

Legal analysis of civil law settlement in the perspective of criminal legal settlement (Case Study of Military Court Decision I-05 Pontianak Number: 46K/PM.I-05/AD/IX/2021)

Indra Jaya, Parluhutan Sagala, M. Ali Ridho

Military Law College, Indonesia¹⁻³

indrajaya.wicaksana99@gmail.com



Article History

Received on 11 October 2024

1st Revision on 23 October 2024

Accepted on 4 November 2024

Abstract

Purpose: This thesis aims to analyze in depth the settlement of civil law from the perspective of criminal law settlement. With the background of the complexity and interaction between the civil and criminal legal systems that often affect the way legal disputes are resolved. The main focus of this study is to explore how the mechanism of civil dispute resolution interacts with the criminal settlement process, as well as its impact on the rights and obligations of the parties involved.

Research Methodology: The research method used is a conceptual approach with normative analysis of laws and regulations, relevant legal practices and library research. The conceptual approach is intended to analyze legal materials so that the meaning contained in legal terms can be known..

Results: This is done as an effort to obtain new meanings contained in the terms studied or to test the legal terms in theory and practice. While library research is a study that uses library literature by studying books, books or other information that is relevant to the scope of the discussion. In the criminal law process, it often has a significant impact on the resolution of civil disputes, both in the form of determining responsibility and influencing civil court decisions. On the other hand, the outcome of the civil legal process can affect the course of the criminal process, especially in cases involving the same elements.

Suggestion: This study suggests the need for better harmonization and coordination efforts between the civil and criminal legal systems to ensure more optimal justice and efficiency in dispute resolution. Thus, it is hoped that the legal system can provide fairer and more comprehensive solutions for all parties involved

Keywords: *Civil legal settlement, Criminal legal settlement, Legal interaction, Harmonization, Coordination*

How to cite: Jaya, I., Sagala, P., & Ridho M. A. (2024). Legal analysis of civil law settlement in the perspective of criminal legal settlement (Case Study of Military Court Decision I-05 Pontianak Number: 46K/PM.I-05/AD/IX/2021). *Journal of Multidisciplinary Academic Business Studies*, 2(1), 147-167.

1. Introduction

Human life is never free from social interaction activities to fulfill all the needs of life. The social interaction activities that are often carried out in society include buying and selling, renting and debts. Giving debt or loans is a good deed, because it is one of the economic activities that contains elements of helping fellow humans as social beings. Debts are one form of mutual assistance. So it should be done based on the provisions that have been mutually agreed upon. Debts are the activity of borrowing

money or goods between people who need it (debtors) and people who have money or goods then lend it (creditors) and later the money or goods will be returned with the same amount or goods. Debts are the social life of every person who does something in relation to other people which will later give rise to rights and obligations.

However, in the development of the era and the increasing complexity of human problems in meeting their needs, there is often a mismatch between norms and human behavior. Along with changes in society, the practice of debts and receivables has also changed so that new problems emerge. In this study, the author reveals the case of decision Number 46-K / PM.I-05 / AD / IX / 2021 of the Military Court I-05 Pontianak, a case of fraud that originated from debts committed by a member of the Indonesian Army named Kopda Mulyono, NRP 310900779062687, Position Ta Provost 2 Urdal Tepbek II-44-4 / Ptk, Bekangdam Unit XII / Tanjungpura (hereinafter the name is given the initials Kopda X) serving in the Kodam XII / Tanjungpura Area against Mr. Jumat (a civilian hereinafter referred to as Witness-1), this case occurred in the Pontianak City area, Pontianak Province. West Kalimantan, the lender Witness-1 provided loan assistance in the form of money with a business cooperation agreement for the sale and purchase of BBM (fuel oil) which ended in a criminal act of fraud. In 2014, Kopda X became acquainted with Witness-1 because the suspect was the husband of Witness-1's cousin, then in August 2017 Kopda X began to offer a business cooperation for the sale and purchase of Solar type BBM by borrowing funds from Witness-1 as capital, but Witness-1 did not provide it on the grounds that there were no funds until January 2018 Kopda X received the first loan of Rp. 200,000,000 (two hundred million rupiah) with an agreement to receive a return of 4.5% every month.

Based on the investigation and the confession of the suspect, it was proven that Kopda X had committed a debt case and a criminal act of fraud. Proven by not having a business selling and buying Solar fuel as intended (a series of lies) but for his personal needs. After going through a series of trials, Kopda X had committed a criminal act of fraud as regulated and threatened by Article 378 of the Criminal Code and was sentenced to imprisonment for 6 (six) and 15 (fifteen) days. Meanwhile, Kopda X was not prosecuted for his debt problem which did not eliminate the requirements in the realm of civil law.

Before the Criminal Procedure Code was enforced in Indonesia, the regulations that became the basis for the implementation of criminal procedure law in the general court environment were the updated Indonesian regulations or better known as "Het Herziene Inlandsch Reglement" or HIR (Staatblad 1941 Number 44) (Kansil, 1979). Where in HIR it is not possible for the settlement to be sequential, where criminal cases must be resolved first and then civil cases. The existence of a merger of compensation claims is because there is a settlement of cases in a case that has two aspects, namely the civil aspect and also the criminal aspect, so that people feel desperate because both criminal and civil procedures take a long time. This is as quoted by Drs. Hadari Djenawi Tahir, SH who stated: "It is not uncommon for things to happen that make justice seekers despair, because both criminal procedures and civil procedures in the district court are a long road" (Tahir, 1981).

However, since the birth of Law Number 8 of 1981 concerning Criminal Procedure Law which is stated in the State Gazette of the Republic of Indonesia Year 1981 No. 76, Supplement to the State Gazette of the Republic of Indonesia Year 1981 Number 3209 which is hereinafter known as the Criminal Procedure Code. Several new things listed in the Criminal Procedure Code, one of which is regarding the possibility of combining criminal cases with lawsuits for damages as regulated in Article 98 of the Criminal Procedure Code to Article 101 of the Criminal Procedure Code (Loqman, 1984).

Based on the description above, the author is interested in conducting further research on this proposal entitled "LEGIDAL ANALYSIS OF CIVIL LAW SETTLEMENT FROM THE PERSPECTIVE OF CRIMINAL LEGAL SETTLEMENT" which in the end can be used as input by the public in general, especially for military law enforcement officers in handling the legal process.

2. Literature Review

2.1. Theory of Legal Certainty

The Theory of Certainty referred to in this theory is the theory of legal certainty, meaning that every legal act carried out must guarantee its legal certainty. For this purpose, for unclear laws, it is necessary to interpret or interpret the norms. However, in interpreting the law against a provision of legislation that is considered incomplete or unclear, a legal expert cannot act arbitrarily.

The principle of legal certainty is a principle in a state of law that prioritizes the basis of laws and regulations, compliance and justice in every policy of state administration. The principle of legal certainty in a state of law according to Radbruch is very necessary to be maintained in order to achieve order or regularity.

2.2. Theory of Authority

Authority or authority has a position in the study of Constitutional Law and Administrative Law, this authority is considered very important so that F.A.M. Stronik and J.G Steenbeek stated: "Het Begrip bevoegdheid is da nook een kembegrip in he staats-en administratief recht". From this statement, an understanding can be drawn that authority is a core concept of Constitutional Law and Administrative Law.

Authority as a public law concept consists of at least three components, namely; influence, legal basis and legal conformity.

1. The influence component is that the use of authority is intended to control the behavior of legal subjects.
2. The legal basis component is that the authority can always be shown its legal basis.
3. The conformity component contains the meaning of the existence of authority standards, namely general standards (all types of authority) and special standards (for certain types of authority).

Legitimate authority is an attribute for every official or for every agency. Legitimate authority when viewed from the source from which the authority was born or obtained, then there are three categories of authority, namely Attributive, Delegative and Mandate, which can be explained as follows (ibid 70-75:

1. Attributive Authority.

Attributive authority is usually outlined or derived from the division of powers by Legislation. In the implementation of this attributive authority, the implementation is carried out by the official or agency listed in its basic regulations. Regarding attributive authority regarding responsibility and liability lies with the official or agency as stated in its basic regulations.

2. Delegative Authority.

Delegative Authority comes from the delegation of a government organ to another organ based on Legislation. In the case of delegative authority, responsibility and liability are transferred to the person given the authority and transferred to the delegate.

3. Mandate Authority.

Mandate Authority is authority that comes from the process or procedure of delegation from a higher official or agency to a lower official. Mandate authority exists in routine relationships between superiors and subordinates, unless prohibited.

