

Ambiguity of Damages in Civil Court Decisions: A Case-Based Analysis of Racial and Ethnic Discrimination in Indonesia

Bustanul Arifien Rusydi

UIN Sunan Kalijaga Yogyakarta

bustanul.rusydi@uin-suka.ac.id

Abstract: This study examines the ambiguity of immaterial damages in civil court decisions concerning racial and ethnic discrimination in Indonesia. Using a normative legal method with philosophical, conceptual, and case study approaches, the research focuses on the application of adequate causality theory by Johannes von Kries to assess the causal relationship between discriminatory acts and non-material harm. The study analyzes court decisions Surabaya District Court Decision No. 529/Pdt.G/2014/PN. Sby, Central Jakarta District Court Decisions No. 588/Pdt.G/2017/PN.Jkt.Pst and No. 13/Pdt.G/2018/PN.Jkt.Pst, which were declared inadmissible due to insufficient proof of harm. Findings reveal that current evidentiary standards are limited to material losses, leaving psychological harm—such as trauma, fear, and social stigma—unaddressed. This research proposes normative parameters for evaluating non-material damages, including psychological intensity, public exposure, duration of impact, and social vulnerability of victims. The study highlights the need for a more responsive evidentiary framework that accommodates the realities of symbolic and immaterial harm in discrimination cases.

Keywords: *racial and ethnic discrimination; immaterial damages; adequate causality; civil court evidence*

Introduction

Racial and ethnic discrimination, though often viewed as a social issue,¹ is a legally actionable violation under Indonesian law, contradicting Pancasila, the 1945 Constitution, and international human rights standards.² Law No. 40 of 2008 allows victims to seek compensation through civil courts; however, court decisions such as those in Surabaya and Central Jakarta have consistently declared such lawsuits inadmissible due to the plaintiffs' failure to clearly define the damages suffered. While Articles 13 and 14 of the law grant the right to claim compensation, they

¹ Defira Martina Adrian, et al, "Diskriminasi Rasial dan Etnis dalam Perspektif Hukum Internasional," *Jurnal Legalitas* 14, no. 1 (2021).

² Zihan Suryani and Dinie Anggraeni Dewi, "Implementasi Pancasila dalam Menghadapi Masalah Rasisme Dan Diskriminasi," *Jurnal Kewarganegaraan* 5, no. 1 (2021). Hlm. 192

lack specific explanations of what constitutes “loss” or “damage,” leading to public misunderstanding about the legal thresholds for filing such claims. This legal ambiguity results in many victims assuming that personal feelings of harm are sufficient grounds for a lawsuit, without meeting the evidentiary and legal criteria required by the courts—highlighting the need for clearer normative definitions and legal guidance.

Numerous scholars have examined acts of racial and ethnic discrimination in Indonesia from diverse academic perspectives, reflecting the complexity and multidimensional nature of the issue. The attention of previous researchers to acts of discrimination in Indonesia can be categorized into several typological perspectives as follows: First, the juridical perspective. According to Kalengkongan, such acts constitute violations of human rights. Sanctions may include imprisonment and fines, aimed at prevention and deterrence.³ In contrast, from a civil law viewpoint, Desak Made Rai Ningsih saw that discriminatory acts in service provision may result in both criminal penalties and civil compensation. From the international law perspective, Martina Adrian et al.⁴ emphasized that the Indonesian government is expected to play a more active role in disseminating information regarding the provisions on the elimination of racial and ethnic discrimination. Second, the sociological perspective.⁵ Through this lens, Femita Adelina et al. revealed a significant positive correlation between social prejudice and the intention to discriminate among Javanese students toward students from East Nusa Tenggara. Zanta Rante Saludung et al identified elements of discriminatory behavior by the majority group toward the minority group as portrayed in the novel.⁶ Third, the human rights protection perspective. Hesti Armiwulan argued that the elimination of racial discrimination can be pursued through the formulation of legislation, thereby ensuring both protection and enforcement mechanisms.⁷ Still within the human rights framework,

³ Miki S. Kalengkongan, “Tinjauan Hukum Pidana Pelaku Kejahatan terhadap Kelompok Minoritas,” *Lex Crimen* 4, no. 3 (Mei 2015). Hlm. 90

⁴ Martina Adrian et al., “Diskriminasi Rasial Dan Etnis Dalam Perspektif Hukum Internasional.”

