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*Indonesian Law Journal*



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**Volume 7 Number 2 (2019)**

Jurnal

# CITA HUKUM

VOLUME 7 NUMBER 2 (2019)

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INDONESIAN LAW JOURNAL

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## Legal Review of the Liability Framework for Remote Sensing by Looking at the Global Navigation Satellite System\*

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 10.15408/jch.v7i2.10714

### Abstract:

Compensation for losses in the law is certain and the civil liability system is designed to respond to this need. Nowadays, it is necessary to check compensation in different fields, and specialists in each field are seeking data to recognize liability issues and even reduce the risk of liability in their work. The legal recognition of the subject is necessary because the field of remote sensing and mapping is one of the fields with many activists and plays an important role in various aspects of the life of the community, but many people still do not have any data about their rights, and even those involved in this field as producers or consumers do not have legal data on this issue, and due to the involvement of this data in the lives of individuals and the existence of relevant cases in the judiciary. Therefore, the accurate recognition of this issue will cause questions in this field to be answered in law. And lawyers and judges can also rely on the recognition and analysis of this issue to avoid error and work more efficiently.

**Keywords:** Liability, Remote Sensing, Fault, Global Navigation Satellite System (GNSS)

Talei, Simin Asadzadeh; Bouzari, Sepideh; and Bagheri, Sakineh. "Legal Review of the Liability Framework for Remote Sensing by Looking at the Global Navigation Satellite System (GNSS)" *Jurnal Cita Hukum* [Online], Volume 7 Number 2 (17 August 2019)

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\* Received: April 16, 2019, revised: May 18, 2019, accepted: July 30, 2019, Published: August 17, 2019.

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## Tinjauan Hukum Kerangka Pertanggungjawaban untuk Penginderaan Jauh dengan Melihat pada Navigasi Global Sistem Satelit

### **Abstrak:**

*Kompensasi untuk kerugian dalam hukum merupakan kepastian, dan sistem pertanggungjawaban sipil dirancang untuk menanggapi kebutuhan ini. Saat ini, perlu untuk memeriksa kompensasi di bidang yang berbeda dan spesialisasi di setiap bidang, guna mencari data untuk mengetahui masalah pertanggungjawaban, selain mengurangi risiko pertanggungjawaban dalam pekerjaan mereka. Pengakuan hukum atas subjek diperlukan, karena bidang penginderaan jauh dan pemetaan adalah salah satu bidang dengan banyak aktivitas dan memainkan peran penting dalam berbagai aspek kehidupan masyarakat, walaupun masih banyak orang yang tidak memiliki data tentang hak mereka. Bahkan mereka yang terlibat dalam bidang ini sebagai produsen atau konsumen tidak memiliki data hukum tentang masalah ini, disebabkan karena keterlibatan data ini dalam kehidupan individu dan adanya kasus yang relevan dalam peradilan. Oleh karena itu, pengakuan yang akurat atas masalah ini akan menimbulkan pertanyaan pada permasalahan ini dan dijawab secara hukum. Pengacara dan hakim juga dapat mengandalkan pengakuan dan melakukan analisis terhadap masalah ini untuk menghindari kesalahan dan bekerja lebih efisien.*

**Kata kunci:** Pertanggungjawaban, Penginderaan Jauh, Kesalahan, Global Satellite System (GNSS)

### **Правовой обзор системы ответственности за дистанционное зондирование с помощью глобальной навигационной спутниковой системы**

