



Comparison of Unlawful Acts in Criminal Law and Civil Law in Indonesia

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Abstract. This study aims to analyze the comparison between unlawful acts (PMH) in criminal law and civil law in Indonesia, focusing on the differences in definitions and the elements that constitute unlawful acts in both legal systems, as well as the implications of the application of PMH in each field of law. The research method used is normative juridical, with legislative and conceptual approaches to examine the provisions in the Criminal Code (KUHP) and the Civil Code (KUHPer). This study identifies fundamental differences in objectives, sanctions, and legal subjects involved, as well as their impact on individual and societal interests. The research findings show that although there are similarities in the basic principles regulating PMH, significant differences lie in the nature of the sanctions imposed, where criminal law emphasizes prevention and punishment, while civil law focuses on compensation and recovery of losses. This research provides insights into how these two legal systems complement each other in maintaining justice and order in Indonesia.

Keywords: Unlawful acts, criminal, law, civil, legal, comparison.

1. INTRODUCTION

According to Munir Faudy, the concept of unlawful acts encompasses legal principles designed to control or regulate behavior that can potentially harm others, establishing liability for losses arising from social interactions, and providing victims with the right to seek compensation through appropriate legal claims. [1] Meanwhile, R. Wirjono Projodikoro defines unlawful acts as actions that create an imbalance in social order. Furthermore, he explains that the term "onrechtmatige daad" is interpreted broadly to include acts that violate moral norms or decency in social interactions. [2]

Various definitions related to unlawful acts have been proposed. Some define it as actions that contradict the law, actions that violate the rights of others, or actions that cause harm to others, where the perpetrators of such actions are obliged to provide compensation to the harmed parties. Additionally, unlawful acts are often understood as actions taken outside the limits of authority or power held by a person. Moreover, unlawful acts are also perceived as actions that violate moral values, norms of decency upheld in society, as well as general principles applicable within the realm of law.

The losses resulting from unlawful acts can encompass material losses, such as damage caused by car accidents, or immaterial losses, such as anxiety or the onset of disease. Through civil lawsuits, aggrieved parties can pursue recovery, one of which is by seeking damages. In legal studies, three categories of unlawful acts are known, namely: unlawful acts

committed intentionally, unlawful acts without fault (without elements of intent or negligence), and unlawful acts occurring due to negligence. [3]

The concept of unlawful acts (PMH) is an important foundation in Indonesia's legal system as it encompasses various actions that not only violate legal rules but can also cause harm to others. PMH has a broad scope that includes violations in two different legal domains, namely criminal law and civil law, each of which has its own consequences and handling mechanisms. In criminal law, PMH functions to maintain public order and safety by imposing sanctions on offenders, while in civil law, this concept allows victims to sue for damages. Thus, PMH plays a crucial role in regulating relationships among individuals and ensuring the creation of social order in society.

Unlawful acts in criminal law are regulated in the Criminal Code (KUHP), while in civil law, unlawful acts or *onrechtmatige daad* are further regulated in Article 1365 of the Civil Code (KUHPperdata) or *Burgerlijk Wetboek (BW)*. This article states that "Every unlawful act that causes harm to another person obligates the person who, due to his mistake, causes that harm to compensate for it." Another notable difference is in the terminology used; in civil law, the term used is *onrechtmatige daad*, while in criminal law, it is more commonly known as *wederrechtelijk*. An act is considered unlawful in criminal law if it threatens and harms public interests, whereas in civil law, unlawful acts are determined when such actions harm private interests. The unlawful acts regulated in Article 1365 of the Civil Code (BW) only encompass the obligation of compensation imposed on the party causing harm due to their fault against another party. This compensation arises because of the fault, not due to an agreement between the parties. [4]

In criminal law, the elements of unlawful acts include: the act clearly violates the law, is done without authority or power, and contradicts general principles in law. In contrast, civil law elements include the presence of an unlawful act, the fault of the perpetrator, the loss experienced by the victim, and the causal relationship between the act and the loss suffered. [5]

Furthermore, in the Anti-Corruption Act (Law No. 31 of 1999), Article 2 paragraph (1) mentions that unlawful acts include acts that enrich oneself, others, or a corporation that causes losses to state finances or the economy. The explanation of this article indicates that the term "unlawful" not only includes violations of written laws (formal meaning) but also encompasses acts deemed contrary to justice or social norms even if not explicitly regulated in the law. This means that actions regarded as reprehensible in society can be penalized even if not specifically outlined in written law.

