

Acts Against Civil Law Versus Acts Against Criminal Law Versus Rechtsvinding HogeRaad / Supreme Judge

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Abstract

An unlawful act in Dutch is called "onrechtmatige daad" and in English, it is called "tort" which means "wrong". The word "tort" developed to mean civil "wrong" that does not result from "default". So it is similar to the meaning of "act against the law" which is called "onrechtmatigedaad" in the Dutch legal system. The word "tort" comes from the Latin word "torquere" or "tortus" in French, just as the word "wrong" comes from the French word "wrung" which means "mistake or loss" (injury). The principle and aim of establishing a legal system for "unlawful acts" are to be able to achieve what is said in the Latin proverb, namely *Juris praecepta sunt lux, honeste vivere, alterum non laedere, suum cuique tribuere* (the motto of the law is to live honestly, not harming people). others, and give others their rights). Onrechtmatigedaad (acts against the law) Article 1365 of the Civil Code or *Burgerlijk Wetboek-Nederland* Article 1401: "Elke onrechtmatigedaad, waardoor aan een ander schade wordt toegebracht, stelt dengene door wiens schuld die schade veroorzaakt is in de verplichting om dezelve te vergoeden". Soebekti and Tjitrosudibio translate it: "Every act against the law, which causes loss to another person, requires the person whose fault it was to cause the loss, to compensate for the loss." Later, after January 31, 1919, one element was added to "Unlawful Acts", namely, the prohibition of violating other people's rights and contradicting morality and propriety in living in society, nation, state vs human rights.

Keywords. Violates the Law, Must Be Punished, Must Compensate.

A. Introduction

Unlawful Actions (PMH), both civil (OnrechtMatigeDaad) and criminal (WederrechTelijkeDaad) are two important concepts in legal discourse (Shidarta, 2010: 65-84). In general, especially if you follow the mainstream of legal thought in Indonesia, these two concepts experience divergence in the direction of their interpretation. Civil Unlawful Acts (PMH) lead to a broad (extensive) meaning, namely by interpreting the law as not being the same as the law (wet). So, OnrechtMatig Acts Against the Law (PMH) is differentiated from the meaning of OnwetMatig Acts Against the Law (PMUU). The historical momentum of this expansion occurred after the Hoge Raad der Nederlanden decision on January 31, 1919, namely in the case of *Lindenbaum versus Cohen*. This is different from Unlawful Acts (PMH) in the criminal field which leads to a narrowed (restrictive) meaning, namely more towards the formal nature of Unlawful Acts (PMH) (Formele WederrechTelijkheid). What is called law generally refers to the provisions of positive

norms in the criminal legislation system that already exist, are written, and are in effect before the act is committed. Violation of this requirement is a serious violation of the principle of legality (Article 1 of the Criminal Code).

Unlawful Acts (PMH) Article 1365 of the Civil Code (Indonesia) historically has the same meaning as Article 1401 Burgerlijk Wetboek (BW-Netherlands) According to L.C. Hoffmann, from the words of Article 1401 Burgerlijk Wetboek (BW-Netherlands) there are four elements, namely: (1) someone must do the action; (2) the act must be unlawful; (3) the act must cause harm to other people; (4) the act was due to a mistake that could be blamed on him. Mariam Darus Badrul Zaman, Article 1401 Burgerlijk Wetboek (BW-Netherlands) details Unlawful Acts (PMH) into five elements: (1) there must be an act (both positive and negative); (2) the act must be unlawful; (3) there is a loss; (4) there is a causal relationship between the unlawful act and the loss; (5) there is an error (Agustina, 2003: 49-50).

Similarities between Civil Law Unlawful Acts (PMH) and Common Law/Tort: a. This act is equally prohibited or not accepted by society because it can cause harm to other people; b. These actions both violate other people's rights (e.g. trespass, negligence), violate statutory obligations, and are contrary to decency or propriety in social interactions (e.g. nuisance, conspiracy); c. Both do not originate from an agreement between the parties, but are actions that can cause harm to another party and the injured party has the right to demand compensation; d. In some cases, they also include criminal acts, such as insults, abuse of other people, and negligence that causes death.

The difference between Civil Law Unlawful Acts (PMH) and Common Law/Tort. Civil Law System. It is broader because it is formulated and includes violations of other people's subjective rights violates the perpetrator's legal obligations is contrary to morality or is contrary to propriety in social interactions. It also includes limited forms, in the sense that they have been recognized by the court, which generally includes negligence, defamation, nuisance, injurious falsehood, injurious to domestic relations, injurious to economic and contractual relations, deceit, and malicious prosecution. Common Law/Tort System. There is no formulation in the law regarding torts. The formulation is carried out by legal experts, including through court decisions. In the Civil Code, there is a formulation of understanding in a broad interpretation regarding Unlawful Actions (PMH).