⁵ Femita Adelina et al., “Hubungan Antara Prasangka Sosial Dan Intensi Melakukan Diskriminasi Mahasiswa Etnis Jawa Terhadap Mahasiswa Yang Berasal Dari Nusa Tenggara Timur,” *Jurnal Sains Psikologi* 6, no. 1 (2017). Hlm. 8

⁶ Zanta Rante Saludung et al., “Diskriminasi Mayoritas Terhadap Minoritas Dalam Novel Kedai 1001 Mimpi Karya Valiant Budi Tinjauan Sosiologi Sastra (Teori Diskriminasi Pettigrew),” *Universitas Negeri Makassar*, n.d. Hlm. 18

⁷ Hesti Armiwulan, “Diskriminasi Rasial Dan Etnis Sebagai Persoalan Hukum Dan Hak Asasi Manusia,” *Jurnal Masalah-Masalah Hukum* 44, no. 4 (2015), <https://doi.org/10.14710/mmh.44.4.2015.493-502>; Hesti Armiwulan, *Diskriminasi Rasial*

Prinisia Nurul Ikasari⁸ found that in the film *Sapu Tangan Fang Yin*, various forms of symbolic discrimination are present, such as slurs, metaphoric expressions, and visual portrayals targeting the Chinese-Indonesian community.

Although a substantial body of research has addressed legal protection in response to discriminatory acts, several critical issues remain underexplored. Juridical studies have yet to comprehensively examine the enforcement mechanisms available against parties who engage in acts of racial or ethnic discrimination. However, such research has predominantly focused on general causality between unlawful conduct and resulting harm as stipulated in the Indonesian Civil Code (*Burgerlijk Wetboek*), rather than in the specific context of racial and ethnic discrimination. As such, a critical gap remains in understanding how discriminatory acts—particularly those based on race or ethnicity—give rise to legally recognizable harm and how such harm can be substantiated and remedied through civil proceedings.⁹

This study adopts a philosophical and normative legal approach, using Johannes von Kries's theory of adequate causality¹⁰ to examine the causal link between acts of racial and ethnic discrimination and resulting harm. The theory asserts that an act is a cause if, under normal conditions,¹¹ it can bring about a legally significant consequence that the

Dalam Hukum HAM: Studi Tentang Diskriminasi Terhadap Etnis Tionghoa (Genta Publishing, 2013).

⁸ Prinisia Nurul Ikasari, "Perempuan Dalam Diskriminasi Etnis Di Indonesia (Analisis Film *Sapu Tangan Fang Yin*)," *Jurnal Komunikasi Dan Kajian Media* 1, no. 1 (2017). Hlm. 57

⁹ Isman Isman, "Kumulasi Gugatan Antara Perbuatan Melawan Hukum Dan Wanprestasi (Kajian Putusan Nomor 886 K/Pdt/2007)," *Jurnal Yudisial* 14, no. 1 (2021), <http://dx.doi.org/10.29123/jy.v14i1.370>; Slamet, "Tuntutan Ganti Rugi Dalam Perbuatan Melawan Hukum: Suatu Perbandingan Dengan Wanprestasi"; Rizqy Rizqy and Syahrizal Syahrizal, "Tinjauan Yuridis Terhadap Perbuatan Melawan Hukum Dan Sanksinya," *Jurnal Justisia* 3, no. 2 (2018), <http://dx.doi.org/10.22373/justisia.v3i2.5931>; Krisna Angela, "Tanggung Gugat Risiko Majikan Atas Perbuatan Melanggar Hukum Bawahannya Dalam Kecelakaan Lalu Lintas Oleh Truk Tronton Di Balikpapan: Siapakah Yang Bertanggung Gugat Dan Bagaimana Bentuk Kerugiannya?," *Rewang Rencang: Jurnal Hukum Lex Generalis* 3, no. 4 (2022); Riedel Timothy Runtuuwu, "Kajian Terhadap Tanggung Gugat Karena Wanprestasi Dan Perbuatan Melanggar Hukum Berdasarkan Kitab Undang-Undang Hukum Perdata," *Lex Privatum X*, no. 1 (2022).

