

A Comparative Legal Study on the Regulation of Torts in Indonesia and Singapore

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Abstract. The regulation of unlawful acts (*torts*) is essential for protecting rights and providing redress. As neighboring nations with strong ties, Indonesia and Singapore operate under different legal traditions—civil law and common law—resulting in distinct approaches to defining, proving, and remedying civil wrongs, which affect legal certainty and judicial flexibility. Despite increasing cross-border engagements, systematic comparative studies between the two systems remain limited. This research aims to compare the regulation of unlawful acts in the legal systems of Indonesia and Singapore. Indonesia applies the concept of *onrechtmatige daad*, derived from Dutch civil law and regulated in Articles 1365–1380 of the Civil Code, while Singapore adopts the common law system inherited from England that places *torts* as the basis of civil liability. This research uses a normative-comparative approach by examining the laws and regulations, doctrines, and court decisions of both countries. The analysis results show fundamental differences related to the elements, scope, and proof of unlawful acts. The Indonesian system provides more room for judicial interpretation by expanding the definition of unlawful acts, while Singapore uses a more structured classification of *torts*, such as negligence, nuisance, and defamation. The differences in legal systems have implications for legal protection for the community and the effectiveness of civil law enforcement. This research is expected to contribute to the development of comparative legal studies and national civil law reform.

Keywords: Comparative law; Indonesia; Singapore; Tort law; Unlawful acts.

INTRODUCTION

Unlawful acts (FMA) are a fundamental concept in civil law that serves to protect individual rights from actions that cause harm. In various countries, including Indonesia and Singapore, regulations regarding FMA continue to evolve in line with societal dynamics and the need for legal protection (Goh, 2019). Therefore, a comparison of two legal systems, both influenced by civil law and common law traditions, is important to understand how the concept of FMA is regulated, interpreted, and applied in a modern context (Adar & Perry, 2023; Amirthalingam, 2022).

Indonesia, as a country that adheres to a civil law system, primarily refers to the provisions of the Civil Code (*KUHPerdata*), specifically Article 1365, which states that any unlawful act that results in harm to another person requires the perpetrator to compensate for that loss. This provision has a broad scope and opens up considerable room for interpretation through court decisions (Cevitra & Djajaputra, 2023). On the other hand, Singapore, which adheres to a common law system, uses a precedent-based approach with a more structured concept of tort law, encompassing negligence, nuisance, trespass, and defamation as the basis for lawsuits (Chan & Lee, 2016; Verheij, 2023).

Previous research on this topic has primarily focused on the doctrinal analysis of each system in isolation. For example, Harahap (2020) provides a comprehensive analysis of unlawful acts under the Indonesian Civil Code, emphasizing judicial expansion since the landmark 1919 Hoge Raad ruling. On the other hand, scholars like Low (2018) and Wong

(2020) have extensively documented the development and application of specific torts within Singapore's common law framework. However, there remains a noticeable gap in the literature regarding a structured, comparative analysis that systematically juxtaposes the normative bases, legal elements, and practical applications of tort law in these two distinct Southeast Asian jurisdictions. Studies such as Poh (201.g.) touch on the evolution of tort law in Singapore but lack a focused comparison with Indonesia's civil law approach.

The development of tort law in Indonesia has undergone a major transformation since the 1919 "Hoge Raad" ruling, which broadened the interpretation of tort beyond merely violating statutes to include violations of morality, propriety, and the subjective rights of others. Meanwhile, Singapore developed tort law through landmark cases such as *Donoghue v. Stevenson*, which established the basis for the adherence to the principles of duty of care and foreseeability as benchmarks for determining negligence (Kaur et al., 2022; Lestari, 2024).

The differences in legal philosophy between civil law and common law lead to variations in approaches to the PMH in the two countries. Indonesia tends to regulate generally in the form of written rules, but requires broad judicial interpretation (Tan, 2016). In contrast, Singapore relies on accumulated precedent as living law, resulting in more specific and detailed elements of tort. These differences in approach directly influence the characteristics of civil dispute resolution in each country (Pratama, 2019; Putro & Wiratraman, 2019; Santi et al., 2024).

