Government Responsibility For Compensation As A Result Of Actions Against Government Law In Implementation Of Roads

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Abstract
Infrastructure development is a manifestation of a civilization’s development, which continues to develop globally over time. The implementation of infrastructure development departs from a Government Policy. The government through its policies has a strategy for equitable distribution of infrastructure development in all regions in Indonesia. The government should provide infrastructure or public facilities that are good for the community. Still, the construction of these facilities is neglected, damaged, and unfit for use, which results in causing losses to the community as users of these public facilities. So that departed an author’s thought to raise a research topic entitled “Government Responsibility For Compensation As A Result Of Actions Against Government Law In Implementation Of Roads”. This writing focuses on the formulation of the problem, namely how are the limits on the Government’s Unlawful Acts? And how is the government’s responsibility for compensation due to unlawful acts? This writing aims to determine the Limits of Unlawful Acts by the Government and the government’s responsibility for compensation due to unlawful acts by the government. Limitations of actions in an obligation given by law to government agencies should have been carried out with caution, failure to comply with these provisions is an unlawful act with an element of negligence. There is still a need for clear law enforcement regarding the limits on acts against the government’s law as well as regulatory provisions regarding liability for compensation due to unlawful acts by the government.

Keywords: Government Responsibility; Compensation; Actions Against Government Law; Implementation Of Roads; Negligence.

INTRODUCTION
Infrastructure Development is one of the obligations that must be carried out by the Indonesian government as an implementation of the objectives of Indonesian Independence. This is as stated in the Preamble of the fourth paragraph of the Indonesian State Constitution, namely: to promote general welfare. Infrastructure development is a form of development of a civilization, which globally continues to grow over time. Indonesia as a country with a population of 273,879,750 people is obliged to meet the infrastructure needs needed by the community.

If you look at the Big Dictionary Indonesian online, by definition infrastructure has the meaning of infrastructure. Meanwhile, based on article 1 number 65 of the Minister of Finance Regulation Number 112 / PMK.07 / 2017 concerning Amendments to the Minister of Finance Regulation Number 50 / PMK.07 / 2017 concerning the Management of Transfers to Regions and Village Funds, what is meant by infrastructure is the technical, physical, system, hardware, and software facilities needed to perform services to the community and support structural networks so that the economic and social growth of the community can run well. Departing from the definition mentioned above, it can be underlined that infrastructure development or public facilities and infrastructure is an obligation of the State as a form of service to the community. (Daring, 2016)

Infrastructure is an important aspect of economic progress and social activities. The development of a country’s economy cannot be separated from the availability of infrastructure in the country. The availability consists of facilities and infrastructure of public facilities, transportation,
telecommunications, sanitation, energy and so on. The relationship between each of these facilities is what supports the progress of a country as a whole. Public facilities are one part of infrastructure development created by the government for the public interest, namely the people of Indonesia. The number of public facilities made by the Government aims to facilitate the community in carrying out daily activities, such as sidewalks, highways, bus stops, TransJakarta lanes (busways), pedestrian bridges, public toilets, public transportation and so on.

The implementation of infrastructure development departs from a Government Policy. The government through its policies has a strategy in equitable distribution of infrastructure development throughout the territory of the State of Indonesia. This is clearly seen by efforts to accelerate development in areas such as Papua, Batam and other regions. DKI Jakarta as the capital city of the Republic of Indonesia, has advantages over other regions in terms of public facilities. This is due to the dense population in DKI Jakarta and also the center of Indonesia's activities as the State Capital. What is interesting to discuss is that in addition to the progress of public facilities at several points in DKI Jakarta, there are also facilities that are not feasible or have been damaged or even abandoned or stalled in the middle of the construction process, one example is the highway. Damage to infrastructure is caused by various factors. Meanwhile, factors that affect damage to road infrastructure include natural factors, drainage that does not work or the absence of drainage, poor quality of asphalt hotmix, overtonnage or overload, planning errors, unstable soil construction conditions, implementation of work that is not in accordance with quality standards, to the absence of regular road maintenance.