¹⁰ Sandy Zabell, "Johannes von Kries's Principien: A Brief Guide for the Perplexed," *Journal for General Philosophy of Science* 47, no. 1 (2016), <https://doi.org/10.1007/s10838-015-9320-x>. Hlm. 131

¹¹ Zabell, "Johannes von Kries's Principien: A Brief Guide for the Perplexed." Hlm. 134

actor knew or should have known was possible.¹² Through conceptual analysis and case studies—specifically court decisions in Surabaya and Central Jakarta—the research highlights how harm from discrimination is not incidental but causally and legally connected to the discriminatory act. By applying this framework, the study exposes challenges in evidentiary processes, particularly the ambiguity surrounding the harm element, which often leads courts to declare claims inadmissible (niet ontvankelijk verklaard).

Civil Lawsuits on Racial and Ethnic Discrimination: The Problematics of Proving Damages

The ambiguity in interpreting immaterial damages can be observed in various tort claims based on acts of racial and ethnic discrimination. Immaterial damages, such as psychological distress, emotional pressure, and the loss of a sense of security, are inherently subjective and not easily proven through the evidentiary instruments used in civil court proceedings.¹³ In South Jakarta District Court Decision No. 588/Pdt.G/2017/PN.Jkt.Pst, the plaintiffs claimed that the defendant's statements had triggered social polarization and caused a disturbance to their sense of security as citizens.¹⁴ However, the court found no facts indicating that the alleged damages met the evidentiary requirements to be recognized as legally valid harm. Errors in the formulation of the claim, particularly in establishing a causal link, constitute a fundamental issue that led to the inadmissibility of the tort claim based on racial and ethnic discrimination.¹⁵

The proof of a causal relationship between an unlawful act and the resulting harm is an essential element in Indonesia's civil law system, as affirmed in Article 1365 of the Indonesian Civil Code.¹⁶ In practice, there are claims that fail to demonstrate a logical and legal connection between the defendant's conduct and the alleged legal consequence in the form of damages. For example, in Central Jakarta District Court Decision No.

¹² Lhedrik Lienarto, "Penerapan Asas Conditio Sine Qua Non Dalam Tindak Pidana Di Indonesia," *Lex Crimen* 5, no. 6 (2016). Hlm. 36

¹³ "Non-Pecuniary Damage in General," in *Essential Cases on Damage*, ed. Bénédict Winiger et al. (De Gruyter, 2011), <https://doi.org/10.1515/9783110248494.493>. p493

¹⁴ Putusan Pengadilan Negeri Jakarta Pusat Nomor 588/Pdt.G/2017/PN.Jkt.Pst. (June 4, 2018).

¹⁵ *Putusan Pengadilan Negeri Jakarta Pusat Nomor 588/Pdt.G/2017/PN.Jkt.Pst.*

¹⁶ Masnida Malau et al., "Perbuatan Melawan Hukum Atas Penyerobotan Tanah Milik Orang Lain Dihubungkan Dengan Pasal 1365 KUH Perdata," *Binamulia Hukum* 12, no. 2 (2023): 2.

13/Pdt.G/2018/PN.Jkt.Pst, the judge found that the plaintiff was unable to clearly explain how the defendant's actions directly caused the alleged harm. The claim merely described feelings of discrimination and social injustice experienced by the plaintiff, without supporting these assertions with legal analysis that systematically connects the elements of the act, fault, harm, and causation.¹⁷ This indicates a weakness in the argumentative construction, which should have been grounded in established theories of legal causation.

