

# Unlawful Acts Viewed Based on Perspective of Civil and Criminal Law

## ABSTRACT

*Unlawful acts are actions that are identified as violating the law or statute so that they have legal consequences. Therefore, it is important to understand the legal regulations and juridical theories regarding unlawful acts and how to resolve them, especially in court. Acts against the law can be seen from the perspective of criminal law and civil law. In criminal law, unlawful acts are known as *wederrechtelijk*, namely actions that violate the Criminal Code (KUHP). One of the elements of a criminal act is the element of unlawfulness which is included in the formulation of the offence and is the core part of the offence, which is specifically called unlawfulness (for example Article 372 of the Criminal Code). Meanwhile, breaking the law as an element that is not mentioned in the formulation of the offence but is the basis for imposing a crime is called breaking the law in general (for example Article 351 of the Criminal Code). In civil law, unlawful acts are known as *onrechtmatigedaad*, namely actions that violate the Civil Code (KUHPer). Article 1365 of the Civil Code states that every unlawful act that causes harm to another person requires the perpetrator to compensate for the loss. It is essential to identify the elements of an unlawful act to determine whether it is unlawful.*

*Keyword: unlawful acts, criminal law, civil law*

## INTRODUCTION

The concept of the Pancasila legal state is a characteristic of the Indonesian legal system and distinguishes it from other legal systems. This concept is known as the "state of Pancasila law" in literature because it combines various social values. The pritchel choice, referred to as prismatic law in the legal world, shows that the state of Pancasila law is prismatic, forming new and original laws by combining the best components of various legal systems (Hasan dkk., 2024). A law is a collection of regulations containing orders and prohibitions made by authorities, with their enforced enforcement to create order, justice, and security in a prosperous society

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<sup>1</sup> Writers from study of law in Open University, email can be checked in [zainudinhasan@ubl.ac.id](mailto:zainudinhasan@ubl.ac.id) & [rohizadwatuna@gmail.com](mailto:rohizadwatuna@gmail.com)

Basically, legal sources are divided into two types, namely material legal sources (*Welbron*) and formal legal sources (*Kenbron*). Material legal sources determine the content of the law or the origin of legal material, for example, the Criminal Code which regulates general crimes, crimes, and violations, as well as the Criminal Code which regulates the issue of people as legal subjects, goods as legal objects, covenants, agreements, proofs, and expiration. Formal legal sources are the procedures and procedures that apply to form every law and regulation by the authorized state fittings (Delianoor, 2020).

Rules are made as limits on what can and cannot be done. Actions or acts that are suspected of being unlawful will receive legal consequences. To determine whether an act is unlawful, an indicator is needed that is a measure of the action. Unlawful acts have a wide scope, including acts that are contrary to written laws and unwritten provisions. In responding to an unlawful act, there are various legal perspectives: an act against civil law (*onrechtmatigedaad*) means violating the rules in the Criminal Code; An act against the Criminal Code (*wederrechtelijk*) means violating the rules in the Criminal Code. An unlawful act by the ruler of the state is known as *onrechtmatige overheidsdaad* (Fuady, 2020).

To determine the right legal perspective on an act that is considered unlawful, the act must meet the elements of unlawfulness. The elements of unlawful acts in civil law include the existence of acts; the act is against the law; causing losses; and there is a causal relationship between act and loss that requires someone to make compensation. Article 1365 of the Criminal Code states, "Every act that violates the law and brings harm to another person, obliges the person who caused the loss due to his fault to compensate for the loss."

In criminal law, what is of concern is only acts that are unlawful, namely acts that are prohibited and threatened with criminal penalties. There are two opinions regarding this. The first opinion is called a formal establishment. This opinion states that being unlawful means violating the provisions of the law, unless it includes an exception provided by the law as well. The second opinion is called material standing. This opinion states that not all acts that violate the law are unlawful acts because there are unwritten norms.