2.3. Criminal act

The definition of a criminal act according to the opinions of experts is very diverse and there are differences of opinion due to different points of view and the diversity of existing legal schools/teachings. In these differences of opinion, it does not cause misinterpretation of the meaning and significance of a criminal act. There are terms that come from foreign terms (in foreign languages) that have no changes in writing and there are also those that have changes in both writing and pronunciation, the meaning of which remains the same as the foreign term.

According to Simons, quoted by S.R. Sianturi in his book *Principles of Criminal Law in Indonesia and Its Application*, formulated that: Een strafbaar feit is a handeling (action or deed) that is threatened with criminal law, contrary to the law (onrechtmatige) carried out with error (schuld) by a person who is able to be responsible. Then he divided it into two groups of elements, namely objective elements and subjective elements. What is meant by objective elements is in the form of actions that are prohibited or required, due to certain circumstances or problems, and subjective elements in the form of errors (schuld) and the ability to be responsible (teo akuntans vatbaar) of the perpetrator. Van Hamel, in formulating strafbaar feit, is the same as that formulated by Simons, only he added the sentence "which action is criminal in nature". E. Mezger defines strafbaar feit as "die straffat ist der inbegriff der voraussetzungen der strafe" (a criminal act is the totality of the conditions for the existence of a criminal act).

2.4. Elements of a Criminal Act

Regarding the content of the definition of a criminal act, there is no consensus among scholars. According to Moeljatno, a criminal act must be separated from its criminal responsibility, therefore Moeljatno's view is often said to be a dualistic view because there are several legal scholars who do not separate criminal acts from criminal responsibility, which is often referred to as a monistic view (Effendy, 2014).

Following the principles that apply in criminal law, a person cannot be blamed for committing a crime if the crime has not been formulated in the law. Although recent developments in criminal law show that this legal principle is no longer applied rigidly or rigidly, this legal principle has been maintained until now as a very fundamental principle in criminal law, even with various modifications and developments. Thus, a person can only be blamed for committing a crime if the person commits an act that has been formulated in the provisions of the law as a crime. The elements of the crime itself consist of the subject, error, unlawful nature, punishable acts and time, place and circumstances. Thus, the definition of a crime can be formulated as an action at a certain place, time and circumstances, which is prohibited (or required) and is threatened with punishment by law, is unlawful, and the error is committed by a person (who is able to take responsibility) (Sianturi, p.2017).

2.4. Criminal Liability

Criminal liability is essentially a mechanism established by criminal law to respond to violations of the "agreement to reject" a particular act (Ali, 2022). Punishment of a person is not enough if the person has committed an act that is against the law or is against the law. So even though the act fulfills the formulation of a crime in the law and is not justified, it does not yet fulfill the requirements for imposing a sentence. For punishment, a requirement is still needed to impose a sentence, namely that the person who committed the act has made a mistake or is guilty. The person must be held accountable for his actions or if viewed from the perspective of his actions, only then can the person be held accountable.

Criminal liability leads to the punishment of the perpetrator, if he has committed a crime and fulfills the elements that have been determined by law. Viewed from the perspective of the occurrence of a prohibited (required) act, a person will be held criminally responsible if his act is against the law or rechtsvaardigingsgrond or (justification) (Ibid, p.38). Viewed from the perspective of the ability to be responsible, only those who are "capable of being responsible" can be held criminally responsible. According to E.Y. Kanter and S.R. Sianturi, someone can be said to be capable of being responsible (toerekeningsvatbaar), if in general.

2.5. Fraud

The crime of fraud is one of the crimes that has an object of property. In the Criminal Code (KUHP) this crime is regulated in Chapter XXV BOOK II. All articles in Chapter XXV are known as bedrog or fraudulent acts. In Article 378 of the Criminal Code, the formulation is as follows (Prof. Moeljatno, 2021).

"Anyone who with the intention of benefiting himself or another person unlawfully, whether by using a false name, either by means of artifice and trickery or by fabricating falsehoods, persuades someone to

give him something, make a debt or write off a debt, shall be punished for fraud, with a maximum imprisonment of four years."

Based on the elements of the crime of fraud contained in the formulation of Article 378 of the Criminal Code above, then: Fraud is an act of a person with trickery, a series of lies, a false name and a false state with the intention of benefiting oneself without rights. A series of lies is a series of false sentences that are arranged in such a way that they are a story of something that seems true (Sugandhi, 1980). Fraud committed by the military is a special concern in this study, considering that the military profession has an important role in maintaining the security, order, and sovereignty of the state. Criminal acts of fraud committed by military personnel can have a significant negative impact on the image of the military institution and public trust in this institution. A criminological review is the approach used in this study, because criminology is a science that studies criminal acts, perpetrators, and prevention of criminal acts.

2.6. Fraud in Civil Law

Fraud is an act of trickery. Article 1328 of the Civil Code clearly states that fraud is a reason for canceling an agreement. In the case of fraud, the party who is deceived does indeed make a statement that is in accordance with his will, but his will, due to the power of deception, is deliberately directed to something that is contrary to his true will, which if there was no fraud, would be a correct action. In the case of fraud, a false image is deliberately planted by one party to the other party. So, the element of fraud is not only a false statement, but there must be a series of lies (*samenweefsel van verdichtselen*), a series of untrue stories, and every action/attitude that is deceptive (Satrio, 2001).

A contract that contains elements of fraud does not make the contract null and void, but rather the contract can only be cancelled (voidable). This means that as long as the injured party does not sue the competent court, the contract is still valid (Ibid, p 32). Fraud (*bedrog*, fraud, misrepresentation) in a contract is a trick used by one party so as to cause the other party to the contract to sign the contract, even though without the trick, the other party would not have signed the contract in question.

3. Research Methodology

The method used in this study is the normative legal research method, namely research conducted based on secondary data. The selection of methods in this study, data was obtained from library research using the legal approach method, namely analyzing problems from the perspective/according to applicable legal/legislation provisions.

3.1. Type of Research

1. Research on legal principles such as research on legal rules that exist in society.
2. Research on legal systematics, conducted by examining the basic understanding of the law contained in the legislation.
3. Research on legal synchronization, this research aims to reveal the reality to what extent a particular legislation is harmonious vertically and horizontally.
4. Comparative legal research, is research that finds and seeks differences in various legal systems.
5. Legal history research, attempts to identify the stages of legal developments that are narrowed in scope.
6. Related to this research, the focus of normative legal research is on legal principles, namely by studying and analyzing legal principles related to criminal acts of fraud in the criminology aspect.

3.2. Data Types and Sources

The data required in this research is a secondary data source in accordance with the problems and objectives of the research, namely data obtained from library research in the form of legal materials, divided into two types of data, namely:

a) Primary Legal Materials:

- 1) The 1945 Constitution of the Republic of Indonesia
- 2) Article 378 of the Criminal Code
- 3) Article 1754 of the Civil Code

- 4) Law No. 31 of 1997 concerning Military Justice
- 5) Article 1 Number 40 of Law No. 31 of 1997
- 6) Law No. 8 of 1981 concerning the Criminal Procedure Code

b) Secondary Legal Materials

As for secondary legal materials, they are legal materials that are closely related to primary legal materials and can help analyze and understand the primary legal materials, for example the research results of related experts, the work of legal experts, relevant books and so on.

c) Tertiary Legal Materials

Tertiary legal materials are materials that provide guidance and explanations for primary and secondary legal materials, consisting of a general Indonesian dictionary, a legal term dictionary and an encyclopedia.

3.3. Data collection methods

1. Descriptive Analysis

Research that is of an expository nature to provide a detailed, systematic and comprehensive description of everything related to the object to be researched, applicable in a certain place and at a certain time, or regarding existing legal phenomena or legal events that occur in society, in this case directly related to TNI personnel as the object.

2. Prescriptive Analytics

Research that aims to provide an overview or formulate a problem according to the existing conditions or facts accompanied by an analysis with the aim of finding a solution, in this case the problem of law enforcement to resolve debt cases in the civil law realm of TNI soldiers and provide recommendations and suggestions for improving case resolution in the existing legal system.

3.4. Data Processing and Analysis

The data processing of this research uses a qualitative method. Data analysis uses a descriptive analysis method, namely an explanation to provide a detailed, systematic and comprehensive description of everything related to cases carried out by TNI soldiers. In addition, researchers use a prescriptive analysis method to obtain suggestions on what should be done to overcome cases involving TNI members, specifically the settlement of debt cases in the existing legal system.

Data analysis system known by adjusting and describing the real situation regarding the perpetrators of fraud committed with money loans by TNI members. The results of interviews or literature studies are then processed and analyzed qualitatively to produce descriptive data to be used as a basis for drawing conclusions.

