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Illegal Acts in Business Versus Criminal Acts: A Comparative Study

Abstract

This study aims to explain the differences between illegal acts (PMH) in civil law and criminal law, along with the elements that distinguish the two. It discusses examples of illegal acts in the context of business and criminal law, as well as the legal implications of these actions. The research method used is normative juridical research, which focuses on the analysis and interpretation of applicable laws. Data collection techniques include documentary studies, analyzing and interpreting primary, secondary, and tertiary legal materials, as well as literature review, examining books, articles, and journals related to the research topic. Data analysis involves analyzing and interpreting the relevant laws regarding illegal acts in both business and criminal law and comparing these illegal acts within the context of Indonesian law. The findings indicate that illegal acts in business and criminal law have several fundamental differences. In civil law, illegal acts are defined under Article 1365 of the Civil Code, where the harmed party has the right to claim compensation. The primary difference between illegal acts in civil law and criminal law lies in the nature and objectives of the acts. In civil law, illegal acts focus more on compensation and restitution for the harmed party, while in criminal law, the focus is on punishment and preventing unlawful actions. Examples of illegal acts in business may involve violations of intellectual property rights or other regulatory breaches, whereas in criminal law, illegal acts include crimes such as theft, fraud, or other violations of criminal law.

Keywords: Illegal Acts, Business, Criminal Law

A. Introduction

Business law refers to a set of legal principles that govern trade, industry, and finance, including the production and exchange of goods and services, aimed at creating a fair and sustainable business environment.

Article 1353: Obligations arising from law due to acts of individuals stem from lawful or unlawful actions. Article 1320: For a valid agreement to occur, four conditions must be met: 1) mutual consent of the parties; 2) competence to form an obligation; 3) a specific subject matter; 4) a lawful cause. Article 1329: Every person is authorized to form an obligation unless declared legally incompetent for such actions. Article 1330: Persons deemed legally incompetent include minors, those under guardianship, married women under specific circumstances, and others prohibited by law from entering into agreements. Article 1331: Incompetent individuals may annul obligations made under these conditions unless otherwise stated by law. Competent individuals cannot challenge agreements on the grounds of the incompetence of minors or individuals under guardianship.

Article 1321: An agreement is void if made under error, duress, or deceit. Article 1328: Fraud is grounds for the cancellation of an agreement if it is clear that the other party would

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not have entered into the contract without the fraud. Fraud must be proven, not just assumed. Article 1335: An agreement without a lawful cause or based on an unlawful or false cause has no legal effect. Article 1336: If an agreement is made without a stated cause, but with a lawful one, it remains valid. Article 1337: A cause is considered unlawful if it violates the law or public morals. Article 1338: All agreements made in accordance with the law are binding as laws for the parties involved. These agreements cannot be revoked except by mutual consent or for reasons stipulated by law. Agreements must be executed in good faith. Article 1339: Agreements bind parties not only to the express terms but also to obligations arising from equity, customs, or law. Article 1340: An agreement is binding only between the parties involved and cannot harm third parties, except under the conditions specified in Article 1317, which allows for agreements made for the benefit of third parties under certain circumstances.

B. Research Methodology

The research methodology for this study on illegal acts in business versus criminal law includes:

1. Type of Research

This research employs normative juridical research, which focuses on analyzing and interpreting applicable laws.

2. Data Sources

The sources of data for this research are:

- a. **Primary Legal Sources:** Laws, government regulations, and other regulations related to illegal acts in business and criminal law.
- b. **Secondary Legal Sources:** Books, articles, and journals relevant to the research topic.
- c. **Tertiary Legal Sources:** Internet resources, mass media, and other related sources.

3. Data Collection Techniques

Data collection techniques for this research include:

- a. **Documentary Study:** Analyzing and interpreting primary, secondary, and tertiary legal materials.
- b. **Library Research:** Analyzing and interpreting relevant books, articles, and journals.

4. Data Analysis Techniques

The data analysis techniques employed in this study are:

- a. **Normative Juridical Analysis:** Analyzing and interpreting the laws relevant to illegal acts in business and criminal law.
- b. **Comparative Analysis:** Analyzing and comparing illegal acts in business and criminal law within the context of Indonesian law.