Law is not only a law, but also covers the norms that apply in society (Moeljanto, 2008). The elements of an unlawful act in criminal law include acts that are declared to violate the law, carried out without authority and power, and violate general principles in law. Article 2 paragraph (1) of Law No. 31 of 1999 concerning the Crime of Corruption states that "Every person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state finances or the country's economy, shall be punished..." The explanation of Article 2 paragraph (1) states that unlawful acts include both in the formal and material sense. This means that even though the act is not regulated in laws and regulations, if it is considered reprehensible because it doesn't proper with the sense of justice and social norms in society, then the act can be punished (Sari, 2020). These elements are needed to ensure legal certainty for an act. In principle, the purpose of the establishment of the legal system known as unlawful acts is to achieve what is called in the Latin proverb, "iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere," which means to live honestly, not harm others, and give rights to everyone.

Unlawful acts are often heard in various legal problems, but not many understand how to determine an act as an unlawful act. There are many definitions that explain unlawful acts. In legal arrangements and juridical theories regarding unlawful acts, there are various problems that arise in their application in the field. In fact, often an act that reaches trial does not have clear elements of unlawful acts. Legal practitioners themselves often blur the correlation between an act and an unlawful act.

The regulation of unlawful acts in the Criminal Code is the main source of engagement, but often contracts or agreements are assumed to be unlawful acts. Likewise, unlawful acts in the Criminal Code only pay attention to acts that are unlawful, namely acts that are prohibited and criminally threatened. However, often these acts are not clear, so the application of the law to these acts has many problems. Therefore, it is important to examine and understand whether an act is included in the category of violating criminal law or violating civil law that causes loss.

## **RESEARCH METHODS**

This writing uses a juridical-normative research method-, which is a study derived from the sources of books and legal journals listed in the bibliography at the end of this paper. This method is carried out by examining various written works and the opinions of experts expressed in this writing.

## **RESULTS AND DISCUSSION**

An unlawful act is an act that is identified as unlawful. The state has laws that are regulated in laws and regulations with the aim of limiting and regulating every individual action so that it does not harm the rights of others. Performing an act that is restricted by law means committing an unlawful act. In the provisions regulated in the Criminal Code and the Criminal Code, there are articles that directly regulate unlawful acts.

Acts against civil law are regulated in the Criminal Code. There are two different opinions regarding acts that violate civil law. The first opinion states that an unlawful act is an act that is contrary to a person's subjective rights or obligations under the law, so if the act does not violate the law, it is not an unlawful act (Purba & Nelvitia Purba, 2013). The second opinion states that an act that, although not regulated in the law, is contrary to the norms that apply and live in society, both regarding respect for oneself and the property of others, as well as the norms that are widely contained in unwritten regulations, are still considered an unlawful act.

The law classifies unlawful acts into three categories, namely:

1. Acts committed deliberately and unlawfully.
2. Acts that cause harm without elements of intention or negligence.
3. Acts caused by negligence and contrary to the law.

Article 1365 of the Criminal Code states that every unlawful act that causes losses to others, obliges the person who caused the loss due to his fault to compensate for his loss. Based on this article, to file a lawsuit, a person must meet the elements of an unlawful act. These elements include:

1. The existence of deeds. This can be in the form of active or passive actions, such as not doing something that should be done based on a legal obligation. This obligation arises from the applicable law, so that in the unlawful act there is no element of "consent" or "permissible causa" as in the contract.
2. The act is against the law. Since 1919, the elements of unlawfulness have been interpreted as broadly as possible, including:
  - a. Acts that violate applicable laws.
  - b. Acts that violate the rights of others protected by law.
  - c. Acts contra to the legal obligations of the perpetrator.
  - d. Acts contra to morality (*goede zeden*).
  - e. Acts contra to good social norms in caring for the interests of others.
3. There is a mistake from the perpetrator. To meet the elements of unlawful acts based on Article 1365 of the Criminal Code, the law and jurisprudence require that the perpetrator must have an element of fault (*schuldelement*) in committing act. An action is considered to contain elements of error by law and can be held legally liable if it meets the following elements:
  - a. There is an element of intentionality, unlawful acts with an element of intention have the most serious degree of error. Because especially regarding compensation to the victims, the law applies differently;
  - b. There is an element of negligence (*culpa*) there is no intention in the heart of the perpetrator to induce, measure whether the act is justifiable or not, it must be seen what normal human beings will do in the same situation. One of the methods of measuring it is by "balancing criteria" which in principle balances the risk factors that arise with the benefits obtained from the alleged unlawful act, and
  - c. There is no justification or excuse (*rechtvaardigingsgrond*), such as overmacht, self-defense, insaneness, etc. What constitutes the

elements of the rational and normal human criterion is his knowledge, both actual and constructive, as well as experience, and perception.

