

The Nature and Effects of the Civil Liability of State Due To Private Contracts

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ABSTRACT: This study attempts to survey concept of civil responsibility and effects of government responsibility due private contracts. This thesis make in five chapter that involved Generalities, concept and literature, works contracts in civil liability, government civil liability and the conclusion. Finds show that Government responsibility rise from Judge's error and the need to compensate from general capital based on the Islamic principle law. Non Islamic government accountability don't response towards the people long time. But it created in point show of law government. Republic Islamic law show that our lower accepted some special material of the civil liability. Surveying legal rules, such as loss, La zarar, the fault show that government has a responsibility in direct and misdirects damages that entered to people. This study survey to Government and civil liability theories related to Iranian Law.

Keywords: civil liability, government regulation, waste fault theory, risk theory

INTRODUCTION

Government responsibility means Government commitment to the loosed individual. In other words, it shows the between government and loosed individual. Although government is not a reality person but he has a legal personality that is composed from people that have instrument and power to receiving to a special purpose (Altalebi, 1999). There is an important question, which is covering the civil liability? Answer is there are two main approaches: first civil liability is the between the state and the loosed individual and second it is a trilateral between person, government and loosed individual. In closer means civil liability of the State losses that are inserted into the sides out of contract that is between them. It is a seductive enforced and it is considered as guarantee to complete law and be imposed on government. Therefore, Improving of expansion of government intervention in social life and his use of different tools to promote the program is inevitable losses to persons. It is noteworthy that in the past, government had the authority and was considered sacred. Nobody can criticize him and it was ruled in societies several centuries. Moreover creation of democratic revolutions and of human rights caused complaint against government. Today there isn't the last authority for governments and better government is who on satisfying the people under his rule in different ways (Mohammadi, 2012). Studies have dealt with various approaches to civil liability of government. Some investigated civil liability with jurisprudence approach and applied Quran and Hadis documents to analyzing legal text (Mohammadi, 2006 and Abol Mohammad, 2003).

Responsibility Contracts

Liability Contracts can be divided into two groups

The contract is made between the observed and possible future losses, looser obligation to pay all or part of the compensation. In this type of contract.

Contracting parties are set future looser for both sides. Commitment of funds is one of the warranties in this Contract in Iran law.

Theories of civil liability

There are two general approaches towards the issue of civil liability which is explained below.

Fault theory

This theory suggests that civil liability arises when governments and other entities are committed fault in doing act. This measure of damages is the steward of Conduct. If this behavior comes from the fault committed then he must compensate the damage. If his behavior is morally blame-free then he does not guaranty (Hosseini Nejad, 2010). Only reason that can justify one's responsibility towards compensation, Causal relationship between the faults and loses (Katoozian, 1998). Civil liability common to the 18th century in Europe (and elsewhere in the world) was based on fault liability and with the exception of Article 1382 of the French Civil Code, which had been responsible for around Tom and his siege was formed primarily on the basis of fault or liability.

Hypothesis or risk theory

This hypothesis is expressed that anyone who intends to work creates a dangerous environment for others will benefit from this position to compensate losses them (Katoozian, 1998). In other words, this theory says for assigning responsibility to one person doesn't need to know that person be mistake in doing losses. If there is damage to his risk surgery (A person is wrong or not) then he has responsibility and must compensation his losses. Risk hypothesis was formed at the end of the 19th century. The main factor of interest and attention to this theory was development of the industry and its losses (Hossein Ghooli Nejad, 2012). Not that this theory have some critics today.

Jurisprudential basis of the civil liability

Government is not a new institution and was in past ages but new formation of government is new thus search about root of civil responsibility of government is difficult. This subject is more difficult in Islamic Fiqh although there is one case about government civil responsibility When a Judge has mistaken in court and its decision caused a loss for persons then government is obliged to compensate loss. In other words, government is responsible for losses incurred on behalf of its employees in Islamic Fiqh. Moreover Hor Ameli said "if Judges have been mistake then government must to compensation from treasury. The basic of redress is one rule that named "La Zarar and La Zerar in Islam" it means that in Islam people who have right (government or everybody) cannot loss harm to other people. This rule cause to privacy of others and protect from abuse of damaged (Katoozian, 2005).

Principles and legal documents of civil liability

Evaluations of Islamic law in Iran show special instance about civil responsibility of government that explain follow as:

Article 171 of the Constitution say "even judges have mistaken in courts about his sentence that because a material or spiritual loss to parties then loss be compensated by the government and the accused will be rehabilitated.