In unlawful acts (PMH), it encompasses violations of not only written laws but also violations of moral values, norms of decency, and public order that are highly regarded in Indonesian society. PMH can involve actions deemed not only illegal but also inappropriate or unethical, both in the criminal and civil law realms. In criminal law, violations of moral norms can result in harsher sanctions due to their nature of threatening public order. On the other hand, in civil law, although the act is not always regarded as a direct threat to social order, violations of civil norms still have legal consequences in the form of obligations for compensation or restoration of the rights of the aggrieved parties.

The differences between PMH in criminal and civil law are often not well understood by the general public and can even confuse legal practitioners. This ambiguity may lead to the improper application of the law, both in handling criminal and civil cases. For instance, there is difficulty in determining when an unlawful act should be handled through criminal legal mechanisms, which focus on sanctions for violations that threaten public order, or whether the act should be resolved via civil legal means that emphasize the recovery of losses and damages between the conflicting parties.

This research is highly relevant in providing a clearer understanding of the differences of PMH in criminal and civil law. By clarifying this distinction, the study can assist the general public in comprehending the appropriate legal pathways when facing unlawful acts, whether through criminal or civil mechanisms. For legal practitioners, this research also provides guidance in formulating appropriate legal steps, considering the context of the acts committed, as well as determining the appropriate measures to demand damages or impose criminal sanctions.

The urgency of this research is crucial to clarify the boundaries between PMH in criminal law and civil law, which often overlap and can lead to confusion in practice. This research is expected to contribute to avoiding misunderstandings or erroneous legal applications, thereby strengthening justice and legal certainty within Indonesia's judicial system. With a better understanding of these distinctions, it is hoped that more effective and fair legal practices will be created for all parties involved.

This research encompasses several core questions aimed at exploring a deeper understanding of the differences between unlawful acts (PMH) in criminal and civil law. Such as the definitions and basic concepts of PMH in both legal fields as well as the elements that differentiate PMH in criminal and civil law, as well as how their applications occur within each legal landscape. Furthermore, the implications of the differences in the PMH concept in its legal application in Indonesia, particularly regarding regulations and law

enforcement related to legal violations in society. This discussion will help map the fundamental differences between both legal fields and their impacts on the judicial processes in Indonesia.

2. METHOD

The normative juridical research method is the method utilized in legal studies focusing on the analysis of documents and legal norms. This method aims to analyze applicable legal rules and how such rules are applied or interpreted within a specific regulatory framework. In normative juridical research, the primary sources utilized include statutory provisions and other legal literature. This approach is highly relevant when examining legal issues that are theoretical and conceptual in nature, such as definitions and basic concepts of PMH in both legal domains as well as elements that differentiate PMH in criminal and civil law. One of the approaches used in this method is the statute approach and the conceptual approach. [6] The statute approach is conducted by examining and analyzing various regulations that govern specific issues, such as the Criminal Code, the Civil Code, and related regulations. Through this approach, the researcher can discuss the need to explore the comparison of unlawful acts in criminal law and civil law in Indonesia.

3. RESULT AND DISCUSSION

Differences in Definitions and Elements of Unlawful Acts in Criminal Law and Civil Law

Criminal law is an integral part of a country's legal system, which establishes basic principles and rules that aim: first, to determine actions that are prohibited and must not be undertaken, with specific criminal sanctions for those who violate these provisions; second, to regulate when and under what conditions criminal sanctions can be imposed on individuals who violate existing legal provisions; and third, to establish procedures and ways in which those criminal penalties are executed if there are parties suspected of committing violations against the established prohibitions. [7]

Criminal acts are actions prohibited by legal provisions, which are accompanied by specific criminal sanctions for anyone who breaks these prohibitions. In other words, a criminal act is an act that is forbidden by law and carries a risk of criminal penalties, provided that the prohibition pertains to acts (leading to a circumstance or consequence brought about

by someone's actions), while the criminal sanction is imposed on the individual who commits that act. The elements constituting a criminal act include: [8]

- a. the behavior and consequences (the act),
- b. conditions or circumstances accompanying the act,
- c. additional circumstances that aggravate the penalty,
- d. objective unlawful elements, and
- e. subjective unlawful elements.