The debate about the possibility of error has several schools of thought regarding the relationship between the element of unlawful act and the element of wrong:

1. Flow of Unlawful Elements Only: Cuck with the existence of elements of unlawful acts. Because in a broad sense, this element is already included in the element of error.
2. Flow of Elements of Fault Only: It is enough to have an element of error because this element already includes elements of unlawful acts.
3. Flow of Unlawful Elements and Elements of Error: Both elements are needed. Mistakes must meet the elements of unlawful acts and elements of errors. This is because the element of unlawful acts does not necessarily include the element of error. The law interprets error in this context as a person's failure to behave ideally, which is an ordinary and normal attitude in social life.
4. Losses for Victims. Article 1365 of the Criminal Code explains that losses in unlawful acts are different from default. In addition to material losses, jurisprudence also recognizes the concept of immaterial losses that can be assessed in money.
5. Causal Relationship between Acts and Losses There are three theories to determine the causal relationship between unlawful acts and losses:
  - *Condition sine qua non*: According to this theory, the person who commits an unlawful act is always responsible for the harm caused (all the conditions that must exist for the consequences to arise).
  - *Adequate veroorzaking*: According to this theory, the perpetrator is only liable for losses that could reasonably be expected as a result of an unlawful act.

- Causality: Loss is considered a natural consequence of an unlawful act if, according to experience and common sense, this is what is expected to happen (Fuady, 2020).

The importance of understanding the concept of unlawful acts is very important in the field of civil law. Often, this concept is misinterpreted as a breach of promise (default). In fact, the two are different even though they both originate from the bond. Default comes from an engagement born from an agreement, while an unlawful act comes from an engagement born from a law (Redjeki, 2013).

Actions that are contrary to the law are carried out by legal institutions that have responsibilities in accordance with Article 1364 BW. If it is carried out by a representative of a legal institution that has a working relationship with a legal institution, its responsibility is based on Article 1367 of the BW. For actions taken by representatives who have a working relationship with a legal institution, their responsibilities can be chosen between Article 1365 BW and Article 1367 BW (Hiariej, 2022).

The fight against the law is regulated in the KUHP. One of the elements of criminal acts is the nature of violating the law. This element is an objective assessment of the act and not the maker. An act is said to be unlawful if it is included in the formulation of the offense as formulated in the law (Apriani, 2019). To determine whether an act is considered unlawful, there are several elements that must be met:

1. The act violates the law.
2. There is a mistake from the perpetrator.
3. There is a loss (Hiariej, 2022)

There are several views on the elements of violating the law, including:

- According to Formal's view, the nature of violating the law is not an absolute element of a criminal act. Pompe stated that this trait is only a criminal element if it is explicitly stated in the law.

- The Material View states that violating the law is an absolute element of any criminal act. However, this can make it difficult to prosecute in court.
- The Middle View considers that breaking the law can be a criminal element if it is mentioned in the delicacy formulation, but there is no need for prosecution if it is not included in the delicacy formulation (Hiariej, 2016).

In the explanation or history of the formation of the Criminal Code in the Netherlands, there is no explanation of the meaning of the word "law" in the term "against the law". From the postulate side, this can be interpreted as a person being considered unlawful when the actions taken are a violation of the law. In criminal law, the term "unlawful" has four meanings:

- a. Contrary to general law, where unlawful acts are elements of criminal acts, as occurred in Article 351 of the Criminal Code.
- b. Against a special law, where the term "against the law" is mentioned in the formulation of the offense as a condition for demanding an action, as happened in Article 372 of the Criminal Code. Consequently, violating the law is an element of offense that must be proven.
- c. Against formal law, which means that all elements of the delicacy formulation have been fulfilled. Article 1 paragraph (1) of the Criminal Code states that no action can be punished except based on the existing law before the act is committed. Every act that is convicted has a formal unlawful nature, as in Article 338 of the Criminal Code
- d. There are two views on the nature of material violations of the law. First, from the perspective of the action itself, where the nature of violating material laws is usually related to the delicacies that are formulated materially. Second, looking at the source of the law, which includes concepts such as unwritten law, the principle of propriety, or the values of justice in society. Furthermore, the nature of violating material laws is further divided into positive and negative functions. In its negative



function, even if an act fulfills the delicacy element, if it does not contradict the community's sense of justice, then the act is not punished. Although not explicitly explained as a general principle, the Criminal Code also contains the principle of material law violation in its negative function (Hiariej, 2016). The existence of the principle of material law violation in the Criminal Code can be seen from several formulations of criminal acts or delixes.