Similarities between Civil Law and Common Law/Tort elements. The element of error (schuld) can both be deliberate (intention) or negligence (carelessness). The element of error (schuld) consists of two meanings, (a) Objective, a measure of behavior determined according to general standards; people in general will act the same way as far as possible in the same circumstances to prevent a loss from occurring; (b) Subjectively, regarding the perpetrator himself, does he have the ability to overcome any losses that may arise? This will determine whether he is responsible for the losses resulting from his actions.

The difference. Civil Law Mistakes. The Civil Law System Article 1365 BW still requires an element of error to be proven which is also regulated in Article 1865 BW. Common Law/Tort System. A person can be held responsible for losses that arise without needing to prove that there is an element of fault, as in the concept of strict liability. So there is no need to pay attention to whether someone acted intentionally or negligently. This concept is used in Indonesia for environmental pollution cases.

The similarity of elements of Civil Law Losses with Common Law/Tort. The amount of real loss is used as a benchmark for the claim for compensation that will be submitted by the plaintiff (modification of Shidarta from Agustina, 2003: 169). The amount of loss is not determined by the parties themselves but is determined by the judge or court according to their respective circumstances. The aim of the compensation given is basically to restore as much as possible the situation as it was before the unlawful act or tort occurred.

The difference. Civil Law System. Damages must be proven by the plaintiff. Losses can be in the form of material or ideal losses. Common Law/Tort System. In certain torts, for example, in trespass to land and libel, this element of loss does not need to be proven. Losses can be in the form of compensatory damages, nominal damages, and exemplary damages.

The similarity between elements of Civil Law Causality and Common Law/Tort. Actions and consequences (losses) must be directly related or balanced and can be calculated or reasonably estimated.

The difference. Civil Law System. This element of bad intent must be included in claims for insult as regulated in Articles 1376 and 1377 paragraph (2) BW. Common Law/Tort System. The element of bad intent (malice) is not considered, but in certain torts, this needs to be proven for the lawsuit to be successful, such as in deceit, malicious prosecution of nuisance, conspiracy, injurious falsehood, and defamation.

B. Research Methods

Legal research is a scientific activity based on certain methods, systematics, and thinking, which aims to study one or several particular legal phenomena by analyzing them.

1. Method of Collecting Data

Data collection was carried out through library study and document study activities. The literature in question consists of legislation, books, or other literature in the legal field. Meanwhile, the document in question is written law information that is not published generally but may be known by certain parties, such as legal teachers, legal researchers, and legal practitioners, in the context of legal studies, legal development, and development, as well as legal practice.

2. Data analysis

Legal materials (data) resulting from processing are analyzed qualitatively. Qualitative legal research methods are a systematic effort in legal research. This includes rules and techniques to satisfy researchers' curiosity about a juridical phenomenon or ways to find the truth in obtaining knowledge.

C. Discussion

1. Onwer Matige Daad

- a. Art 1401 Burgerlijk Wetboek(BW-Dutch 1827) Staatsblaad 23 Tahun 1847. OnwetMatigeDaad(Actions Against the Law) te vergoeden". Versus Article 1365 Burgerlijk Wetboek (BW-Dutch Indies) Koninklijk Besuit Dated 10 April 1838. Staatblad 1838 Number 12. Effective 01 October 1838. Announcement of the Governor General of the Dutch East Indies 03 December 1847. Effective 01 May 1848. Translated by Soebekti, Tjitrosudibio: OnwetMatigeDaad (Acts Against the Law) "Every act against the law, which brings loss to another person, requires the person whose fault it was to cause the loss, to compensate for the loss."
- b. Elements of OnwetMatigeDaad (Acts Against the Law):
 - a. There are actions (active or passive);
 - b. The act is against the law (1. the act violates the law; 2. The act violates other people's rights (personal rights, property rights, the right to freedom, the right to honor, the right to a good name) which are protected by law; 3. The act is contrary to the perpetrator's legal obligations; 4. Actions that are contrary to morality (geode zeden); 5. Actions that are contrary to good attitudes in society by paying attention to the interests of others (principle of decency); There is an element of negligence; 3. There is no justification (Article 48: over-macht/forced) MvT Criminal Code: "Any force, any coercion or pressure that cannot be restrained (Vis Asaluta) can be caused by human power or nature. The compulsion cannot be restrained. Relative Compulsion (Vis Compulsive) The compulsion can be restrained but the person under the compulsion

