



Legal Voids in the Regulation of Immaterial Compensation and the Role of General Court Judges in Building Progressive Judicial Standards

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Abstract. *This study aims to analyze the legal vacuum and normative ambiguity in the regulation of immaterial damages in Indonesian civil law and reconstruct the role of general court judges in developing progressive judicial standards. Normatively, Articles 1243, 1246, and 1365 of the Civil Code recognize the existence of "loss" as a basis for awarding compensation, but do not provide an explicit definition, objective parameters, or quantification standards for immaterial losses. This condition creates a wide scope for judges' discretion and impacts disparity in decisions in general judicial practice, thereby weakening legal certainty and predictability. The study employs a normative juridical method with a statutory and conceptual approach to examine the construction of norms, court decision practices, and the legitimacy of legal discovery by judges based on the Law on Judicial Power. The study results indicate that the vacuum in the regulation of immaterial damages quantification requires an active role of judges in conducting legal discovery in a measured manner through the application of the principles of proportionality, propriety, and substantive justice. As a model for legal reform, this study recommends jurisprudence consolidation and judicial guidelines development by the Supreme Court to establish consistent and accountable standards. Thus, general court judges function not merely as mouthpieces of the law, but as actors in legal reform within a state based on the rule of law that ensures a balance between certainty and justice.*

Keywords: *Immaterial Compensation; Justice; Legal Certainty; Legal Vacuum; Normative Ambiguity.*

1. INTRODUCTION

The concept of immaterial damages in the civil law system developed from the classical understanding of losses resulting from rights violations that cannot be permanently measured economically. In the Roman legal tradition, which later influenced the civil law system, the concept of iniuria was known to protect an individual's honor and dignity (Winastri, Priyono, & Hendrawati, 2017). This development continues in modern codifications such as the Burgerlijk Wetboek, which serves as a reference for the Indonesian Civil Code. Intangible damages include psychological suffering, pain, loss of enjoyment of life, and damage to reputation that have no direct market value (Mantili, 2019). However, its regulation in the Civil Code is not formulated explicitly and systematically. Article 1246 of the Civil Code only mentions costs, losses, and interest as elements of compensation due to default, without clearly distinguishing between material and immaterial losses. Meanwhile, Article 1365 of the Civil Code, as the basis for unlawful acts, opens up compensation for "losses" in general, but does not provide conceptual or technical parameters for assessing these non-economic losses (Suryoutomo & Wibowo, 2023).

In the national normative context, a legal vacuum (*rechtsvacuum*) and vague norms (vague norm) are evident in the regulation of immaterial damages. There are no provisions in the Civil Code or other laws and regulations that establish calculation standards, minimum or maximum limits, or objective indicators for measuring the extent of psychological suffering or loss of honor. In fact, the difference in construction between breach of contract under Article 1243 in conjunction with Article 1246 of the Civil Code and unlawful acts under Article 1365 of the Civil Code creates uncertainty as to whether immaterial damages can be awarded equally under both regimes (Nuzan, Situmorang, & Geraldi, 2024). This ambiguity is exacerbated by the absence of a legal definition of immaterial damages in positive regulations, requiring judges to broadly interpret the term "loss" in Article 1365 of the Civil Code (Febriansyah, Kurniawan, Syahladin, & Larasati, 2024). Thus, normatively, it can be said that Indonesian positive law recognizes the possibility of immaterial losses, but fails to provide an adequate operational framework for their implementation.

This normative problem has direct implications for general judicial practice. Court decisions demonstrate significant disparities in determining the amount of immaterial damages for relatively similar cases, both in cases of unlawful acts and breach of contract. The wide variation in values, from symbolic amounts to very large sums, demonstrates the absence of consistent judicial standards. The inconsistency of the *ratio decidendi* in judicial deliberations further demonstrates that the determination of the amount of compensation depends more on the subjectivity and individual beliefs of judges than on structured normative parameters (Wijaya, 2026). The situation not only creates legal uncertainty but also has the potential to violate the principle of equality before the law, as parties in similar cases can receive very different compensation.

