

THEMATIC TITLE	PROBLEM OF INSTALLMENT FOR COMPENSATION UNDER THE LAW ON LIABILITY FOR A WRONGFUL ACT OF THE OFFICIALS
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ABSTRACT

The operations of the officials in accordance with their powers and duties, the officials may occasionally breach the private. When the case is filed to the Courts of Justice, the Court of Justice shall apply the principle of law under Civil and Commercial Code, wrongful acts according to Section 420-452 for the wrongful acts of the officials. In the event that the official is solely liable for the consequence of the wrongful act, it may cause unfairness to the official because, in the case of a wrongful act, it caused by the performance of the official is an act for the advantage of the State. However, the civil law provides the officer is personally liable. In order to protect and to be a guarantee of fairness for the officials, the Act of Liability for a Wrongful Act of the Officials B.E. 2539 (1996) was enacted. Section 8, paragraph one provides that in the event that State agency is liable to pay compensation to an injured person for an official's wrongful act, State agency has the right to claim the official pay such compensation to State agency. If the official has done the willful act or grossly negligent. Section 13 provides that

the Council of Ministers offers regulations for liable officials to pay installments by considering income, family status, responsibilities and the circumstances of the case.

The Council of Ministers has a resolution providing Regulations of the Office of Prime Minister on the Performing Rule relating to Liability for a Wrongful Act of the Officials B.E. 2539 (1996). Article 27 provides that if the inability to pay debts is caused by the serious misconduct of the official or the official commits any act as serious misconduct so that State agency shall not receive the payment in full, the damaged State agency shall offer to the prosecutor for bankruptcy. Article 28 provides that any compromise at any stage must be approved by the Ministry of Finance unless it is specified by the Ministry of Finance. In addition, the Notification of a ministry of Ministry of Finance relating to Rule of the Installment for debts of the officials, Article 2 provides that the approval of the installment shall not be in the case of corruption of the official. Article 9 provides that in case of any State agency is unable to comply with the rules under this Notification of the Ministry of Finance, it shall request an agreement with the Ministry of Finance. The foregoing principles are in excess of those provided by Article 13 of Liability for a Wrongful Act of the Officials B.E. 2539 (1996).

From the result of study, it was found that the provisions of Article 27 and Article 28 of the Regulations of the Office of Prime Minister, including Article 2 and Article 9 of the Notification of a ministry of Ministry of Finance, these provisions contain the rules that exceed the scope of Article 13 of the Act of Liability for a Wrongful Act of the Officials B.E. 2539 (1996). Such cases are considered subordinate legislations that exceed the provisions of the primary law. In this case, the enactment of a subordinate laws was against the legal State (État de droit) and against the theory of hierarchy of norms.

The findings of this study have considered that for the practice concerning the rule for installment of compensation of the liability for a wrong act of the officials have a framework and scope of consideration including a practical guideline in the same way and standard. Therefore, there should be the amendment of the Act of Liability for a Wrongful Act of the Officials B.E. 2539 (1996). The method is to amend the rules and procedures for the installment of compensation in case of liability for a wrongful act of the officials in the Act of Liability for a Wrongful Act of the Officials B.E. 2539 (1996) as follows:

1. Provisions under Section 13/1 shall be amended as follows:

Section 13/1 An approval to pay in installments under the rules provided in this Act, it shall be considered by the State agency in all cases except in the case of willful act or caused by corruption of the official, and in the case where installment is required to pay in full amount of liability, including interest, costs, and litigation costs (if any).

In the installments, the liable official shall make a written acknowledgement, the installment agreement, and the guarantee contract, or in the case where it deems appropriate, the security may also be placed.

2. Provisions under Section 13/2 shall be provided as follows:

Section 13/2 When a liable official proposes an request of installment, the State agency shall comply with the following:

(1) Examine the current status as of the date of the offer for installment relating to income, expenses, and properties of both the liable official and spouse with written evidence from the liable official or the State agency, the owner of the information, as the case may be, for consideration.

(2) The State agency shall consider the indulgence and determine the amount of monthly installment as appropriate considering income, living expenses as appropriate to the position, and liability of the officials liability including the responsibility that the liability official is under the law or good morals and circumstances of the case.

The interest during the installment shall be in accordance with the Civil and Commercial Code and the calculation of interest shall be from the due date which the State agency claims for compensation until the payment is completed. The amount paid in each month shall be treated as the first monthly interest payment. The remain amount shall be paid as an outstanding installment unless the installment is made within a period of one year, the State agency shall consider indulgence by the interest does not be charged during the repayment period.

If amendments, adjustments, and legal developments are implemented in accordance with such recommendations, it may make the application of the law relevant to such issues clearer and also create a norm for consideration that creates guarantee and justice in the spirit of the law on liability for a wrongful act of the officials. This amendment will be appropriate and, in

accordance with the theory of hierarchy of norms, which will result in law of liability for a wrongful act of the officials that guarantees the rights and liberties of officials and resulting in the performance of the official to be more achieve, accomplished, efficient and effective.