5. Presentation of Results

The results will be presented using:

- a. **Textual Format:** Systematically and structurally presenting research findings.
- b. **Tables and Graphs:** Presenting results using tables and graphs for better understanding.

C. Results and Discussion

The Functional Government Position is governed by Government Regulation (PP-RI) No. 58/2010, which amends PP-RI No. 27/1983 (State Gazette of the Republic of Indonesia, 2010, No. 90, Supplement to State Gazette of the Republic of Indonesia, No. 5145) dated July

28, 2010, regarding the Implementation of the Criminal Procedure Code. This regulation is further amended by PP-RI No. 92/2015 (State Gazette of the Republic of Indonesia, 2015, No. 290, Supplement to State Gazette of the Republic of Indonesia, No. 5772) dated December 8, 2015. Article 2A (1) states: "To be appointed as an Investigator for the Indonesian National Police, as referred to in Article 2 letter a, the candidate must meet the following requirements: letter c reads: to undergo and pass specialized criminal investigation training." Article 2A (2) states: "The Investigator as referred to in paragraph (1) is appointed by the Head of the Indonesian National Police." Article 2A (3) further states: "The appointment authority mentioned in paragraph (2) may be delegated to an Indonesian National Police Officer designated by the Head of the Indonesian National Police."

Law No. 8/1981 (State Gazette of the Republic of Indonesia, 1981, No. 76, Supplement to State Gazette of the Republic of Indonesia, No. 3209), which took effect on December 31, 1983, concerning Criminal Procedure Law, defines in Article 1:

- a. "Investigator refers to a Police Officer or a certain Civil Servant given special authority by law to conduct investigations."
- b. "Investigation refers to a series of actions taken by an Investigator, as regulated by law, to search for and collect evidence that clarifies a criminal act and identifies the suspect."

Article 6 (1) specifies: "An Investigator is: (a) an Officer of the Indonesian National Police." Subsection (2) further states: "The rank requirements of the officer as referred to in paragraph (1) will be further regulated in PP-RI No. 92/2015, Juncto PP-RI No. 58/2010, Juncto PP-RI No. 27/1983."

Article 7 (1) grants Investigators, as defined in Article 6 (1) letter a, the authority to: (g) summon individuals to be heard and examined as suspects or witnesses; (h) bring in experts needed for the investigation; (j) carry out other legal actions responsibly. Article 7 (3) stresses: "In performing their duties, as mentioned in paragraphs (1) and (2), the Investigator must uphold the applicable law."

Law No. 28/1999 (State Gazette of the Republic of Indonesia, 1999, No. 75, Supplement to State Gazette of the Republic of Indonesia, No. 3851) dated May 19, 1999, concerning State Organizers Clean from Corruption, Collusion, and Nepotism, defines in Article 2: State officials include: (a) high-level State officials; (b) Ministers; (c) Governors; (d) Judges; (e) Other State Officials in accordance with prevailing regulations; (f) Other officials with strategic functions in relation to the state organization, as per applicable regulations.

Article 3 outlines the General Principles of State Organization, including: 1. Legal Certainty; 2. Orderly State Administration; 3. Public Interest; 4. Openness; 5. Proportionality; 6. Professionalism; 7. Accountability. Law No. 39/1999 (State Gazette of the Republic of Indonesia, 1999, No. 165, Supplement to State Gazette of the Republic of Indonesia, No. 3886) dated September 23, 1999, concerning Human Rights, in Article 19 (2) reads: "No one shall be imprisoned or detained based on the inability to fulfill an obligation under a debt agreement." Regulation of the Head of the Indonesian National Police (PERKAP-RI) No. 6/2019 dated October 4, 2019, on the Investigation of Criminal Offenses defines in Article 1: "Investigation is a series of actions carried out by an Investigator as per the law to search and collect evidence of a criminal act and identify the suspect." "Investigator refers to an Indonesian National Police Officer authorized by law to conduct investigations." "Investigation includes steps like observation, interviews, surveillance, undercover operations, etc." Article 10 (1) outlines the stages of criminal investigation, which include investigation activities starting from investigation, suspect designation, filing of charges, and others.

