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## Violation of Subjective Rights as the Basis for an Unlawful Act

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### Abstract

In modern civil society, conflicts of interest often arise from acts that cause harm to others, yet not all such acts are clearly regulated by written law, creating legal uncertainty for victims seeking justice. This research aims to analyze the concept of unlawful act (tort) in Indonesian Civil Law based on violations of subjective rights and to examine judicial considerations in determining the fulfilments of the elements of tort in judicial practice. This research employed a normative juridical method with statutory and case approaches, analyzed using descriptive qualitative method. The results indicate that the concept of unlawful act (tort) has evolved from a narrow interpretation limited to violations of written law into a broader interpretation encompassing violations of subjective rights, moral norms, and principles of propriety. The elements of tort consist of an act, unlawfulness, fault, damage and a causal relationship, all of which must be cumulatively proven. In judicial practice, the application of these elements still reflects decision disparities due to differing judicial interpretations. The analysis of decision Number 2579 K/Pdt/2025 demonstrates that violations of subjective rights, particularly proprietary rights over land certificates, may serve as the primary basis for establishing an unlawful act, even in the absence of explicit statutory violations. The novelty of this journal lies in emphasizing the central positions of subjective rights violations as a foundational basis of constructing unlawful acts in Indonesian civil law practices.

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## INTRODUCTION

Along with technological advancements, modernization and globalization are factors that cannot be separated from the development and complexity of social life. Which, these developments are a factor in significant changes in the pattern of interaction and legal relations (Seidman, 2016; Sorokin, 2017). This also raises the potential for greater conflicts of interest or legal disputes between legal subjects, especially in the civil context (O'Sullivan et al., 2019; Singer, 2018; Svirin et al., 2019).

In the context of civil law, one of the concepts to resolve the conflict of interest is known as unlawful acts. Van Boven (2020), stated that the concept of unlawful acts is the basis for the aggrieved party to request the restoration or restoration of the victim's rights through the compensation mechanism, as well as the implementation of the legal function as a protection for the interests of legal subjects.

In this modern era, a clear understanding of this concept is needed to maintain fairness

in legal interactions. Research conducted by Sari (2021) shows that unlawful acts in civil law have become the focus of a number of civil law theories. This concept is related to violations of contractual norms and the obligation to indemnify. Previous research has discussed the need for clarification and in-depth analysis of the legal implications of unlawful acts in civil law.

In Indonesia, normatively according to the provisions of Article 1365 of the Civil Code (KUHPer), unlawful acts are defined as any act that violates the law and causes harm to others, for which the perpetrator is obliged to compensate for the loss. This shows that the Indonesian civil system not only protects violations against contractual disputes or engagements born due to agreements, but also provides legal protection if general norms regulated in laws and regulations are violated and the victim suffers losses. This means that unlawful acts are one of the strategic mechanisms in an effort to maintain a balance of rights and obligations in the life of society and the state.

Initially, in a narrow way, unlawful acts in the civil field were static and interpreted solely as acts that violate written regulations or laws (*wetmatige daad*). However, through the development of science and practice, especially after the Hoge Raad decision in 1919, unlawful acts are broadly defined, which also include violations of the norms of decency, propriety and generally applicable legal principles (Subekti:2005).

In accordance with the general opinion of legal experts as explained (R. Agustina: 2003), in the civil context an act can be categorized as an unlawful act if the act meets the elements of guilt (*schuld*), loss (*schade*) and there is a causal relationship between the act and the loss incurred (*casual verband*). All of these elements are cumulative, meaning that all elements must be proven and if there are elements that are not proven, then there is a potential for the act to be prosecuted to be declared not against the law or in the context of civil procedure law, the panel of judges will issue a decision stating that the lawsuit is rejected (Judd et al., 2015; Sailer et al., 2017; Senkov et al., 2015).