The problem of formulating a causal relationship is also one of the main reasons why a claim is declared inadmissible (*niet ontvankelijk verklaard*).¹⁸ In Central Jakarta District Court Decision No. 13/Pdt.G/2018/PN.Jkt.Pst, the plaintiffs argued that the statement made by the then-Governor of Jakarta in a public speech using the term “pribumi” had caused unrest, social polarization, and harmed their sense of security and dignity as citizens.¹⁹ The plaintiffs emphasized that the public statement was discriminatory and violated Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination. However, they failed to distinguish between general social or psychological effects and legal consequences, which must be concrete, identifiable, and evidentially provable. The proper application of causality theory is therefore crucial.²⁰ A lawsuit is regarded as a normative claim that must be supported by a valid structure of legal proof.²¹

The weakness in formulating a causal relationship is a key factor that prevents the court from proceeding to the substantive examination of discrimination cases filed through civil litigation.²² The formulation of the

¹⁷ Putusan Pengadilan Negeri Jakarta Pusat Nomor 13/Pdt.G/2018/PN.Jkt.Pst (September 3, 2018).

¹⁸ Runtunuwu, “Kajian Terhadap Tanggung Gugat Karena Wanprestasi Dan Perbuatan Melanggar Hukum Berdasarkan Kitab Undang-Undang Hukum Perdata”; Rivo Krisna Winastri et al., “Tinjauan Normatif terhadap Ganti Rugi dalam Perkara Perbuatan Melawan Hukum yang Menimbulkan Kerugian Immateriil (Studi Kasus Putusan Pengadilan Negeri Istimewa Jakarta No. 568/1968.G),” *Diponegoro Law Journal* 6, no. 2 (2017): 2.

¹⁹ Putusan Pengadilan Negeri Jakarta Pusat Nomor 13/Pdt.G/2018/PN.Jkt.Pst.

²⁰ Muhammad Irfan Luthfi Damanik and Fauziah Lubis, “Arti Pentingnya Pembuktian Dalam Proses Penemuan Hukum Di Peradilan Perdata,” *Judge : Jurnal Hukum* 5, no. 02 (2024): 02, <https://doi.org/10.54209/judge.v5i02.568>.

²¹ Damanik and Lubis, “Arti Pentingnya Pembuktian Dalam Proses Penemuan Hukum Di Peradilan Perdata.”

²² Samsiati Samsiati, “Prinsip Tuntas Sebagai Manifestasi Keadilan Dalam Upaya Rekonstruksi Putusan Atas Gugatan Tidak Dapat Diterima,” *Judex Laguens* 2, no. 1 (2024): 25–54.

causal link between the statement in question and the harm suffered by the plaintiffs was neither precise nor systematically constructed.²³ The plaintiffs alleged immaterial damages such as trauma, anxiety, and discomfort, yet failed to demonstrate that these harms arose directly as a legal consequence of the defendant's actions.²⁴ There was no adequate explanation of how the impact of the speech specifically affected the plaintiffs' personal lives or how it violated any legally protected rights under existing laws and regulations. On the other hand, the judge found that the defendant's statement was general in nature and not directed specifically at the plaintiffs, making the alleged harm abstract and insufficient to meet the legal standards of proof, which require actual and measurable loss. As a result, the causal link that should logically connect the act and its legal consequence was not fully established.

Proving non-physical discrimination cases presents a unique challenge, as the resulting harm is intangible and difficult to establish through conventional means.²⁵ The standard of proof in Indonesian civil law requires valid and relevant evidence to demonstrate the existence of an unlawful act, the harm caused, and the causal relationship between the two.²⁶ In cases of racial and ethnic discrimination that are symbolic or verbal in nature,²⁷ the evidence submitted often consists of speech excerpts, media reports, or personal narratives that do not meet the formal evidentiary standards set by civil procedural law. In Central Jakarta District Court Decision No. 588/Pdt.G/2017/PN.Jkt.Pst, although the plaintiffs submitted evidence in the form of speech quotations and media coverage, the court held that such evidence was insufficient to prove the existence

²³ Enjang Nursolih, "Analisis Penyusunan Surat Gugatan," *Jurnal Ilmiah Galuh Justisi* 7, no. 1 (2019): 87.