One important element in criminal offenses that is objective in nature is the characteristic of unlawfulness, closely associated with the principle of legality as reflected in Article 1(1) of the Criminal Code. In Dutch terminology, the term "against the law" is referred to as *wederrechtelijk* (*weder*: against, contrary; *recht*: law). In determining whether a particular act can be punished, lawmakers make the characteristic of unlawfulness a clearly articulated element. Without this element, the definition of criminal offense in law would be overly broad. Furthermore, in some offenses, blameworthy elements are often incorporated into the act's formulation, such as in the case of *culpa*. The doctrine of unlawfulness is of paramount importance in criminal law, alongside the principle of legality. This doctrine subdivides unlawful acts into two categories: formal and material unlawfulness. The doctrine of material unlawfulness in Indonesian criminal law includes unwritten law, such as customary law. Nevertheless, the recognition and application of this doctrine were only implemented in 1965, with significant impacts in numerous cases, such as the acquittal of corruptors who have recovered state losses. Over time, this doctrine has eventually been incorporated into legislation, including Law No. 31 of 1999 and in the draft of the Criminal Code (KUHP).

The doctrine regarding the nature of unlawfulness distinguishes unlawful acts into two categories: formal unlawful acts, referring to actions that violate laws established in written regulations, with the evaluation basis being the written legal provisions. Meanwhile, material unlawful acts include actions considered unlawful despite not being explicitly laid out in the law, with the evaluation basis referencing the general principles applicable within legal practice.

An act is deemed unlawful in criminal law if such act is expressly prohibited by prevailing legal regulations and is threatened with punishment. This means that for an act to be classified as a criminal offense, that act must be clearly regulated in relevant legislation, both under general criminal law and special criminal law. In criminal law, culpability is a significant element. This culpability may take the form of intention (with purpose) or negligence (without intention but due to carelessness or inattentiveness). To impose criminal

sanctions, there must be a relationship between the action taken and the culpability, demonstrating intent or negligence in conducting the unlawful act.

Acts performed outside the authority or powers granted by law are also considered unlawful in criminal law. This refers to actions taken by individuals or parties lacking a legitimate right or authority to perform such actions, rendering them illegal under the law. One important characteristic of criminal offenses is their broader impacts beyond mere individual losses. Criminal actions often affect public order or societal security, indicating that such acts not only harm individuals but also jeopardize the social structure and national order. Consequently, criminal laws aim not only to deliver justice for victims but also to safeguard societal interests altogether.

The category of unlawful acts in civil law primarily includes acts that violate the rights of others, as established in Article 1365 of the Civil Code, encompassing violations against rights recognized by law, covering various rights held by individuals. Some of the rights that may be violated include personal rights, property rights, freedom rights, as well as rights to honor and reputation. Violations against these rights can result in harm to the aggrieved party, such as reduced enjoyment or benefit derived from an asset, ultimately decreasing the asset's value or price. This action is deemed an unlawful act, for which compensation must be provided by the violating party.

An unlawful act can also be categorized as an action that contradicts the creator's legal obligations (*rechtsplicht*), which is imposed on the actor, be it from written law or unwritten law. These legal obligations include those established by statutory regulations and the rights of others protected by law. Therefore, an act is considered unlawful not only when it violates written laws (*wettelijk plicht*) but also when it contradicts the rights of other individuals recognized by law (*wettelijk recht*). Hence, the term used to refer to these acts is *onrechtmatige daad* (unlawful act) rather than *onwetmatige daad*, which leans more toward violations of formal law only.

Acts that violate moral norms that are recognized by the community as unwritten law can also be classified as unlawful acts. This indicates that even if such acts are not explicitly regulated in written law, actions deemed unacceptable or contrary to prevailing social norms can still attract legal accountability. If such actions violating moral norms cause harm to another party, the aggrieved party has the right to seek compensation based on unlawful acts in accordance with Article 1365 of the Civil Code. Therefore, law recognizes that transgressions against moral values and proper decency in society can result in legal consequences comprising obligations to compensate for losses caused by those actions.