Islamic Penal Code Article 58 says "If one is found material or spiritual harm in implementation of fault or error of the judge's ruling on a particular subject then in financial losses sponsor is culprit if blame is to ensure conformity with Islamic criteria otherwise damage to be compensated by the government. If In spiritual harm caused to a person who disrespected due to mistake of judge Action must be attributed to rehabilitate him. "

Is required on the above tips and explanations and definitions

Note1. These materials often are referred to the word "fault" That the definition should be referred to civil law. In accordance with Article 953 of the Civil Code " It is the fault of both violence and negligence" and in accordance with Article 951 of this Law The rape is violence against property or other right about permission or conventional and according to Article 952 of the Constitution " Going is leaving the practice that under the contract or common to protect the other commodity is necessary.

Lawyers believe that the fault can be intentional or unintentional Lawyers believe that the fault can be intentional or unintentional and the fault is when a person intentionally commits the intent to harm another Although unintentional fault (negligence) no one's going to lick another however, caused him to lose due to negligence and recklessness (Katoozian, 2005). So this is not the exact words, words chosen by the legislature the fault and error they're finding the meaning and concept semantic overlap.

Note 2. Responsibilities listed in the article, is a unique, limited liability. It means that government has been responsible for the mistakes made by their judges in Islamic Penal Code.

According to the article, "11" the law of civil liability approved 1959, "if State and municipal employees and their affiliated companies are entering damage to persons on the occasion of the task or the due to deliberate or recklessness then they are personally responsible losses incurred to compensate. But if losses

incurred are not documented to be associated with defects in their office and its institutions therefore compensation is the responsibility of the department or agency concerned But In "exercise of state sovereignty" if action is taken based on the need to provide social benefits based on law and caused harm to another people then government would not be forced to pay damages.

Article XI of the Act been referred to apply the rule It should be said that in this regard the rights scholars have divided former duties and responsibilities of the two groups' rule and tenure "Rule means the National Authority for Government that puts the public interest to perform his duties. But tenure practices. The government pays for the things that people do in private relationships. In these actions, the government appears as a businessman and industrialist and intends to transact such other legal entities (Katoozian, 2005). Legal definition of the term can be applied in amendments "4" rule Concerning disputes between individuals and the state (But the law is now abrogated but the law is now abrogated but could be attributable to its definition) and the legal definition Rule Can be invoked in the latter part of Article 11 of the Civil Liability Act. Office equipment defects were noted In Article 11 of the Civil Liability Act is a general and vague terms unlike some lawyers who believe that the purpose of the above was run with instrumentation that measures and procedures for managing work. This can cause irregularity or abuse of the administrative process and will result in loss. (Tabatabayi, 1998).

It seems legislator defines failure office as Defects and deficiencies and shortcomings tools and technical facilities and material state unless if it means was bad management policies and procedures then individual is responsible for the failure should be held accountable and government responsibility is irrational.

Responsibilities simultaneously

Article 171 in constitution, Article 58 and Article XI of the law of civil responsibility has no mention to an important case. When the damage caused by the fault of a government employee and caused by defects in materials then what is the task? It is not anticipated by legislator. Irregularly law such as civic responsibility provisions of Article 14 and one sector of Article 165 sea law can conclude that Multiple and overlapping causes loss, all factors have liability partnerships. In this case aggrieved may refer to each of them for repay all or part of their loss.

Under Article 12 of the Law on weapons use by the armed forces in urgent cases "The officers attempted to use their weapons to the provisions of this Act (Articles 2, from 7 Act) will not accept any liability for the criminal or the civil". In accordance with Article 13 of this law "If the authorities apply the provisions of Arms as a result of this law, decisions of courts of competent jurisdiction, the person or persons killed or injured innocence or compensation has been entered to them. In this particular case the government to maintain law and order and fighting the causes of insecure imposes law to accepting responsibility for statutory damages entered to assist his official in duties. Articles 11 of the Civil Liability Act say "if State and municipal employees and their affiliated institutions loss hitting to Individuals due to perform the task or the result of deliberate recklessness then they are personally responsible losses incurred to compensate but if loss hitting was due to government utility defective then Compensation is the responsibility of the government. In rule if Measures to be taken in terms of the need to provide social benefits and these activities imposes loss to reality or legal people the government would be not forced to pay losses". There are three not about this Article. First, this material is based on the theory of liability based in fault and it was Separation of personal culpability of the government's fault. It means if the loss is caused by the fault of the person's employee or agent of the Government then them to be accountable to his own fault. But if loss was from defective equipment and tools In this case, it is the responsibility of the department or agency concerned.

