime case itself.

The damages referred to in the combined damages claim are not damages for unlawful arrest, detention, prosecution or trial. Rather, it is a claim for compensation:

- a. What is caused by the criminal offense itself
- b. A claim for damages resulting from a criminal offense is assigned to "the perpetrator of the offense" i.e. to the defendant, and
- c. The compensation claim filed against the defendant is merged and examined and decided at the same time as the examination and decision of the criminal case charged against the defendant.

The filing of a lawsuit for compensation for traffic accidents can be done by requesting the case to be combined before the public prosecutor files charges in court, in other words, the compensation claim must have been received by the public prosecutor before the charges are read, but in the event that the public prosecutor cannot be present, the compensation claim can be submitted or given no later than before the judge decides the criminal case.

This is regulated in Article 98 paragraph (2) of KUHAP which states that the request as referred to in paragraph (1) can only be submitted no later than before the public prosecutor files criminal charges. In the event that the public prosecutor is not present, the request shall be submitted no later than before the judge makes a decision. Based on this article, it means that requests for compensation cannot be made at any time.

Claims for compensation that can be filed by victims or people who suffer losses are limited to the amount of material losses suffered, as stated in Article 99 paragraph (2) of the Criminal Procedure Code. Meanwhile, "immaterial" losses must be sued separately in an ordinary civil case. This means that in order to obtain full compensation, the injured person must go through two examination processes.

In criminal procedure law, the trial is held where the criminal act was committed, this is regulated in Article 84 paragraph (1) of the Criminal Procedure Code which states that the district court has the authority to hear all cases regarding criminal acts committed within its jurisdiction. Whereas in civil procedure the trial is held where the defendant

resides, this is regulated in Article 118 HIR which stipulates that every civil case begins with the filing of a lawsuit and stipulates that the authorized district court is located in the jurisdiction where the defendant resides.

Regarding the authority of the court, the Criminal Procedure Code instructs the court before merging a compensation lawsuit case to consider and see its relative authority. Article 99 paragraph (1) of the Criminal Procedure Code states that if the injured party requests the merger of the lawsuit case with the criminal case as referred to in Article 98, the district court shall consider its authority to hear the lawsuit, the validity of the basis of the lawsuit and the punishment for reimbursement of costs incurred by the injured party.

The merger of a compensation claim that has been incorporated and executed in a criminal case will automatically be decided by the criminal verdict, meaning that if the defendant is found guilty and must receive a criminal sanction in the form of confinement, then the defendant will be sentenced to imprisonment. He must also compensate the loss suffered by the victim. Furthermore, if a criminal case is appealed, the compensation claim case will automatically be examined in the appeal. Conversely, if the criminal case is not appealed, then the compensation claim case cannot also be appealed. In accordance with Article 100 paragraphs (1) and (2) of the Criminal Procedure Code which states that if there is a merger between a civil case and a criminal case, the merger automatically takes place in the examination of the appeal level, and if no appeal is filed against a criminal case, then an appeal regarding a compensation decision is not permitted.

The lawsuit for compensation in the merger of the case with the criminal case is made and structured in such a way as to be based on the rules of civil procedure law HIR-RBG, as long as these provisions are not regulated in the Criminal Procedure Code which is the basis for the merger of compensation lawsuits. This is ordered by KUHAP in article 101 which states that the provisions of the rules of civil procedure law apply to compensation claims to the extent that this law does not provide otherwise. R. Soesilo said in Andi Sofyan's book that the definition of criminal procedure law or formal criminal law is "a collection of legal regulations that contain provisions governing matters, as follows:

1. How to take action if there is a suspicion that a crime has been committed, how to find out the truth about what crime has been committed.
2. Once it has been established that a criminal offense has been committed, who and how should search for, investigate and investigate the persons suspected of being guilty of the offense, how to arrest, detain and examine the person.
3. How to collect evidence, examine, search the body and other places and confiscate these items, to prove the suspect's guilt.
4. The way in which a defendant is examined in court by a judge until a sentence is imposed.
5. By whom and in what way the decision to impose the punishment must be implemented and so on, or in short it can be said that it regulates how to

maintain or organize material criminal law, so as to obtain a judge's decision and how the contents of the decision must be implemented.