Acts that contravene the principle of due care or the requirement within accepted community practice can also be categorized as unlawful acts. Thus, even if such actions do not explicitly break the provisions set forth in formal law, they can still be viewed as unlawful acts if they contradict the obligation to act with caution, according to the approved social norms. Although this obligation is not inscribed in legal provisions, it is acknowledged by the concerned society as a standard of accepted conduct. If such acts lead to harm to others, then the perpetrator can be held liable for compensating damages based on unlawful acts in accordance with Article 1365 of the Civil Code.

The elements of unlawful acts in civil law are clearly regulated in Article 1365 of the Civil Code (BW). This article states that each unlawful act that causes harm to others obligates the party that causes that harm due to its fault to compensate for it. This illustrates that PMH in civil law focuses on recovering losses endured by the aggrieved party resulting from actions that are harmful to others.

Several key elements that constitute PMH in civil law include the presence of an act that violates the law. This act can take the form of a violation of subjective rights of a person, such as property rights or personal rights, or the violation of applicable written law. In addition, the action must also contravene moral norms acknowledged in society. For example, an act that is not expressly prohibited within statutory provisions yet deemed inappropriate or unethical socially can still fall under the umbrella of a legal violation. Unlawful acts may consist of various forms of transgressions that harm others, either directly or indirectly. This includes violations against subjective rights of individuals that protection is offered by legal provisions. Additionally, unlawful acts may also arise if such actions are at odds with current written laws, such as laws or other regulations. However, unlawful acts cannot be limited solely to transgressions against written legislation. Actions that deviate from moral norms or social appropriateness recognized in society may also be labeled as unlawful acts. Thus, unlawful acts are not merely related to breaches of formal regulations but also the violation of values and principles commonly accepted within societal life.

The second element is the existence of concrete loss. This loss can be material or immaterial, such as financial loss or emotional suffering experienced by the aggrieved party. Without any losses, there are no obligations for the party committing an unlawful act to provide restitution. This loss can take the form of material loss, such as financial loss or loss of property that can be quantitatively or economically evaluated. Moreover, losses can also be immaterial, encompassing emotional suffering, reputational damage, or loss of opportunities which has detrimental psychological or social impacts on the victim. These

immaterial losses, although not directly measurable in monetary terms, are still recognized as legitimate losses by law. Without a tangible loss, there is no basis for the aggrieved party to seek damages. Therefore, this element of loss becomes crucial in determining whether a particular action can be classified as an unlawful act since without loss, the perpetrator does not need to compensate for the damages caused by such actions.

Subsequently, the presence of fault becomes an extremely significant component in PMH of civil law. This fault may take the form of intentionality or negligence of the party performing the act. If the act is committed intentionally, the actor is aware and consciously chooses to violate the law. Conversely, if negligence is the cause, that party is deemed to have acted carelessly, resulting in harm to others. This fault can occur as either intentional or negligent behavior, which serves as a key element in determining legal responsibility. If the act is performed with intent, the doer acts with knowledge and full awareness to breach the law, consequently deliberately causing harm to another party. In contrast, if the said act was committed out of negligence, the actor did not intend to violate the law but is considered to have acted insufficiently prudently or attentively, which ultimately led to other parties sustaining losses. Such neglect can manifest as a lack of attention, forgetfulness in fulfilling obligations, or not observing the legitimate standards of care expected in specific situations, thus causing harm to others. With this fault being present, regardless of whether it is intentional or negligent, the actor can be held liable and required to compensate for damages resulting from their actions.

The final element is the causal relationship between unlawful acts and the resulting losses. This only indicates that it must be proven that the actions performed directly resulted in harm to the aggrieved party. Without a clear causal connection, even when the acts violate law, the aggrieved party cannot pursue damages in civil law. This means that to demand compensation, the aggrieved party must be able to demonstrate that the losses suffered are directly caused by said unlawful act. The causal relationship serves to link the actor's actions with the resulting losses, so without a clearly established relationship between them, even if actions breach law or are deemed unethical, the aggrieved party cannot claim compensation for damages. In other words, the losses incurred must be the unavoidable consequence of the perpetrator's actions and not something that occurs accidentally or due to other factors unrelated to those acts.