- cannot be expected to be able to resist. Criminal Code Article 49 paragraph (1) good-weer (emergency defense). Article 50 (statutory orders) and Article 51 paragraph (1) position orders are valid. There is no reason for forgiveness (Article 44 paragraph (1) not being able to take responsibility. Article 49 paragraph (2) defense of exceeding the limits (noodles-excess) Article 51 paragraph (2) carrying out in good faith one's position is invalid). Eradication of Mistakes from outside the Law (1. Rights of parents over their children or rights of teachers over their students; 2. Rights to positions; 3. Having permission from the victim; 4. Representing other people; 5. There is no element of material unlawfulness; 6. There are no errors); d. There are Victim Losses (1. Actual or concrete or material loss; 2. Immaterial or Idiil: Fear or pain or Loss of the Pleasure of Life; 3. Future loss (potential loss) rehabilitation or recovery).
- c. Three Types of OnwetMatigeDaad (Acts Against the Law): 1. Acts against the law on purpose; 2. Unlawful acts without fault (without intentional or negligent elements); 3. Acts against the law due to negligence.
 - d. Definition of OnwetMatigeDaad (Acts Against the Law): a. Failure to fulfill an obligation other than a contractual obligation or quasi-contractual obligation which gives rise to the right to request compensation; b. An act or inaction that results in harm to another person without previously having a legal relationship in which the act or inaction is either an ordinary act or could also be an accident; c. Failure to fulfill an obligation imposed by law, which obligation is directed towards everyone in general, and for not fulfilling this obligation, compensation can be requested; d. A civil wrong for which damages can be claimed which do not constitute a breach of contract breach of trust obligation or breach of other equity obligations; e. A loss that is not caused by a breach of contract or, more precisely, is an act that harms the rights of another person created by law that does not arise from the contractual relationship; f. An act or inaction that is contrary to the law violates another person's rights created by law and therefore compensation can be demanded by the injured party; g. Torts are not a contract just as chemistry is not a matter of physics or mathematics.
 - e. Arrest Hoge Raad-Netherlands January 5, 1905. Onwet Matige Daad (Action Against the Law) Singer Naaimachine Case. A trader sells a "Singer-brand sewing machine. This machine is not a Singer product. The word "Singer" is written in large letters, so that at first glance you will see just the word "Singer". The trader was sued by the court. The trader's actions are not against the law."
 - f. Arrest Hoge Raad-Dutch Date 10 June 1910. Onwet Matige Daad (Acts Against the Law) Case De Jutphense Juffrouw. Jutphen City. Winter: A lady and her neighbor live in the same apartment in the city. Nona lives in the upper part, while the lower part of the apartment is occupied by her neighbors. One time the water pipe in the upper apartment broke and the water flowed into the lower part of the neighbor's apartment. The flow of water that broke from the pipe was located in the lady's apartment and only she could stop the flow of water, namely by not turning on the bathroom tap, but the lady didn't care about this until her neighbor asked the lady not to turn on the tap. the water and still he ignored it until the flow of water was wet and inundated his neighbor's residence. Due to this, her neighbor sued the lady at the Zutphen Court for Unlawful Actions. The lawsuit reached the Hoge Raad (Supreme Court of the Netherlands) and the neighbor's lawsuit was not accepted because the lady's actions did not violate the law (wet) because there were no provisions that prohibited the lady from using the bathroom tap.
 - g. Arrest Hoge Raad-Dutch 14 February 1916. OnrechtMatigeDaad. Material Unlawful Acts in Negative Function. Case Water en Melk. Art 344 Vol Verord Juncto Deelneming Delicten. It is prohibited to sell, melt, or have stock for dispensing, milk with the name whole milk (volle melk) if something has been added or removed. Kantonrechter-Amsterdam Court: Sentenced a milk producer and his employees (orderlies) who distributed milk mixed with water to customers. The Court of Appeal of the Rechtbank-

Amsterdam Arrondissements) overturned the decision of the court of first instance by convicting the employer of the crime of ordering (doen-pleger) to distribute milk mixed with water, and acquitting the employee (laborer) from the crime, because he was deemed not to have known about the existence of mixture of water in milk. The employer via the Prosecutor filed an appeal. Dutch Supreme Court (Hoge-Raad): Released and released the employee (servant). Art 344 Vol Verord Amsterdam: does not require the existence of an "error" element. Since the Hoge-Raad Jurisprudence, the Principle of Geen Straf Zonder Schuld was born. there is no crime without fault or the Principle of Afwezigheid Van Alle Schuld (AVAS): Forgiving Reasons. Reasons for erasing someone's mistakes that arise from outside the law (mens-rea). Principle of Afwezigheid Van Alle Wederrech telijkheid. there is no crime without material unlawful acts (AVMW): Justifying Reasons. Not reprehensible (article 48 and article 49 paragraph (2) and article 51 paragraph (2) of the Criminal Code. His actions were correct (article 49 paragraph (1) and Article 50 and Article 51 paragraph (1) of the Criminal Code. Not capable of responsibility (article 44 paragraph (1) Criminal Code).