### **Аннотация:**

*Компенсация за ущерб определена законом, и система гражданской ответственности разработана в ответ на эту потребность. В настоящее время необходимо изучить вопрос компенсации в различных областях и специализации в каждой области в целях поиска данных для выяснения вопроса об ответственности, а также снизить риск ответственности в своих работах. Юридическое признание рассматриваемого лица необходимо, потому что область дистанционного зондирования и картографирования является одной областью со многими действующими лицами и играет важную роль в различных аспектах общественной жизни, хотя все ещё есть много людей, которые не имеют данных о своих правах. Даже те, кто вовлечён в эту область в качестве производителей или потребителей, не имеют правовых данных по этому вопросу из-за вовлечения этих данных в жизнь отдельных лиц и наличия соответствующих дел в судебной системе. Таким образом, точное признание этой проблемы поднимет вопросы, которые будут решены юридически. Адвокаты и судьи также могут рассчитывать на признание и анализ проблемы, чтобы избежать ошибок и работать более эффективно.*

**Ключевые Слова:** Ответственность, Дистанционное Зондирование, Ошибки, Глобальная Навигационная Спутниковая Система (Гнсс)

## **Introduction:**

Civil liability is continuously seeking to compensate for the loss sustained by the loss incurring agent. In order to do so, the loss elements, the loss incurring agent and causality relationship are essential elements. Nonetheless, in all disciplines and situations, civil liability and a warrant for compensation are not easy. Nowadays, due to the specialization of human activity in different fields, it is important to examine this system and help the affected. Remote sensing is the acquisition of data from the surface of the earth and seas using images taken from the above. In this process, people and sometimes companies involved in the process may incur losses on others. Of course, the losers will not be able to pursue their rights and compensate without knowing the various aspects of the subject and related legal issues. Legal challenges have also been created with the launch of satellite remote sensing and technological advances in the field, with legal issues also emerging as the technology develops.

There are four basic elements about remote sensing data or maps: First, remote sensing technology providers; second, data providers; third, remote sensing manufacturers, and fourth remote sensing users. Liability may be an issue per each four-stage, including security and copyright issues, privacy and civil liability issues. This liability is created in several ways: first, in relation to the place of evaluation or manipulation of data; second in relation to the misrepresentation of the data that is correct, for example, presentation of a false-scale image that misleads the user. Third, an unintended loss incurred by faulty use data and fourth is a violation of copyright or other intellectual property rights. Does the current paper aim at examining how is legal liability primarily addressed in the field of remote sensing and practitioners? This is an analytical and descriptive study, we have tried to use the data from books and articles and authoritative sites to describe the relationship between the two fields and the issues of creating liability, and using the experiences of other countries with a look at their jurisprudence to add to the richness of rights in this new and applied field, by invoking the foundations of civil liability.

## **The Concept of Civil Liability**

Today, if the term civil liability is used in an absolute manner, then civil liability is non-contractual (Hashemi, 2010: 17). If two persons have no covenant with each other and either one of them deliberately or mistakenly incurs damages to the other, the liability is non-negotiable or out of contract (Katouzian, 1995: 72). It should be noted that "civil liability" if used without any definitions, means "

out of contract civil liability." An out-of-contract liability is when a person deliberately or in error causes harmed without having previously contracted a loss; this liability is the result of a violation of customary and legal customary duties that are imposed on everyone. (Katouzian, 1995: 174). Some aspects of remote sensing subject to legal liability are as follows:

### **A Plan for Discussing Liability for Remote Sensing**

These days, remote sensing specialists are aware that they may be responsible for the accuracy of the data stored or sold in the data sources and they may be sued if the damage is caused or economic loss caused by an error in the data system. Or even if public policy chooses a decision based on data obtained from the measurement and causes loss, liability may ultimately be imposed on data providers, who may be responsible for the distribution of data that causes the loss, even if that data had not used in the specified subject. Sometimes mistakes in the map or a chart of the real world lead to a terrible result. Sometimes mistakes arise from the geographic data that is unpredictable, for example, the correct data is presented incorrectly. Maps are provided for various purposes. sometimes a map is applied in the field which is not provided for that field and is causing damage. Some aspects of remote sensing field leading to legal liability as follows:

First, the basic data may not be accurate, such as the value of the tools and the skill of the cartographer (scanner) and the scale shown on the map. Second, the remote sensing process needs human judgment, that is the skill of the people is very important. Third, in remote sensing data collection process this inaccuracy may occur, such as regional, climatic, and so on errors. Fourth, the data may be misinterpreted by the end-user. It seems that the classification of the data is not complete or there is no data interpretation skill or the physical disability that leads to this misinterpretation, such as color blindness.