Scope of Civil liability of the State

Civil liability is not the absolute. It is about the damage that is attributable to acts of Government Policies that it does not have the political power of the state so selling buy and etc. that government do them as a legal responsibility. Government is responsible for loss to entering persons in the rule. Today the theory of absolute liability has greater acceptance. Legislator accepted that lack of government responsibility theory in governance measures. In some cases private interests of individuals ignored due to importance of the public interest.

Direct responsibility of the state (government entity)

Analysis of the concept

This approach say government has a legal personality and he has responsibility for loss to other people. Direct responsibility extracted to impact of the social contract "theory Friedrich Hegel" about state. It is a non-referred understanding of the theory of state organs (Pooladi, 2005). Civil liability of the State is not government officials from the operation of any other person Rather, this responsibility is the result of its action

as a true identity. According to this view employed went but government is Immortal. In other words, Changes that occur in the regulatory state is to the outer (physical) state.

Lack of manpower in Responsibility Lack of fault

Proof of entry and proof of Loss causation relationship is need in lack of fault liability between this loss and government. There is not Allow a third party to be responsible for the acts attributed to him in checking this responsibility. In lack of fault liability legislator knows enough Proof of causation relationship to realization of civil liability. There is third party that called a broker in lack of fault liability because achieving the government fault need to lack of commits a fault by his or her legal representative. It implies the broker agent. According to this subject there is civil liability of the State in all cases therefore; agent and paying compensation is government. In this cases Lawsuit arises against state first then government will compensation without Referred to special person.

Indirect responsibility

Theory of indirect state responsibility has tri identity. This idea protected by some law scientists in France. A major advocate of this theory has been done expressed criticism of the government's vision direct responsibility. The central idea of the inherent is nobility of the character. Based on Organs theory similar generalization of the atmosphere with respect to the object of his limbs not correlated with the relationship between the state and her agents. Because the body is unable to perform an action independently while a government agency can do practically independent that is quite distinct from the competent government. It will be the responsibility of direct responsibility since then the government has a real and physical properties. In other words, the distinction between personal error and governmental mistake is obvious signs of indirect responsibility for government (Pooladi, 2010).

No need for harmful factors based No-fault liability

No-fault liability doesn't rise from Act resulting in loss by a real person. It puts compensation undertake the government. Although, when compensation occurs that there is a causal relationship between losses and government. But there is an important question. Are there losses without human activities? It is evident that proof of causation relationship is the most important element in achieving of civil liability of the State. One of the pillars of this relationship is State Action. Government action is identifiable with legislative action of individuals about Special contentious or all claims. In other words, no-fault liability doesn't follow the denial of the existence of human factor as agent of loss. But it ignores this aspect of factor deliberately that turn leads to loss by reality individual or individuals and legislator say identifying and surveying concept and causes to losses is necessary in some cases. For example, in French law civil liability of the State associated towards help to people loosed based on no-fault liability. Thus government identifies loosed individuals and conditions that he has to helping them.

Immunity and responsibility between government and Broker

In contemporary Theory, civil liability of the state and Government immunity is not as immunity for government employees¹. It is established in many states. For example, in USA and UK Judiciary has Absolute immunity but Judges has not absolute immunity. They have civil liability for their mistakes about loss of individual. Therefore, government immunity and Lack of extend to public officials investigate differences of losses factor and payer compensation because, it is necessary that judges have immunity so government and their responsibility should be undertake government.

CONCLUSION

Civil liability of the State is bilateral relationship between government and loosed individual. In other words, it we imagine civil liability of the state as a legal relationship then it limited between two persons, government and loosed individual. It is systems that regulate rights and duties together. If another person or legal personality be entered in this relationship then he/it has not originality inherent and cannot be raised as one of sectors of legal relationship. But his presence has consequential aspects because he was having joined by government. Governing Legal System on civil liability of the government must be set should be designed so that protected loosed rights and help to sovereign power of the government. In private contracts government has not great civil responsibility but there are rare conditions that civil liability of the government is important and played critical role in private contract. For example, contracts between private company and a foreign

¹ Kenneth A. Warren, Administrative Law in Political System, USA Pretic-Hall, 'Third Edition, P 368.

governmental company that has been concluded based on the laws of a foreign-owned company. But there is not complete responsibility for government in this case. For example, Article 57 of the Islamic Penal Code hasn't an interpretation that government must response about wrong behavior of employees in every condition.

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