4. Result and Discussion

4.1. Description of the Criminal Case of Fraud in the Decision of the Military Court Number 46-K/PM.I-05/AD/IX/2021

In order to gain an understanding of the occurrence of a criminal act, in this case a criminal act of fraud by TNI soldiers, the author will provide an overview of how this case was handled by dissecting the decision part by part.

4.1.1. Case Position of Criminal Act of Fraud in Decision Number 46-K/PM.I-05/AD/IX/2021

In this case, the Author will describe the chronology of legal events that occurred in the decision Number 46-K / PM.I-05 / AD / IX / 2021 of the I-05 Pontianak Military Court in a criminal case of fraud that began with debts committed by a member of the Indonesian Army named Kopda Mulyono, NRP 310900779062687, Position Ta Provost 2 Urdal Tepbek II-44-4 / Ptk, Bekangdam XII / Tanjungpura Unit serving in the XII / Tanjungpura Military Command Area against Mr. Jumat (a civilian hereinafter referred to as Witness-1), this case occurred in the Pontianak City area, West Kalimantan Province, as follows:

- a. That Kopda Mulyono (Suspect) has committed a military crime of THTI and currently the THTI case is in the process of trial at the Military Court, furthermore in the examination of this fraud case the Suspect requires legal counsel to accompany him and the Legal Counsel appointed in accordance with the Letter of Order of Kakumdam XII/Tpr Number Sprin/359/III/2021 dated March 8, 2021 is Major Chk (K) Cok Morina Agung, S.H. along with 8 (eight) DKK (Letter of Order Attached) and the person accompanying him during this examination is Second Lieutenant CHK Waldiawan Hakim, S.H., NRP 11190028380392 Paurmin Tu Kumdam XII/Tpr (Letter of Order Attached).
- b. That the Suspect entered the Indonesian Army through Secata PK TNI AD Gel II TA 2008 at Rindam III/Slw, then attended Dikjurta Bekang TA 2009 at Pusdik Bekang, after graduating the Suspect was assigned to Bekangdam VI/Tpr in Balik Papan (currently Bekangdam VI/MIW), then after the expansion of the Kodam in June 2011 the Suspect was transferred to Bekangdam XII/Tpr until now, then the Suspect is the 5th (five) child of 5 (five) siblings of the couple Mr. Darmo Mujiyono (deceased) and Mrs. Juminem, then the Suspect is married, his wife is named Ms. Nur Aini and has been blessed with 1 (one) daughter in the name of Ms. Aishakira Kanza Azkia aged 7 (Seven) years.
- c. Then in June 2017 Witness-1 met the Suspect again at a coffee shop in the Parit Mayor area, at that time the Suspect asked Witness-1 "how is it Pak Haji, do you have the money?" Witness-1 answered "what money, uncle?", the Suspect answered "my loan for the diesel oil business", Witness-1 answered "oh, that money, I don't have it yet, uncle", then the Suspect asked again "if I have it, I'll borrow it first, Pak Haji", Witness-1 answered "just wait and see, uncle", then the two of them chatted and not long after returned to their respective homes.
- d. Then in August 2017 the Suspect contacted Witness-1 to come to his house and when he arrived at the Suspect's house and the Suspect asked again "How is it Pak Haji, do you have the money I borrowed for the diesel oil business?", because it was uncomfortable to be asked continuously by the Suspect, Witness-1 answered "Yes, uncle, I have the money", answered by the Suspect "when can I get the money Pak Haji?", answered by Witness-1 "I can't right now, uncle, there are still events at home", after that the two of them chatted and not long after Witness-1 went home.
- e. Bahwa uang jasa tersebut bukan merupakan uang pembayaran pinjaman Tersangka kepada Saksi-1, dan Tersangka telah menyerahkan 1 (satu) unit mobil Nissan Latio warna hitam dan saat ini mobil tersebut sudah dijual oleh Saksi-1 dengan harga Rp50.000.000,- (Lima puluh juta rupiah) sehingga uang Saksi-1 belum dibayar oleh Tersangka sebesar Rp650.000.000 (enam ratus lima puluh juta rupiah).

4.1.2. Evidence

The evidence submitted by the Military Auditor in the trial was:

1. Witness Statement

Witness Statement 1

Name Friday, Age 47 years, Place and date of birth Durian, October 12, 1974, Tribe/Nation Madura/Indonesia, Religion Islam, Private Occupation Farmer/planter, Address Durian Village RT 004 RW 001, Durian Sub-district, Sungai Ambawang District, Kubu Raya Regency, West Kalimantan.

a) Mr. Jumat (Witness-1) stated that when he was examined he was in good health both physically and mentally and was willing to provide information truthfully and was also willing to be sworn in according to his religion, namely Islam, then understood the reason for being examined, namely to provide information as a witness in the fraud case against Witness-1 which was allegedly carried out by Kopda Mulyono (Suspect) a member of Bekangdam XII/Tpr in the form of money amounting to Rp700,000,000,- (seven hundred million rupiah) and before the fraud occurred Witness-1 had known the Suspect since around 2014, then between Witness-1 and the Suspect's wife a.n. Sister Nuraini Binti Mislum are cousins.

b) Witness-1 stated that he knew the Suspect in 2014 because the Suspect was the husband of Witness-1's cousin a.n. Ms. Nuraini binti Mislum, from the introduction, the relationship between Witness-1 and the Suspect became closer, then in 2017 Witness-1 chatted at a coffee shop with the Suspect, at that time the Suspect asked Witness-1 "Pak Haji, what business have you been doing all this

time? Witness-1 answered "it's normal, uncle, a laborer selling vegetables at the Flamboyan market, besides that I have a car buying and selling business with my friend, but currently the car business is quiet and I plan to withdraw my capital", then the Suspect said "okay, just withdraw it, Pak Haji, I happen to have a diesel oil business, if I may, I will borrow Pak Haji's funds and invest them in diesel oil", answered Witness-1 "not yet, uncle, my friend can't return the funds at this time", then after a long chat, Witness-1 and the Suspect returned to their respective homes.

c) Witness-1 stated that it was true that he had received money from the Suspect every month and the amount of money given by the Suspect varied, depending on the amount of money he borrowed, if the loan was IDR 200,000,000 (two hundred million rupiah) then every month Witness-1 was given IDR 9,000,000 (nine million rupiah), if IDR 100,000,000 (one hundred million rupiah) Witness-1 was given IDR 4,500,000 (four million five hundred thousand rupiah) every month and if IDR 50,000,000 (fifty million rupiah) Witness-1 was given IDR 2,500,000 (two million five hundred thousand rupiah), but the monthly money given by the Suspect every month Witness-1 never specified the amount, but since January 2021 the Suspect has never given it again.

d) Witness-1 explained that he did not know what the money given every month was for, but Witness-1 had asked the Suspect and the Suspect answered that the money was only money given by the Suspect to Witness-1 because of his gratitude for helping the Suspect, then if at that time the Suspect had said that the money was money for profit or to pay off his loan in installments, Witness-1 would definitely not have accepted the money because Witness-1 had no diesel oil business cooperation with the Suspect and also if the gift was a form of returning the money he had borrowed, Witness-1 would have been even less willing to accept it because Witness-1 wanted all of his money returned in full, not in installments like that.

e) Witness-1 stated that it was true that the Suspect gave a black Suzuki Latio sedan as a form of partial payment of his debt to Witness-1 and the car was handed over by the Suspect to Witness-1 around January 2021, I forgot the date and currently the car has been sold for IDR 50,000,000 (fifty million rupiah).

