

Perbandingan konsep dan pengaturan ganti rugi dalam perbuatan melawan hukum di Indonesia dan Jerman = Comparative studies on the concept and regulation of tort damages in Indonesia and Germany

Muhammad Aldo Britano Kuncoro, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=20456157&lokasi=lokal>

Abstrak

Indonesia and Germany both derive from a common civil law system. However, due to differences in politics, economy, and society, there are differences in the concepts of torts. In both countries, the concept of torts is to provide compensation if a particular condition before the damage occurs. The regulation of torts can be found in the Indonesian Civil Code (KUH Perdata), which regulates the concept of torts and a general provision of damages in the case of torts or contractual breach. In Germany, the regulation of torts is not only found in the German Civil Code, but also in other provisions outside the civil code, such as strict liability. This research found that Germany's jurisprudence is heavily based on strict liability, while Indonesia's jurisprudence is more based on the principle of fault. The research also found that Germany recognizes two methods of paying damages: lump sum payment and periodic payment.

.....

Indonesia and Germany derives from a similar family Law which is Civil Law, however due to the difference in politics, social, and economy different concepts can be found. Both Germany and Indonesia aknowldge the same concept of torts, which is to bring remedy if a particular condition before the damages. The regulation on torts could be found in the Indonesia civil code KUH Perdata, which regulates the concept of torts and a general provision of damages in the case of torts or contractual breach. In Germany the regulation on torts is not only found in the German Civil Code, throughout the years damages regarding strict liability can be found in other provision outside the civil code.

In this research, that found the uniqueness of how a civil law country like Germany is also heavily jurisprudence based like that of a common law country. This heavily Jurisprudence based approach serves to fill the gap left within the regulation in Germany. Thus, detail things like the method and amount of regulation are stated and described detailly. Moreover, unlike in Indonesia, Germany recognize two method of paying damages which is divided into lump sum payment and periodic payment.

In sum the regulation on damages in Germany is more complex and detailed with regards to the method and assessment of damages. Moreover, the development on law of damages can be seen on the provision outside BGB, which follows the current development. With this research, the writer hopes that Indonesian judges would be willing to use past jurisprudence as the basis of their decision. The writer strongly hopes that the Indonesian judges could contribute to development of law by achieving legal discovery, on the law of damages especially on the assessment on damages.