

## COMPARATIVE ANALYSIS OF UNLAWFUL ACT REGULATIONS IN INDONESIA AND THAILAND

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**Abstract.** Unlawful acts constitute one of the fundamental institutions in civil law, serving as the basis of liability for any party that causes damage to another outside a contractual relationship. This concept plays a strategic role in providing legal protection, maintaining a balance of interests, and realizing justice in civil relationships. This study aims to analyze the regulation of unlawful acts in civil law in Indonesia and Thailand, as well as to examine examples of the legal consequences arising from such acts in practice. The research method employed is normative legal research using a statutory approach and a comparative law approach. Legal materials were obtained through library research on legislation, legal doctrines, jurisprudence, and relevant scientific journals. The results indicate that Indonesia regulates unlawful acts in a general manner through Article 1365 of the Indonesian Civil Code, the development of which is strongly influenced by legal doctrine and jurisprudence, thereby providing flexibility in the enforcement of substantive justice. Meanwhile, Thailand regulates unlawful acts more systematically under the Thai Civil and Commercial Code, with an emphasis on elements of fault, causal relationship, and proof of damage, resulting in a higher degree of legal certainty. These regulatory differences have implications for variations in determining legal consequences and compensation in judicial practice in each country.

Keywords: unlawful acts; civil law; comparative law.

### I. INTRODUCTION

Unlawful acts constitute one of the main pillars of the civil law system, functioning as a legal protection mechanism for individuals who suffer losses as a result of the actions of other parties. This concept is not solely oriented toward the restoration of losses (compensation), but also serves as a preventive instrument to deter the occurrence of harmful acts in social and economic relations. Thus, unlawful acts reflect the function of civil law as a means of realizing corrective justice, maintaining legal certainty, and balancing the interests of the parties in social life [1]

In modern legal practice, the scope of unlawful acts has undergone significant development.[2] Unlawful acts are no longer interpreted in a purely formalistic manner as merely violations of statutory provisions, but also encompass acts or omissions that contravene the subjective rights of others, legal obligations that should be fulfilled by the actor, moral norms, as well as the principles of propriety and due care in social interactions. This expansion in meaning demonstrates that civil law is dynamic and responsive to evolving social, economic, and technological values, particularly in the context of increasingly complex civil relationships. [3]

In Indonesia, the regulation of unlawful acts is normatively rooted in Article 1365 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), which stipulates that any act that is unlawful and causes harm to another obliges the

perpetrator to compensate for such damage. This provision has been further clarified and developed through legal doctrine and jurisprudence, particularly since the decision of the Hoge Raad dated 31 January 1919, which broadened the interpretation of the term “unlawful.” The influence of this doctrine remains very strong in Indonesian judicial practice to this day, such that the elements of an unlawful act include the existence of an act, its unlawful nature, fault, the occurrence of damage, and a causal relationship between the act and the damage. This conception serves as the primary basis of civil liability in various cases, including general civil disputes, consumer protection, fraudulent business practices, and professional negligence [4]

Meanwhile, Thailand, as a country that also adheres to the civil law system, regulates unlawful acts comprehensively in the Thai Civil and Commercial Code (CCC). The provisions on wrongful acts or torts in the CCC affirm that any person who intentionally or negligently infringes upon the rights of another and causes damage is liable to provide compensation. This regulation reflects a philosophical similarity with Indonesian civil law, particularly in terms of the protection of individual rights and the restoration of losses. Nevertheless, Thai civil law places a strong emphasis on fault and causation as decisive elements in determining civil liability, adopting a more systematic and structured approach in its codification (Law & Islam, 2024).

Differences in social, cultural, and legal policy backgrounds between Indonesia and Thailand influence how each country formulates and applies the concept of unlawful acts. Indonesia, with its pluralistic society and strong social values, tends to place significant importance on the principles of propriety and moral norms in assessing unlawful acts. In contrast, Thailand demonstrates a more legalistic and codified approach in determining the elements of civil liability. These differences affect not only the normative legal construction but also the practice of dispute resolution and the determination of compensation by the courts.