The head of the Criminal Investigation Unit of the Indonesian National Police issued Regulation No. 1/2022 on December 27, 2022, about Standard Operating Procedures for

Criminal Investigation. The regulation defines key terms such as: investigation, investigator, reporting, and others. Article 1 also clarifies what constitutes the various investigative activities and authorities of police officials in criminal investigations.

Article 15: Electronic Evidence refers to electronic information, electronic documents, and perforations stored in an electronic device. Article 16: A Letter of Notification of the Commencement of Investigation, abbreviated as SPDP, is a letter informing the head of the prosecutor's office about the commencement of an investigation carried out by the police investigators. Article 17: A Letter of Notification of the Progress of Investigation, abbreviated as SP2HP, is a letter informing the reporter/complainant about the progress of the investigation. Article 18: A Decree on the Revocation of the Termination of Investigation, abbreviated as SKPPP, is a decree issued by a superior investigator to reopen/continue an investigation that had been terminated by the investigator based on a pretrial decision that has acquired permanent legal force. Article 19: A Decree on the Determination of a Suspect is a decree issued by a superior investigator to establish someone as a suspect based on sufficient initial evidence.

Article 20: A Decree on the Revocation of Suspect Status is a decree issued by a superior investigator to revoke someone's status as a suspect for reasons such as insufficient evidence, non-criminal action, expiration of the statute of limitations, ne bis in idem, the suspect's death, or restorative justice. Article 21: Preliminary Examination refers to an examination conducted by an official in charge of supervising the investigation, based on an order from the superior investigator, on the investigator or assistant investigator suspected of committing procedural violations during the investigation. Article 22: A Case Review is an activity where the investigator explains the investigation process to participants in the review, followed by group discussions to gather feedback, input, or corrections, resulting in recommendations for further actions in the investigation process. Article 23: Administrative Registration of Investigation refers to the manual and/or electronic recording of the investigation process activities.

Article 24: The Electronic Investigation Management Application, referred to as e-mp, is a web-based application used by investigators or assistant investigators in the investigation management system, serving as a tool for control and a database of criminal cases. Article 25: Case Resolution, abbreviated as Selra, refers to a case that has completed the investigation process by the investigator or assistant investigator and is considered resolved by the public prosecutor or has been terminated from investigation, with the termination considered as the performance evaluation of the investigator and assistant investigator. Article 26: An Expert is a person who possesses specific knowledge and experience as a basis for providing testimony that can be used as evidence in criminal court proceedings.

Article 2: The scope of regulation in this Police Chief Regulation includes the implementation of:

- a. Letter a: Investigation and Inquiry into Criminal Offenses;
- b. Letter b: Criminal Investigation Administration;
- c. Letter c: Technical Assistance in Criminal Investigation and Inquiry;
- d. Letter d: Electronic Application System for Criminal Investigation Management;
- e. Letter e: Supervision of Criminal Investigations.

Article 3, Paragraph (1): The implementation of criminal investigations as referred to in Article 2, letter a, includes:

- a. Letter a: Crime Scene Processing;
- b. Letter b: Observation;
- c. Letter c: Interviews;
- d. Letter d: Surveillance;
- e. Letter e: Undercover Operations;
- f. Letter f: Undercover Purchases;

- g. Letter g: Controlled Deliveries;
- h. Letter h: Tracking;
- i. Letter i: Document Research and Analysis;
- j. Letter j: Termination of Investigation;
- k. Letter k: Case Review.

Paragraph (2): The implementation of criminal investigations as referred to in Article 2, letter a, includes:

- a. Letter a: Reception of Reports/Complaints;
- b. Letter b: Inquiry;
- c. Letter c: Commencement of Investigation;
- d. Letter d: Coercive Measures;
- e. Letter e: Determination of a Suspect;
- f. Letter f: Case File Preparation;
- g. Letter g: Case File Submission;
- h. Letter h: Transfer of Responsibility for Suspects and Evidence (Stage II);
- i. Letter i: Investigation Termination;
- j. Letter j: Progress Notification of Investigation (SP2HP);
- k. Letter k: Account Blocking;
- l. Letter l: Issuance of Search Warrants;
- m. Letter m: Prevention and/or Interception of Criminals;
- n. Letter n: Pretrial Hearings;
- o. Letter o: Cybercrime or Other Crimes Related to Digital Evidence;
- p. Letter p: Case Review.