Witness Statement 2

Name Saideh, Age 45 years, Place and date of birth Durian, January 02, 1976, Tribe/Nation Madura/Indonesia, Religion Islam, Occupation Taking care of the household, Address Durian Village RT 004 RW 001, Durian Sub-district, Sungai Ambawang District, Kubu Raya Regency, West Kalimantan.

a) Ms. Saideh (Witness-2) stated that when she was examined she was in good health both physically and mentally and was willing to provide information truthfully and was also willing to be sworn in according to her religion, namely Islam, then Witness-1 also understood the reason for being examined, namely to provide information as a witness in a fraud case allegedly committed by Kopda Mulyono (Suspect) member of Bekangdam XII/Tpr, against the husband of Witness-2 in the name of Mr. Friday (Witness-1) in the form of money amounting to Rp. 700,000,000,- (seven hundred million rupiah) and before the fraud occurred, Witness-1 had known the Suspect since around 2015.

b) According to Witness-1's confession to Witness-2, Witness-2's money amounting to Rp. 300,000,000,- (three hundred million rupiah) as detailed above was used to help the Suspect for the diesel oil business, but for the money in points b and c, Witness-2 did not see when Witness-1 handed over the money to the Suspect, but Witness-1 once told Witness-2 that the money had been handed over to the Suspect and according to Witness-1's statement, the Suspect would return the money within 1 (one) year, but until now the money has not been returned.

c) Witness 2 stated that he did not know that the Suspect had a diesel oil business and Witness 2 also did not know whether Witness 2's money amounting to Rp. 300,000,000 (three hundred million rupiah) was actually used for the diesel oil business by the Suspect or not.

d) The suspect explained that in 2014 he knew Mr. Friday (Witness-1) because the Suspect's wife is still related to Witness-1, then in 2017 Witness-1 asked for the Suspect's help to take care of his land in making a certificate, after the land certificate was finished, it was sold by Witness-1 and the Suspect tried to borrow his money of Rp. 200,000,000, - (two hundred million rupiah) on the grounds that it was for capital for a diesel oil business, but at that time Witness-1 said that the money had not come out, then in 2018 after Witness-1's land had been paid for (a sale and purchase took place), the Suspect tried to borrow money from Witness-1 and at that time Witness-1 was willing to lend him Rp. 200,000,000, - (two hundred million rupiah) and on January 20, 2018 the money was given by Witness-1 to the Suspect at a coffee shop near Kodam XII/Tpr, then the Suspect borrowed money from Witness-1 several times as follows:

- 1) On February 10, 2018, the Suspect borrowed money from Witness-1 amounting to Rp100,000,000 (one hundred million rupiah) on the grounds of increasing the capital for his oil business and the money was given by Witness-1 at a coffee shop near Kodam XII/Tpr.
- 2) On March 10, 2018, the Suspect borrowed money from Witness-1 again amounting to Rp100,000,000 (one hundred million rupiah) on the grounds of increasing the capital for his oil business and the money was given by Witness-1 at a coffee shop near Kodam XII/Tpr.
- 3) On March 23, 2018, the Suspect borrowed from Witness-1 on the grounds of increasing the capital for his oil business, where at that time the Suspect, Witness-1 and Ms. Saideh (wife of Witness-1) came to Bank Kalbar Sungai Raya Dalam, then Witness-2 withdrew money through the Bank Kalbar teller in the amount of Rp200,000,000,- (two hundred million rupiah), then the money was immediately handed over to Witness-1 and by Witness-1 directly handed over to the Suspect in the parking lot of Bank Kalbar Sungai Raya Dalam, after receiving the money the Suspect left Witness-1 and Witness-2.
The Suspect explained that he had borrowed money from Mr. Jumat (Witness-1) in the amount of Rp700,000,000,- (seven hundred million rupiah) from 2018 to 2019 and it is true that the 4 (four) receipts shown to the Investigator were receipts for borrowing business capital from the Suspect to Witness-1 which were made by the Suspect himself and then the Suspect submitted them to Witness-1 as proof of borrowing money from Witness-1.
- 4) The suspect stated that the amount of Rp. 700,000,000 (seven hundred million rupiah) was not used for the diesel oil business.

4.2 Criminal Offenses in Civil Cases

The reason for the emergence of criminal offenses that are processed is because basically elements of criminal acts are found that do occur in civil cases that are being prosecuted. Civil law and criminal law are basically two different laws. Civil law focuses on private matters, while criminal law focuses on public matters. Basically, private matters should not be public consumption, but in many cases sometimes civil cases turn into criminal cases because there are criminal elements that can be charged.

If a civil case turns into a criminal act, it must meet several elements. In a criminal act, there must be an element of an act against the perpetrator, which act has met the provisions of a violation of the law. The act must be proven wrong and can be accounted for. Then, the act is also contrary to the law and there are already legal regulations that regulate it as a form of legal certainty.

In this case, the dispute between two parties who have entered into an agreement is a case in the realm of civil law. However, in many cases that ultimately bring the suspect to the realm of criminal law because there is an element of fraud committed by one of the parties.

In civil cases, the lawsuit that is often filed is a breach of contract or an unlawful act. Default is committed by someone when he does not fulfill an agreement that has previously been made and agreed

upon. Meanwhile, an unlawful act is an act that harms another party caused by negligence or error and accompanied by a lack of good faith from the party causing the loss.

Based on that, civil cases based on unlawful acts often end up as criminal cases. In such cases, investigators usually use criminal articles to put more pressure on the suspect, where criminal articles should be the last weapon and applied if the case is not resolved. The general public must have extensive legal knowledge to avoid incidents like this. At least the public needs to know the difference between criminal and civil cases. Asking for legal considerations from legal practitioners can also help so that the public is not confused when faced with this happening.

4.3 Discussion

4.3.1 *Analysis of the investigation process of debt cases based on fraudulent actions up to the trial stage by separating the case for the sake of military or command interests to the point of ignoring the civil case*

In the case of decision Number 46-K/PM.I-05/AD/IX/2021 of the Military Court I-05 Pontianak, a criminal case of fraud that originated from debts committed by a member of the Indonesian Army named Kopda Mulyono, NRP 310900779062687, Position Ta Provost 2 Urdal Tepbek II-44-4/Ptk, Bekangdam XII/Tanjungpura Unit serving in the Kodam XII/Tanjungpura Area against Mr. Jumat (a civilian hereinafter referred to as Witness-1, this case occurred in the Pontianak City area, West Kalimantan Province, the act was carried out with the following description:

- a. That the Suspect entered the Indonesian Army through Secata PK TNI AD Gel II TA 2008 at Rindam III/Slw, then participated in Dikjurta Bekang TA 2009 at Pusdik Bekang, after graduating the Suspect was assigned to Bekangdam VI/Tpr in Balik Papan (currently Bekangdam VI/MLw), then after the expansion of the Kodam in June 2011 the Suspect was transferred to Bekangdam XII/Tpr until now, then the Suspect is the 5th (fifth) child of 5 (five) siblings of the couple Mr. Darmo Mujiyono (deceased) and Mrs. Juminem, then the Suspect is married, his wife is named Ms. Nur Aini and has been blessed with 1 (one) daughter in the name of Ms. Aishakira Kanza Azkia aged 7 (seven) years.
- b. That in 2014 the Suspect knew Mr. Friday (Witness-1) who is the cousin of the Suspect's wife named Ms. Nuraini binti Mislum, from the introduction the relationship between the Suspect and Witness-1 became closer, then in 2017 the Suspect chatted at a coffee shop with Witness-1, at that time the Suspect asked Witness-1 "Pak Haji, what business have you been doing all this time? Witness-1 answered "usually uncle, a laborer selling vegetables at the Flamboyan market, besides that I have a car buying and selling business with my friend, but currently the car business is quiet and I plan to withdraw my capital", then the Suspect said "okay, just withdraw it, Pak Haji, I have a diesel oil business, if I may, I will borrow Pak Haji's funds and invest them in diesel oil", answered by Witness-1 "not yet, uncle, my friend can't return the funds at this time", then after a long chat, Witness-1 and the Suspect returned to their respective homes.
- c. Then in June 2017 Witness-1 met the Suspect again at a coffee shop in the Parit Mayor area, at that time the Suspect asked Witness-1 "how is it Pak Haji, do you have the money?" Witness-1 answered "what money, uncle?", the Suspect answered "my loan for the diesel oil business", Witness-1 answered "oh, that money, I don't have it yet, uncle", then the Suspect asked again "if I have it, I'll borrow it first, Pak Haji", Witness-1 answered "just wait and see, uncle", then the two of them chatted and soon returned to their respective homes.
- d. Then in July 2017 Witness-1 met the Suspect again at a coffee shop and at that time the Suspect still asked about the loan and Witness-1 answered that the money was still not there, then the two of them chatted and after that they dispersed and returned to their respective homes.
- e. Then in August 2017 the Suspect contacted Witness-1 to come to his house and when he arrived at the Suspect's house and the Suspect asked again "How is it Pak Haji, do you have the money I borrowed for the diesel oil business?", because it was uncomfortable to be asked continuously by the Suspect so Witness-1 answered "Yes uncle, I have the money", answered by the Suspect "when

can I get the money Pak Haji?", answered by Witness-1 "I can't right now uncle, even now there are still events at home", after that the two of them chatted and not long after Witness-1 went home.