In the era of globalization and increasing cross-border interactions, comparative studies on the regulation of unlawful acts have become increasingly relevant, particularly in addressing civil disputes involving legal subjects from different jurisdictions. Differences in legal systems may give rise to issues concerning the determination of applicable law (choice of law) as well as the recognition and enforcement of court judgments. Therefore, this research focuses on comprehensively examining the civil law regulation of unlawful acts in Indonesia and Thailand and analyzing examples of the legal consequences arising from unlawful acts in both countries. This study is expected not only to contribute academically to the development of civil law and comparative legal studies, but also to serve as a practical reference for law enforcers and legal practitioners in handling unlawful act cases of a cross-jurisdictional nature [5]

## II. RESEARCH METHODS

This study employs a normative legal research method. The approaches used are the statutory approach and the comparative legal analysis approach. The legal materials analyzed consist of primary legal materials, namely provisions of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*) and the Thai Civil and Commercial Code, as well as secondary legal materials in the form of journal articles, textbooks, and relevant court decisions related to unlawful acts. Data collection was conducted through literature review and library research using reliable legal sources. The analysis is carried out descriptively and comparatively to explain the similarities and differences between the two legal systems in regulating unlawful acts and their juridical implications.

## III. RESULTS AND DISCUSSION

### **Civil Law Regulation of Unlawful Acts in Indonesia and Thailand**

The regulation of unlawful acts in Indonesian civil law is normatively based on Article 1365 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*), [6] which provides that any act that is unlawful and causes damage to another obliges the perpetrator to compensate for such damage. This provision serves as a general clause for civil liability outside contractual relationships. Although the wording of the article is concise, legal doctrine and jurisprudence have developed the elements of unlawful acts

in a comprehensive manner, so that it functions not merely as an abstract norm but also as a concrete instrument in the settlement of civil disputes [7]

In Indonesian judicial practice, the element of “unlawfulness” is no longer interpreted narrowly as a violation of written statutory provisions alone. Since the development of doctrine influenced by the Arrest of the Hoge Raad dated 31 January 1919, the meaning of unlawfulness has been expanded to include four categories: acts that contravene statutory law, infringe upon the subjective rights of others, violate the legal obligations of the perpetrator, and are contrary to morality and the principles of propriety prevailing in society. This expansion demonstrates that Indonesian civil law adopts a substantive approach that places values of justice and propriety as integral components of legal assessment. [8]

In addition to Article 1365 of the Civil Code, the regulation of unlawful acts in Indonesia is further reinforced by other provisions related to liability for the acts of others and liability arising from objects. Article 1366 of the Civil Code affirms that every person is responsible not only for damage caused by their actions but also for damage resulting from their negligence. Furthermore, Article 1367 of the Civil Code regulates liability for the acts of persons under one’s supervision or for objects under one’s control. These provisions broaden the concept of civil liability, particularly in the context of employment relationships, family relationships, and control over objects that may potentially cause harm (Dan et al., 2025).

An unlawful act may be illustrated through a traffic accident, such as when a driver negligently crashes into another person’s vehicle and causes material damage. In the Indonesian legal system, such conduct may constitute a *perbuatan melawan hukum* under Article 1365 of the Indonesian Civil Code, which requires the injured party to prove the existence of an unlawful act, fault or negligence, damage, and a causal relationship between the act and the loss suffered. As a consequence, the driver who caused the accident bears civil liability to compensate the victim for material losses, including vehicle repair costs, and potentially immaterial damages. In addition to civil responsibility, the same act may also give rise to criminal liability under Law No. 22 of 2009 on Road Traffic and Transportation, particularly if the accident results in serious injury or death. This demonstrates that in Indonesia, a single traffic accident may lead to dual legal consequences, namely civil liability based on unlawful acts and criminal liability based on statutory traffic offenses.

In contrast, under the Thai legal system, a similar traffic accident caused by a driver’s negligence is generally classified as a wrongful act under the Thai Civil and Commercial Code. The injured party must likewise establish negligence, damage, and causation in order to claim compensation. However, Thai law places greater emphasis on fault-based liability and proportional compensation, focusing primarily on restoring the victim’s losses rather than imposing punitive measures. While criminal liability may arise under the Criminal Code of Thailand, in practice, minor traffic accidents are often resolved through administrative measures or simplified criminal procedures, such as fines, unless the harm caused is severe. This approach reflects Thailand’s

emphasis on procedural efficiency and the avoidance of unnecessary escalation of minor cases to higher judicial levels.