Furthermore, the development of people's lives, technology and globalization also encourage forms of unlawful acts to become more complex, such as in the fields of technology and information, the environment, consumer protection, and acts related to corporate administration. In these cases, the boundary between unlawful acts and defaults is often mixed, this certainly poses its own challenges both for the plaintiff to formulate the right basis for the lawsuit and for the court (panel of judges) in formulating a verdict as an effort to enforce fair and proportionate law.

In addition, the development of international law and comparative law also have an influence on the concept of unlawful acts in Indonesia (Gosal et al., 2025; Sutrisno, 2024). The concepts of accountability and legal obligations such as duty of care, vicarious liability, and strict liability have begun to be adopted in various laws and regulations and law enforcement practices in judicial institutions (Giliker, 2018b, 2018a; Luskin, 2020). This is concrete evidence of a shift and paradigm development from a legal approach that was initially solely based on the faults of the perpetrators towards a law that is oriented towards victim protection (Munir Fuady: (2013).

It is also important to highlight that in judicial practices in Indonesia, there are often inconsistencies in the application of elements that are the requirements for unlawful acts both in the context of interpretation and proof (Caria, 2025; Pratama et al., 2025). This can be seen

from the difference in the judge's consideration in cases that have the same characteristics, as well as the difference in the consideration of the panel of judges in the same case at each level of examination. This phenomenon shows that although the concept of unlawful acts has been clearly regulated normatively, in practice it is still possible to have a wide space for interpretation (Geovani et al., 2021; Habermas, 2015; Leerssen, 2023). Therefore, it is important to review the concept and application of unlawful acts in Indonesia.

For example, the case with Number 2579 K/Pdt/2025, at the first level, the panel of judges at the Medan District Court stated that the lawsuit was inadmissible due to lack of parties, but at the appeal level, the Medan High Court annulled the decision and stated that the appellants had committed an unlawful act.

In judicial practice in Indonesia, such things are not uncommon to be found, where there are differences in interpretation and consideration in the same case or in cases that have relatively the same characteristics or objects of dispute or commonly known as disparity in decisions (Tata Wijayanta and Sandra Dini: 2014). Disparities are not entirely avoidable because judges have the freedom to assess the evidence and interpret and apply applicable legal norms. However, the freedom of judges must still be supervised and limited by the principle of legal certainty so as not to cause injustice to the parties (Achmad Ali: 2012).

This phenomenon is a strengthening factor to realize legal certainty, usefulness and justice in the settlement of a civil dispute. As one of the bases of civil lawsuits in the Indonesian legal system, unlawful acts have far-reaching implications for the protection of civil rights of the community. Therefore, a deep and comprehensive understanding of the concept of unlawful acts is very important both in the academic and practical order.

Referring to the descriptions mentioned above, it is concluded that unlawful acts are conceptually something that is named and develops along with the development of social interaction and the needs and interests of law in community life. However, the complexity of its application and interpretation raises various problems and uncertainties that need to be studied further. Therefore, the core research aims to analyze the concept of unlawful acts, their elements, forms and application in judicial practice in Indonesia. The benefits of this study are twofold. Theoretically, this research enriches the legal literature on tort law by clarifying the evolving concept of unlawful acts based on violations of subjective rights, which is particularly relevant for developing countries with civil law traditions. Practically, the findings provide guidance for legal practitioners, judges, and scholars in understanding and applying the elements of unlawful acts more consistently, especially in cases involving complex civil disputes. Additionally, this study offers recommendations to reduce decision disparities in judicial practice and to strengthen legal protection for victims of unlawful acts.

## **RESEARCH METHOD**

In this study, the authors used juridical-normative research, which is a process to find a rule of law, legal principles and legal doctrines to answer the issues at hand. This type of research often conceptualizes the law as what is written such as in laws and regulations, court decisions, and the opinions of legal experts to know and answer the problems faced (Peter Mahmud: 2010).