²⁴ *Putusan Pengadilan Negeri Jakarta Pusat Nomor 13/Pdt.G/2018/PN.Jkt.Pst.*

²⁵ Rai Mantili, "Ganti Kerugian Imateriil Terhadap Perbuatan Melawan Hukum Dalam Praktik: Perbandingan Indonesia Dan Belanda," *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum* 4, no. 2 (2022): 298–321.

²⁶ Markus Suryoutomo et al., "Koherensi Putusan Hakim Dalam Pembuktian Ganti Rugi Imateriil Perbuatan Melawan Hukum," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 133–49, <https://doi.org/10.14710/jphi.v4i1.139-144>; Rai Mantili and Anita Afriana, "Pertimbangan Hakim Dalam Mengabulkan Gugatan Ganti Rugi Imateriil Pada Perkara Perbuatan Melawan Hukum (Analisis Putusan Kasasi No. 3215 K/PDT/2001)," *ADHAPER: Jurnal Hukum Acara Perdata* 5, no. 1 (2019): 19, <https://doi.org/10.36913/jhaper.v5i1.86>.

²⁷ Putri Erna Oktavia Putri, "Kebijakan Hukum Terkait Tindakan Rasisme Yang Melumpuhkan Sistem Keadilan Di Indonesia," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 1, no. 2 (2022): 29–35, <https://doi.org/10.52005/rechten.v1i2.46>.

of actual and measurable legal harm.²⁸ General or indirect evidence was deemed inadequate to support the claim that the defendant's actions had caused legally recognizable personal harm.²⁹ This illustrates the limitations of evidentiary instruments in addressing forms of discrimination that do not result in material loss but significantly affect a person's or group's integrity, sense of security, and civil rights.

The use of the class action mechanism in cases of racial and ethnic discrimination offers procedural efficiency in handling disputes involving multiple victims with similar issues.³⁰ However, its application in the context of discriminatory acts faces considerable legal and technical challenges. One of the key requirements for a class action lawsuit, as stipulated in Supreme Court Regulation No. 1 of 2002, is the presence of commonality in facts, legal grounds, and the type of harm suffered by all members of the group. This requirement is difficult to fulfill in discrimination cases, as the resulting harm is subjective, intangible, and varies from one individual to another. In Decision No. 529/Pdt.G/2014/PN.Sby, the plaintiff filed a class action representing hundreds of residents who claimed to have suffered harm due to discriminatory acts related to land control.³¹ Although the lawsuit outlined the legal basis and formal procedures for a class action, the court held that the plaintiff failed to prove the similarity in the form and degree of harm experienced by the group members. Furthermore, the plaintiff was unable to clearly identify the members of the class, making it difficult for the court to assess the validity of the legal representation presented.

An emerging challenge in racial and ethnic discrimination cases is proving immaterial damages, particularly in instances of verbal or symbolic discrimination, where harm is deeply personal and not easily generalized. This complicates class action lawsuits, as evidence must show systemic harm within a shared legal context. Although Law No. 40 of 2008 provides a legal basis for compensation, it lacks clear technical standards for assessing and proving immaterial harm in civil litigation. Articles 13 and

²⁸ *Putusan Pengadilan Negeri Jakarta Pusat Nomor 588/Pdt.G/2017/PN.Jkt.Pst.*

²⁹ Dea Mahara Saputri and Abdul Azis, "Kedudukan Alat Bukti Dalam Hukum Acara Perdata Sebagai Implementasi Kepastian Hukum," *Rechtsregel: Jurnal Ilmu Hukum* 6, no. 2 (2023): 207–16, <https://doi.org/10.32493/rjih.v6i2.37572>.