Andi Sofyan further explained the purpose of Criminal Procedure Law is as formulated in the guidelines for the implementation of the Criminal Procedure Code in 1982, that the purpose of criminal procedure law is as follows:

1. Seeking and obtaining or at least approaching material truth is the complete truth of a criminal case by applying the provisions of the criminal procedure law honestly and accurately.
2. Seeking the perpetrators who can be charged with violating the law and then requesting an examination and decision from the court to determine whether it is proven that a criminal offense has been committed and whether the person charged is to blame.
3. After a court decision is rendered and all legal remedies have been exhausted and finally the decision has permanent legal force, the criminal procedure law also regulates the implementation and supervision of the decision.¹³

The mechanism for combining compensation claims is a system or implementation structure that involves combining compensation claims with the charges made by the public prosecutor. As explained in Article 98 paragraph (2) of the Criminal Procedure Code, the claim for compensation can be combined with the charges made by the public prosecutor.

Prosecution according to Article 1 point 7 of KUHAP is a public prosecutor's action to submit a criminal case to the authorized district court in the case and in the manner provided for in the law with a request that it be examined and decided by a judge at a court session. Before the victim (plaintiff) submits to combine compensation claims for criminal charges, he must first pay attention to several elements or conditions that must be present in the substance of his compensation claim so that the claim can be accepted, the elements are as follows:

1. There must be elements of unlawful acts such as violating the rights of others, contrary to the legal obligations of the perpetrator, contrary to good morals, contrary to decency and necessity that must be considered in public relations.
2. There must be an element of fault committed by the perpetrator.
3. There must be an element of loss caused in the form of both material and immaterial loss.
4. There must be an element of causal relationship between the act and the harm caused so that the perpetrator can be held accountable.

The contents of the compensation claim are:

1. The identity of the parties (plaintiff and defendant) or also called *persona standi in judicio*

2. Posita, which is the seat of the case or the reasons for filing a lawsuit, explains the legal facts that form the basis of the lawsuit or also known as the fundamental petendi.
3. Demand (petitum), which is what the plaintiff wants or asks the judge to decide, determine, or order.

Regarding the mechanism of combining it, the first thing that must be considered is whether the basis of the criminal indictment contains an element of loss or someone is harmed because of the criminal act committed. This can be proven by collecting evidence of the loss suffered, basically the burden of proof in criminal proceedings is on the public prosecutor, but in the merger of lawsuit cases, the public prosecutor is responsible for the burden of proof. In order to compensate the victim, the public prosecutor must prove the evidence to the prosecution, and the prosecution will present the evidence in court during the reading of the indictment.

Based on Article 101 of the Criminal Procedure Code which states that the provisions of the rules of civil procedure apply to compensation claims, in terms of proving compensation claims, civil procedure law applies. Proof is the presentation of evidence that is valid according to the law to the judge examining a case in order to provide certainty about the truth Proof is needed in a case that *adjudicates* a dispute before the court (*juridicto contentiosa*) as well as in petition cases that result in a determination (*juridicto voluntair*). In a civil proceeding, one of the judge's duties is to investigate whether a legal relationship that is the basis of a lawsuit actually exists or not. The existence of this legal relationship must be proven if the plaintiff wants to win a case. If the plaintiff fails to prove the arguments that form the basis of his lawsuit, then his lawsuit will be rejected, but if on the contrary, his lawsuit will be granted. Where a claim for compensation has been lodged with the court, such a claim for compensation shall be examined and decided by the judge who has heard the case. In this case, the President of the Court should, as far as possible, appoint a judge who has already tried the case in question, the aim being that the same judge who has already tried the case has a better understanding of the criminal case that is the subject matter of the case.

The provisions of civil procedural law in the examination of compensation claims, in connection with matters relating to the authority to examine claims both in terms of absolute competence, especially in terms of relative competence. In relation to the issue of authority in terms of civil procedural law, the judge must examine more carefully the place of residence or residence of the defendant. Based on research sources from the civil lawsuit register of the Kupang District Court Class 1A, in relation to the merger of compensation claims in traffic accidents, in accordance with the research location at the Kupang District Court Class 1A, it can be explained by the author that in the last four years, namely from 2019 to 2022 there were no cases of traffic accidents that were filed with a merger of compensation claims.

In relation to the absence of the filing of a combined compensation claim in traffic accident cases at the Kupang Class 1A Court, the results of the author's interview with

Noh Fina as a young clerk of the first level of the Kupang Class 1A District Court said that so far there has never been a victim in a traffic accident crime who filed a combined compensation claim at the Kupang Class 1A District Court. Furthermore, Noh Fina said that usually the victim does not file a joint claim for compensation because the perpetrator has overcome the victim's loss by taking responsibility for the victim's medical treatment so that the victim has forgiven the perpetrator. Even so, the criminal charges against the perpetrator do not disappear. (interview result dated March 16, 2023) Furthermore, according to the results of an interview with a judge of the Kupang District Court Class 1A, Sisera Semida Naomi Nenoh Ayfeto, S.H., said that while on duty at the Kupang District Court, the judge was not involved in the investigation.