Despite differences in their legal systems, both Indonesia and Singapore share a common primary goal: to protect individuals from harm and ensure legal accountability mechanisms. Challenges arise as technological, economic, and social developments give rise to new forms of criminal liability, such as digital defamation, professional negligence, and non-material harm. These developments require responsive legal adaptations in both jurisdictions.

The urgency of this research is based on the importance of understanding how both countries regulate PMH and how these regulatory developments can provide effective legal protection. By comparing the two legal systems, this research can provide an overview of the strengths and weaknesses of each approach and their implications for law enforcement and substantive justice. Furthermore, this comparative research is also important given the growing bilateral relationship between Indonesia and Singapore in the areas of trade, investment, and labor mobility.

Based on this background, this study aims to comprehensively analyze and compare the regulation of unlawful acts in Indonesia and Singapore. The research focuses on the normative basis, legal principles, elements of unlawful acts, as well as their implementation and interpretation in actual cases. Therefore, this research is expected to contribute to the development of legal science, particularly in the fields of civil law and comparative law, and serve as a reference for academics, practitioners, and policymakers.

MATERIALS AND METHOD

This research employed a normative juridical approach with a comparative method. Data sources consisted of primary legal materials in the form of the Civil Code, related laws, Singapore statutes, and court decisions; secondary legal materials in the form of legal literature, academic articles, and expert analyses; and tertiary materials such as legal dictionaries. Data were collected through documentary study. This technique involved systematically locating,

reviewing, and extracting relevant provisions, judicial rulings, and scholarly opinions from the sources. Key landmark cases were identified (e.g., *Lindenbaum v. Cohen* for Indonesia, *Donoghue v. Stevenson* for Singapore) to trace doctrinal evolution. The analysis was conducted using content analysis techniques on norms and doctrines, then compared based on their elements, characteristics, and application in judicial practice.

RESULTS AND DISCUSSION

The research findings show that the provisions on unlawful acts (PMH) in Indonesia and Singapore have similar objectives, but fundamentally differ in their legal approach and implementation (Wiradinata, 2022). Indonesia, as a country with a civil law tradition, explicitly stipulates PMH provisions in Article 1365 of the Civil Code, which regulates the elements of loss, fault, causal relationship, and the existence of an unlawful act (Yeo & Tang, 2018). Meanwhile, Singapore, which is based on common law, does not regulate PMH in the form of a specific article, but rather groups them into various torts such as negligence, nuisance, defamation, and trespass. This difference indicates that Indonesia uses a codification approach, while Singapore relies on more detailed court precedent (Wong & Lim, 2020).

In further analysis, the study found that Indonesia has experienced significant developments since the 1919 Hoge Raad ruling (*Arrest Lindenbaum vs. Cohen*), which expanded the definition of unlawful acts to include violations of morality, propriety, and the subjective rights of others. Meanwhile, in Singapore, the most significant development occurred through the adoption of the duty of care doctrine in the *Donoghue v. Stevenson* case, which became the basis for determining the element of negligence. This difference in development shows that Indonesia emphasizes a broad interpretation of general norms, while Singapore develops PMH elements through a more precise grouping and elaboration of torts. The results of the comparison of PMH elements in the two countries can be seen in the following table:

Table 1. Comparison of Elements of Unlawful Acts in Indonesia and Singapore

Element	Indonesia (Article 1365 of the Civil Code)	Singapore (Common Law Tort System)
Unlawful Acts	Yes, it is general and broad	Based on specific tort categories
Loss	Must be proven	Must be proven
Fault	Yes, in the form of intent/negligence	Yes, depending on the type of tort
Causal Relationship	Yes	Yes, using <i>foreseeability tests</i>
Additional Norms	Morality, propriety, subjective rights	Precedents and the doctrine of duty of care

Source: Authors' analysis based on Indonesian Civil Code (Articles 1365–1380) and Singaporean common law principles derived from case law such as *Donoghue v Stevenson* [1932] AC 562 and subsequent tort jurisprudence

The discussion shows that Singapore has a more systematic tort structure, allowing each type of unlawful act to have specific evidentiary elements. This provides clarity for both judges and injured parties in determining the basis for a lawsuit. Conversely, Indonesia allows for

broad interpretation, allowing judges to play a significant role in determining the normative boundaries of the PMH. The Indonesian system's strength lies in its flexibility, but its weakness lies in the potential for inconsistent decisions. In Singapore, the strength lies in the precision of legal elements, but the weakness is the reliance on precedent, which can complicate understanding for non-legal parties.