This situation raises a theoretical dilemma between legal certainty and substantive justice. On the one hand, judges in civil law systems are traditionally positioned as mouthpieces of the law, bound by normative texts. On the other hand, Article 5, paragraph (1) of the Law on Judicial Power requires judges to explore, follow, and understand the legal values and sense of justice that exist in society. When written norms do not provide clear guidance, judges are faced with the need to conduct legal discovery (*rechtsvinding*) (Yufiandra, 2025). However, this expanded role carries the risk of excessive judicial activism if not accompanied by clear methodological boundaries. Thus, the tension between legal certainty and substantive justice becomes increasingly apparent in the context of immaterial compensation.

Within this framework, the role of general court judges is central in filling legal gaps through systematic, teleological interpretation methods and argumentation based on the principles of proportionality and justice. Through the consistent construction of the ratio decidendi, judges have the potential to shape judicial standards that gradually become established jurisprudence (Tumpa, 2025). However, judicial discretion must remain limited by the principles of legality, propriety, and the principle of non-ultra petita to prevent it from exceeding the authority granted by civil procedural law (Karyadi & Saraswati, 2022). In other words, the establishment of standards for immaterial damages through court decisions must be within a methodological framework that is academically and constitutionally accountable.

Therefore, the need for legal reform in the regulation of immaterial damages is urgent. Norm reconstruction can be achieved through two channels: legislation that explicitly defines indicators and quantification limits for immaterial losses, or through the consolidation of jurisprudence standardized in Supreme Court guidelines. Standardization based on the principles of proportionality, propriety, and legal certainty will strengthen the consistency of decisions while protecting citizens' civil rights. Academically, this research contributes to the development of legal discovery theory in the context of normative vacuums and enriches the discourse on national civil law reform. Practically, the results are expected to encourage the creation of progressive yet measurable judicial standards, so that immaterial damages no longer depend solely on the subjectivity of judges, but rather on a transparent and accountable normative framework.

2. METHODOLOGY

This study uses a normative juridical method that positions law as a norm or rule contained in legislation, court decisions, and doctrine, with the aim of systematically examining the legal vacuum and the ambiguity of norms in the regulation of immaterial damages and their implications for the role of general court judges. The approach used includes a statute approach by examining in depth the provisions of the Civil Code, especially Articles 1243, 1246, and 1365 of the Civil Code, as well as provisions in the Law on Judicial Power that are relevant to the obligations of judges in making legal discoveries, in order to identify normative structures, regulatory vacuums, and systematic inconsistencies. In addition, a conceptual approach is used by examining the doctrines on immaterial losses, the theory of legal discovery, judicial discretion, the principle of legal certainty, and the principle of substantive justice, to build an argumentative construction regarding the limits and legitimacy of the role of judges in filling legal vacuums. The legal materials used consist of primary, secondary, and tertiary legal

materials which are analyzed qualitatively through grammatical, systematic, and teleological interpretation techniques, so that normative prescriptions are obtained regarding the model of legal reform and the formation of progressive judicial standards while remaining within the framework of the rule of law.

3. RESULT AND DISCUSSION

Normative Construction of Immaterial Compensation in Indonesian Positive Law and Identification of Legal Gaps

The normative construction of immaterial damages in Indonesian positive law is rooted in the systematics of the Civil Code (KUHPerdata), which does not explicitly distinguish between material and immaterial losses, but rather uses the general term "loss." In the context of default, Article 1243 of the Civil Code stipulates that reimbursement of costs, losses, and interest is only required if the debtor, after being declared negligent, continues to fail to fulfill their obligations. This provision is further elaborated in Article 1246 of the Civil Code, which states that costs, losses, and interest include actual losses suffered and profits that should have been obtained (Hasibuan, 2026). This formulation is essentially oriented toward concretely measurable economic losses. There is no phrase explicitly recognizing psychological suffering, shame, loss of honor, or emotional disturbance as components of loss. Therefore, from a textual perspective, the recognition of immaterial damages in the default regime is implicit and requires further interpretive construction.