The Kupang District Court Class 1A has never examined and adjudicated a civil case of a lawsuit for the incorporation of compensation according to Article 98 of the Criminal Procedure Code or filed separately in a traffic accident case that has permanent legal force. The crime of traffic accident is an unlawful act that is closely related to Articles 359 and 360 of the Criminal Code regarding negligence or negligence, so that criminal charges for the perpetrator of a traffic accident cannot be dropped even though civilly the perpetrator of the traffic accident has compensated the victim. (interview result april 2023). This fact shows that in terms of implementation, from 2019 to 2022, the merger of compensation claims based on Article 98 of the Criminal Procedure Code has not been applied during the traffic accident criminal cases at the Kupang District Court class 1A. In fact, from 2019 to 2022, there has never been a victim of a traffic accident who has filed a separate compensation claim even though there has been a criminal verdict with permanent legal force. Putu Dima Indra, S.H., a judge at the Kupang District Court Class 1A, stated that the filing of a joint compensation claim can only be submitted by the victim and the judge may not suggest or influence the victim to file a joint compensation claim. The victim, through their legal counsel, should be aware of the effectiveness of Article 98 of the Criminal Procedure Code. (interview result on April 10, 2023) Referring to Article 98 paragraph 1 of the Criminal Procedure Code, the decision to merge cases of compensation claims by the presiding judge can be realized if there is a request to merge cases of compensation claims from the person who feels harmed. It can be said that during the last four years, from 2019 to 2022, there has never been a victim. who filed a joint compensation claim in the trial of a traffic accident case at the Kupang District Court class 1A. In civil law, to be precise, Article 1365 of the Civil Code only mentions unlawful acts without specifying what unlawful acts are. Article 1365 of the Civil Code, known as the article on unlawful acts (onrechtmatiggedaad), requires the fulfillment of four main elements, namely:

- a. The existence of an act;
- b. There is an element of fault;
- c. There is a loss suffered;
- d. There is a causal link between the fault and the loss.

Article 1365 of the Civil Code can be broadly applied in various events. Due to the wide possibility of its application, Article 1365 of the Civil Code can also be applied in traffic accidents with the condition that the elements of Article 1365 of the Civil Code must be fulfilled, namely:

- a. Unlawful conduct of a motor vehicle driver.
- b. The fault of the driver of the motor vehicle.
- c. There are losses incurred by motor vehicle drivers.
- d. The existence of a causal relationship between the unlawful act committed by the driver of a motor vehicle and the damage it causes

Lesly Anderson Lay, S.H., a lawyer practicing at the Kupang District Court Class 1A, said that victims are reluctant to file a lawsuit for merging damages because of the compensation in the form of the perpetrator's responsibility in the form of medical treatment costs to the victim, when the case handling is still at the police level. This has been regulated in the LLAJ Law, precisely in Article 240. This article explicitly ensures that victims receive their rights in the form of treatment or care from the perpetrator and the government, compensation from the perpetrator and accident compensation from the insurance company. (interview result on March 16, 2023) Referring to the interview with Lesly Anderson Lay, S.H., in terms of criminal law, there is the LLAJ Law relating to traffic accidents and legal liability for traffic accidents. Legal responsibility for victims of traffic accidents who are entitled to their rights as stipulated in Article 240 of Law Number 22 Year 2009 concerning Road Traffic and Transportation which reads that victims of traffic accidents are entitled to get:

- a. Aid and treatment from the party responsible for the traffic accident and/or the government;
- b. Compensation from the party responsible for the traffic accident; and
- c. Traffic accident compensation from an insurance company.

Fredrik Djaha, S.H., a lawyer practicing at the Kupang District Court Class 1A, stated that the reason why victims do not file a joint compensation claim under Article 98 of the Criminal Procedure Code is because victims usually wait for legal certainty. from the criminal verdict so that the victim can consider a separate civil lawsuit. However, during his career as a lawyer, there has never been a victim in a criminal traffic accident case who filed a merger of compensation claims or filed a separate civil lawsuit. (interview result on April 10, 2023). Based on the interview with Fredrik Djaha, S.H., it can be said that with the existence of an inconclusive criminal case decision, the victim wants to file a compensation claim by filing a separate civil lawsuit on the basis of the inconclusive criminal decision number.