2. Onrech Matige Daad

- a. Arrest Hoge Raad-Dutch January 31, 1919. OnrechtMatigeDaad. Unlawful Actions (PMH) Cohen Printing Case vs Lindenbaum Printing Case. The formulation of PMH elements increases "Active or passive or negligent, contrary to the public interest and contrary to the rights of other people and contrary to the principles of propriety or the principles of propriety or the principles of decency in society." Lindenbaum's printing company grew rapidly compared to Cohen's printing company. Furthermore, Cohen bribed Lindenbaum's employees to provide price lists and names of Lindenbaum's customers. Finally, based on this data, Cohen offered Lindenbaum consumers lower prices than their competitors' prices. As a result of Cohen's actions, Lindenbaum was harmed and sued Cohen at the Amsterdam Court on charges of Unlawful Actions (PMH) Art 1401 Burgerlijk Wetboek (BW-Netherlands) Vs Article 1365 BW-Netherlands Indies. At the first level, the judge granted Plaintiff Lindenbaum's lawsuit, but at the appeal level, Plaintiff Lindenbaum was defeated by the appeal judge's decision, and finally, Plaintiff Lindenbaum submitted a cassation lawsuit to the Hoge Raad (Dutch Supreme Court) and the Hoge Raad (Dutch Supreme Court) cassation decision granted the Plaintiff's lawsuit. Lindenbaum: Legal Rules: 1. Actions that are contrary to the legal obligations of the perpetrator; 2. Actions that violate the subjective rights of others; 3. Actions that are contrary to the rules of general politeness; 4. Actions that violate society's sense of propriety. Legal Considerations: "Every act (active) or negligence (passive) which causes a violation of the subjective rights of another person or is contrary to the legal obligations of the perpetrator or is contrary to good morals and/or is contrary to the sense of propriety that exists in society is an Unlawful Act".
- b. Jurisprudence 1939. OnrechtMatigeDaad. Material Unlawful Acts (PMH) in Negative Function. Bournier's Case. Doctor Bournier performed an abortion on a 14-year-old female teenager who was the victim of several rapes by several perpetrators. Due to this, Doctor Bournier was brought to criminal justice on charges of violating Section 58 of the Offense Act 1861. The council (legal advisor) argued that the defendant's actions were based on "therapeutic" purposes. Meanwhile, the Attorney (public prosecutor) argued that the defendant's actions endangered other people. Next, the judge put aside these two arguments and took his legal consideration that abortion is legal if the consequences of continuing the pregnancy will be physically and mentally detrimental to the woman. Abortus Provocatus Therapeutics: a legal reason for medical indications that concludes that the pregnancy will worsen a person's physical and mental health.

3. Onwet Matige Daad Ruler

- a. Arrest Hoge Raad-Dutch 29 May 1846. OnwetMatigeDaad (Acts Against the Law) Ruler. Vrouwe Elske Versus Mayor Leeuwarden. The owner of the ship Vrouwe Elske, while in public waters in Leeuwarden Township, hit a pole standing below sea level, causing the ship Vrouwe Elske to leak and be damaged. The Municipality of Leeuwarden is considered negligent in properly managing the waters around the Port Marge Municipal Pier. Due to this, the owner of the ship Vrouwe Elske filed a lawsuit against the Municipality of Leeuwarden. Hoge Raad thinks that the Leeuwarden Municipal Authority as the government cannot be sued for civil liability, because the Leeuwarden Municipal Authority as the government is not in the same position as the private sector.
- b. Arrest Hoge Raad-Dutch 21 April 1898. OnwetMatigeDaad (Acts Against the Law) Ruler. Rhedense Koe. Mayor Rheden as Chief of Municipal Police ordered Veldwachters to shoot dead the farmer's buffalo which was rampaging in his town. The owner of the buffalo is given money for the proceeds from the sale of the animal's skin: Freies Ermeisen Doctrine (Ruler's Discretion or Authority to Act in a Free State) Mayor Rheden Koe as Head of the Municipal Police can represent the public interest who has the authority in the public interest to carry out early prevention of damage caused by buffalo Farmers' property went berserk. These legal events fall within the realm of public law, not the realm of civil law. This act did not contain abuse de pouvoir (arbitrary).
- c. Arrest Hoge Raad-Dutch 10 May 1901. OnwetMatigeDaad (Acts Against the Law) Ruler. Mayor of Amsterdam. The municipality of Amsterdam ordered homeowners to repair the walls of their houses. The homeowner ignored orders. Then the Amsterdam-Netherlands Municipality took action to demolish the walls of the house.