The research uses two main approaches: the statutory approach (analyzing Article 1365 of the Indonesian Civil Code and related laws) and the case approach (examining Supreme

Court Decision Number 2579 K/Pdt/2025). Legal materials consist of primary sources (Civil Code, statutes, court decisions), secondary sources (textbooks, articles, legal commentaries), and tertiary sources (legal encyclopedias). Data collection is conducted through documentary study (literature review), and analysis is performed using a descriptive-qualitative method to interpret the concept, elements, and forms of unlawful acts based on violations of subjective rights. The analytical framework integrates legal theory, doctrine, and judicial considerations to understand how such violations serve as a basis for establishing an unlawful act, even without explicit statutory violations.

## RESULTS AND DISCUSSION

In the field of civil law, the basis for filing a lawsuit is divided into 2 (two) categories, namely due to breach of contract and due to acts that are contrary to the law (Gisni Halipah, et al:2023). As mentioned in the background section, in civil law, unlawful acts have significant implications in the context of civil liability and victim compensation recovery, where normatively unlawful acts refer to violations of legal norms that can cause complex losses.

As stated by Fitzgerald (in Satjipto Rahardjo:2000), the law has the purpose of coordinating and integrating various interests in the life of society, this is because in his view the protection of a certain interest can only be done by limiting the interests of other parties. In the context of civil law, the provisions on unlawful acts aim as a basis for the restoration of the status quo. Civil law adopts the theory of legal protection to maintain a balance of interests of parties in society. In addition, the concept of restoration, which is one of the points of victim protection, is manifested in the provision that the victim is compensated to return the situation to when the unlawful act has not occurred or so that it is as if the unlawful act did not occur. In addition, the Criminal Code also stipulates that there is an obligation to pay compensation to people who commit unlawful acts, which according to (Salim:2008), the compensation arises due to a mistake and not due to a contractual agreement.

There are many interpretations or definitions of unlawful acts in the civil context. Partly, interpreting unlawful acts as acts against laws and regulations, acts that are contrary to the rights of other parties, acts that cause losses to other parties and some interpret it as acts that are done outside their authority or power. In addition, unlawful acts are also defined as acts that violate the values of decency, decency, and violate the principles of morality in social life.

Unlawful acts or what in English law is called tort are any act that causes harm to the victim where the loss is the basis for the victim to make a claim (lawsuit) against the person who committed the act. The losses incurred can be material and/or immaterial, through the lawsuit the victim seeks to obtain civil redress, for example obtaining compensation.

Tort itself actually only means wrong, but along with development, tort is interpreted as a civil fault that does not originate from default. Tort comes from the Latin word *torquere* or in French called *tortus* which means mistake or loss.

It has been said before that in the past unlawful acts were interpreted narrowly as only violations of articles in written law (solely violations of applicable laws and regulations), but since 1919 there has been a development of interpretation based on the decision of the Hoge Raad in the Netherlands, where the Hoge Raad In the decision of the *Lindebaum* versus

Cohen case, it is interpreted as "unlawful not only for violations of written laws alone, but also for any violation of morality or propriety in public life. Thus, the act of *onrechmatige daad* is no longer defined only as *onwetmatige daad* (unlawful act), but is also expanded to:

- a. Acts that violate the rights of others
- b. acts that violate their own legal obligations
- c. Acts that violate morality
- d. Acts that violate the principle of prudence or necessity in good public relations

In Indonesia, legal experts categorize unlawful acts into the following forms:

- 1) This act is contrary to the perpetrator's legal obligations.

The legal obligation (*rechtsplicht*) in question is an obligation given by law to a person either in writing or otherwise. Thus, it is not only contrary to the obligations of the written law (*wettelijk plicht*), but also contrary to the rights of others according to the law (*wettelijk recht*).

- 2) The act violates the subjective rights of the other party.

Acts that are contrary to the rights of others (*inbreuk op eens anders recht*) include one of the acts prohibited by Article 1365 of the Criminal Code, rights that are prohibited to be prohibited are rights that are subject to law recognized by law, including but not limited to the rights:

Personal rights encompass fundamental entitlements inherent to individuals, including rights related to wealth or property (property law), the protection of freedom, and the safeguarding of honor and good name, all of which collectively form the basis of legal protection for individual dignity and personal integrity.