In contrast to the default regime, Article 1365 of the Civil Code concerning unlawful acts states that any unlawful act that results in loss to another person requires the perpetrator to compensate for that loss (Cevitra & Djajaputra, 2023). The norm does not limit the types of losses for which compensation can be sought, leaving room for interpretation to include immaterial losses. However, again, there is no normative definition of what is meant by immaterial losses, what the parameters of proof are, or how to quantify them. Even Article 1366 of the Civil Code, which expands liability for negligence, and Article 1367 of the Civil Code, which regulates liability for the actions of others, still do not provide guidelines for calculating non-economic losses (Sari, Rohani, & Prihatin, 2023). Thus, there is systematically a normative ambiguity (vague norm) in the use of the term "loss," which has not been further elaborated by lawmakers.

This legal vacuum (*rechtsvacuum*) becomes even more apparent when examined from the technical aspects of calculating and limiting the quantification of immaterial losses. The Civil Code does not regulate minimum or maximum compensation limits, does not provide objective indicators such as the level of suffering, social impact, or the perpetrator's degree of culpability, and does not establish a uniform evaluation method. Unlike material losses, which can be calculated based on concrete evidence such as invoices, contract value, or estimated economic losses, immaterial losses lack a normative measurement tool in Indonesian positive law. This lack of parameters leaves judges with very broad discretion and potentially leads to disparities in decisions. Therefore, it can be said that positive law recognizes the existence of the immaterial losses conceptually but fails to formulate an operational and standardized regulatory framework (Sihotang & Salam, 2025).

The conceptual distinction between breach of contract and unlawful acts also creates systematic problems in the awarding of immaterial compensation. In breach of contract, the relationship between the parties is based on an agreement as stipulated in Article 1313 of the Civil Code, so responsibility arises from a breach of the agreed-upon obligation. Meanwhile, in unlawful acts, responsibility arises from a violation of general norms that protect a person's legal interests. The question then becomes whether immaterial losses can be claimed equally under both regimes, given that Article 1246 of the Civil Code tends to focus on economic losses, while Article 1365 is more open (Fawwaz, 2025). This lack of synchronicity creates legal uncertainty because there are no explicit provisions defining the limitations or extensions of the right to non-economic compensation within each liability regime.

The implication of this unsystematic normative construction is the emergence of tension between the principles of legal certainty and the principle of justice. On the one hand, Article 1338 paragraph (1) of the Civil Code emphasizes that all legally concluded agreements apply as law to the parties, which implies that breaches of the agreement must be compensated proportionately (Susanti, 2024). On the other hand, without clear guidelines regarding immaterial losses, such remedies are highly dependent on judicial interpretation. It risks inconsistency and unpredictability, ultimately weakening the law's function as a regulatory instrument that provides certainty. The ambiguity of the norm in the phrase "loss" and the absence of quantification standards show that the Indonesian civil law system has not yet provided a comprehensive normative framework to accommodate the development of demands for the protection of non-economic rights.

It can be proven that historically and normatively, Indonesian positive law recognizes the possibility of immaterial compensation through the interpretation of Articles 1243, 1246, and 1365 of the Civil Code. However, this recognition is implicit and not accompanied by operational regulations. The absence of explicit definitions, calculation standards, objective parameters, and quantification limits indicates a legal vacuum and significant normative ambiguity. This condition has the impact of opening up a wide room for discretion for judges, while also giving rise to systematic problems in the consistency of legal application. Therefore, this normative construction analysis serves as an important foundation for formulating the need for legal reconstruction and the establishment of more measurable judicial standards in the awarding of immaterial compensation in the general court environment.

Disparity in General Court Judges' Decisions in Determining Immaterial Compensation and Problems with Judicial Standards

The disparity in general court decisions regarding the determination of immaterial damages is a direct consequence of normative constructions that do not provide clear quantification parameters. In practice, claims for immaterial damages are generally filed under Article 1365 of the Civil Code concerning unlawful acts or in connection with breach of contract under Article 1243 in conjunction with Article 1246 of the Civil Code. However, because these provisions only mention "losses" without any differentiation or calculation method, judges have extensive discretion in determining the amount of compensation. As a result, in cases with relatively similar loss characteristics, the amount of immaterial damages awarded can vary significantly from one decision to another, whether at the first instance, on appeal, or in cassation (Atsari & Cahyono, 2025). The situation demonstrates the absence of consistent judicial standards as guidelines for determining the value of non-economic compensation.