4. Onrecht Matige Daad Ruler

- a. Arrest Hoge Raad-Dutch 20 November 1924. OnrechtMatige Overheids Daad (PMH-Ruler) Detournemen du Puvor Doctrine. Osterman Butter Exporters. The Osterman businessman who exports Butter goods will export his Butter goods and has handed them over to the Amsterdam Customs Officer (douana employee) for inspection, and the Amsterdam Customs Officer (douana employee) refused by not responding well to the request, which in the end the goods The butter goods were exported late, which resulted in losses for Osterman, the exporter of the butter goods. The Osterman businessman who exports butter goods filed an Unlawful Act lawsuit against the Amsterdam-Netherlands Customs Agency (douana authority). Hoge Raad: that the actions of the douana ruler are contrary to his legal obligations, by not acting (passively), this constitutes onrechtmatigdaad (act against the law) because it conflicts with the rights of other people.
- b. Arrest Hoge Raad-Dutch 20 December 1940. Onrecht Matige Overheids Daad (PMH-Ruler) Veehouder (Cowboy) Cattle Breeder. Cattle entrepreneurs or cattle breeders own cows. At that time some laws prohibited the act. The local authority or government orders the Registration Officer to sell the cows belonging to Veehouder (Cowboy) Cattle Entrepreneurs or Cattle Breeders, and the proceeds from the sale of these cows amount to 100 guilders. However, according to the Veehouder (Cowboy) Cattle Entrepreneur or Cattle Breeder's opinion, if the Registration Officer carries out sales properly and correctly, then the sales results will be more than that value because the cows are "Stambock Vokvee or Quality Cows". The owner of the cows filed a lawsuit against the state for the actions of the government or authority. Hoge Raad: "The ruler's action is onrecht matilda (an unlawful act) because he sold other people's cows at a low price and this act is an onrecht matilda (an unlawful act) because he did not pay attention to the legal interests of the owner of the cows ”.

- c. Arrest Hoge Raad-Dutch 09 January 1942. OnrechtMatige OverheidsDaad (PMH-Ruler) Wegdek Motor Rider. A motorcyclist had an accident caused by a former excavation hole on the Friese Township highway. Due to this accident, Wegdek, a motorcyclist, sued the government to compensate the plaintiff for the losses incurred. Hoge Raad that the actions of the Friese Municipal authorities who do not maintain and properly maintain the condition of the highways in their area, which is a legal obligation for them, and which cause losses to users of these roads, then the actions of the Friese Municipal authorities are onrecht matilda (acts against the law).
- d. Arrest Hoge Raad-Dutch 24 June 1949. Onrecht Matige Overheids Daad (PMH-Ruler) Groningen. The North Eastern Province region borders Lower Saxony (German State). The Dutch government claims Kwelder Gronden in the Groningen Province region in the North East of the Netherlands near the border with Lower Saxony (German State). This was done based on the Algemene Voderings Besluit of 1940. The government demanded to eliminate conflict between the government and land owners. Hoge Raad thinks that the government's actions are onrecht matilda (acts against the law).
- e. Jurisprudence March 20, 1977. OnrechtMatigeDaad. Material Unlawful Acts (PMH) in Negative Function. Violators of the FormieleWederrech Telijkheid Principles. Actions are not reprehensible, the conditions are: no personal gain and no loss to the state and prioritizing the fulfillment of the public interest (principle of benefit) there is a forgiving or justifiable reason. Cassation Decision Number 81 K/Kr/1973. On behalf of the TIPIKOR Defendant Ir. Otjo Dana Atmadja. The Defendant's actions: 1. The Defendant has a real goal that benefits the public interest which the legislator wants to protect; 2. The defendant protects a legal interest that is higher than the legal interest aimed at by the formulation of the criminal act he violated; 3. The defendant has greater value for the interests of society than for his interests.
- f. Jurisprudence 19 November 1977. OnrechtMatigeDaad. Material Unlawful Acts (PMH) in Positive Function. Banda Aceh District Court Decision. Juncto Cassation Decision Number 93 K/ Kr. Sentencing the male defendant and the female defendant (customary crime of adultery). Emergency Law Number 1/Drt/1951. Article 5 paragraph (3) letter b.
- g. Jurisprudence 08 October 1979. OnrechtMatigeDaad. Material Unlawful Acts (PMH) in Positive Function. Violators of the Materiale Wederrech Telijkheid Principle. Violation of the principle of decency or the principle of appropriateness or disgraceful actions in society. Emergency Law Number 1/Drt/1951. Article 5 paragraph (3) letter b: 1. For an act that is considered a customary criminal act, but which is not equivalent to the act regulated in the Criminal Code, the judge can impose a sentence with a maximum imprisonment of 3 (three) months and/or fine 2. If the act (which has no equivalent to the act regulated in the Criminal Code) has customary sanctions/punishments which are higher than those specified (higher than just a sentence of 3 months in prison and/or a fine of IDR 500) then the judge (court) can sentence the perpetrator of a customary crime with a maximum threat of 10 (ten) years in prison. 3. For an act that is considered a customary crime, but which is equivalent to an act regulated in the Criminal Code, the perpetrator of a customary crime can be subject to a punishment similar to the provisions in the Criminal Code. Balinese Customary Criminal Juncto: "Sanggraha Logic". Article 359 of the Adi Agama Book: 1. There is a love relationship (dating) between a man and a woman who are not yet married; 2. Between a man and a woman who are making love, there is a sexual relationship based on mutual consent; 3. The man has promised to marry the woman; 4. Sexual intercourse has caused the woman to become pregnant; 5. The man breaks his promise to marry the woman. Gianjar District Court Decision. Bali. Juncto MA-RI Decision Number 195 K/Kr. October 8, 1979. Sentenced men who violated the customary crime of "Logika Sanggraha". Emergency Law Number 1/Drt/1951. Article 5 paragraph (3) letter b.