According to Police data, in Indonesia, the large number of accidents is caused by several things, namely: 61% of accidents are caused by human factors, namely those related to the ability and character of the driver, 9% are caused by vehicle factors (related to meeting roadworthy engineering requirements) and 30% are caused by facilities and infrastructure and environmental factors. Meanwhile, the Ministry of Public Works and Public Housing (PUPR) said that road conditions in Indonesia will be increasingly damaged. Director General of Highways PUPR, Hedy Rahadian explained that in 2020-2021 there was a decline in road conditions at a good level of 2,258 kilometers (Km). That condition widened until 2022 to a length of 2,928 Km. In addition, for DKI Jakarta, Member of Commission B of the DKI Jakarta DPRD, PDIP Faction, Gilbert Simanjuntak highlighted damaged roads on the TransJakarta route (busway) as reported by detiknews media, that the damage to the road must be repaired immediately because it is the right of the community to enjoy good and comfortable public facilities.

The government has responsibility in terms of planning and execution of an infrastructure development. This responsibility is inseparable from the supervision and maintenance of public facilities provided to the community. Not a few we encounter such as hollow or damaged public roads, toll road construction that has never been completed or stalled and or the construction of stalled projects. With the abandonment of a public facility, it certainly has a detrimental impact on the community as users of these public facilities.

In the realm of private or civil law, known as Unlawful Acts (PMH) or in Dutch terms known as Onrechtmatige Daad, as stipulated in Article 1365 of the Civil Code (KUHPerCivil), namely all unlawful acts, which bring harm to others, oblige the person who wrongfully publishes the loss, to compensate for the loss. In state life, it is not uncommon for conflicts of interest to occur between an action carried out by the government as the organizer of the state in the public interest intersecting with the personal interests of the community as a subject of law. Such acts whether done or not done can cause harm to society, whether done intentionally or unintentionally. In the scope of public law, if the unlawful act committed by the ruler in this case is the Government, it is known as the (Milky Way, 2018)Onrechtmatige Overheidsdaad.

Based on the things mentioned above, it is interesting to discuss the government's obligation to provide infrastructure or facilities and infrastructure of good public facilities for the community. In fact, many public facilities are abandoned, damaged and unfit for use, which results in giving losses to the community as users of these public facilities.
RESEARCH METHODS
In discussing these problems, normative juridical research is carried out with a statutory approach and a conceptual approach, namely a literature research with a legislative approach carried out by examining laws and regulations related to existing problems, using secondary data, sourced from primary legal materials, secondary legal materials and tertiary legal materials.

Theoretical Framework
Responsibility Theory
According to the Big Dictionary Indonesian online, the word Responsibility has 2 (two) meanings, namely:
1. the state of being obliged to bear everything (if anything happens it can be prosecuted, blamed, prosecuted, and so on),
2. The function of accepting imposition, as a result of the attitude of one's own or the other party.

While in the Legal Dictionary, the term liability is known in two terms, namely: liability and responsibility. Liability has a broader understanding than the definition of Responsibility. According to Ridwan HR, in its understanding and practical usage, the term liability refers to legal liability, namely liability due to mistakes committed by legal subjects, while the term responsibility refers to political responsibility.(Ridwan, 2006)

Hans Kelsen in his theory called the traditional theory, responsibility is divided into 2 (two) types, namely:(Kelsen, 2006)
1. liability based on error; and
2. absolute responsibility.

Responsibility for wrongdoing is the responsibility imposed on the subject of law or the perpetrator who commits an unlawful act or criminal act because of his error or negligence (negligence or negligence). Negligence itself is a condition in which the legal subject or individual perpetrator is careless, less careful, less conscientious, less attentive to what is his obligation or gets to carry out his obligations. While absolute responsibility has the understanding that his actions cause consequences that are considered detrimental by lawmakers and there is an external relationship between his actions and the consequences.