A comparison of unlawful acts (PMH) in criminal law and civil law lies in several fundamental aspects. Regarding legal foundations, PMH in criminal law is governed by criminal law statutes that specify prohibited acts along with the imposed penalties, while in

civil law, the legal foundation for PMH refers back to Article 1365 of the Civil Code (BW), focusing on civil liability for acts that cause harm to others. Legal subjects engaging in unlawful acts also differ; in criminal law, the perpetrator can be an individual or a corporation committing acts that threaten public order, while in civil law, subjects involve individuals or entities engaged in disputes or losses that are more personal in nature. The objectives of addressing PMH in these two legal systems also vary significantly; criminal law aims to establish social order and prevent criminal acts through deterrent effects, while civil law focuses on restoring the rights of harmed parties through compensation or redress. The penalties imposed in both systems also differ: criminal law threatens with criminal sanctions such as imprisonment or fines, while civil law leans more towards providing restitution to parties who have suffered losses. Lastly, the impacts of unlawful acts are also distinct; in criminal law, the effects are broader because they concern the interests and social order of the entire community, whereas in civil law, the consequences are more limited to parties directly harmed.

Comparison of Unlawful Acts in Criminal Law and Civil Law and Implications for the Application of Unlawful Acts in Criminal and Civil Law

The comparison of unlawful acts (PMH) in criminal and civil law can be observed through several different aspects of these two legal disciplines. The first significant difference lies in the legal foundation; unlawful acts in criminal law are regulated within criminal statutes that delineate which acts are prohibited and impose sanctions in the form of criminal penalties for the perpetrators. On the other hand, in civil law, unlawful acts are governed by Article 1365 of the Civil Code (BW), which emphasizes the duty of compensation for losses arising from harmful acts against others.

The subjects of criminal acts also vary between the two legal systems. Within criminal law, the subject of criminal acts can be individuals or corporations who commit actions detrimental to public order or violate the pertinent criminal law regulations. Conversely, in civil law, the subjects are individuals or legal entities involved in disputes pertaining to the harmed rights of individuals or breached agreements, typically more limited to personal relationships or contractual ties between those parties. The objectives of addressing unlawful acts in these two legal systems also exhibit fundamental differences. Criminal law strives to uphold order and security within society, preventing the commission of crimes through sanctions with deterring effects on the perpetrators. In contrast, civil law is primarily concerned with restoring the rights of aggrieved parties, aiming to revert the circumstances of

a harmed party to the original state (restorative justice) via compensatory restitution or damages.

The penalties imposed within both areas of law also diverge significantly. Criminal law enforces stringent penalties, such as incarceration or fines, directed to judge the perpetrators and dissuade similar future actions. In contrast, civil law applies more compensatory sanctions, specifically through damage payments or the reimbursement of both material and immaterial damages that arise as a consequence of unlawful acts committed by other parties. Finally, the impacts of unlawful acts in both legal frameworks also vary. In criminal law, the repercussions can be broader as they pertain to public interests and the safety of society as a whole. Criminal acts can disrupt social order, therefore their resolution focuses on prevention and restoration of such order. Meanwhile, in civil law, the impacts of unlawful actions are more confined to the affected person, with the primary goal of providing restoration or compensation for the losses experienced by that individual.

In criminal law, the application of unlawful acts (PMH) carries essential implications for maintaining social order and safeguarding public interests. When someone commits an act prohibited by criminal law, the sanctions imposed not only provide justice for the aggrieved party but serve as a deterrent against future crimes. The penal system is designed to ensure that offenders receive punishments commensurate with the severity of their actions, which in turn serves as a warning to the public that law violations carry significant consequences. Such deterrent effects are foundational to theories of crime prevention, aiming for the recurrence of unlawful acts to be significantly lessened. Therefore, the application of PMH in criminal law yields wider implications compared to civil law, due to its influence on the broader community. This creates a sense of fear regarding punishment, potentially significantly reducing the rates of law infringements.