- h. Post 16 August 1999. OnrechtMatigeDaad. Material Unlawful Acts (PMH) in Negative and Positive Functions. Law of the Republic of Indonesia Number 20 of 2001. Date 21 November 2001 (State Gazette of the Republic of Indonesia of 2001 Number 140. Supplement to State Gazette of the Republic of Indonesia Number 4150) Amendment to Law of the Republic of Indonesia Number 31 of 1999. Date 16 August 1999 (State Gazette of the Republic of Indonesia 1999 Number 140. Supplement to the State Gazette of the Republic of Indonesia Number 3874) concerning the Eradication of Corruption Crimes (TIPIKOR). Explanation of Article 2 paragraph (1).
- i. Post July 25, 2006. OnrechtMatigeDaad. Material Unlawful Acts (PMH) in Negative Function. Decision of the Constitutional Court of the Republic of Indonesia. Case Number 003/PUU-IV/2006. Regarding Judicial Review and Cancellation of Explanation of Article 2 paragraph (1) UU-TIPIKOR.
- j. Post 28 February 2007. OnrechtMatigeDaad. Material Unlawful Acts (PMH) in Negative and Positive Functions. 1. TIPIKOR Cassation Decision Number 103 K/Pid/2007. February 28, 2007. 2. Decision of the Central Jakarta District Court. TIPIKOR Number 16/Pid.B/ TPK/2005.PN.Jkt.Pst. Juncto High Court Decision-Jakarta. TIPIKOR Appeal Number 089/Pid/TKP/2006/PT. DKI. Juncto TIPIKOR Cassation Decision Number 2608 K/Pid/ 2006. In 2007, Defendant Achmad Rojadi, S.Sos. 3. Padang District Court Decision. TIPIKOR Number 16/Pid.Sus/2014/PN. Pdg. Juncto Padang High Court Decision. TIPIKOR Appeal Number 17/ TPK/2014/ PT.Pdg. Juncto TIPIKOR Cassation Decision Number 837 K/Pid.Sus/2015. Juncto TIPIKOR Cassation Decision Number 1812 K/Pid. Sus/2013. 4. Semarang District Court Decision. TIPIKOR Number 54/Pid.Sus/TPK/2014/PN.Smg. Juncto Semarang High Court Decision. TIPIKOR Appeal Number 42/Pid.Sus/TPK/2014/PT.Smg. Juncto TIPIKOR Cassation Decision Number 1017 K/Pid.Sus/2015. The defendant Sudjarwo bin Sardju. 5. Banda Aceh District Court Decision. TIPIKOR Number 26/Pid.Sus/TPK/2013/PN.BNA. Juncto Cassation Decision. TIPIKOR Number 397 K/Pid.Sus/2014. The defendant Imanuddin bin Tulus. 6. TIPIKOR Cassation Decision Number 417 K/ Pid.Sus/2014. Defendant Hotasi Nababan. President Director of Merpati Nusantara Airlines (Persero) Juncto RI Supreme Court Decree Number 142/KMA/SK/IX/2011. September 19, 2011, concerning Guidelines for Implementing the Room System. Juncto RI Supreme Court Decree Number 213/KMA/SK/XII/2014. December 30, 2014. Juncto SEMA-RI Number 10/BUA.6/ HS/SP/IX/2012. 12 September 2012. Juncto SEMA-RI Number 07 of 2012. 08 - 10 March 2012, concerning Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guide to Implementing Duties for Special Crime Courts.
- k. National Criminal Code Bill. OnrechtMatigeDaad. Material Unlawful Acts (PMH) in Negative and Positive Functions. Article 2 paragraph (1): the provisions referred to in Article 1 paragraph (1) do not reduce the validity of the laws existing in society which determine that a person deserves to be punished even though the act is not regulated in statutory regulations. Paragraph (2): The application of laws that live in society as referred to in paragraph (1) as long as they are by the values contained in Pancasila, Human Rights, and general legal principles recognized by the community of nations.