³⁰ Priska Debora Samosir and I. Gusti Agung Ayu Dike Widhyaastuti, "Tujuan Dan Manfaat, Serta Kritik Yang Timbul Dari Gugatan Perwakilan Kelompok (Class Action) Dalam Suatu Sengketa Perdata Di Indonesia," *Kertha Wicara: Journal Ilmu Hukum*, 2016, <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/24809>.

³¹ *Putusan Pengadilan Negeri Surabaya Nomor 529/Pdt.G/2014/PN.Sby.* (Desember 2014).

14 permit lawsuits, but offer no guidance on defining or measuring harm, leading to confusion in judicial practice. In cases like Surabaya and Central Jakarta District Court decisions, plaintiffs often failed to concretely prove harm, resulting in claims being deemed unproven or inadmissible. This highlights a disconnect between legal ideals and courtroom application, where compensation rights depend on conservative judicial interpretations focused on tangible, measurable losses, rather than subjective, immaterial suffering.

Civil Damages in Racial and Ethnic Discrimination: An Adequate Causality Perspective

The theory of adequate causality is a key approach to determining causal relationships in civil law, developed by Johannes von Kries.³² This concept emerged as a response to the weaknesses of the *conditio sine qua non* theory, which tends to be overly broad by treating every condition preceding an outcome as a legal cause, without considering the relevance and reasonable connection between events. Von Kries argued that not all preceding conditions can be regarded as legal causes.³³ Only those actions which, under normal circumstances, can reasonably be expected to result in a specific consequence may be considered *causa adequate* or adequate causes. This theory emphasizes the importance of reasonableness (adequacy) and predictability in causal relationships. An act is regarded as a legally valid cause if, under normal conditions and based on general human experience, it can be reasonably foreseen to give rise to a specific harmful outcome.³⁴

Adequate causality can serve to strengthen tort claims based on racial and ethnic discrimination, particularly in cases involving immaterial damages. The harm experienced by victims in such cases is not always material or physical in nature, but may take the form of psychological distress, fear, social stigma, or the loss of a sense of security.³⁵ The challenge lies in proving that the discriminatory act constitutes a legally

³² Cristian Aedo Barrena and Renzo Munita Marambio, "Some Problems Raised by The Theory of The Equivalence of Conditions and The Theory of Adequate Causation in Civil Liability," *Latin American Legal Studies* 10, no. 1 (2023): 297–352, <https://doi.org/10.15691/0719-9112Vol11n1a8>.

³³ Michael Heidelberger, "From Mill via von Kries to Max Weber: Causality, Explanation, and Understanding," in *Historical Perspectives on Erklären and Verstehen*, ed. Uljana Feest, vol. 21, Archimedes (Springer Netherlands, 2010).

³⁴ Heidelberger, "From Mill via von Kries to Max Weber."

³⁵ Neil Thompson, "Discrimination, Oppression, and Loss," in *Non-Death Loss and Grief*, 1st ed., ed. Darcy L. Harris (Routledge, 2019), p50-60

valid (juridical) cause of the harm suffered.³⁶ Reasonableness and the likelihood of consequences under normal conditions and general human experience are critical considerations.³⁷ In the context of discrimination, a racially charged statement by a public official, exclusionary behavior based on ethnic background, or unequal treatment in service delivery can, under normal circumstances, be reasonably expected to cause social and psychological harm to a particular group.

In Central Jakarta District Court Decisions No. 588/Pdt.G/2017/PN.Jkt.Pst and No. 13/Pdt.G/2018/PN.Jkt.Pst, the court declared the lawsuits inadmissible on the grounds that the plaintiffs failed to prove the alleged harm in a concrete manner. From the perspective of von Kries, the relationship between discriminatory speech and its psychological or social impact can be considered a legally valid causal connection, as long as the act can logically and generally be associated with the harm suffered. The resulting psychological effects underscore the importance of integrating psychological expertise into the evidentiary process of racial and ethnic discrimination cases, especially in clarifying and substantiating claims of immaterial, psychological harm. When the harm is not physical or material in nature—but rather manifests as feelings of humiliation, anxiety, trauma, or the loss of a sense of security—a purely legal approach becomes insufficient.³⁸