This study also compares the legal sources used in determining PMH. In Indonesia, the primary legal sources are the Civil Code and court decisions. Meanwhile, Singapore uses a complementary combination of statutory law and case law. The following table illustrates the differences in these legal sources:

Table 2. Comparison of PMH Legal Sources

Aspect	Indonesia	Singapore
Primary Source	Civil Code	Case law (tort principles)
Additional Resources	Court decisions, special regulations	Statutory law (eg: Defamation Act)
Characteristics	General codification	Detailed and specific precedents
Legal Developments	Through the judge's interpretation	Through landmark cases

Source: Compiled from legal system analyses of Indonesia (civil law tradition) and Singapore (common law tradition), referencing Harahap (2020) and Low (2018)

Further discussion shows that the application of the PMH concept in court practice also differs. In Indonesia, judges often assess cases based on the four PMH elements in an integrated manner and interpret the norm of propriety as a tool for balancing justice (Zulkifli & Ibrahim, 2023). In Singapore, the burden of proof follows strict tort elements, resulting in a more structured analysis process. As a result, decisions in Singapore tend to be more consistent across cases, while Indonesia's decisions are more flexible, adapting to social developments (Zakaria & Rahman, 2021; Zhang, 2019).

Furthermore, research shows that the impact of PMH on compensation also varies significantly (Abdullah, 2021). In Indonesia, compensation is compensatory and emphasizes both material and immaterial losses. Meanwhile, Singapore applies compensatory damages, limited punitive damages, and relies more on precedent-based quantum of damages. The following table illustrates the differences in compensation structures:

Table 3. Comparison of PMH Compensation Mechanisms

Compensation Components	Indonesia	Singapore
Material Compensation	Yes	Yes
Immaterial Compensation	Yes	Yes, more restricted
Punitive Damages	Not applied	Very limited, specific cases
Assessment Reference	Judge based on fairness	<i>Quantum</i> precedents and guidance
Flexibility	Tall	Currently

Source: Authors' synthesis based on Indonesian Civil Code provisions and Singaporean tort law compensation principles as discussed in Wong (2020) and case law analysis

Overall, the research findings indicate that differences in legal systems lead to significant variations in the normative basis, evidentiary elements, legal sources, and redress

mechanisms. Indonesia's system is broad and adaptive, while Singapore's is more structured and precedent-based. This comparison demonstrates that the two countries have unique characteristics that can complement each other, particularly in the development of modern civil law in Southeast Asia.

CONCLUSION

This comparative study found that the regulation of unlawful acts (torts) in Indonesia and Singapore is fundamentally shaped by their distinct legal traditions, with Indonesia's civil law system relying on the broad, principle-based provision of Article 1365 of the Civil Code—enhanced by expansive judicial interpretation since the 1919 Hoge Raad ruling—to provide flexible, context-sensitive adjudication, while Singapore's common law system structures liability through specific, precedent-defined torts such as negligence and defamation, resulting in a more detailed, element-based, and predictable framework; each system thus entails a trade-off between flexibility and certainty, suggesting that Indonesia could enhance consistency by adopting more structured common law-style tests for particular torts without undermining substantive fairness, and that Singapore could draw on Indonesia's holistic, principle-oriented approach to better address unprecedented civil wrongs, with future research recommended to examine how hybrid models or cross-fertilisation of doctrines between civil law and common law jurisdictions in Southeast Asia might improve the responsiveness and coherence of tort law in practice.

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