D. Conclusion

- a. Memorie van Toelichting Wetboek van Strafrecht voor Nederlandsch -Indie(WVSNI) WederrechTelijkheid not found. What is meant by the word "law" in the phrase "Against the Law"? If we refer to the Postulate Contra Legem facit qui id facit quod lex prohibet; in fraudem vero qui, salvis verbis legis, sententiam ejus circumuenit. A person is declared against the law when the action he or she commits is an act that is prohibited by law. One of the main elements of an objective criminal act is its unlawful nature. Principle of Legality Article 1 paragraph (1) of the Criminal Code. In Dutch "against the law" is

wederrechtelijk (weder: contrary to, against; recht: law). In determining whether an act can be punished, the legislator makes the nature of unlawfulness a written element. Without this element, the formulation of the law would be too broad. In addition, the nature of censure is sometimes included in the formulation of the offense of culpa. The doctrine of the nature of unlawfulness has an important position in criminal law in addition to Indonesia's unwritten law, namely customary law. However, the recognition and application of the teaching of the nature of being against the law in material terms was only made in 1965. During its development, the teaching of the nature of being against the law was then formalized. If you examine the articles in the Criminal Code, the words unlawful (wederrechtelijke) are included to indicate the validity of an action or an intention. The use of the word wederrechtelijke to indicate the illegal nature of an action is contained in Article 167 paragraph (1), Article 168, Article 179, Article 180, Article 189, Article 190, Article 198, Article 253 - 257, Article 333 paragraph (1), Article 334 paragraph (1), Article 335 paragraph (1) number 1, Article 372, Article 429 paragraph (1), Article 431, Article 433 number 1, Article 448, Articles 453 - 455, Article 472 and Article 522 of the Criminal Code. Meanwhile, the use of the word wederrechtelijke to indicate a purpose or brand can be found in Article 328, Article 339, Article 362, Article 368 paragraph (1), Article 369 paragraph (1), Article 378, Article 382, Article 390, Article 446, and Article 467 of the Criminal Code.

- b. Criminal Acts Against the Law (PMH): 1. Formal View: the element of unlawfulness is not an absolute element of a criminal act. Violating the law is an element of a criminal act if it is stated explicitly in the formulation of the offense. Professor Pompe's opinion, "wederrechtelijkheid is dus in het algemeen geen bestaandeel van het strafbare feit, tenzij uitdrukkelijk in de wettelijke omschrijving opgenomen". The nature of unlawfulness is generally not an element of a criminal act unless it is expressly stated in the formulation of the law. Article 338 of the Criminal Code: "Anyone who deliberately takes the life of another person, is threatened with murder with a maximum imprisonment of fifteen years." Comparison of Article 362 of the Criminal Code: "Anyone who takes something which wholly or partly belongs to another person, to possess it unlawfully, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of sixty rupiah." 2. Material View: breaking the law is an absolute element of every criminal act. Vos and Moeljatno's opinion. Hazewinkel Suringa: that the nature of unlawfulness is a constant and permanent element of every criminal act if it is mentioned, as is responsibility. A criminal act is not only behavior that fulfills the formula for a crime, but both are required, first is that it is against the law and second is that the perpetrator can be held accountable. 3. Middle View: Hazewinkel Suringa's opinion: "De wederrechtelijkheid is slechts daar, waar wet haar noemt elementen verder allen maar het kenmerk van ieder delict...". The nature of being against the law is an absolute element if it is mentioned in the formulation of the offense, otherwise, being against the law is only a sign of an offense....
- c. Understand the Nature of Criminal Unlawful Acts (PMH). The doctrine distinguishes: 1. Acts against formal law, namely acts against the law if the act has been regulated in law, written law; 2. Acts against material law, that is, there may be an act against the law even though it has not been regulated in law. The alleged act must be an act that is prohibited and punishable by a statutory regulation and the act is also contrary to the law. Every criminal act is always contrary to statutory regulations or contrary to the law unless there is a justifying or forgiving reason. The nature of unlawfulness is not only formal wederrechtelijkheid, but also materiele wederrechtelijkheid. This is none other than to accommodate customary laws which to this day in various regions are still in effect and most of them are not written. There is a principle of balance between formal standards (legal certainty) and material standards (values of justice) where in concrete events both are mutually pressing, in Article 19 of the National Criminal Code Bill.