Theory of Legal Protection
The thought of legal protection theory departs from the development of the concept of recognition and protection of human rights that developed in the 19th century. Within the legal education environment, experts have different views in defining the theory of legal protection. By definition, legal protection is the attempt of the government or ruler to protect through a number of regulations that it makes. According to Satjipto Rahardjo, legal protection is an effort to organize various interests in society so that there is no collision between interests and can enjoy all the rights provided by law. (Law, 2014)(Satjipto Raharjo, 2000)

The Protection Theory presented by Satjipto Rahardjo departs from Fritzgerald’s thought which states that the purpose of law is to integrate and coordinate various interests in society by regulating protection and restrictions on these various interests. This is also in line with the thinking of Gustav Radbruch who stated that law in its purpose must have an orientation that provides a sense of justice, legal certainty and social benefits for its people. While Philipus M. Hadjon stated that legal protection is the protection of dignity and dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions of arbitrariness.(Satjipto Raharjo, 2000)(" 'Manifestation of the Theory of the Purpose of Gustav Radbruch's Law and Mashab Positivism in Indonesia' Link: https://Advokatkonstitusi.Com/Manifestasi-Teori-Tujuan-Hukum-Gustav-Radbruch-Dan-Mashab-Positivisme-Di-Indonesia/, accessed February 19, 2023.," (Lawonline, 2023)

In the Indonesian Constitution, 4th Paragraph of the Preamble to the 1945 Constitution, it is stated that the State is obliged to provide protection to Indonesian citizens. That is, the
government as a representative of the State in providing protection of the rights possessed by citizens has the obligation and duty to protect all its people in its capacity as a Ruler.

**DISCUSSION**

**Unlawful Acts of the Government (Ruler)**

Unlawful or Unlawful Acts in Mertokusumo's opinion are disturbances of balance in society. Unlawful Acts in the realm of civil law, regulated in the provisions of Article 1365 of the Civil Code, namely: "(Cahyady, 2021) Every unlawful act, which brings harm to another person, obliges the person who by mistake publishes the loss, to compensate for the loss".

The provisions of Indonesian Civil Law, as mentioned above, in the provisions of Article 1365 of the Civil Code, Unlawful Acts must meet elements consisting of:

1. the existence of a deed,
2. the act is against or unlawful;
3. the presence of fault on the part of the offender;
4. the existence of losses felt or experienced by the victim;
5. There is a casual relationship between actions and losses.

Where all these elements are cumulative. That is, all existing elements must be fulfilled, then an act can be categorized as an Unlawful Act.

So, an Unlawful Act according to the provisions of Article 1365 of the Civil Code is an unlawful act committed by a person who through his fault has caused harm to others. While in learning legal theory, Unlawful Acts are known as 3 (three) categories, namely: (Fuadhy, 2017)

1. intentional unlawful acts,
2. unlawful acts without fault (without elements of intentionality or negligence),
3. unlawful acts due to negligence.

The Unlawful Act is a form of claim for accountability from the victim to the perpetrator. Referring to the regulation on Unlawful Acts in the Indonesian Civil Code and in the Continental European Legal System in other countries, the model of legal responsibility for unlawful acts is divided into 3 models, namely: (Fuadhy, 2017)

1. responsibility with elements of misconduct (willful and negligence), as stipulated in Article 1365 of the Civil Code,
2. liability with an element of error, in particular an element of negligence, as stipulated in Article 1366 of the Civil Code,
3. absolute liability (without fault) in a very limited sense, as stipulated in Article 1367 of the Civil Code.

Unlawful Acts with elements of intentionality are more emphasized on the intention of the perpetrator of the act. In science, the element of intentionality is very difficult to describe specifically. In unlawful acts are only considered to exist when by the act done intentionally, has caused certain consequences to the physical and / or mental or property of the victim, even though it has not been intentional to injure (physical or mental) of the victim. The act is done intentionally when there is a "intention" from the perpetrator. (Fuadhy, 2017)

Unlawful Acts with elements of negligence are emphasized more is the presence of civil negligence. Unlawful Acts with elements of negligence, in English it is called "negligence", while in Dutch it is called "nalatigheid". In legal science, an act can be referred to as negligence if it meets the following elements: (Fuadhy, 2017)