Paragraph (3): The implementation of investigation and inquiry as referred to in paragraphs (1) and (2) is carried out according to the Standard Operating Procedures (SOP) outlined in Appendix I, which forms an integral part of this Police Chief Regulation. [Refers to Appendix I: Standard Operating Procedures for Criminal Investigation and Inquiry].

Chapter I: Introduction.

D. Sequence of Investigation and Inquiry Activities is structured as follows:

Chapter I: Introduction Chapter II: Investigation and Inquiry A. Investigation Procedures:

- a. Point 1: Standard Operating Procedure for Crime Scene Processing.
- b. Point 2: Standard Operating Procedure for Observation.
- c. Point 3: Standard Operating Procedure for Interviews.
- d. Point 4: Standard Operating Procedure for Surveillance.
- e. Point 5: Standard Operating Procedure for Undercover Operations.
- f. Point 6: Standard Operating Procedure for Undercover Purchases.
- g. Point 7: Standard Operating Procedure for Controlled Deliveries.
- h. Point 8: Standard Operating Procedure for Tracking.
- i. Point 9: Standard Operating Procedure for Document Research and Analysis.
- j. Point 10: Standard Operating Procedure for Investigation Termination.
- k. Point 11: Standard Operating Procedure for Case Review.

B. Inquiry Procedures:

- a. Point 1: Inquiry in the Investigation Stage.
- b. Point 2: Commencement of Investigation.
- c. Point 3: Coercive Measures.

- d. Point 4: Determination of Suspect.
- e. Point 5: Case File Preparation.
- f. Point 6: Submission of Case File (BAP).
- g. Point 7: Transfer of Responsibility for Suspects and Evidence (Stage II).
- h. Point 8: Termination of Investigation.
- i. Point 9: Case Review.
- j. Point 10: Notification of Investigation Progress (SP2HP).
- k. Point 11: Account Blocking.
- l. Point 12: Issuance of Search Warrants.
- m. Point 13: Prevention and/or Interception of Criminals.
- n. Point 14: Pretrial Hearings.
- o. Point 15: Processing Cybercrime or Other Crimes Related to Digital Evidence.

Point 9: Standard Operating Procedure for Document Research and Analysis

Letter a: The purpose of document research and analysis is to guide investigators in searching for, gathering, selecting, and identifying documents related to a criminal event under investigation to obtain documentary evidence.

Letter b: Preparation

1. Administration:
 - a. Report of Information or Police Report;
 - b. Assignment Letter;
 - c. Investigation Letter;
 - d. Document Request Letter;
 - e. Acknowledgment of Receipt Letter.
2. Personnel:
 - a. Investigator or Detective;
 - b. Capable of examining and analyzing documents;
 - c. Able to coordinate with ministries/agencies issuing permits or the parties responsible for the documents;
 - d. Knowledgeable about procedures for issuing ordinary letters and authentic deeds;
 - e. Skilled in searching, gathering, selecting, and identifying documents relevant to an ongoing investigation;
 - f. Has connections with academics and practitioners in the field of issuing regular letters and/or authentic deeds.
3. Equipment:
 - a. A comfortable and secure room;
 - b. Computer and specialized software;
 - c. Printer and document scanner;
 - d. Communication equipment and internet access;
 - e. Magnifying glass;
 - f. Other supportive equipment.
4. Methods:
 - a. Documents to be received by the investigator must first be verified for their origin (study the document);
 - b. Provide comparison documents to verify the authenticity of documents according to regulations (compare documents);

- c. Invite/clarify with officials who issue the permit or letter to support document research and analysis activities (opinion of the issuing official).