- f. That the service fee is not a loan payment from the Suspect to Witness-1, and the Suspect has handed over 1 (one) black Nissan Latio car and currently the car has been sold by Witness-1 for Rp50,000,000,- (Fifty million rupiah) so that Witness-1's money has not been paid by the Suspect in the amount of Rp650,000,000 (six hundred and fifty million rupiah).
- g. That when Witness-1 was subjected to additional examination related to the amount of monthly money given by the Suspect, Witness-1 was shown by the Investigator the details of the monthly money made by the Suspect in a paper note, only then did Witness-1 know that the total amount of money he had received had exceeded the Suspect's loan and considering that the Suspect is still the husband of Witness-1's cousin (Ms. Nuraini Binti Mislum) so that Witness-1 has accepted the Suspect's debt whether it is paid or not.

From the explanation in Article 281 of the Criminal Code, the elements of the crime of fraud are:

1. First Element: Who.

What is meant by "Whoever" is every person or anyone who is subject to the laws and regulations of the Republic of Indonesia as formulated in Article 2 Chapter I of Book One of the Criminal Code including the Defendant as an Indonesian citizen and as a soldier of the Indonesian Army.

a. The suspect entered the Indonesian Army through Secata PK TNI AD Gel II TA 2008 at Rindam III/Slw, then participated in Dikjurta Bekang TA 2009 at Pusdik Bekang, after graduating the suspect was assigned to Bekangdam VI/Tpr in Balik Papan (currently Bekangdam VI/MLw), then after the expansion of the Kodam in June 2011 the suspect was transferred to Bekangdam XII/Tpr until now, then the suspect is the 5th (fifth) child of 5 (five) siblings of the couple Mr. Darmo Mujiyono (deceased) and Mrs. Juminem, then the suspect is married, his wife is named Ms. Nur Aini and has been blessed with 1 (one) daughter named Sdri. Aishakira Kanza Azkia aged 7 (seven) years.

b. The defendant as a TNI soldier is also an Indonesian citizen who is subject to all positive laws in Indonesia including the Criminal Code as indicted by the High Military Prosecutor.

Thus the author agrees with the Panel of Judges that the first element "whoever" has been fulfilled.

2. Second Element: With the intention of benefiting oneself or another person in an unlawful manner. The element of error here is in the form of dolus which is formulated with the term "With intent", The use of the term with intent placed at the beginning of the formulation has a dual function, namely as a substitute for intent and as a statement of intent, as an element of intent the perpetrator realizes/realizes/wants an advantage for himself or others.

What is meant by the phrase "With intent" is a substitute for the word "Intentionally", which is one form of error from the perpetrator. According to Memori van Toelichting (MvT) what is meant by "Intentionally" (intentionally) is Willing and realizing the occurrence of an action and its consequences. That what is meant by "against the law" according to jurisprudence (arrest Hoge Raad dated December 31, 1919) is as follows: damaging a person's subjective rights according to law; or doing something that is contrary to the perpetrator's legal obligations according to law or doing something that is contrary to propriety in society.

That this element contains the meaning that the perpetrator, in this case the defendant, by using trickery or a series of lies, has deliberately carried out an act with the intention and purpose of obtaining an advantage for himself or another person, where the methods used to obtain said advantage are contrary to propriety in society, or contrary to the legal obligations of the perpetrator or damage the subjective rights of another person according to the law.

3. The third element: by using a false name or false dignity, by deception or a series of lies to encourage other people to hand over something to him, or to give a debt or write off a receivable.

In this element of action, there are means used by the perpetrator so that other people are moved to hand over something or give debt or write off debts, the means used are several alternatives, namely a false name or false dignity or trickery or a series of lies.

That what is meant by "Fake name" is a name that is not the name of the perpetrator, but when asked to people who actually know the perpetrator, they do not know the name. Regarding the addition of a nickname or other name to be more complete, which actually makes it easier to recognize the perpetrator by that name, it does not include a fake name.

That what is meant by "Trickery" is an action that can be witnessed by other people, whether or not accompanied by a statement, with which the perpetrator creates a belief in something or hope for other people, even though he realizes that it does not exist. For example, a drug seller colludes with his friends who pretend to be sick, so that when they take the medicine they feel their health is restored; or a street vendor who colludes with his friends who pretend to fight over buying the goods because the price is cheap, even though later it will be returned. If it is just by saying that a medicine is efficacious or that the merchandise is very cheap, it is not a trick. Other examples of tricks: the perpetrator uses a form from a certain company, or a certain government agency, even though he is not authorized to do so; Making a payment at night with banknotes that are no longer valid; Making a payment with a giro bill where on the date of withdrawal, the funds in the relevant bank are not available.

That what is meant by "Handing over an item" is that a payment can occur directly. Also the payment occurs indirectly. So the delivery can occur indirectly or also direct delivery. What is meant by goods here are goods in general goods that have economic value.

The definition of "Giving debt" or making debt or acknowledging debt to the perpetrator does not have to be exactly as regulated in civil law, but rather an acknowledgment of debt of a certain amount of money on a piece of paper, or verbally witnessed by another person, or in this modern technological era recorded on one tape, is sufficient for the application of this article.

The definition of "Writing off receivables" here is not limited to receivables due to loans, but also receivables due to pawning, receivables as a result of a profit sharing, etc. The method of writing off can occur by tearing up the receivables letter, saying it verbally witnessed by someone.

The Civil Code does not explain further what fraud is, so to find out, we can make an analogy with fraud as stated in the Criminal Code into the fraud referred to in Article 1321 of the Civil Code. If fraud in the Criminal Code contains an element of trickery that moves another person to hand over something in the form of goods, then if we make an analogy with fraud in civil law, looking at Article 1328 of the Civil Code, there is also an element of trickery that causes another person to be moved to enter into a contract or make an agreement.

A criminal act is an act that is prohibited by criminal law and is punishable by punishment for anyone who violates this prohibition (Poernomo, 1994, p.130). Thus, a person can only be accused of committing a crime if the person commits an act that has been formulated in the provisions of the law as a crime. In other words, it can be stated that a person cannot be accused of committing a crime if one of the elements of the crime charged to the person cannot be proven. Because the failure to fulfill one of the elements of the crime has the consequence that the charge for the crime is not proven. However, these normative limitations have shifted in their development, where it is very possible that a person can still be accused of committing a crime based on the values that exist in society even though the act is not expressly regulated in the normative apparatus or law (Tongat, 2003).

1. Fraud in its basic form.

The crime regulated in Article 37 of the Criminal Code is called the crime of fraud in another basic form called "oplichting". The provisions of Article 378 of the Criminal Code state: "Anyone who intends to benefit himself or another person unlawfully by using a false name or false dignity, by

trickery, or a series of lies, moves another person to hand over something to him, or to give a loan or write off a debt, is threatened, because of fraud, with a maximum imprisonment of four years. " Meanwhile, for the act of moving another person according to Article 378 of the Criminal Code, it is not required to use the above efforts, but by using actions, either in the form of actions or words that are deceptive (Lamintang & Samosir, 2010).

Indeed, the essential nature of the crime of fraud is the intention to benefit oneself or others unlawfully, to move others to hand over or do something, with limitations in Article 378 of the Criminal Code. In relation to the element of "moving others" in Article 378 of the Criminal Code, it is necessary to state that the meaning of "moving others" in this article is different from the meaning of "moving others" or uitlokking in the context of Article 55 paragraph (1) of the Criminal Code. The context of "moving others" in Article 378 of the Criminal Code does not require the use of the above efforts. The act of "moving" in the context of Article 378 of the Criminal Code is by using actions.

Only in this case, because of the element of "intention", this means that the element of "surrender" must be a direct result of the efforts made by the fraudster. Thus, there must be a causal relationship between the act of "surrendering" carried out by the person who was deceived and the efforts made by the fraudster.

2. Minor fraud.

This minor fraud crime is regulated in the provisions of Article 379 of the Criminal Code, which states: "The acts regulated in Article 378 if the goods handed over are not livestock and the price of the goods handed over, the debt given or the receivables written off is not more than twenty-five rupiah, are subject to, as minor fraud, a maximum imprisonment of three months or a maximum fine of sixty rupiah". Based on the formulation of Article 379 of the Criminal Code above, the elements of the minor fraud crime are:

- a. Elements of the crime of fraud in its basic form.
- b. The goods submitted (as the object of the crime of fraud) must not be livestock and its value must not exceed twenty-five rupiah.
- c. The debt given or the receivables written off must not exceed twenty-five rupiah. Thus, there are three requirements for a crime of fraud to be categorized as a minor crime.

3. Fraud in sales.

This crime is regulated in the provisions of Article 383 of the Criminal Code, which states: "Threatened with imprisonment of one year and four months, a seller who cheats the buyer:

1st because he intentionally delivers goods other than those designated to be purchased.

2nd regarding the type of condition or the number of goods delivered, using trickery".