- 3) The act is contrary to the norms of decency

The act referred to in this context is an act that violates the unwritten law, as long as the act causes harm to other parties, then the party can claim compensation for the act committed. For example, in the Hoge Raad decision, Cogen was considered to have leaked company secrets so that it was considered to have violated decency and was declared to have committed an unlawful act.

- 4) Such acts violate the principles of propriety, thoroughness and the duty of care.

What is meant by actions in this context is known as *zorgvuldigheid* (prudence). So, if there is a party who commits an act that harms others without violating the articles of the written law, then he may be charged with an unlawful act because his actions are contrary to the principle of prudence or necessity in community association, where the necessity is not written in the provisions of the law, but is recognized by the community.

According to Munir Fuady, in order for a party to be held accountable for unlawful acts in accordance with the provisions of Article 1365 of the Criminal Code, the plaintiff must be able to prove the elements of the unlawful act, namely:

The existence of an act in the context of unlawful conduct, according to classical teachings as cited from William C. Robinson in Indah Sari (2020), includes nonfeasance (not doing something required by law), misfeasance (performing an obligation or authority improperly), and malfeasance (committing acts without rights or authority). These actions are not limited to positive actions but also include negative actions or omissions, as emphasized by Prodjudikoro (2003), who explains that unlawful acts can take the form of active conduct or passive inaction. Therefore, unlike contractual default, unlawful acts do not require

elements such as agreement or lawful cause.

Furthermore, an act is considered unlawful if it violates legal provisions, infringes upon the rights of others protected by law, contradicts the legal obligations of the perpetrator, opposes morality (*goede zeden*), or goes against societal norms of propriety and respect for others' interests. In terms of fault, unlawful acts can arise from intentional conduct, negligence, or even in certain cases without fault, although doctrinal debates exist regarding whether fault must accompany unlawfulness. Some legal scholars argue that the element of unlawfulness alone is sufficient, others contend that fault alone is adequate, while another view requires both elements to be present. In civil law, fault is generally interpreted as a deviation from the standard of reasonable and proper behavior in society, and based on Article 1365 of the Civil Code, liability requires intentional or negligent acts without justification or excuse. Additionally, unlawful acts must result in losses (*schade*), which may be material or immaterial, distinguishing them from contractual damages. Lastly, there must be a causal relationship between the act and the loss suffered by the victim, which can be explained through two main theories: causation in fact (*sine qua non*), as proposed by Von Buri, which states that loss would not occur without the causal act, and the proximate cause theory, which emphasizes legal causation to ensure fairness and legal certainty, although its application may lead to differing interpretations among legal experts.

Referring to the principle of *actori in cumbit probatio*, in applying for compensation caused by an unlawful act, the victim must be able to prove that the loss he suffered was caused by an intentional or negligent act of the perpetrator. In the practice of proof, it is often found that it is difficult to present evidence, especially witnesses, this is one of the drivers of the emergence of this theory.

From this fact, a doctrine or theory was born that we know as Res Ipsa Loquitor which is literally interpreted as "the object speaks", in practice this theory is very helpful for victims in proving and determining the occurrence of unlawful acts (Titin Apriani: 2020).

Considerations in case 2579 K/Pdt/2025

In this case, the applicants for cassation who were originally the defendants (118/Pdt.G/2024/PN Mdn) filed an application for cassation. At the first instance (district court), the defendants were sued for committing an act where the plaintiffs took and controlled the plaintiff's land ownership certificate.

In its consideration, the panel of judges of the first instance (PN Medan) considered that in this case there was a formal defect because the plaintiff did not include Bank BRI where the title certificate was placed before being taken by the defendants. And therefore, the panel of judges declared the lawsuit unacceptable (*niet onvankelijke verklaard*).