- d. Judge's Guideline: Judges must, as far as possible, prioritize the value of justice in deciding a case at hand rather than the value of certainty regarding the concept of material legality or the doctrine of material unlawfulness in the currently unknown Criminal Code.
- e. Andi Hamzah's opinion. against the law in the formal sense is defined as contrary to the law. If an act meets the definition of an offense, it is usually said to be formally against the law. Going against the material law must be meant only in a negative sense, meaning that if there is no violation of the law (material) then it is the basis for justification. When imposing a crime, it must be used against formal law, meaning that it is contrary to written positive law for the reason *nullum crimen sine lege stricta* as stated in Article 1 paragraph (1) of the Criminal Code.
- f. Satochi Kartanegara's opinion. "Unlawful" (*Wederrech telijk*) in criminal law is divided into: 1. *Wederrech telijkformil*, namely when an act is prohibited and threatened with punishment by law. 2. *Material Wederrechtelijk*, namely an act that is "possible" *wederrechtelijk*, even though it is not expressly prohibited and is threatened with punishment by law.

Reference

Books

- Agustina, Rosa., 2013. *Acts Against the Law*. Jakarta: Postgraduate Program, Faculty of Law, University of Indonesia.
- Asser, C., 1991. *Dutch Civil Law Studies*. Translated by Sulaiman Binol. Jakarta: Dian Rakyat.
- Andi Hamza. 2008. *Principles of Criminal Law*. PT. Rineka Cipta Revised Edition. Jakarta
- Amir Ilyas., 2016. *Collection of Legal Principles*. PT. Raja Grafindo Persada. The Basics of Criminal Law in Indonesia. P.A.F. Lamintang. Graphic Rays. Second Printing 2016.
- Andi Hamzah., 2017., *Indonesian Criminal Law*. Graphic Rays. First Printing of Principles of Criminal Law. Eddy O.S Hiariej. 2015 Revised Edition.
- H.M. Rasyid Ariman., 2016. *Criminal Law*. Press Equivalent. Poor. Second Printing of Legal Science Overview. H. Muchsin. Islamic Publishing Agency 2006.
- Hardjosoemantri, Koesnadi., 1999. *Environmental Management Law*. Yogyakarta: Gadjah Mada University Press.
- Moeljatno., 2008. *Principles of Criminal Law*. PT. Rineka Cipta Revised Edition. Jakarta 2008.
- Pannett, A.J. 1992. *Law of Torts*. London: Pitman Publishing.
- Romli Atmasasmita. 2011. *Contemporary Criminal Justice Systems*. Kencana Prenada Media Group. Second printing
- Setiawan, Rachmat. 1991. *Elementary Review of Unlawful Acts*. Bandung: Binakreatif.
- Shidarta. 2010. "Unlawful Environmental Actions: Extensive Interpretation and the Doctrine of *Injuria Sine Damno*." *Judicial Journal*. Vol. III/No. 01/April/2010. Pg. 65-84.
- Shidarta., 2015. *Revisiting the Basic Concept of Unlawful Acts*. Journal (January)
- S. R. Sianturi. Alumni., 1996. *Principles of Criminal Law in Indonesia and Their Application*. AHAEM-PETEHAEM Jakarta 1996.
- Zweigert, Konrad & Hein Kotz. 1987. *An Introduction to Comparative Law*. Vol. I-The Framework. Ed. 2. Oxford: Clarendon Press.

Constitution

- Wetboek van Strafrecht voor Nederlandsch-Indie(WVSNI) Penal Code. Balai Pustaka Translation Number 488. Jakarta 1945.
- Wetboek van Strafrecht voor Nederlandsch-Indie (WVSNI) Criminal Code (KUHP) Translated by R Soesilo.
- Wetboek van Strafrecht voor Nederlandsch-Indie(WVSNI) Criminal Code (KUHP) Translation P.A.F. Lamintang.

Wetboek van Strafrecht voor Nederlandsch-Indie(WVSNI) Criminal Code (KUHP) Translation
S.R. Sianturi.

Wetboek van Strafrecht voor Nederlandsch-Indie(WVSNI) Criminal Code (KUHP) Satochid
Kartanegara Translation.

Wetboek van Strafrecht voor Nederlandsch-Indie(WVSNI) Criminal Code (KUHP) Translated by
Jan Rimmelink.

Law of the Republic of Indonesia Number 8 of 1981, concerning Indonesian Criminal Procedure
Law.

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