Constitutive effect element (constitutief gevolg). This element is found in criminal acts that require their resolution on the emergence of certain consequences (material crimes), and criminal acts that require the emergence of consequences to aggravate the crime. The constitutive effect element is stated explicitly, such as a person delivering goods, creating debt or writing off receivables from fraud Article 378 of the Criminal Code.

If fraud in the Civil Code can be analogized to fraud in criminal law, then what is the meaning and elements of fraud in a contract. The Civil Code does not further regulate the elements and what is fraud, because fraud is included in the public sphere so its regulation is in criminal law. To find out the Fraud that occurs in a contract in the Civil Code in Article 1328 is only translated as fraud marked by the presence of an element of trickery used by one of the parties, because in Article 1328 of the Civil Code if there is an element of fraud, then fraud is not suspected, but must be proven, this can be interpreted if one party suspects fraud then the party must prove the fraud that occurred. Therefore, because there is no regulation in the Civil Code, fraud can be analogized as fraud in the Criminal Code which is regulated in Article 378 of the Criminal Code which has elements of trickery and elements of moving the hearts of others to hand over something. Thus, if we compare fraud to fraud in the Criminal Code,

then fraud in civil law has elements of trickery or deceit, persuasion, and a series of lies that make the deceived party enter into an agreement. Therefore, if there is fraud in a contract, there are elements of trickery, deceit and a series of lies that in the contract can be interpreted as the deceived party entering into an agreement and an agreement or contract occurs.

The conclusion of a contract is often preceded by negotiations, by means of which one party makes statements of fact, intended to induce the other party to enter into the contract. If such statements are untrue or false, this is called misrepresentation. Thus, a fraudulent act can be defined as a statement of fact made by one party to an agreement to another party before the agreement is made, with the intention of inducing the other party to agree to the statement. The statement must have been intended to be made to, and must actually induce the other party to agree.

An unlawful act is an unlawful act in the civil field. Because, for an unlawful act in a criminal case (delict) or what is called a "criminal act" has a different meaning, connotation and legal regulation. According to Article 1365 of the Civil Code, what is meant by an unlawful act is an unlawful act committed by a person who due to his/her fault has caused harm to another person. In this case, what is meant by abuse of rights is an act based on the legitimate authority of a person in accordance with applicable law, but the act is carried out deviantly or with an intention other than the purpose for which the right is granted. The act of abuse fulfills the elements in Article 1365 of the Civil Code, such as there is a loss for another person, there is a violation of propriety, morality or carelessness, there is a causal relationship with the loss, then the act of abuse of rights is already an unlawful act according to Article 1365 of the Civil Code (Ibid, p.9).

The elements of fraud according to criminal law with the elements of civil unlawful acts have similarities in the existence of elements of unlawful acts and elements of harming others. The reason for the emergence of criminal offenses that are processed is because basically elements of criminal acts are found that do occur in civil cases that are being prosecuted. Civil law and criminal law are in principle two different laws. Civil law focuses on private matters, while criminal law focuses on public matters. Basically private matters should not be consumed by the public, but in many cases sometimes civil cases turn into criminal cases because there are criminal elements that can be prosecuted.

If a civil case turns into a criminal act, it must fulfill several elements. In a criminal act, there must be an element of an act against the perpetrator, which act has fulfilled the provisions of a violation of the law. The act must be proven wrong and can be accounted for. Then, the act is also contrary to the law and there are already legal regulations that regulate it as a form of legal certainty. In civil law, the position of a court decision in a criminal case can legally be used as one of the authentic evidence. Even with the existence of a court decision in the criminal case, it can provide confidence to the judge that the defendant has indeed committed an unlawful act.

As long as the actions of the legal subject are contrary to matters that are objects of law (according to material civil law), the case can be criminalized. Then, every action of the legal subject that is contrary to other legal subjects such as relationships between individuals or groups will become the realm of civil cases. A civil case cannot become a criminal case if in the process there is a change in the civil case that is followed up in the judicial institution as a criminal offense, this does not mean that the position of the case has changed.

The reason for the emergence of criminal offenses that are processed is because basically elements of criminal acts are found that do occur in civil cases that are being prosecuted. This case often occurs in cases of buying and selling or debts between individuals. In this case, the dispute between two parties who have entered into an agreement is a case in the realm of civil law. However, in many cases that ultimately bring the suspect to the realm of criminal law because of the element of fraud committed by one of the parties.

4.3.2 *Analysis of case consolidation in the settlement of criminal cases based on debt in military courts in order to obtain compensation?*

In terms of language, the meaning of "Loss" in everyday life can be interpreted as the meaning of loss due to something that arises. "Compensation is the right of a person who is a victim of a crime who directly or indirectly suffers a loss, to receive fulfillment of his demands in the form of compensation in the form of a sum of money according to the method regulated in the Law. The definition above does not explain the form of loss suffered by a person and what causes it. The amount of loss is only measured in terms of money, either for moral or material losses. For example, for losses due to defamation of a person's good name or traffic accidents and so on. The definition of compensation as stated above is very broad in nature. There is no limit that an act that results in loss to another person is an unlawful act. This means that an act that is felt to be detrimental to a particular individual in society can be asked for compensation even though there is no legal regulation.

Starting from the field of civil law, sanctions regarding compensation are regulated in Articles 1365 to 1380 of the Civil Code, as a result of "breach of contract" in a contract, either due to an agreement or due to the Law. Article 1365 states "Every unlawful act, which causes loss to another person, requires the person whose fault causes the loss, to compensate for the loss". The articles above all regulate claims for compensation in the sense of unlawful acts, which according to (Prodjodikoro), these acts cause a shock in the balance of the balance of society and this shock does not only occur when legal regulations in a society are violated (directly) but also when moral, religious and polite regulations in society are violated (directly) (Prakoso, 1988). Based on Article 1365 of the Civil Code, if a person has committed an unlawful act and has been proven to have committed a crime, then he can be sued for compensation. Quoting Subekti's opinion, regarding compensation: "Compensation is often detailed in 3 (three) elements, namely: costs, losses and interest (kosten, schaden en interessen in Dutch), what is meant by costs is all expenses or costs that have actually been incurred by one party, while what is meant by loss is loss due to damage to goods belonging to the creditor caused by the debtor's negligence, what is meant by interest is loss in the form of loss of profit (winnsterving) (Marpaung, 1997).

In Article 1957 BW it is stated that a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents or caused by goods under his control. From these two articles it can be concluded that the guarantee of compensation for losses according to the civil law system can be imposed on any party whose actions, whether negligent or intentionally causing harm to another party, are given in the form of money.

The definition of compensation is "Costs that have been incurred" (Asmawi, 1992, p.6). Meanwhile, another opinion defines compensation as: "Compensation given to someone who suffers due to arrest and detention that is used for purposes that cannot be accounted for according to law". Article 1 Number 40 of Law Number 31 of 1997 states that compensation is the right of someone who is a victim of a crime who directly or indirectly suffers a loss, to receive fulfillment of his/her demands in the form of compensation in the form of a sum of money in the manner regulated in this Law (Prinst, 2003). Different understanding of compensation contained in Article 1 Number 22 of Law Number 8 of 1981 states that compensation is a person's right to receive fulfillment of his/her demands in the form of compensation for being arrested, detained, charged or tried without a reason based on the Law or because of an error regarding the person or the law applied in the manner regulated in this Law. From this definition it is very clear that a person who is a victim of a crime is justified by the Law to sue for his/her losses.

The issue of compensation is subject to civil law, therefore the court that has the authority to examine this compensation claim is a civil court with a Civil Judge. While in Law Number 8 of 1981 and Law Number 31 of 1997 regulates issues related to criminal matters. However, with the positive relationship in Article 98 of Law Number 8 of 1981 and Article 183 of Law Number 31 of 1997 which combines compensation claims in criminal cases at the same time, what is in civil law and criminal law can be brought together.

Article 183 of Law Number 31 of 1997 states that if an act that is the basis for an indictment in a criminal case examination in a Military/High Military Court causes harm to another person, then the Chief Judge of the trial at the request of that person can determine to combine the compensation claim case with the criminal case. From the formulation of Article 183 of Law Number 31 of 1997, it can be seen that in order to be able to combine this case, three requirements are needed, namely the existence of an act by the Defendant, the existence of an act by the Defendant as the first requirement must cause harm to another person and there is a request from the party who feels aggrieved to the Court to combine the compensation case. The act committed by the Defendant is clearly a criminal act. The definition of a criminal act in general can be interpreted as an act that is prohibited by law and is threatened with criminal punishment. The prohibition is directed at the act, namely an incident due to the behavior of a person, while the threat of punishment is directed at the person who caused or created the incident. So there is a close relationship between the prohibition and the threat of punishment, therefore there is also a close relationship between the incident and the person who created the incident. It is stated above that the merger of cases must cause losses to others. In this case, "loss to others" is the loss of a third party including the victim's witness. As previously stated, the merger of civil cases with criminal cases is due to no other reason than the loss suffered by the victim. The loss here is in the form of material loss.