In the special provisions of the Criminal Code that clearly mention the element of "unlawful", including: a. Article 167 paragraph (1) b. Article 333 concerning kidnapping c. Article 368 paragraph (1) concerning extortion d. Article 406 concerning the destruction of goods. From these articles, it can be concluded that to establish an act as a criminal act depends heavily on proving the element of "unlawful". This is a consequence of the inclusion of the element of "unlawful" in the formulation of criminal acts. Therefore, the burden of proof is the responsibility of the prosecutor, because the accusation of certain articles requires him to include elements of the criminal act in the indictment and prove the charge (Kila, I Nyoman Gede Sugiarta, Ni Made Puspasutari Ujianti; 2023). Meanwhile, in the positive context against material law, even though the act is not regulated in the law, if it is considered inappropriate because it is not in accordance with justice or social norms in society, then the act can be punished.

The approach to the unlawful nature of material law in negative functions is valid and has been applied in court practice. According to Suringa, there are concerns about significant legal inequality, as some judges accept this approach while others reject it. Meanwhile, a positive approach to the nature of material law violations is fundamentally contrary to the principle of legality (Hiariej, 2022).

In applying the elements of a criminal act, to determine whether an act in a legal event constitutes a violation of the law, an analysis can be carried out on whether the act meets the elements of violation of the law that have been described earlier, which are regulated in the provisions of certain criminal law articles. It is necessary to adjust or match the parts or events of the event with the elements of the offense which is a violation of the law. If these elements are

appropriate, it can be concluded that the event is a violation of criminal law that can give rise to criminal liability for the perpetrator. However, if one of these elements does not exist or is not proven, then it must be concluded that the act is not a violation of criminal law. It may be that the act has occurred but is not a violation of the law, or it may also be that the act has occurred in accordance with the formulation of the action in the relevant article, but there is no fault on the part of the perpetrator and/or the act is not unlawful.

The Difference Between Unlawful Acts in Criminal and Civil Law has different meanings and arrangements. In the realm of criminal law, unlawful acts are called criminal acts, and the focus is on violations of legal norms and the public interest. Sanctions for criminal acts are in the form of criminal penalties, such as imprisonment, fines, or confinement. On the other hand, in civil law, unlawful acts focus on violating rights and obligations between individuals, and result in losses for other parties. Sanctions for acts that violate civil law are in the form of compensation that must be paid by the perpetrator to the victim. An act can be categorized as a criminal or civil act is an element of the act (Fuady, 2020).

What happens to an act if there is an unlawful act fulfills 2 elements of a legal perspective, namely civil law and criminal law. The settlement between these two types of legal disputes is different, the question is whether one unlawful act can be processed with two different laws. Of course, if there is an action, and the action meets the elements of violating criminal law and elements of acts against civil law, then the two sanctions can be imposed at the same time. This means that the victim can receive compensation (based on civil lawsuit), but also at the same time (with the criminal process) the perpetrator can be imposed criminal sanctions at once. Double possibility of sanctions: One act can violate both types of law, and result in criminal sanctions and civil damages. For example, illegal assault and detention are criminal acts and also acts against civil law.

## CONCLUSION

The fundamental difference in criminal law is that it violates legal norms and the public interest. Violating public law with the penalty of imprisonment or detention, namely deprivation of liberty. Civil law is a violation of rights and obligations between individuals. Violating the private law of the disanksi compensation to an.

Understanding the difference between unlawful acts in criminal and civil law is essential to determine the appropriate type of lawsuit and the applicable sanctions. It takes the ability and skills of practitioners and enforcers to achieve justice.

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