1. the existence of an act or ignoring something that should be done,
2. the existence of a duty of care,
3. non-performance of such precautionary duty,
4. the presence of harm to others,
5. There is a causal relationship between the act or not doing the act and the losses that arise.
If we look at the terms of the main elements of an Unlawful Act as stipulated in Article 1365 of the Civil Code, the condition is in line with the main conditions of an Unlawful Act with the element of negligence mentioned above, which:

1. there must be a deed,
2. the act is against / unlawful,
3. the presence of fault on the part of the offender (either intentionally or due to negligence),
4. the presence of losses suffered by the victim,
5. There is a causal relationship between actions and losses.

One element in negligence is the obligation of prudence on the part of the perpetrator, where the legal obligation is not fulfilled so that an illegal act occurs with an element of negligence. Therefore, one of the important things in the element of negligence is the problem of risk, namely risk as a result of danger. Risks arising from an attitude that involves inappropriate risks that cause losses to the victim. It is a substandard created by law to protect people from harm and undeserved risk.

Furthermore, in Unlawful Acts without an element of guilt or in legal science, it is better known as the Doctrine of Strict Liability. Generally, the concept of unlawful acts is the imposition of responsibility for the mistakes of the perpetrators, whether intentional or negligent mistakes. In addition, the law also recognizes what is called responsibility without fault or known as "absolute responsibility". Absolute responsibility is a legal responsibility imposed on the perpetrator of an unlawful act regardless of whether the person concerned in committing the act has an element of guilt or not. In this case, the perpetrator can be held legally responsible even if the act was done without intention or there was no negligence, carelessness or impropriety. This is what makes absolute responsibility referred to as responsibility without fault.

While the Unlawful Act of the Government (Ruler) or known as Onrechmatige Overheidsdaad is a government act consisting of a factual act, either doing something and / or not doing something that brings harm to the interests of the community as a subject of law. The Supreme Court of the Republic of Indonesia through Supreme Court Regulation Number 2 of 2019, mentions (Milky Way, 2018) Onrechmatige Overheidsdaad as an Unlawful Act by Government Agencies and/or Officials. Unlawful Acts committed by the government, in essence, are the same as Unlawful Acts in general. However, in Unlawful Acts committed by the government, the government is a representative of the State as a subject of law which through its policy of regulating the public interest has crossed personal interests (individual interests). According to Sudikno Mertokusumo, the State is a legal subject not an individual, meaning the State as a legal entity, so that the actions of a legal entity (in this case the State) are represented by people who act for and on behalf of the legal entity (in this case the government). (Mertokusumo & Tjandra, 2014)

In the responsibility of legal entities, there are 2 types of responsible representatives, namely: representatives in this case who are organs and representatives who are subordinate (ondergeschikte). The state as a legal entity for its actions, whether done or not carried out by the government, if it has fulfilled the elements against the law, then these actions must be held accountable. It is common practice that all consequences of the actions of employees, agencies, and/or government agencies must be borne by the State, as long as the act is due to negligence or error while carrying out government duties or within the authority of their duties or obligations. But different, if a government employee acts in bad faith or intentionally (recklessly), then the employee is directly responsible for his unlawful actions against the aggrieved party. (Mertokusumo & Tjandra, 2014) (Mertokusumo & Tjandra, 2014)

Based on the provisions of Article 1 number 8 of Law Number 30 of 2014 concerning Government Administration (Government Administration Law), what is meant by Government Administration Action is the act of Government Officials or other state administrators to do and / or not do concrete actions in the context of government administration. That is, what is included in government actions is the actions of government officials or other State administrators to do and / or not do a concrete act in the administration of government. Article 1 point 4 of Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Dispute Resolution of Government Actions and Authority to Prosecute Unlawful Acts by Government Bodies and/or Officials
(Onrechtmatige Overheidsdaad), Disputes over Unlawful Acts by Government Bodies and/or Officials (Onrechtmatige Overheidsdaad) is a dispute in which it contains a claim to declare invalid and/or void the actions of Government Officials, or has no binding legal force along with compensation in accordance with the provisions of laws and regulations.