Implementation of Research and Document Analysis

Document Research and Analysis refers to the activities conducted by investigators to find, collect, select, and establish documents related to an event under investigation for analysis as evidence in the criminal investigation process. The procedure may include the following steps:

- a. Collecting documents suspected to be related to a criminal offense from the crime scene or other locations where the documents were found;
- b. Inventorying documents that are related to the crime;
- c. Verifying the validity of the documents (e.g., checking for falsification in parts of the documents);
- d. Creating a receipt acknowledgment for the documents;
- e. Analyzing when, where, and by whom the documents were created or issued;
- f. Analyzing the documents for use in the proof process;
- g. Examining and analyzing the content of the documents alongside the reported criminal event;
- h. Investigators must be capable of distinguishing between ordinary letters and authentic deeds;
- i. Inspecting and analyzing the type of paper based on its properties, form, and/or the quality of the seal paper used as the document's foundation;
- j. Coordinating with the Forensic Laboratory regarding the formal and material requirements according to the relevant regulations, including: 1) signatures, handwriting, document materials, 2) printed products (stamps, labels, seals, typed and printed writing).

Conclusion of Document Research and Analysis

Evaluation: After conducting research and document analysis, investigators evaluate the activities to determine the next investigative steps and refine the process for future use. The administration of document research and analysis involves drafting a written report containing a systematic and factual summary of all research activities, along with recommendations for further action to the investigator's superior for a case review. The report includes:

- a. Time and location of the document research and analysis;
- b. Identity of the research and analysis personnel;
- c. Identity of the target;
- d. Information about the lifestyle of the target;
- e. Results of compulsory efforts;
- f. Documentation of the research and analysis activities in the form of photos, videos, and audio.

Points to Consider

Documents to be researched and analyzed must be original and/or copies of the documents

- a. Investigators must handle the evidence carefully and diligently without altering the document's authenticity;

- b. Evidence documents should be wrapped, bound, sealed, and labeled before being sent to the forensic laboratory;
- c. Documents that are unrelated to the reported event must be returned to the rightful owner with an official report.

Article 5: Interests of the government and the public. Article 6: Interests of the current generation and the interests of future generations. Article 7: Interests of humans and their ecosystems. Article 8: Interests of men and women.

Subsection c: The principle of "neutrality" refers to a principle that obliges government bodies and/or officials to make decisions and/or take actions by considering the interests of all parties involved as a whole and without discrimination. Subsection d: The principle of "accuracy" means that any decision and/or action must be based on complete information and documents that support the legality of the decision and/or action, ensuring that the decision and/or action is carefully prepared before it is enacted.

Subsection e: The principle of "no abuse of power" means that every government body and/or official is prohibited from using their authority for personal or other interests, and must act within the limits of the authority granted to them without exceeding, misusing, or mixing their powers. Subsection f: The principle of "transparency" means that the government must provide the public with access to truthful, honest, and non-discriminatory information while still protecting personal, group, and state secrets.

Subsection g: The principle of "public interest" refers to prioritizing the well-being and benefit of the public in an aspirational, accommodative, selective, and non-discriminatory manner. Subsection h: The principle of "quality service" means providing timely service with clear procedures, costs, and in accordance with service standards and legal regulations.

Paragraph (2): "Other general principles outside of AUPB" refers to general principles of good governance derived from decisions of district courts that are not appealed, high court decisions that are not cassated, or decisions of the Supreme Court.

Criminal Law Definition of a Crime

The term "crime" comes from the legal term "Strafbaar Feit." While this term is found in the Dutch Penal Code (WvS), there is no official explanation of what exactly "Strafbaar Feit" means. In Indonesian legal terminology, "Tindak Pidana" is one of the translated terms for "Strafbaar Feit." In Dutch, "Strafbaar" means punishable, and "Feit" means part of a reality. So, "Strafbaar Feit" literally means a part of a reality that can be punished. However, it is important to note that it is humans, not realities, who are subject to punishment.

Several legal scholars have provided definitions of "Tindak Pidana" or "Strafbaar Feit," including Van Hammel, who described it as "an attack or threat against the rights of others." Tien S. Hulukati further elaborated that a crime is an act prohibited by law with criminal sanctions that may be imposed by the state on those who commit such acts. Pompe, in his book "Tien, S.H.," defined it as "a violation of norms (disturbance of legal order) either intentionally or unintentionally committed by an individual, where punishment is necessary for maintaining legal order and protecting legal interests."