However, at the appeal level, the panel of judges canceled the decision on the grounds that according to the panel of judges, the appeal level judged that the non-withdrawal of the Bank, where the certificates were placed or stored, did not cause the lawsuit to be less partial. According to the panel of judges, the main case that should be examined is about the unwillingness of the appellants (originally the defendants) to hand back the certificates they control to their owners, namely the plaintiff.

According to the panel of judges, although the certificates were kept in the safety deposit box belonging to the heirs of the appellants who were also one of the shareholders of the plaintiff (a limited liability company), considering that a limited liability company has

separate assets from its shareholders, the certificates were assets or assets of the appellant and the appellants had no right to control them.

Thus, based on these considerations, the panel of judges stated that the appellants (originally the defendants) had committed an unlawful act.

If examined further, the unlawful acts committed by the defendants are not acts that violate the written law or their obligations, because the plaintiffs when taking the certificates from the safety deposit box are in their capacity as the legal heirs of the owner of the safety deposit box.

However, the actions of the defendants who did not want to hand over the plaintiff's certificate which was in the power of the defendants were the reason for the unlawful act. As explained in the previous discussion, after the 1919 Hoge Raad decision, the meaning of unlawful was expanded, one of which was if the act violated the subjective rights of others.

The rights that must not be violated include:

- a. personal rights (personal rights);
- b. property rights;
- c. the right to liberty; and
- d. Right to honor and good name

In addition, violating the subjective rights of others means violating the special authority given by law to a subject of law. The characteristics of subjective rights include:

- a. its importance is of high value to the subject of the law;
- b. direct recognition given by law to the subject of the law;
- c. a strong evidentiary position in a case that may arise.

In social life, subjective rights are widely known as, among others:

- a. absolute property rights, such as property rights;
- b. personal rights such as the right to soul and body;
- c. Istiewa rights, for example the right to occupy a shophouse by the tenant.

In a quo case, it is known that the object of the case is the certificates of building use rights belonging to the plaintiff, which certificates are quasi-owned by the defendants and the defendants do not want to return them to the plaintiff.

According to the authors, the defendants' actions have fulfilled the elements of unlawful acts in the form of violation of subjective rights because the defendants have mastered the certificate of building use rights which are included in the material rights and property rights of the plaintiffs.

## **CONCLUSION**

In the civil law corridor, unlawful acts have a role to maintain the balance of rights and obligations as well as interests among legal subjects in social life. Unlawful acts are a tangible manifestation of the theory of legal protection in order to restore the status quo, so that the aggrieved party can get appropriate compensation or restitution. There are various types of "against the law" applied in Indonesia. One of them is if there is a party who is considered to have violated the subjective rights of others that have been guaranteed by law. The subjective rights in question include personal rights, wealth, property, property, honor and good name. In case Number 2579 K/Pdt/2025, at the appellate level, the panel of judges decided that the appellants (originally the defendants) issued a verdict stating that the

appellants committed an unlawful act with the consideration that they had violated the plaintiff's subjective rights, because the appellants had taken the certificates of ownership of the land belonging to the appellant (originally the plaintiff).