Quoting Wahyu Affandi's opinion, in one of his writings he said the following: "Because the act is a criminal case and the claim for compensation is merely a request, then the fulfillment of the claim depends on the criminal decision, if the Defendant or Public Prosecutor accepts the decision, the claim for compensation can be realized, conversely if one party or both of them reject the decision, the claim for compensation cannot be realized (Prakoso, 1988).

The claim for compensation according to Article 183 of Law Number 31 of 1997 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 merging their civil cases with criminal cases. However, Law Number 31 of 1997 does not regulate in detail and completely regarding the procedures for merging these cases. Article 183 of Law Number 31 of 1997 only explains the time when the lawsuit can be filed, namely the lawsuit can be filed no later than before the Public Prosecutor files a criminal charge. Law Number 31 of 1997 does not explain the process adopted, whether it is a criminal process or still a civil process. If we look at the process of the case of merging compensation as a whole, Law Number 31 of 1997 is not biased, meaning it does not emphasize one of the proofs, but uses both systems of proof in a balanced way. Therefore, it is clear that in the process of Article 183 of Law Number 31 of 1997, the Judge uses both of the above evidentiary systems. For criminal cases, a negative evidentiary system is used, then in the examination of the claim for compensation, the Judge uses a positive evidentiary system based on valid evidence that has been obtained in the criminal process.

4.4 Compensation System

Compensation is described in the book "Compensation of the Victim of Crime" which is then explained in a guideline book for the implementation of Law Number 8 of 1981 which differentiates the compensation system into five, namely:

- a. Compensation that is civil in nature and given in civil procedures Through civil procedures, all types of losses suffered by victims, both material losses and immaterial losses can be claimed for their fulfillment. Victims of criminal acts can also use civil procedures to claim compensation for the losses they have experienced. But there is one thing with this civil procedure that will be a consideration for the plaintiff to be reluctant and lazy because the settlement usually often takes a long time, so that it will automatically take a lot of time and money. The long time and increasing costs by themselves cannot fulfill the principles of fast, simple, and low-cost justice. A civil lawsuit caused by a civil claim is not only a legal act that is carried out by oneself but can also be sued for an unlawful act. The unlawful act in question is an unlawful act related to a criminal case, the result of which causes harm to others. And based on the provisions of Article 1365 of the Civil Code, the perpetrator of the loss can be sued to compensate for the loss he caused. "Every unlawful act, which causes loss to another person, requires the person whose fault causes the loss to compensate for the loss." Everyone is responsible not only for the loss caused by his actions but also for actions

committed due to his negligence or carelessness. In addition, everyone is not only responsible for the loss caused by his own actions but also for the actions of other people under his care or people under his responsibility or caused by goods under his supervision. This responsibility can only be declared to have ended if the loss caused could not have been prevented by the person responsible for it. In this system, a separation is made between compensation and the criminal case. Criminal acts are viewed solely as crimes against the public interest while the interests of the victim as an individual are resolved through civil law.

- b. Compensation that is civil in nature and is given in criminal procedures but the payment is the responsibility of the State, but the State can request reimbursement from the convict.
- c. Compensation that is neutral in nature and is given through criminal procedures. This fifth system does not include civil procedures or criminal procedures. This procedure is applied because the victim is a person who is in great need while the convict is also a person who is unable, so the State takes over the responsibility by replacing the losses that are the burden of the convict, this system applies in Switzerland.

In the Military Court, the consolidation of compensation claims is regulated in Article 183 to Article 187 of Law Number 31 of 1997 concerning Military Justice, which only regulates one system related to compensation, namely civil compensation but given a criminal procedure, the same as in Law Number 8 of 1981 concerning the Criminal Procedure Code, in Chapter XIII Articles 98 to 101. The Military Court only has one system regarding compensation because the Military Court only regulates matters related to criminal matters. This consolidation procedure, Law Number 31 of 1997, carries out two examination processes at once. The first is the criminal process, then continued with the civil process for the examination of the compensation.

Of the various compensation systems that exist, in Indonesia, the first system is more adhered to, namely civil compensation is given in the civil procedure, as well as the second system, where the compensation claim from the victim which is civil in nature is combined in the criminal case, while the compensation is accounted for to the perpetrator of the crime. Meanwhile, losses of an "immaterial" nature cannot be claimed through this procedure.

4.4.1. How to claim compensation if you are a victim of a crime and the process of implementing a claim for compensation

- a. Through the Consolidation of Claims for Damages in Criminal Cases.

Claims for compensation in criminal cases are regulated in Law Number 8 of 1981, namely Articles 95 and 96, namely related to being arrested, detained, charged and tried or subjected to other actions without a reason based on the law or due to an error regarding the person or the sentence determined, the claim for which is through a pre-trial hearing, while Law Number 31 of 1997 does not regulate it. Meanwhile, regarding the consolidation of cases for claims for compensation, it is regulated in Law Number 8 of 1981, Articles 98 to 101 and also regulated in Law Number 31 of 1997, Articles 183 to 187.

Article 183 Paragraph (1) of Law Number 31 of 1997 states "If an act that is the basis for an indictment in a criminal case examination by a Military Court/High Military Court causes harm to another person, the Chief Judge at the request of that person may determine to combine the claim for compensation with the criminal case. From the explanation of the Article, it can be seen that the purpose of combining cases is so that the lawsuit case is examined and decided at the same time as the criminal case in question, while what is meant by losses for other people includes losses for the victim. The claim for compensation referred to in Article 183 Paragraph (1) of Law Number 31 of 1997 is a claim for compensation arising from the commission of a criminal act.

Here, there is attention to victims of criminal acts in the form of accelerating the process of obtaining compensation for losses suffered as a result of the Defendant's actions by combining his criminal case with a lawsuit for compensation, which is essentially a civil case. That the demands submitted are limited to demands for compensation for material losses or real losses, namely as stated by M. Yahya

Harahap ".....the separation between compensation for material and immaterial losses is perhaps based on the idea that material losses are so easy to examine and prove. In contrast to immaterial losses, the examination and proof of which are very difficult so that it is estimated that it will hinder the smooth examination of the lawsuit for compensation combined with his criminal case.

Material losses are losses that can be calculated in money, losses of wealth which are usually in the form of money, including losses that are suffered and have been clearly suffered. While immaterial losses/ideal losses or moral losses, namely losses that cannot be assessed in a definite amount. For example, fear, loss of pleasure or disability of limbs and so on.

b. Process of Merging Criminal Cases with Compensation Lawsuits.

If the case file has been entered into the Military Court, the victim can file a request to file a Compensation Claim. And the request can only be filed no later than before the Military Prosecutor files a criminal charge. Furthermore, based on Article 183 Paragraph (1) of Law Number 31 of 1997 on the request, the Chief Judge can determine to combine the compensation claim case with the criminal case.

For the examination of compensation by referring to the provisions of civil procedural law in the examination of compensation, the provisions of the civil procedural law rules apply to the examination of compensation claims. In civil procedural law, the parties referred to in a compensation claim are the Plaintiff and Defendant. The Plaintiff is the person or parties who file a lawsuit for a case because they feel that their rights have been violated by someone, while the Defendant is the person or parties who are sued and brought to court because they are suspected of violating someone's rights. And the Judge's decision only contains the determination of the penalty for compensation for the costs incurred by the victim.

Regarding the implementation of this compensation, of course, it is first closely related to how the Judge's decision or the actions taken by the Defendant is stated, of course, against the Decision where the Defendant is clearly proven to have committed a crime so that the Defendant must be punished, because here it is clearly proven that the Defendant's actions violate criminal law and cause losses to other parties. The right to claim compensation is given to sufferers or victims who directly suffer losses, but it does not rule out the possibility of their heirs to claim compensation. Heirs are not only responsible for the debt or consequences of criminal acts caused by their heirs, but also have the right to receive all the benefits left by their heirs. Meanwhile, against the Decision of acquittal or release, the claim for compensation is not granted.

Likewise, regarding who has the right to pay compensation, in this case it is clear that the Defendant who directly causes losses to other people is obliged to pay compensation. If before the execution the Defendant dies, the victim's family is obliged to pay the compensation. If the Defendant dies before the case is decided, then the right to sue for the crime is lost and at the same time the heirs are free to pay the compensation. This is appropriate because a crime can only be prosecuted against the person who committed it.