Psychology—particularly the branches of social psychology and forensic psychology—can offer both academic and empirical validation of the mental and emotional impact of discrimination on victims.³⁹ Using standardized instruments such as clinical interviews, psychological assessments, or trauma evaluations, psychological experts can provide professional opinions regarding the presence of psychological disorders or

³⁶ Emanuel V. Towfigh, “Der Umgang Mit Empirie Beim Nachweis von Diskriminierung (Empirical Approaches to Proving Discrimination),” *SSRN Electronic Journal*, ahead of print, 2021; Benjamin Perryman, “Proving Discrimination: Evidentiary Barriers and Section 15(1) of the Charter,” *SSRN Electronic Journal*, ahead of print, 2023.

³⁷ Robert Alexy, “The Reasonableness of the Law,” in *Reasonableness and Law*, ed. Francisco J. Laporta et al., vol. 86, ed. Giorgio Bongiovanni et al., Law and Philosophy Library (Springer Netherlands, 2009), p3-15.

³⁸ Carel J. J. M. Stolker, “The Unconscious Plaintiff: Consciousness as a Prerequisite for Compensation for Non-Pecuniary Loss,” *International and Comparative Law Quarterly* 39, no. 1 (1990): 82–100.

³⁹ Robert T. Carter and Sinéad M. Sant-Barket, “Assessment of the Impact of Racial Discrimination and Racism: How to Use the Race-Based Traumatic Stress Symptom Scale in Practice,” *Traumatology* 21, no. 1 (2015): 32–39, <https://doi.org/10.1037/trm0000018>.

stress triggered by discriminatory acts.⁴⁰ These expert opinions may be submitted as expert evidence in court, as permitted under Article 1866 of the Indonesian Civil Code and Article 164 of the HIR, to substantiate the claimed harm.⁴¹

Psychological research shows that emotional harm from racial and ethnic discrimination follows consistent patterns, affecting victims' self-esteem, identity, and mental health—supporting the theory of adequate causality by making such harm foreseeable. However, courts struggle to translate this immaterial harm into monetary compensation, as it typically involves psychological trauma rather than economic loss. Despite clear psychological evidence—such as PTSD or depression—there is no objective method to quantify such harm, leading some plaintiffs to file symbolic claims (e.g., Rp1), as in Central Jakarta District Court Decision No. 588/Pdt.G/2017/PN.Jkt.Pst. This approach has been criticized for minimizing victims' suffering and undermining substantive justice. The legal system in Indonesia lacks guidelines for valuing psychological harm, unlike tort systems in Anglo-Saxon jurisdictions. In the absence of clear standards or progressive legal precedents, judges tend to avoid awarding meaningful compensation, leaving victims without adequate redress and exposing a critical gap between psychological realities and legal remedies.

Reconstruction of the Standard of Proof for Damages

The standard of proof in civil procedural law requires evidence to be concrete, measurable, and material.⁴² Damages must be demonstrated through documents, factual witnesses, or physical evidence that shows a loss of assets, infringement of rights, or financial impact.⁴³ The standard evidentiary requirements in civil procedure become inadequate in cases of racial and ethnic discrimination, where the harm is often immaterial—such as psychological distress, social stigma, or humiliation—and cannot be proven through conventional means like receipts or damage reports.

⁴⁰ Shawn O. Utsey, "Assessing the Stressful Effects of Racism: A Review of Instrumentation," *Journal of Black Psychology* 24, no. 3 (1998): 269–88, <https://doi.org/10.1177/00957984980243001>.

⁴¹ Catur Nugroho Jati, "Kajian Kekuatan Pembuktian Saksi Ahli Sebagai Alat Bukti Dalam Pemeriksaan Sengketa Perdata (Studi Perkara Nomor : 19/Pdt.G./2011/Pn.Ska Di Pengadilan Negeri Surakarta)," *Jurnal Verstek* 1, no. 2 (2013).