The comparison between Indonesia and Thailand reveals that although both legal systems recognize traffic accidents caused by negligence as unlawful acts, they differ in their approach to legal responsibility. Indonesia tends to apply a broader overlap between civil and criminal liability, emphasizing legal accountability and deterrence, whereas Thailand adopts a more pragmatic and efficiency-oriented approach that prioritizes compensation and limits criminal prosecution for minor negligence. Nevertheless, both systems share a common objective of protecting victims' rights and ensuring legal certainty in cases arising from unlawful acts.

In contrast to Indonesia, Thailand regulates unlawful acts in a more systematic and detailed manner under the Thai Civil and Commercial Code (CCC). Provisions concerning unlawful acts are contained in Book II of the CCC, particularly in the section governing wrongful acts or torts. One of the principal provisions states that any person who intentionally or negligently unlawfully infringes upon the rights of another is obliged to provide compensation for the resulting damage. This formulation explicitly emphasizes the element of fault, whether in the form of intent or negligence, as the basis of civil liability [9]

The regulation under the Thai CCC reflects a more codified and legalistic approach compared to Indonesia. The elements of unlawful acts are clearly formulated, encompassing the existence of an unlawful act, fault on the part of the perpetrator, the occurrence of damage, and a causal relationship between the act and the damage. This approach provides a higher degree of legal certainty, as judges are guided by relatively clear normative standards in assessing civil liability. Consequently, the scope of judicial discretion in interpreting the element of "unlawfulness" tends to be more limited than in Indonesian practice [10]

Although both Indonesia and Thailand adhere to the civil law system, there are distinct differences in their respective characteristics in regulating unlawful acts. Indonesia tends to rely on the development of law through doctrine and jurisprudence to adapt the norm of Article 1365 of the Civil Code to societal developments. Conversely, Thailand emphasizes legal certainty through more detailed normative formulations within its codification. These differences indicate that the regulation of unlawful acts is influenced not only by the legal system adopted but also by the legal policies and social needs of each country [11]

Thus, the regulation of unlawful acts in Indonesia and Thailand shares a common objective, namely to provide legal protection and compensation for parties who suffer losses, yet differs in terms of regulatory techniques and normative approaches. These differences form an important basis for comparative legal studies, particularly in understanding how a legal system balances legal certainty and substantive justice in the resolution of civil disputes.

#### **Examples and Legal Consequences of Unlawful Acts in Indonesia and Thailand**

In the Indonesian civil law system, the legal consequence of an unlawful act is, in principle, the obligation of the perpetrator to provide compensation to the injured party. Such compensation may take the form of material and immaterial

damages, insofar as a causal relationship between the perpetrator's act and the resulting loss can be proven. A concrete example of an unlawful act is frequently found in land dispute cases, where one party unlawfully occupies or uses land belonging to another without legal entitlement [12]

In such cases, the courts generally declare that the unlawful occupation constitutes an unlawful act as referred to in Article 1365 of the Indonesian Civil Code, as it violates the subjective rights of others and contravenes the principle of propriety. The legal consequences include an order for the perpetrator to vacate the disputed object and to pay compensation for the losses suffered by the landowner, whether in the form of economic losses or losses arising from the deprivation of the benefits of the land [13]

In addition to land disputes, unlawful acts in Indonesia frequently occur in the context of professional negligence, such as medical malpractice or negligence by business actors. In cases of medical negligence, the actions of doctors or healthcare professionals that fail to meet professional standards and result in harm to patients may be classified as unlawful acts. The legal consequences of such acts give rise not only to ethical and administrative liability but also to civil liability in the form of an obligation to pay compensation. In judicial practice, judges assess the element of fault, whether in the form of negligence or lack of due care, as well as the causal link between the conduct of medical professionals and the losses suffered by patients. This demonstrates that the legal consequences of unlawful acts in Indonesia are comprehensive and may have far-reaching implications for the civil rights of the parties involved [14]