One of those who play an important role in criminal trials is the Public Prosecutor, who is tasked with reading out criminal charges against the perpetrators of criminal acts. Prosecutors even play a very important role in the merger of compensation claims, because the merger of compensation claims is a combination of criminal and civil law and the merger of compensation claims will be inkrach as a criminal decision. Article 98 paragraph 2 of the Criminal Procedure Code itself states that a request for the merger of compensation can only be submitted before the public prosecutor files criminal charges. Therefore, it is important to know the requirements of the public prosecutor in accepting the incorporation of the compensation claim and the mechanism for incorporating the claim into the prosecutor's indictment.

Dewi Retna Martani S.H., as a public prosecutor from the Kupang District Attorney's Office, stated that there are conditions that must be met in combining compensation, namely:

1. Material loss suffered by the victim
2. The submission of a claim for damages by the victim to the panel of judges, either in writing or orally.
3. The application for joinder of the compensation claim must be filed before the public prosecutor files criminal charges.

Kadek Widiantari, S.H., a public prosecutor from the Kupang City Public Prosecutor's Office, explained that with the authority to complete charges and complete certain files, victims who want to combine cases for compensation for criminal acts can provide their files to the public prosecutor, which is in line with Article 98 Paragraph (2) KUHAP. Where a claim for compensation has been filed with the court, the request for compensation shall be examined and decided by the judge who has heard the case. In this case, the president of the court should, as far as possible, appoint a judge who has already tried the case in question. The purpose of this is because the same judge who has already tried the case is more familiar with the underlying criminal case. After the court has considered all matters that determine the admissibility of the merger of compensation cases, the trial process or mechanism will continue in accordance with the criminal procedure law until the public prosecutor at the request of the presiding judge is obliged to provide the necessary explanations.

Furthermore, Dewi Retna Martani, S.H explained that during her tenure at the Kupang District Attorney's Office, no victim of any criminal offense has filed a lawsuit for compensation based on Article 98 of the Criminal Procedure Code at the Kupang District Court, class 1A. This includes the traffic accident verdict that he prosecuted. Decision with case number 4/pid.sus/2023/PN Kpg. The victim was Martha Dina Rompas, and the defendant was Mayer Bryan Makunimau. Chronology of the case as follows.

Next: Saturday August 20, 2022, at 19.00 the defendant was riding a Yamaha Mio motorcycle with Vehicle Number DH 5357 HW at a speed of 60 km/h from the direction of Eltari Road, the Governor's Office, when he arrived in front of Anugrah Church the defendant saw a black minibus moving in front of the defendant, so the defendant took the right lane to overtake the minibus, However, when the defendant was about to pass the minibus the defendant suddenly saw the victim witness walking across the road in front of the minibus, because of the close distance between the defendant's motorcycle and the victim witness, the motorcycle that the defendant was riding collided with the victim and the victim and the defendant were thrown onto the road. This incident caused the victim to suffer problems in carrying out her daily activities as a housewife, as well as a fractured pubic bone, a fractured femur in the lower third which will result in disability. The actions of the Defendant are regulated and punishable in Article 310 Paragraph (3) of Law No. 22 of 2009 Concerning Road Traffic and Transportation. Monday, April 3, 2023, this case has been decided in court, the Defendant himself is serving a prison sentence for a certain period of time, namely 10 (ten) months. (Interview result April 12, 2023).

On this occasion the researcher also interviewed the victim about the losses suffered by the victim and how the victim obtained compensation from the defendant. The victim stated that the victim and her family did not ask for compensation from the defendant because the defendant paid for all of the victim's medical treatment and the defendant made amicable efforts with the victim. The victim also felt compassion for the defendant who continued to undergo the legal process and accepted the decision in this case. The victim did not want to claim compensation to the defendant either in a separate civil lawsuit or through the incorporation of a compensation lawsuit based on Article 98 of the Criminal Procedure Code. (interview result April 12, 2023).

In relation to the above, it can be concluded that the role of the public prosecutor in the incorporation of compensation is to convey the rights of the victim to claim compensation at the same time in the judicial process and if the victim wants a civil compensation claim, the prosecutor will incorporate it into the criminal charges at the same time with the highest charge limit.