Unlawful Acts of the Government in Road Administration

Referring to the matters conveyed in the background section above, namely regarding damage to public facilities or public road facilities and infrastructure, which have resulted in losses to the community, be it accidents resulting in damage, injury and/or death. Referring to the provisions of Article 4 jo Article 5 letter (a) of Presidential Regulation Number 27 of 2020 concerning the Ministry of Public Works and Public Housing, the Ministry of Public Works and Public Housing (PUPR) is responsible.

Article 4, reads:
"The Ministry of Public Works and Public Housing has the task of organizing government affairs in the field of public works and public housing to assist the President in organizing the government of the country".

Article 5 letter (a), reads:
"In carrying out the duties as referred to in Article 4, the Ministry of Public Works and Public Housing carries out the following functions: a. formulation, determination, and implementation of policies in the field of water resources management, road implementation, implementation of drinking water supply systems, domestic wastewater management, environmental drainage management, and waste management, building arrangement, development of residential areas, development of infrastructure facilities strategic, housing implementation, implementation of public works and housing infrastructure financing, as well as construction service development..."

Furthermore, based on the provisions of Article 183 of PUPR Ministerial Regulation Number 13 of 2020 concerning Organization and Work Procedures of the Ministry of Public Works and Public Housing, which confirms that: "The Directorate General of Highways has the task of carrying out the formulation and implementation of policies in the field of road administration in accordance with the provisions of laws and regulations". That is, based on these provisions, the legal subject who has the responsibility of duty in terms of implementing road operations is the Directorate General of Highways of the Ministry of PUPR.

The provisions of Article 1 number 12 of Law Number 22 of 2009 concerning Road Traffic and Transportation (Law LLAJ), explain that: "road means all parts of the road, including auxiliary buildings and equipment intended for public traffic, which are at ground level, above ground level, below ground and/or water level, and above water level, except rail roads and cable roads". Article 24 of the LLAJ Law more explicitly states that the Road Operator as the duty of authority owned by the Ministry of PUPR, in this case the Director General of Highways, has 2 (two) obligations if there are damaged or unsuitable road facilities and infrastructure, namely:

1. The road operator must immediately and appropriately repair damaged roads that may result in Traffic Accidents.
2. in the event that repairs to the damaged road as referred to in paragraph (1) have not been carried out, the road operator must provide signs or signs on the damaged road to prevent traffic accidents.

Based on the provisions mentioned above, the laws and regulations have expressly imposed the responsibility on the Road Operator to immediately repair the damaged road and if it cannot be repaired the damaged road, the Road Operator must provide signs or signs on the damaged road. This is intended to maintain and protect the public from traffic accidents. In the event that the Director General of Highways of the Ministry of PUPR does not perform these obligations, it can be considered as not performing its obligations, so that it has fulfilled the elements of Unlawful Acts with negligence, with the following description:

1. the existence of an action or ignoring something that should be done
in this case, the Director General of Highways of the Ministry of PUPR who has the responsibility as a road operator has neglected by not doing his obligation to repair damaged road infrastructure.

2. the existence of a duty of care
The Director General of Highways of the Ministry of PUPR has been given the obligation to immediately repair damaged roads and if they have not had time to be repaired so that signs or signs are immediately given regarding the damaged roads, as stipulated in Article 24 of Law Number 22 of 2009 concerning Road Traffic and Transportation.

3. non-performance of such precautionary duty,
The condition of the road is damaged and there are no signs or signs that the road is damaged, so this is evidence that the Director General of Highways of the Ministry of PUPR has not carried out the duty of prudence.

4. the presence of harm to others,
As a result of passing damaged road facilities and infrastructure, people experience vehicle damage and/or traffic accidents.

5. There is a causal relationship between the act or not doing the act and the losses that arise.
Traffic accidents caused by damaged road facilities and infrastructure occur because the Director General of Highways of the Ministry of PUPR does not carry out his obligation to immediately repair damaged roads or place signs or signs on damaged roads.