## REFERENCE

- Caria, C. (2025). The role of the Supreme Court in maintaining consistency of judicial decisions in Indonesia's integrated judicial system. *Journal of Legal Framework*, 1(1), 32–38.
- Geovani, I., Nurkhotijah, S., Kurniawan, H., Milanie, F., & Nur Ilham, R. (2021). Juridical analysis of victims of the economic exploitation of children under the age to realize legal protection from human rights aspects: Research study at the office of social and community empowerment in Batam City. *International Journal of Educational Review, Law and Social Sciences (IJERLAS)*, 1(1), 45–52.
- Giliker, P. (2018a). Analysing institutional liability for child sexual abuse in England and Wales and Australia: Vicarious liability, non-delegable duties and statutory intervention. *The Cambridge Law Journal*, 77(3), 506–535.
- Giliker, P. (2018b). Comparative law and legal culture: Placing vicarious liability in comparative perspective. *The Chinese Journal of Comparative Law*, 6(2), 265–293.
- Gisal Halipah, G., Purnama, D. F., et al. (2023). Tinjauan yuridis konsep perbuatan melawan hukum dalam konteks hukum perdata. *Jurnal Serambi Hukum*, 16(1).
- Gosal, W., Dickson, P., Dzahabi, M. D., Sarundajang, J., Pangaribuan, M. Z., & Surbakti, C. R. Y. (2025). Comparison of the concept of unlawful acts in the Indonesian and Chinese civil law systems. *Asian Journal of Engineering, Social and Health*, 4(11), 1696–1708.
- Habermas, J. (2015). *Between facts and norms: Contributions to a discourse theory of law and democracy*. John Wiley & Sons.
- Judd, A. D., Backhaus, T., & Goodsir, F. (2015). An effective set of principles for practical implementation of marine cumulative effects assessment. *Environmental Science & Policy*, 54, 254–262.
- Leerssen, P. (2023). An end to shadow banning? Transparency rights in the Digital Services Act between content moderation and curation. *Computer Law & Security Review*, 48, 105790.
- Luskin, R. (2020). Caring about corporate 'due care': Why criminal respondeat superior liability outreaches its justification. *American Criminal Law Review*, 57, 303.
- O'Sullivan, S., Nevejans, N., Allen, C., Blyth, A., Leonard, S., Pagallo, U., Holzinger, K., Holzinger, A., Sajid, M. I., & Ashrafian, H. (2019). Legal, regulatory, and ethical frameworks for development of standards in artificial intelligence (AI) and autonomous robotic surgery. *The International Journal of Medical Robotics and Computer Assisted Surgery*, 15(1), e1968.
- Pratama, T. Y., Sudarsono, S., Suryokumoro, H., & Widiarto, A. E. (2025). Analyzing the concept of incompleteness and ambiguity of norms in formal testing of laws at the constitutional court. *International Review of Social Sciences Research*, 5(1), 106–127.
- Sailer, M., Hense, J. U., Mayr, S. K., & Mandl, H. (2017). How gamification motivates: An experimental study of the effects of specific game design elements on psychological need satisfaction. *Computers in Human Behavior*, 69, 371–380.
- Sari, I. (2021). Perbuatan melawan hukum (PMH) dalam hukum pidana dan hukum perdata. *Jurnal Ilmiah Hukum Dirgantara*, 11(1).
- Seidman, A. (2016). *State and law in the development process: Problem-solving and institutional change in the Third World*. Springer.

- Senkov, O. N., Miller, J. D., Miracle, D. B., & Woodward, C. (2015). Accelerated exploration of multi-principal element alloys with solid solution phases. *Nature Communications*, 6(1), 6529.
- Singer, L. (2018). *Settling disputes: Conflict resolution in business, families, and the legal system*. Routledge.
- Sorokin, P. (2017). *Social and cultural dynamics: A study of change in major systems of art, truth, ethics, law and social relationships*. Routledge.
- Sutrisno, A. (2024). Reconstructing the concept of digital-based accountability for international corporations for unlawful acts to achieve justice from an Indonesian perspective within the context of national legal system reform. *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum*, 6(2), 203–214.
- Svirin, Y. A., Kulakov, V. V., Mokhov, A. A., Shestov, S. N., & Sorokin, V. P. (2019). Balance of interests as a principle of civil law: Some aspects of legal consciousness. *Journal of Advanced Research in Law and Economics*, 10(3), 940–947.
- Titin Apriani. (2020). Kedudukan doktrin *res ipsa loquitur* (doktrin yang memihak pada korban) dalam tata hukum Indonesia. *Ganec Swara*, 14(1).
- Van Boven, T. (2020). Victims' rights to a remedy and reparation: The United Nations principles and guidelines. In *Reparations for victims of genocide, war crimes and crimes against humanity* (pp. 15–37). Brill Nijhoff.