4. Factors that Impede the Merger of Compensation Lawsuits in Traffic Accident Crimes at the Kupang District Court Class 1A

Based on the results of interviews with judges, young clerks and lawyers, the merger of compensation claims based on Article 98 of the Criminal Procedure Code at the Kupang District Court class 1A has not been implemented, which means that there are factors that hinder the implementation of Article 98 of the Criminal Procedure Code. Agus Riyanto quoted Soejono Soekanto's opinion, the factors that influence law enforcement, namely:

- a. The legal factor itself, which is only limited to the law.
The legal factor in question is starting from the law itself which is problematic, namely: law enforcement originating from the law is not followed by the

principles of enactment, the law has no implementing regulations that are needed to implement the law, unclear meaning of words in the law which will result in confusion. Confusion in interpretation and application. In addition, there is a lack of clarity in the words used in the formulation of certain articles. This is due to the use of words whose meaning can be interpreted very broadly. The consequence of this is regulations that contain articles with words that can be interpreted broadly (multi- interpretation) and cause confusion in interpretation or application, which in turn leads to conflict. This means that legal factors, namely regulations that have unclear wording in the formulation of their articles, have proven to affect law enforcement against disputes in Indonesia. The problem grows because even though the law has been passed and is in effect, but until a certain time limit, the implementing regulations have not been made as a command of the law, so as a result some articles of the law cannot be implemented. Another problem that often arises in laws is the vagueness of the words used in the formulation of certain articles. This may be due to the use of words whose meaning can be interpreted very broadly, or for example due to inaccurate foreign language translations.

- b. Law enforcement factors where the parties who form and apply the law. The causes include, first, the low quality of judges, prosecutors, police and advocates; Second, the principle of the right man in the right place is ignored; Third, their low commitment to law enforcement; Fourth, the absence of an integrated, good and modern law enforcement mechanism; Fifth, the strong influence and intervention of politics and power into the world of law enforcement, especially into the police, prosecutor's office and judiciary; Finally, there are strong allegations of corruption and organized crime among members of law enforcement with accusations of judicial mafia. The practice of law enforcement is increasingly difficult, due to the lack of coordination among law enforcers, both at the level of terrorism and rules, as well as at the operational level. In fact, legal coordination is one of the important factors for legal empowerment to the community. Based on the lack of coordination between law enforcers, then the desire to realize an integrated legal approach to justice (integrated justice system). With this situation, law enforcers who cannot carry out the law as it should have been mandated in the law and have an impact on law enforcement. Facility factors or facilities that support law enforcement. Without the existence or support of adequate facilities, it is not easy for law enforcement to take place properly, which includes, among others, highly educated and skilled human resources, good organization, adequate equipment, sufficient finance, and so on. If these things are not fulfilled, it is difficult for law enforcement to achieve its goals. Highly educated human resources here are defined as qualified and qualified law enforcers who are able or able to serve and protect the community in accordance with their respective duties and fields.
- c. Community factors, where the legal environment applies and is established. From a social and cultural point of view, Indonesia is a society that pluralistic

with so many ethnic groups with a variety of different cultures. A law enforcer must recognize social stratification or layers of society that exist in an environment along with the existing status / position and role order. Every social stratification must have a basis. Another thing that needs to be known and understood is about social institutions that live, and are highly valued by the largest part of existing citizens. By knowing and understanding these things, it can make it easier for law enforcers to identify the values and norms or rules that apply in the environment.

- d. The cultural factor, which is the result of work, creation, and taste based on human spirit in the association of life. Culture, according to Soerjono Soekanto, has a very large function for humans and society, namely to regulate so that humans can understand how they should act, do, and determine their attitude when dealing with other people. Basically, culture includes the values that underlie the applicable law, which values are abstract conceptions of what is considered good (so followed) and what is considered bad (so avoided). Actually, cultural factors have similarities with community factors. It's just that the cultural factors emphasize the problem of the system of values that exist in society. In the community factor, it is said that the level of community compliance with the rules of society is still low. This is because a culture of compromise often occurs in Indonesian society. In fact, there will be a tendency for people's culture to escape from the prevailing rules. The legal culture (system) essentially includes the values underlying the applicable law, which values are abstract conceptions of what is considered good and what is considered bad. They are usually pairs of values that reflect two extremes that must be harmonized. The pair of conservatism and innovation values always plays a role in the development of law, because on the one hand there are those who claim that the law only follows the changes that occur and aims to maintain the status quo. Under these conditions, law enforcement must also be able to understand the problems of cultural elements that can affect the rule of law.¹⁴