Regarding the implementation of court decisions, Article 254 Paragraph (1) stipulates that the implementation of court decisions that have obtained legal force is carried out by the Military Auditor, for which the clerk sends a copy of the decision letter to him. However, if we examine the series of articles in Law Number 31 of 1997, namely Articles 255 to 263, which are contained in part eleven regarding the implementation of court decisions, then what is meant by court decisions implemented by the Military Auditor are court decisions based on the main sentence, while for additional sentences, their implementation is not regulated. For court decisions regarding the consolidation of compensation claims, their implementation is regulated by Article 187 of Law Number 31 of 1997, namely carried out according to the procedures for civil decisions. It is stated in Article 187 that the provisions of the civil procedural law apply to compensation claims as long as this Law does not regulate otherwise. Meanwhile, Article 186 of Law Number 31 of 1997 states that the Chief Clerk of the Military/High

Military Court, because of his position, is a special Bailiff for the implementation of the Decision on compensation due to the consolidation of the claim for compensation with the criminal case. Here it is clear regarding the implementation of compensation by the Katera/Registrar.

If the losing party is unwilling or neglects to implement the Judge's decision, the winning party may submit an application to the Chief of the Military Court who decided the case either verbally or in writing so that the decision is implemented. For this purpose, the Chief of Court orders the losing party to be summoned and warns him to implement the decision no later than within 8 days (Article 196 HIR, 207 Rbg). If within 8 days the Judge's decision is not implemented or the losing party does not appear after being properly summoned, then the Chief of the Military Court, because of his position, orders in writing to confiscate the movable goods belonging to the losing party, in the amount of the price that must be paid plus the costs of implementing the decision. If the movable goods are not available or insufficient, then the confiscation of the immovable goods is carried out (Article 197 Paragraphs 1-208 Rbg).

In the event that the Defendant is already in detention, then the Defendant's family is also responsible or fulfills the compensation. If the fulfillment of this compensation is carried out, it will be in accordance with the objectives of the Law which provides guarantees and protection for human dignity and honor. (Abdurrahman and Ridwan Syabrani: 1997). This is not the case if the socio-economic conditions of the Defendant personally and his family are weak, so that they are unable to fulfill this decision, this will result in disappointment for the person seeking justice or for the victim, because it is only a victory on paper.

Therefore, the victim who will file a claim for compensation through this case consolidation procedure must really consider and pay attention to both the positive and negative aspects. The temporary conclusion regarding the implementation of this compensation is in principle the same as the provisions in the HIR, because specifically for the Civil Procedure Law, the provisions in the HIR (for Java and Madura) and Rbg. for outside Java and Madura still apply.

However, it turns out that there are several shortcomings of Law Number 31 of 1997 concerning Military Justice concerning the provision of this compensation. First, the submission procedure is not simple because the submission of compensation can only be done through a claim for compensation that is combined with the examination of the main criminal case. In addition, in the process, the victim of the crime must be active. He must often communicate with law enforcement officers to ensure that the process of submitting his claim for compensation will be accommodated by the Military Prosecutor in his claim. This will certainly take up time and money from the victim of the crime. Second, the form of compensation given is apparently only for material losses. The judge's decision is only limited to the granting of compensation for costs incurred by the injured party. This means that the amount of compensation is only the amount of real losses or material losses. Outside of real losses, such as immaterial losses, cannot be submitted in the consolidation of cases. If immaterial compensation is submitted by the injured party, the judge must declare the lawsuit inadmissible (*niet onvankelijke*) (M Yahya Harahap, 1985). Submissions for immaterial compensation can only be submitted through civil lawsuit procedures.

5. Conclusion

5.1. Conclusion

1. Fraud in Civil Law is analogous to fraud in Criminal Law. The existence of fraud is different between Civil fraud and Criminal fraud. If Criminal fraud contains elements of deception that move others to hand over goods, then Civil fraud has elements of trickery, deceit and fraudulent acts that cause others to be moved to agree to the agreement and if they agree they can request the cancellation of the agreement because the agreement was made based on an incorrect will. In the will that becomes the agreement of the parties, it is based on an incorrect will, because the will is based on deceit, deceit and fraudulent acts that move the other party to make the agreement. The principle of good faith and the principle of accuracy can be used in proving whether or not there is

an alleged fraudulent act. Fraud occurs in the will in the agreement made by the parties, so the act of fraud is an unlawful act.

2. This compensation issue is actually subject to civil law, therefore the court that has the authority to examine the claim for compensation is the civil court and Civil Judge. Meanwhile, Law Number 31 of 1997 regulates matters related to criminal matters. With Article 183 of Law Number 31 of 1997 which combines the case of a lawsuit for compensation in a criminal case at the same time, what is in the civil and criminal world can be brought together which was originally not subject to Law Number 31 of 1997, with Article 183 of Law Number 31 of 1997 being regulated by the Military Criminal Procedure Law. This merger occurs at the request of the person who feels aggrieved. In detail, for the merger of cases, three conditions are required, namely: First, the defendant's actions are limited only to those that are the basis for the indictment. Second, the loss arises as a result of the act. Third, there is a request from the person who feels aggrieved to the Judge. Regarding this merger procedure, Law Number 31 of 1997 carries out two examination processes at once. The first is the criminal process, then continued with the civil process for the examination of compensation.

5.2. Suggestion

To maintain a balance between the rights of the Defendant and the victim, it would be better if Law Number 31 of 1997 did not include Article 185 Paragraph (2). Even though the Defendant has received a criminal or civil verdict, the victim's right to appeal or cassation should still be respected as it is in the trial process through a pure initial lawsuit. Whether or not the victim's appeal or cassation is granted should be submitted to a higher level of justice with the condition that it should not be linked to the criminal case.

To be regulated more clearly regarding the merger of compensation claims both in Law Number 8 of 1981 and in Law Number 31 of 1997 so that its implementation can run well. In addition, there is a need for a new mechanism for victims of criminal acts to fight for their rights to obtain restitution. The new mechanism must be regulated in formal law (Criminal Procedure Code and Law Number 31 of 1997 as a reference for the criminal justice system in carrying out its duties. This is also to fill the gaps and ambiguities in procedural law so far.

References

- Ali, M. (2022). *Dasar-Dasar Hukum Pidana*: Sinar Grafika.
- Asmawie, M. H. (1992). *Ganti Rugi dan Rehabilitasi menurut KUHAP*.
- Bambang, P., & Pidana, A.-A. H. (1978). Ghalia Indonesia. *Jakarta, cet. ke-3*.
- Effendy, M. (2014). *Teori hukum : perspektif perkembangan dan harmonisasi hukum pidana* / Marwan Effendy.
- Harahap, M. Y. (1985). *Pembahasan Permasalahan dan Penerapan KUHAP Jilid I. Pustaka Kartini, Jakarta*.
- Harahap, M. Y. (2000). *Pembahasan permasalahan dan penerapan KUHAP: Penyidikan dan penuntutan*: Sinar Grafika.
- Kansil, C. S. (1979). *Pengantar ilmu hukum dan tata hukum Indonesia. (No Title)*.
- Lamintang, P., & Samosir, C. D. (2010). *Delik-delik khusus kejahatan yang ditujukan terhadap hak milik dan lain-lain hak yang timbul dari hak milik*: Nuansa Aulia.
- Loqman, L. (1984). *Pra peradilan di Indonesia*.
- Marpaung, L. (1997). *Proses Tuntutan Ganti Kerugian dan Rehabilitasi Dalam Hukum Pidana. Raja Grafindo Persada, Jakarta*.
- Prakoso, D. (1988). *Masalah ganti rugi di dalam Kuhap*: Bina Aksara.
- Prinst, D. (2003). *PERADILAN militer / Darwan Prinst*.
- Prodjodikoro, W. (1956). *Perbuatan melanggar hukum, dipandang dari sudut hukum perdata*: Vorkink-van Hoeve.
- Prof. Moeljatno, S. H. (2021). *KUHP (Kitab Undang-Undang Hukum Pidana)*: Bumi Aksara.
- Satrio, J. (2001). *Perikatan yang Lahir dari Perjanjian, Buku II. Bandung: Citra Aditya Bakti*.

- Sugandhi, R. (1980). *Kitab Undang-Undang Hukum Pidana. Usaha Nasional, Surabaya.*
- Tahir, H. D. (1981). *Pokok-pokok Pikiran Dalam Kitab Undang-Undang Hukum Acara Pidana: Alumni.*
- Tongat. (2003). *Hukum pidana materiil.*