These variations in compensation amounts reflect not only differences in factual assessments but also inconsistencies in the ratio decidendi. In some decisions, judges base their considerations on the level of psychological suffering experienced by the plaintiff without elaborating on measurable indicators; in other decisions, judges use a reasonableness approach or simply state "for the sake of justice" without detailed methodological argumentation. However, based on Article 50 paragraph (1) of the Law on Judicial Power, every court decision must clearly and completely state the reasons and basis for the decision. When considerations regarding the amount of immaterial damages are not formulated based on consistent

parameters, the obligation to provide adequate legal arguments is substantively less fulfilled, even if formally stated in the deliberations (Dzaky, 2025).

The tendency for judicial subjectivity is increasingly apparent due to the lack of binding objective indicators in positive law. Unlike material losses, which can be proven through documents or concrete economic calculations, immaterial losses are highly dependent on the judge's internal assessment of the intensity of the suffering, the defendant's level of culpability, and the resulting social impact. Although Article 5, paragraph (1) of the Law on Judicial Power requires judges to explore, follow, and understand the legal values and sense of justice that exist in society, this provision does not specifically regulate the methodological limits for converting this sense of justice into a specific nominal figure. As a result, the arguments used are often abstract and cannot be objectively verified by the public or by judges at subsequent levels of the court system (Suriadiata & Taqiuddin, 2026).

The absence of standards also impacts the weak predictability of the law. In a state governed by the rule of law, certainty is a fundamental principle that requires court decisions to be rationally estimated based on applicable norms. However, when the value of immaterial damages in similar cases can differ sharply without significant factual differences, the principle of legal certainty is diminished. It implies uncertainty for the parties in determining litigation strategies and in assessing legal risks. In fact, this disparity can give rise to perceptions of injustice because parties suffering similar losses receive unequal compensation (Badriyah, 2025).

In practice, judges often use the principles of propriety and proportionality as the basis for determining the amount of immaterial damages. This principle aligns with the spirit of Article 1338 paragraph (3) of the Civil Code, which emphasizes the implementation of agreements in good faith, and with the general doctrine of propriety in civil law. However, without a standardized methodological framework, the application of these principles relies heavily on the individual judge's intuition and experience. There are no standard guidelines regarding which factors should be considered, how to weight each factor, and how to relate them to a specific amount. Thus, the use of the principles of propriety and proportionality has not been able to bridge the existing normative gap.

It can be concluded that the disparity in general court decisions in determining immaterial damages is not simply a case-by-case phenomenon, but rather a structural problem stemming from the absence of normative parameters in Articles 1243, 1246, and 1365 of the Civil Code. The inconsistency of the *ratio decidendi*, the dominance of subjectivity, and the weak predictability of the law indicate that judicial standards regarding immaterial

compensation have not been established consistently. This condition emphasizes the urgency of establishing measurable and systematic judicial standards, both through the consolidation of jurisprudence and through normative policies that provide quantification guidelines, so that the role of judges in filling legal gaps remains within the corridor of certainty and justice.

Reconstructing the Role of General Court Judges in Building Progressive Judicial Standards as a Model for Legal Reform

Reconstructing the role of general court judges in establishing progressive judicial standards must begin with strengthening the constitutional legitimacy of the legal discovery function (*rechtsvinding*). Article 24, paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms that the judicial power is an independent power to administer justice to uphold law and justice. This legitimacy is reinforced in Article 5, paragraph (1) of the Law on Judicial Power, which requires judges to explore, follow, and understand the legal values and sense of justice that exist in society. In the context of the legal vacuum regarding the quantification of immaterial damages under Articles 1243, 1246, and 1365 of the Civil Code, this mandate provides a normative basis for judges not to dwell on vague texts but rather to construct law responsively and measurably. Thus, legal discovery is not a deviation, but rather a logical consequence of the judicial function within a state system governed by the rule of law.

However, strengthening the role of judges must be accompanied by limits on judicial discretion to prevent it from developing into activism that exceeds authority. Discretion in determining the amount of immaterial damages must remain subject to the principles of legality, legal certainty, and the principle of *non ultra petita*, as stipulated in civil procedural law. Judges may not issue a decision exceeding the demands of the parties and are required to formulate clear legal reasoning as required by Article 50, paragraph (1) of the Law on Judicial Power. Therefore, reconstructing the role of judges does not involve granting unlimited freedom, but rather developing a systematic and rationally testable argumentation methodology. This boundary is crucial to ensure that the established judicial standards remain within the principle of limiting judicial power.