Effective application of criminal law enhances the feeling of security and order within society, as individuals become more cautious in their actions to avoid violating laws. Furthermore, with stringent law enforcement, people tend to respect established rules and norms more. Beyond that, sanctions applied to offenders signify the state's presence in safeguarding the rights of citizens and enforcing social justice principles. Through the criminal justice process, public trust in the legal system can be fortified, ultimately reinforcing the backbone of the law within the nation.

In civil law, the application of unlawful acts (PMH) is more centered on restoring the rights of individuals harmed by others' actions. The primary focus in civil law is to revert the status of an aggrieved party to what it should have been, often accomplished through

monetary compensation. The harmed party is entitled to compensatory remedies for the losses suffered, whether material (such as financial losses) or immaterial (such as emotional distress or non-financial damages). The goal of applying PMH in civil law is to ensure justice for the party that experienced loss and assist in restoring their standing post the occurrence of the unlawful act.

The civil dispute resolution process is more restorative in nature, meaning its aim is to mend the damaged legal relationship between the disputing parties. There are no criminal penalties imposed on the party responsible for the unlawful act; rather, the emphasis is on restoring the rights of the harmed party. The responsible party must provide appropriate compensation to ensure that the legal status of the harmed party can revert back to its prior condition. This process prioritizes peaceful resolutions and solutions geared towards compensation rather than punitive measures.

The implications of applying PMH in civil law are more limited to the relationships between individuals or entities, which means that the impact is more felt by the parties involved in the dispute, not the wider community. This civil law process aims to deter further losses by ensuring that the perpetrator of the unlawful act is held accountable for their actions by compensating the aggrieved party. Therefore, civil law plays a crucial role in upholding the balance of legal relationships among involved parties, while also ensuring that the harmed individuals receive fair compensation for the damages incurred.

Additionally, the application of PMH in civil law not only restores the rights of injured individuals but also provides a foundation for preventing further losses. This occurs because with the obligation to compensate, the party responsible for the unlawful act will be more cautious in their future actions to avoid incurring further legal and financial burdens. As a result, even without criminal sanctions, the enforcement of civil law retains strong deterrent effects in the legal relationships among individuals or entities.

4. CONCLUSION

Criminal law serves as a crucial component within a nation's legal system, aimed at regulating and enforcing order through the definition of prohibited actions, consequences for violators, and procedures for implementing penalties. Criminal offenses encompass various elements, such as conduct, outcomes, and accompanying circumstances, with the aspect of "unlawfulness" as an essential component in evaluating whether an act can be subjected to criminal liability. In criminal law, culpability—either as intention or negligence—becomes a

critical element for imposing penalties, along with acts performed outside the authority bestowed by law, observable as unlawful acts. Criminal offenses not only cause harm to individuals but also have ramifications on social order and national security, culminating in the broad goal of safeguarding societal interests altogether.

Unlawful acts (PMH) in civil law, as outlined in Article 1365 of the Civil Code, encompass actions that violate others' rights, legal obligations, moral norms, or due care requirements recognized within society, resulting in both material and immaterial harm to others. The elements of PMH include an unlawful act, the existence of concrete losses, fault (whether intentional or due to negligence), and a causal relationship between the act and the harm. Comparing this to criminal law, PMH in civil rights focuses more on compensating victims for losses incurred due to wrongful acts, by providing restitution rather than imposing criminal sanctions. Despite both systems of law differing in aims and penalties, they both play crucial roles in affirming justice and protecting individual rights within society.

The comparative analysis of unlawful acts (PMH) in criminal and civil law reveals fundamental differences in objectives, handling, and impacts. In criminal law, PMH focuses on the enforcement of social order and the protection of public interests, with sanctions such as imprisonment or fines implemented to serve as deterrents against future criminal behavior. Criminal law aims to maintain social stability and reinforce the judicial system through punitive measures that act as warnings to the public. Conversely, in civil law, PMH is oriented towards the recovery of the rights of aggrieved parties through compensation or restitution, with the goal of restoring the harmed party's position. Civil law is restorative in nature, aiming to rectify relations between the involved parties, with impacts being more limited to interactions among individuals or entities. Although both legal systems strive for justice, the principal differences rest in the sanctions imposed and the consequences that arise; criminal law focuses on deterring crime and safeguarding the broader society, whereas civil law places greater emphasis on recovery and compensation for injuries suffered by the aggrieved parties.

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