Simons, in "Leeboek van het Nederlandse," defined it as "an act that is punishable by law, contrary to the law (unlawful), committed with fault by a person who is capable of being held responsible." For "Strafbaar Feit" to be considered a crime, it must involve a prohibited or required act by law that can be penalized. According to R. Tresna, "Tindak Pidana" (Strafbaar Feit) refers to "an act or series of acts that contradict the law, accompanied by legal actions." Moeljatno defines it as "an act prohibited by law and punishable by law."

Thus, for an act to be classified as "Tindak Pidana," it must meet the criteria established by law. If it fails to meet one of these criteria, it is not considered a criminal act.

Indonesian Penal Code - Law No. 1 of 2023 (Effective from January 1, 2026)
Regarding Crimes:

- a. A "crime" is an act of doing or not doing something that is prohibited by law and carries criminal sanctions.
- b. To be classified as a crime, the act must not only be prohibited and subject to punishment by law, but must also be unlawful or contrary to public consciousness.
- c. Every crime is considered unlawful, except when there are justifying reasons.

Fraud Offense

The definition of fraud (known as "Bedrog" in Dutch) is described in Title XXV of Book II of the Criminal Code, specifically Article 378, which addresses the crime of "Oplichting" (fraud). Fraud, in a broader sense, refers to lies made for personal gain, and its legal implications vary across different legal systems. Fraud involves manipulating information for personal benefit, often by creating false impressions. According to Article 378 of the Indonesian Penal Code, fraud occurs when someone unlawfully induces another person to hand over goods, incur a debt, or cancel a debt by using false identities, positions, tricks, or lies. The punishment for fraud can be up to 4 years in prison.

Embezzlement Offense

The crime of embezzlement is governed under Articles 372 to 377 of the Indonesian Penal Code. The basic definition states that anyone who unlawfully possesses someone else's property, even partially, without it being a criminal act (civil relationship), is guilty of embezzlement and can be punished with up to 4 years in prison. Lamintang defines embezzlement as the abuse of trust by someone who was given the authority over the property for lawful purposes but uses it for personal gain unlawfully.

According to Tongat, the crime of embezzlement consists of several elements, including:

- a. The offender claims the property as their own.
- b. The property is owned, fully or partially, by another person.
- c. The property is in their possession due to lawful relationships (e.g., renting, borrowing).
- d. The possession is unlawful (PMH).
- e. The offender acts intentionally.

Criminal Responsibility is a legal concept, also known as "Criminal Responsibility," which pertains to the imposition of penalties on offenders with the aim of determining whether a defendant or suspect can be held accountable for a criminal act or not. Criminal responsibility refers to the continued attribution of objective blame for a criminal act based on applicable legal provisions. Subjectively, it involves holding the individual accountable for their actions, provided they meet the conditions set out in the Criminal Law for being penalized for their actions. For criminal responsibility to exist and for a penalty to be imposed, there must be an element of fault, which can be either intentional or negligent.

In Dutch, the term "criminal responsibility" has equivalents such as Aansprakelijk, Verantwoordelijk, and Toerekenbaar. The person who is Aansprakelijk or Verantwoordelijk is held accountable, while Toerekenbaar does not refer to the person but rather to the act for which responsibility is attributed to the individual. In both Civil Law and Common Law countries, criminal responsibility is generally formulated in a negative manner. Civil Law, for instance, outlines situations that could prevent the perpetrator from being held responsible. The negative

formulation of criminal responsibility can be seen in various sections of the Criminal Code, such as Articles 44, 48, 49, 50, and 51.

All these provisions outline circumstances that may exclude the perpetrator from criminal liability. This negative formulation is closely tied to the repressive function of criminal law. In this sense, being held criminally responsible means being subjected to punishment. Thus, the concept of criminal responsibility involves the necessary conditions for imposing a penalty on an individual who has committed a criminal act. Criminal responsibility means the accountability of an individual for the crime they have committed. In other words, an individual is held responsible for the criminal act they performed, and criminal responsibility arises when a criminal act has been committed by someone. Essentially, criminal responsibility is a mechanism established by criminal law to respond to violations of agreements that reject certain actions.

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