The five factors that influence law enforcement can be linked into an analysis of factors inhibiting the implementation of Article 98 of the Criminal Procedure Code at the Kupang District Court Class 1A, as follows:

- a. Legal factors (laws)

Actually, the merger of compensation claims is clearly stated in articles 98 to 101 of the Criminal Procedure Code. However, there is a lack of assertiveness in the form of an obligation to merge as in Article 98 of the Criminal Procedure Code so that victims often wait for an inkrah criminal decision in order to get legal clarity and then the victim files a civil lawsuit in isolation. In fact, based on the results of interviews, there has never been a traffic accident case or other criminal case in which a claim for compensation has been filed under Article 98 of the Criminal Procedure

Code. The Criminal Procedure Code also does not clearly explain the mechanism from the beginning to the end of the merger of compensation claims. Article 98 of the Criminal Procedure Code is not implemented because no one has filed a joint compensation claim at the Kupang District Court Class 1A.

b. Law enforcement factors

Pursuant to Article 98 of the Criminal Procedure Code, the judge may not suggest the filing of a joint compensation claim to the victim, which means that it is the victim who actually files the joint compensation claim. The public prosecutor should explain to the victim the effectiveness of Article 98 of the Criminal Procedure Code so that the victim no longer needs to file a separate civil claim.

c. Facility factors

Kupang District Court Class 1A is one of the district courts that conducts first instance proceedings within Kupang City. Therefore, it cannot be said that the incorporation of compensation claims under Article 98 of the Criminal Procedure Code at the Kupang District Court Class 1A is hampered by facilities.

d. Community Factors

This factor is the most crucial factor in hampering the incorporation of compensation claims at the Kupang District Court Class 1A. Based on the results of interviews, many victims of traffic accidents still do not know the effectiveness of Article 98 so that victims prefer to file separate civil lawsuits. Then the perpetrators of traffic accidents often make efforts to mitigate accidents to victims in the form of compensation for victims and medical efforts so that victims do not file a lawsuit for compensation either separately or through merging. And in a family manner, the victim has forgiven the perpetrator so that the victim does not think about the rights that the victim must get such as compensation from the perpetrator.

e. Cultural Factors

This factor is closely related to community factors. The culture of the community is very influential in solving various problems, even problems related to the law. Based on the results of the interviews, it often happens that the victim and the perpetrator in the criminal act of traffic accidents have made amicable efforts aimed at reducing the victim's losses. However, this does not negate the criminal charges against the perpetrator, only that the victim has forgotten his right to compensation in court.

Table 1.
Numbers of Traffic Accidents in Kupang City from 2019 to 2022

No	Mounth	Traffic accidents (Years)			
		2019	2020	2021	2022
1	January	30	12	13	22
2	February	29	12	16	24
3	March	41	22	22	17
4	April	25	20	19	20
5	May	37	23	30	26
6	June	35	24	29	23
7	July	34	19	21	28
8	August	26	20	27	24
9	September	36	25	23	35
10	Oktober	38	20	26	23
11	November	31	24	23	21
12	Desember	30	21	21	20
	Total	392	242	270	283

Source: Kasatlantas Polres Kota Kupang

5. Conclusion

Articles 98 to 101 of the Criminal Procedure Code on the merger of compensation cases are provisions based on the principles of speedy, simple and low cost justice. This provision not only guarantees the civil rights of victims but also realizes the effectiveness and efficiency of litigation in the realm of criminal justice. The mechanism for filing a claim for compensation in accordance with Article 98 paragraph (2) of the Criminal Procedure Code, is no later than before the Public Prosecutor files criminal charges. In the event that the Public Prosecutor is not present, the request is submitted no later than before the judge issues a criminal verdict, and the amount of compensation that can be requested by the victim is limited to material losses (Article 99 paragraph) (2) KUHAP). During the last four years, from 2019 to 2022, there has never been a victim of a traffic accident who filed a lawsuit for compensation under Article 98 of the Criminal Procedure Code.

Factors inhibiting the incorporation of compensation claims include Legal factors, namely the Criminal Procedure Code does not require victims to file a lawsuit for compensation and the Criminal Procedure Code also does not clearly explain the mechanism from the beginning to the end of the lawsuit for compensation amd the law enforcement factor is that the judge cannot influence the victim, so that the victim is truly on his own awareness in filing a lawsuit for compensation, so the judge is required not to advise the victim regarding the merger of compensation claims.

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