There are also legal risks in the development of remote sensing, and remote sensing development typically involves the following:

- 1) Create or modify related data software.
- 2) Purchase other software that is required to perform remote sensing on a computer system.
- 3) Purchase hardware like computers, external hard drives, scanners, and printers.
- 4) Acquire (buying or collecting) data generated by remote sensing software such as statistical data, and satellite imagery (Katharine Reid, 1996).



## **Analysis of Observations of (Gnss Global Navigation Satellite System) Providers' Liability**

Remote sensing satellite system and satellite navigation systems have many common features. Both systems have global performance that delivers vital data based on spatial technology. Also, both systems may be used for similar items. Sometimes in integration, they create value-added services and affirm the activities of the planet. The resulting losses incurred by the two systems are unpredictable, while the complications of service and implementation channels both create a barrier to establishment of a legitimate site. There have been studies on GNSS legal issues, which can be used as legal basis for remote sensing satellite system for the reasons stated.

First of all, we shall present a brief background to GNSS losses and related liabilities. The GNSS performance is based on signals from satellites that help users identify their location. It is inappropriate to impose product or commodity liability on GNSS services because the liability is imposed on the manufacturer or seller of the goods, which its product caused loss. However, the GNSS liability should be posted on the process itself that the loss arises from its activity. (F.G. Von der Duck, liability analysis for GPS and Galileo: 135)

The range of misconduct and the importer service is widespread. The causes of the damage importer include lack of signal, signal lag, service interruptions, wrong signal transmissions, all of the above can be detrimental to the property or personal loss or even death at worst. All of the above are from three groups of services or GNSS signals, each of which is used for a variety of items.

The liability of the goods is fairly clear, it is only applied against producers. The contractual liability first is applied to primary signal providers and the other two groups come prior to plan, and whether the contractor's liability is can be applied to plan provided by the service recipients depends on the program and type of service. Generally, liability for all types of signals provided by service recipients and third-party victims against the fault-based service providers is liable. It should be noted that the position of the GNSS operator is such that the potential liability of the system is not based on absolute liability.

In the United States, GPS signals are free to the public. In any case, the American symbols deny the existence of a contractual relationship to the elemental signal. In fact, they deny any contractual liability for such free access. On the other hand, the United States does not deny the possibility of establishing

liability under civil liability title. In 1994, under the US Government Accord, it agreed to provide national-level liability to the GPS Provider against losses caused by GNSS signals, and this liability is based on a fault-based and unlimited liability regime for air trace systems. Therefore, the United States may be responsible only when the fault is proven, but there are limits to the imposition of liability on a geographic scale. There is no liability for outside America. In fact, it does not apply to users who are harmed by the use of a signal in a foreign country (Ito, 2011: 285).

An overview of the GNSS process and the legal framework for GPS and GNSS regimes it can be inferred:

- 1- The GNSS analysis specifies that service providers intend to deny liability with an unlimited amount of benefits, denying contractual liability under the GPS, such as the liability limitation for monetary services, leaves many of the unprotected interests.
- 2- There is no GNSS-specific regime to protect third parties outside of contractual relationships.
- 3- The remaining question is whether the national-level regime provides adequate solutions for all cases.
- 4- For a foreigner, a lawsuit filed in the area of service provider often proves with difficulty, and in reality, it is not simple.

The above-mentioned legal problems and predictions by the GNSS operators in remote sensing are also common. There are two key issues regarding GNSS that need to be clarified in terms of remote sensing.

