

ABSTRAK

Tanggung jawab majikan (tanggung jawab pengganti) adalah konsep hukum perdata dimana majikan dapat bertanggung jawab atas perbuatan melawan hukum yang dilakukan oleh karyawan selama menjalankan tugasnya, sesuai Pasal 1367 ayat (3) KUHPperdata. Contoh kasus mengenai hal tersebut yaitu terdapat pada Putusan Pengadilan Negeri Palu No: 129/Pdt.G/2022/Pn Pal. Penelitian ini bertujuan untuk menganalisis penerapan tanggung jawab majikan dan pertimbangan hukum hakim dalam memutuskan besarnya ganti rugi dalam perkara No: 129/Pdt.G/2022/Pn Pal. Penelitian ini merupakan penelitian yuridis normatif dengan menggunakan metode pendekatan perundang-undangan, pendekatan kasus dan konseptual. Spesifikasi penelitian preskriptif analitis, sumber data yang digunakan adalah bahan hukum primer, skunder dan tersier yang dilakukan dengan studi kepustakaan. Data disajikan dalam bentuk teks naratif kemudian dianalisis secara normatif kualitatif. Penerapan tanggungjawab majikan atas perbuatan melawan hukum oleh karyawan dalam Putusan Pengadilan Negeri Palu Perkara Nomor:129/Pdt.G/2022/Pn.Pal sudah tepat Majelis Hakim dalam putusannya menyatakan bahwa Tergugat dan Turut Tergugat memiliki hubungan hukum yaitu hubungan kerja, dan menyatakan perbuatan Tergugat dan Turut Tergugat merupakan perbuatan melawan hukum, akan tetapi Majelis Hakim dalam pertimbangan hukumnya hanya menyebutkan dan tidak menguraikan secara jelas mengenai syarat-syarat/unsur-unsur perbuatan melawan hukum yang termasuk dalam Pasal 1365 KUHPperdata dan hanya menyebutkan Pasal 1367, tidak menyebutkan secara spesifik ayat berapa. Menurut penulis, seharusnya Majelis Hakim menggunakan Pasal 1365 KUHPperdata *juncto* Pasal 1367 ayat (3) KUHPperdata sebagai dasar tuntutan ganti rugi. Terkait tuntutan ganti rugi dalam gugatan ganti rugi materiil hanya dikabulkan sebagian yaitu Rp 40.000.000,00 dan menolak ganti rugi immateriil, dikarenakan tidak adanya bukti dan saksi sehingga dianggap tidak ada kerugian.

Kata Kunci: Perbuatan Melawan Hukum, Tanggung Jawab Majikan, Pertanggungjawaban Pengganti, Ganti Rugi

ABSTRACT

The employer liability (vicarious liability) is a civil law concept where the employer can be held liable for unlawful acts committed by employees while performing their duties, in accordance with Article 1367(3) of the Civil Code, an example of a case in this regard is found in the decision of the Palu District Court No. 129/Pdt.G/2022: 129/Pdt.G/2022/Pn Pal. The purpose of this study is to analyse the application of the employer's responsibility and the legal considerations of the judges in deciding the amount of compensation in the case No. 129/Pdt.G/2022/Pn Pal: 129/Pdt.G/2022/Pn Pal. This research is a normative juridical research with the method of statutory approach, case approach and conceptual approach. The research specifications are prescriptive analytical, the data sources used are primary, secondary, and tertiary legal materials conducted by literature study. The data is presented in the form of narrative text and then analyzed normatively qualitatively. The application of the responsibility of employer for unlawful acts by employees in the Decision of the Palu District Court Case Number: 129/Pdt.G/2022/Pn.Pal is appropriate. The Panel of Judges in their decision stated that the Defendant and the Co-Defendant had a legal relationship, namely an employment relationship, and stated that the actions of the Defendant and the Co-Defendant were unlawful, but the Panel of Judges in their legal considerations only mentioned and did not clearly elaborate on the terms/elements of unlawful acts included in Article 1365 of the Civil Code and only mentioned Article 1367, not specifically mentioning which paragraph. According to the author, the Panel of Judges should have used Article 1365 of the Civil Code in conjunction with Article 1367 paragraph (3) of the Civil Code as the basis for the claim for compensation. Related to the claim for compensation in the lawsuit for material compensation was only partially granted, namely Rp 40,000,000.00 and rejected immaterial compensation, due to the absence of evidence and witnesses so that it was considered that there was no loss.

Keywords: *Unlawful Acts, Liability Of The Employer, Vicarious Liability, Compens*