In the context of unlawful acts committed by business entities, for instance in cases of environmental pollution or business practices that harm consumers, the resulting legal consequences are not limited to individual compensation but may also involve collective liability or class actions. Courts may order business actors to pay compensation to victims and to undertake remedial measures. This underscores that unlawful acts in Indonesia are not viewed solely as individual matters but also as instruments for the protection of public interests. [15]

Meanwhile, in Thailand, examples of unlawful acts and their legal consequences are regulated and applied under the provisions on wrongful acts in the Thai Civil and Commercial Code. One concrete example is an unlawful act arising from a traffic accident caused by a driver's negligence. In such cases, the negligent driver is deemed to have breached the legal duty of care on the road and infringed upon the safety rights of others. The legal consequence is an obligation to compensate the victim for physical injuries, economic losses, and medical expenses. The assessment of compensation under the Thai legal system is generally carried out proportionally, based on the degree of fault and the extent of proven damage (Zebua et al., 2025).

Another example of an unlawful act in Thailand can be found in the context of employment relationships and employer liability. If an employee causes damage to a third party in the course of performing their work, the employer may be held liable under the principle of liability for the acts of others. The legal consequence of such an act is the obligation of the employer to provide compensation to the

injured party, even though the act was committed by the employee. This provision demonstrates that Thai civil law prioritizes the protection of victims by emphasizing the effectiveness of loss recovery [16]

Differences in approach between Indonesia and Thailand are also evident in the determination of the amount of compensation. In Indonesia, judges have relatively broad discretion to assess damages, including immaterial losses, based on considerations of justice and propriety. By contrast, in Thailand, the determination of compensation tends to be more measured and grounded in concrete proof of the losses suffered by the victim. Nevertheless, both countries place compensation as the primary legal consequence of unlawful acts.

Thus, the examples and legal consequences of unlawful acts in Indonesia and Thailand reveal a shared objective, namely to provide legal protection and recovery for injured parties, albeit through different approaches in application and assessment. Indonesia places greater emphasis on flexibility and substantive justice through the role of judges and jurisprudence, while Thailand prioritizes legal certainty through more systematic normative regulation. These differences enrich comparative legal studies and provide insight into how legal systems respond to unlawful acts in concrete practice.

#### IV. CONCLUSIONS

Based on the results of the analysis and discussion, it can be concluded that the regulation of unlawful acts in Indonesian and Thai civil law shares the same objective, namely to provide legal protection and compensation for losses suffered by injured parties, yet differs in normative approaches and practical application. In Indonesia, the regulation of unlawful acts is grounded in Article 1365 of the Indonesian Civil Code, which is general and open-ended in nature, so that its development relies heavily on legal doctrine and jurisprudence. The concept of “unlawfulness” in Indonesia has undergone an expansion in meaning to include violations of statutory law, the subjective rights of others, the legal obligations of the perpetrator, as well as moral norms and the principle of propriety. This approach provides flexibility for judges to assess substantive justice in accordance with societal dynamics; however, it may also lead to variations in interpretation in judicial practice. Meanwhile, Thailand regulates unlawful acts in a more systematic and detailed manner under the Thai Civil and Commercial Code, with a clear emphasis on the elements of fault, causation, and damage. This codificatory approach offers a higher degree of legal certainty, as the limits of civil liability are explicitly formulated in statutory provisions. The legal consequences of unlawful acts in Thailand are generally realized in the form of an obligation to pay compensation that is proportional and based on concrete proof of the losses suffered by the victim.

Thus, the comparison between Indonesia and Thailand demonstrates that although both countries adhere to the civil law system, there are distinct characteristics in the implementation of the concept of unlawful acts. Indonesia tends to prioritize substantive justice through the role of

judges and jurisprudence, whereas Thailand places greater emphasis on legal certainty through detailed normative regulation. These differences are significant in the context of resolving civil disputes, particularly those involving cross-border elements, and contribute to the development of comparative civil law studies in the Southeast Asian region.

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