This is, if it is connected with the provisions of Article 4 of Presidential Regulation Number 27 of 2020 concerning the Ministry of PUPR jo. the provisions of Article 183 of PUPR Ministerial Regulation Number 13 of 2020 concerning Organization and Work Procedures of the Ministry of Public Works and Public Housing, then the actions of the Director General of Highways of the Ministry of PUPR are Unlawful Acts of the Government in road administration.

Based on the theory of responsibility and the provisions of the laws and regulations mentioned above, the Director General of Highways of the Ministry of PUPR should immediately repair the damaged road or at least provide signs / signs on the damaged road. Repairing damaged roads or at least providing signs / signs on damaged roads, according to legal protection theory, is important to provide a sense of security and comfort for the user community as a form of protection for the use of road facilities and infrastructure that are the right of the community.

Government Responsibility for Losses Due to Government Unlawful Acts in Road Operation
In the discussion above, "as if" the responsibility of the government through the Director General of Highways of the Ministry of PUPR is only limited to immediately repairing damaged roads or at least providing signs / signs on damaged roads. However, the government's responsibility through the Director General of Highways of the Ministry of PUPR is not only limited to this. In addition to criminal legal responsibility, it must also be responsible for compensation for losses suffered by the community as a result of damaged road facilities and infrastructure. The Law on Road Traffic and Transport expressly provides criminal sanctions for unlawful acts committed by Road Operators, as stipulated in the provisions of Article 273 of the LLAJ Law, which reads:

(1) Any Road operator who does not immediately and properly repair a damaged Road that results in a Traffic Accident as referred to in Article 24 paragraph (1) resulting in minor injuries and/or damage to Vehicles and/or goods shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of Rp12,000,000.00 (twelve million rupiah).

(2) In the event that the act as referred to in paragraph (1) results in serious injury, the perpetrator shall be sentenced to a maximum imprisonment of 1 (one) year or a maximum fine of Rp24,000,000.00 (twenty-four million rupiah).

(3) In the event that the act as referred to in paragraph (1) results in the death of another person, the perpetrator shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp120,000,000.00 (one hundred twenty million rupiah).
Road operators who do not give signs or signs on damaged and unrepaired roads as referred to in Article 24 paragraph (2) shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of Rp1,500,000.00 (one million five hundred thousand rupiah).

Apart from these criminal sanctions, Unlawful Acts in the civil domain, as stipulated in Article 1365 of the Civil Code, affirm that every unlawful act that results in harm to others is required because of its fault to cause the loss to compensate for the loss. Furthermore, the provisions of Article 1366 of the Civil Code emphasize compensation for Unlawful Acts due to negligence, stating: "Everyone is responsible not only for losses caused by his actions, but also for losses caused by negligence or carelessness".

Regarding compensation for losses as a result of unlawful acts, the Civil Code states the provision of compensation as follows:
1. compensation for unlawful acts in general as stipulated in Article 1365 of the Civil Code,
2. compensation for unlawful acts due to negligence and due to others as stipulated in Article 1366 and Article 1367 of the Civil Code,
3. compensation for families left behind due to death caused by acts or negligence as stipulated in Article 1370 of the Civil Code, and
4. compensation because the person has been injured or disabled limb as a result of acts or omissions as stipulated in Article 1371 of the Civil Code.

While liability in the form of compensation known in law is as follows:
1. nominal compensation, which is compensation given by victims in the form of a certain amount of money in accordance with the sense of justice without calculating how much the loss actually is,
2. compensation compensation, which is compensation which is a payment to the victim for and in the amount of loss actually suffered by the victim from an unlawful act, such as compensation for all costs incurred such as hospital costs, treatment, damage experienced, loss of benefits / salaries, and others,
3. Punitive damages, which are damages in large amounts that exceed the actual loss. The amount of compensation is intended to provide punishment for the offender.