⁴² Mike Redmayne, "Standards of Proof in Civil Litigation," *The Modern Law Review* 62, no. 2 (1999): 167–95.

⁴³ Hendri Jayadi, "Searching for Material Truth in Civil Trials Based on Civil Procedure Law in Indonesia," *International Journal of Law and Politics Studies* 5, no. 4 (2023): 49–53.

Courts frequently consider evidence like media coverage or public statements insufficient to establish harm, resulting in many claims being dismissed as inadmissible. This evidentiary gap highlights not just a procedural challenge, but a broader disconnect between legal frameworks and the lived experiences of discrimination victims. Despite the serious impact of emotional and symbolic harm, the legal system has yet to fully recognize or accommodate these non-material injuries, limiting access to justice and meaningful redress for affected individuals.

The opinion of a psychological expert plays a crucial role in strengthening the evidentiary basis of racial and ethnic discrimination cases that result in non-material harm. In such cases, victims are considered to suffer from psychological disturbances, including mental stress, fear, anxiety, or trauma—types of harm that cannot be proven through conventional evidence such as documents or factual witnesses. A psychologist's task is to scientifically demonstrate that the harm is real and verifiable through professional examination methods.⁴⁴ This process involves clinical interviews, behavioral observation, and the use of standardized psychological instruments.⁴⁵ The findings are presented in the form of a report or expert opinion, which can be submitted as evidence in court. According to Article 1866 of the Indonesian Civil Code and Article 164 of the HIR, expert testimony qualifies as a legitimate form of evidence and may be considered by judges in their assessment of the case.⁴⁶

Psychological expert testimony plays a crucial role in bridging the gap between a victim's internal emotional experiences and the formal legal standards of proof in civil discrimination cases. It not only confirms the existence of harm but also clarifies the causal link between discriminatory acts and psychological impact, providing judges with a scientific basis to assess compensation claims. Given Indonesia's lack of normative parameters for evaluating non-material damages, the study proposes a framework to guide legal interpretation. This includes four key indicators: (1) the intensity of psychological harm, measured through expert evaluations; (2) the public exposure of the discriminatory act, which can amplify its impact; (3) the duration of psychological suffering, evidenced

⁴⁴ Lonna Yohanes Lengkong, "Keterangan Ahli Sebagai Alat Bukti Dalam Penyelesaian Sengketa Perdata," *Jurnal Hukum To-Ra* 6, no. 3 (2020).

⁴⁵ Robert F. Bornstein, "Evidence-Based Psychological Assessment," *Journal of Personality Assessment* 99, no. 4 (2017): 435–45.

⁴⁶ Jati, "Kajian Kekuatan Pembuktian Saksi Ahli Sebagai Alat Bukti Dalam Pemeriksaan Sengketa Perdata (Studi Perkara Nomor : 19/Pdt.G./2011/Pn.Ska Di Pengadilan Negeri Surakarta)."

by long-term effects; and (4) the victim's social vulnerability, such as minority status or structural marginalization. These parameters aim to legitimize and quantify immaterial harm in a structured, context-sensitive way, enabling more equitable judgments and strengthening legal recognition of emotional and symbolic injuries.

Conclusion

Indonesia's civil evidentiary system remains limited in accommodating immaterial damages from racial and ethnic discrimination, as it prioritizes physical evidence and material loss. This makes it difficult to legally prove psychological harm, social stigma, or emotional distress, leading many claims to be deemed inadmissible due to the absence of clear causality and measurable loss. In this context, psychological expert testimony becomes vital, offering legally recognized assessments that can substantiate trauma and emotional suffering. The theory of adequate causality supports this approach by emphasizing foreseeable and reasonable consequences of discriminatory acts under normal conditions. To strengthen legal responses, the formulation of normative parameters—such as the intensity of psychological impact, the scope of public exposure, the duration of harm, and the victim's social vulnerability—is essential. These indicators would guide judges in evaluating non-material harm more objectively and contextually, helping reconstruct the standard of proof toward a more equitable and humane legal framework.

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