Methodologically, judges can use a combination of grammatical, systematic, and teleological interpretations of Article 1365 of the Civil Code to broaden the meaning of "loss" to explicitly include immaterial losses in legal considerations. Furthermore, judges need to integrate the principle of proportionality as a quantification framework, considering the level of the defendant's fault, the intensity of the victim's suffering, the resulting social impact, and

the economic capabilities of the parties proportionally. A concrete action that can be taken is to establish explicit parameters for decision-making, for example, by including consistent assessment indicators in each case, thus establishing a recurring ratio decidendi pattern that can be used as a reference by other judges. Thus, judicial standards are not born in the abstract, but rather through structured argumentative practice.

Another concrete step is to encourage the consolidation of jurisprudence through plenary chamber meetings or judicial discussion forums within the Supreme Court. Through this consolidation, decisions containing rational quantification parameters can be identified as established jurisprudence and become national references. The Supreme Court can also develop technical guidelines or circulars outlining the factors to be considered in determining immaterial damages, without diminishing the judge's independence in assessing the concrete facts of the case. Developing such guidelines constitutes a concrete institutional action to bridge the legal gap without having to wait for formal legislative changes to the Civil Code.

At the level of general judicial practice, judges can also implement internal standardization by including a systematic table or framework of considerations in decisions, which includes a classification of types of immaterial losses, such as psychological suffering, reputational damage, or loss of enjoyment of life, along with the weighting of each consideration. This action will increase transparency and accountability in the assessment of nominal damages. Furthermore, ongoing education and training for judges on methods for quantifying non-economic losses based on international comparisons can enrich perspectives and reduce disparities. With these steps, the formation of judicial standards is not merely conceptual but also operationally implemented.

The reconstruction of the role of general court judges as legal reformers must be understood as an evolutionary process that remains grounded in the principle of the rule of law. Judges are no longer positioned merely as mouthpieces of the law, but rather as maintainers of the balance between legal certainty and substantive justice in situations of normative vacuum. Through measured legal discovery, consolidation of jurisprudence, the development of technical guidelines by the Supreme Court, and strengthening the methodology of argumentation in decisions, progressive judicial standards regarding immaterial damages can be established. This model is a form of legal reform based on judicial practice, while maintaining constitutional legitimacy and limiting judicial power within the framework of the national legal system.

4. CONCLUSION

Based on the overall analysis, it can be concluded that the provisions on immaterial damages in Indonesian positive law, particularly those derived from Articles 1243, 1246, and 1365 of the Civil Code, conceptually recognize the existence of non-economic losses, but are not accompanied by operational and standardized normative design. The absence of explicit definitions, objective parameters, and clear quantification limits has created a legal vacuum (*rechtsvacuum*) and unclear norms (*vague norm*), impacting general judicial practice. The disparity in judicial decisions in determining the amount of immaterial damages demonstrates that the broad scope for discretion, without a uniform methodological framework, has implications for legal predictability and certainty. In such situations, the role of judges as legal innovators becomes crucial, not only in filling the normative vacuum but also in establishing progressive, proportional judicial standards that remain within the principles of legality and the principle of limiting judicial power.

In this regard, a systematic reconstruction is recommended at both the judicial and normative levels. At the judicial level, the Supreme Court needs to consolidate its jurisprudence and develop guidelines or standards for consideration regarding the quantification of immaterial damages based on the principles of proportionality, propriety, and substantive justice, to minimize disparities in decisions. At the legislative level, updating the provisions of the Civil Code or establishing specific regulations that explicitly regulate the definition, indicators, and limits of immaterial damages is an urgent need to strengthen legal certainty. Furthermore, strengthening the methodological capacity of judges through continuing education in legal reasoning and argumentation techniques is necessary to ensure that the exercise of discretion remains measurable and accountable. With these steps, legal reforms regarding immaterial damages will not be merely conceptual but will be implemented concretely in general judicial practice for fairer and more consistent protection of civil rights.

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