In relations between citizens and the government as subjects of law, when the government commits unlawful acts that harm citizens, based on the provisions of the above laws and regulations, the government must be responsible for the compensation suffered by citizens. In legal developments, since the enactment of Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Dispute Resolution of Government Actions and the Authority to Prosecute Unlawful Acts by Government Bodies and/or Officials (Onrechtmatige Overheidsdaad), every case of Unlawful Acts by Government Agencies and/or Officials has become the authority of the State Administrative Court as stipulated in the provisions of Article 2 paragraph (1).

Referring to the above, every citizen who suffers losses due to government negligence not to repair damaged road facilities and infrastructure and / or does not give signs or signs to the damaged road facilities and infrastructure can file a lawsuit at the State Administrative Court stating the reason for the actions committed (whether done or not done concretely or tangibly) contrary to laws and regulations and contrary to the general principles of good government. In the various provisions of the above laws and regulations, there is no regulation regarding the amount of compensation given to victims. The sanction arrangements given to Road Operators are only limited to imprisonment and fines, which fines are given to the State.

Compensation as a result of unlawful acts of the government, when viewed based on the theory of responsibility, is only limited to the responsibility determined by laws and regulations, while the amount of value for losses suffered by citizens is only regulated in the range of at least Rp.250,000,- (two hundred fifty thousand rupiah) and a maximum of Rp.5,000,000,- (five million rupiah), with the clause "taking into account real circumstances", as stipulated in Article 3 paragraph (1) of Government Regulation Number 43 of 1991 concerning Compensation and Procedures for Its Implementation in the State Administrative Court. This of course "will most" not be comparable to the real losses suffered by community members as a result of damage to
road facilities and infrastructure as an act against government law in road administration. This seems to provide a blurring of the rights that should be obtained by victims for unlawful acts of the government in the operation of roads that should have been the responsibility of the government.

For this reason, if viewed based on the theory of legal protection, legal protection for victims, specifically regarding the payment of compensation for losses suffered by community members as victims, is not comparable and does not provide protection. In fact, Satjipto Rahardjo stated that legal protection is an effort to organize various interests in society so that there is no collision between interests and can enjoy all the rights provided by law. Inadequate regulation regarding the granting of rights given to victims makes the regulation seem to eliminate the essence of the purpose of the law itself, as Gustav Radbruch thought which states that the law in its purpose must have an orientation that provides a sense of justice, legal certainty and social benefits for the community.

CONCLUSION

Every act of law has responsibility for the consequences of that action. This is very related to the rights of others, which when an action results or causes harm to others. The same applies to actions committed by the government. Every unlawful act that brings harm to another person, obliges the person who by mistake caused the loss, to compensate for the damage. In the implementation of roads, this is the responsibility of the government through the Director General of Highways of the Ministry of PUPR, as stipulated in Article 4 of Presidential Regulation Number 27 of 2020 concerning the Ministry of PUPR jo. the provisions of Article 183 of PUPR Minister Regulation Number 13 of 2020 concerning Organization and Work Procedures of the Ministry of Public Works and Public Housing.

The Director General of Highways of the Ministry of PUPR is not only responsible for immediately repairing damaged road infrastructure or giving signs or signs to the damaged road, but must be responsible for compensation for losses suffered by community members as a result of damaged road facilities and infrastructure. At least currently, based on the provisions of Law Number 30 of 2014 concerning Government Administration jo. Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Dispute Resolution of Government Actions and the Authority to Prosecute Unlawful Acts by Government Bodies and / or Officials (Onrechtmatige Overheidsdaad), citizens can sue the State Administrative Court, although currently the amount of compensation is only between Rp.250.000,- (two hundred fifty thousand rupiah) to a maximum of Rp.5.000.000,- (five million rupiah).

Through this writing, it is hoped that the government can be more responsive in carrying out its duties and responsibilities in road implementation, so as not to cause losses to community members. Furthermore, the provisions of Government Regulation Number 43 of 1991 concerning Compensation and Procedures for Its Implementation in the State Administrative Court which regulates the range of compensation value of at least Rp.250.000,- (two hundred fifty thousand rupiah) and a maximum of Rp.5.000.000,- (five million rupiah), with the clause "taking into account real circumstances", are no longer in accordance with the current situation, So the government is expected to change these provisions.

Reference