- 1- The lack of a special civil liability regime for creating solutions to address the issue by different national-level liability regimes causes a procedural problem.
- 2- The Italian draft of the GNSS liability regulations refers to the need for development in remote sensing, in particular with regard to the need for distribution of responsibilities by providing bargaining and guaranteeing the trial of the countries where losses occur. (Ito, 2011: 288).

### **Observations on the Implementation of The GNSS Regime for Remote Sensing**

In the light of the existence of the GNSS-Liability regime and the analyzes described, the inclusion cycle of liability in the field of remote sensing can be

demonstrated in the creation, process, value-added and use of data products. Although many differences may be seen, there specifically are five different legal relationships:

- 1- The contract between the institutions in supply bargaining;
- 2- The liability for the non-transferability of data distributors and end-users in connection with distribution agreements.
- 3- Civil liability that can be targeted by end-users against data producers, value-added agencies, and major image vendors and data distributors.
- 4- Civil liability that can be raised by third-party victims.
- 5- Product liability that can be raised against remote sensing satellite manufacturers.

Claims of product liability against satellite manufacturers should be considered under any GNSS regime and satellite-based measurements. For the latter case, special attention should be given to product litigation against producer data. If product liability is applicable to satellite imagery or extraction products, only product physics should apply.

### **Conclusion:**

In the national legal and regulatory framework, the fault usually leads to relief from liability. The elements of fault are very complex and are not fixed in all cases. The fault-based liability cases assume the defendant responsible, however, taking into account elements such as the regularity and reasonableness of the behavior of the defendant, the inevitability of losses, and the analysis of costs and benefits. When the inevitability of loss is posed, the defendant is responsible only if the loss is foreseeable. Cost-benefit analysis is an approach that the judge has developed as a tool to detect fault in decision making. There is a time when the cost of protecting losses is less than the probability of occurrence and is compared with the expected loss. Although it is difficult to evaluate each of the elements, this method can provide a standard subject for liability detection. By looking at the 1971 liability convention, in the field of remote sensing victims, the victims of the accident of space objects hit on the Earth's surface are not helpless. Meanwhile, users of satellite data are likely to rely on changes in data sources.

Given the point of view of remote sensing activities - which includes data collection, creation, supply and use of remote sensing data - these activities are not hazardous and the probability of occurrence of damage in relation to satellite

remote sensing is much less than the level of damage caused by the same activity on earth. Even in terms of losses, the nature of the losses appears to be more the result of the effect of other factors than direct loss. For the same reason, it will be more probable to claim fault-based liability as a good option for the remote sensing system.

The fault-based liability elements, such as loss predictability, the reasonableness of the behavior of the defendant and cost-benefit approach, are all related to remote-sensing lawsuits. A fault-based system allows courts to determine which cases have inaccurate data and incorrect interpretations of data, including deliberate behavior, and which ones are not.

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    - 4) Article as a part of book (antology). example: Juwana, H. "*Penegakan Hukum dalam Kajian Law and Development: Problem dan Fundamen bagi Solusi Indonesia*", in Muhammad Tahir Azhary, *Beberapa Aspek Hukum Tata Negara, Hukum Pidana, dan Hukum Islam*, Jakarta: Kencana Prenada Media Group, 2012.
    - 5) Article from internet, example: Kharlie, Ahmad Tholabie, "*Problem Yuridis RUU Syariah*" in <http://ahmadtholabi.com/2008/03/03problem-yuridis-ruu-syariah>, downloaded on March 20, 2012.
    - 6) Article from magazine, example: Susilaningtias, "*Potret Hukum Adat pada Masa Kolonial*," in *Forum Keadilan*, No. 17, August 20, 2016.
    - 7) Article in Seminar, example: Asshidiqqie, Jimly, "*Kedudukan Mahkamah Konstitusi dalam Struktur Ketatanegaraan Indonesia*," paper presented on public lecture at faculty of law Universty Sebelas Maret, Surakarta on March 2, 2014.
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