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Unlawful Act Claims in Land Auction Disputes: A Juridical Analysis of Court Decision No.

29/Pdt.G/2025/PN Kwg

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Abstract:

Disputes arising from land auctions frequently involve claims of unlawful acts (perbuatan melawan hukum), particularly where alleged violations of legal rights occur during the auction process. However, not all contested auctions meet the legal threshold for liability under Article 1365 of the Indonesian Civil Code. This study addresses this issue by examining the juridical basis of unlawful act claims and the judicial reasoning applied in Court Decision No. 29/Pdt.G/2025/PN Kwg. This research employs a normative legal method using statutory, case, and conceptual approaches. Legal materials, including primary, secondary, and tertiary sources, are analyzed qualitatively to assess the legal standards governing land auction disputes. The findings demonstrate that unlawful act claims in land auction disputes require the fulfillment of key elements: an

unlawful act, fault, damage, and causality. The court, in the examined decision, emphasized both procedural and substantive legality, including the validity of the auction object, the authority of auction officials, and the protection of affected parties. The ruling highlights that compliance with established legal procedures serves as a critical benchmark in determining the absence of unlawful conduct. This study contributes to clarifying the limits of civil liability in auction-related disputes and underscores the importance of legal certainty in auction practices.

Keywords: *Unlawful Act, Land Auction Dispute, Juridical Analysis, Court Decision, Civil Liability.*

A. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia as the highest source of law in Indonesia affirms that the state of Indonesia is a state of law (*rechtsstaat*), as stipulated in Article 1 paragraph (3) of the 1945 Constitution. The consequence of the principle of the rule of law is that all actions of citizens and state administrators must be based on the applicable law. The law exists not only as an instrument of social control, but also as a means of protecting the rights of individuals and communities from all forms of acts that cause harm.¹

One of the important instruments in Indonesian civil law that provides protection for individual rights is the provision on Unlawful Acts (PMH). Article 1365 of the Civil Code states that any action that is contrary to the law and causes losses to other parties, requires the perpetrator who caused the loss due to his mistake to compensate for the loss.² The formulation of this article provides a clear legal basis that anyone who commits an act contrary to the law and causes harm to others must be responsible for compensating for the damage caused.

Theoretically, the concept of PMH in civil law has a wide scope. PMH is not only limited to acts that are contrary to written laws, but also includes actions that violate the subjective rights of others, contrary to legal

¹ Zaetama, *The Role of Law in Realizing Social Justice and Human Rights*, (Journal: Law, 2024), Vol.2, No.1, p.45-47.

² See Article 1365 of the Civil Code.

obligations, and contrary to the norms of propriety, precision, and prudence that apply in society. This shows that PMH has flexible dimensions, can adapt to social developments, and reaches various forms of actions that have the potential to harm other parties.³

However, in practice, the phenomenon of PMH often intersects with criminal acts, especially in cases of fraud and embezzlement. The same action can cause two legal consequences at once, namely as a criminal act that is detrimental to the public interest and must be processed through criminal law and as an unlawful act that is detrimental to the interests of individuals and must be resolved through civil channels. This situation raises quite serious problems in legal practice, because parties who feel aggrieved often take two paths at once, namely criminal and civil, or use criminal reports as a means to strengthen their position in civil disputes. This phenomenon of overlap between the criminal and civil realms is very interesting to analyze in depth. Civil disputes that originate from criminal reports raise fundamental problems about how judges assess the existence of PMH when an act is also qualified as a criminal act, as well as about how judges distinguish the protection of the public interest which is the domain of

³ Agustina, *Acts Against the Law*, (Jakarta: Pustaka Sinar Harapan, 2003), p.50-55.

criminal law from the protection of individual rights which is the domain of civil law.⁴

A clear example of this phenomenon can be seen in Decision Number: 29/Pdt.G/2025/PN Kwg at the Karawang District Court, between Ela Komalasari and H. Aban Subandi and Titut Hartadi. This case began with the allegation of a fictitious auction, which on the one hand was seen as a criminal act because it contained elements of fraud, but on the other hand caused real financial losses for the plaintiff so that it caused civil law consequences. This case shows the existence of a complex conflict of interest, where the criminal route focuses on the protection of the public interest, while the civil route focuses on the restoration of individual rights. In the perspective of legal theory, the mixture between the criminal and civil realms can be analyzed through several important principles.

The first is the principle of judicial independence, which requires criminal and civil courts to run independently, without influencing each other, even though the object of the case is the same. The second is the principle of *ultimum remedium*, which places criminal law as a last resort if other legal channels, including civil channels, are unable to provide effective remedy. However, in practice, the criminal route is often

⁴ Munir Fuady, *Unlawful Acts: Contemporary Approach*, (Bandung: Citra Aditya Bakti, 2005), p.3-5.

taken first by the party who feels aggrieved, in the hope of strengthening the position in civil disputes.⁵

This poses a dilemma as well as a challenge for judges in enforcing the law. Research on this case is important because it can provide a concrete picture of how judges apply the principle of PMH in civil disputes that are closely related to criminal reports. The judge is required to assess the evidence objectively, consider the arguments of the parties, and carefully distinguish between criminal and civil elements. The resulting decision must not only be in accordance with the provisions of the law, but must also be able to provide legal certainty, justice, and benefits for the parties and the wider community, therefore the author is interested in taking the title of the research "JURIDICAL ANALYSIS OF UNLAWFUL LAWSUITS IN LAND AUCTION DISPUTES (Case Study of Decision Number: 29/Pdt.G/2025/PN. Kwg)"

⁵ Pers, 2019), p.77-105.

RESULTS AND DISCUSSION

B. Legal Regulations on Unlawful Acts in Indonesian Civil Law

Indonesian civil law is one of the branches of law that functions to regulate legal relations between individuals and between individuals and legal entities, with the main purpose of protecting the rights and obligations of each party.⁶ One of the fundamental concepts in civil law is Unlawful Acts (PMH), which is an important instrument in providing legal protection for individuals harmed by the actions of other parties. Legal Regulations Regarding Unlawful Acts in Indonesian Civil Law:

1. Legal Basis of Unlawful Acts

Unlawful Acts (PMH) in Indonesian civil law have a clear legal basis, namely Article 1365 of the Civil Code (KUHPERDATA). This article states that any act that is contrary to the law and causes harm to another party requires the perpetrator who caused the loss due to their fault to compensate for the loss.⁷ This provision is the main legal basis for claiming compensation through civil

⁶ _____, *Indonesian Civil Law : An Introduction*, (Jakarta: Prenadamedia Group, 2018), p.45-67.

⁷ See Article 1365 of the Civil Code.

channels, both in the context of business disputes, employment relations, and other civil cases that cause losses to certain parties. Based on Article 1365 of the Civil Code, PMH is not only an act that is contrary to the written law, but also includes actions that harm other parties due to violations of legal obligations, moral norms, or propriety in society. In other words, any action that causes harm to others and is done incorrectly or negligently falls under the category of PMH.

This PMH can be in the form of active actions (for example, stealing, damaging goods, or cheating) or passive actions or negligence (for example, not closing a hole in one's own land so that someone else is injured). In practice, PMH is an instrument that provides legal protection for aggrieved individuals. The aggrieved party has the right to demand recovery for the losses it has suffered, both in the form of material and immaterial damages.⁸

2. Elements of Unlawful Acts

Unlawful Acts (PMH) in Indonesian civil law, as stipulated in Article 1365 of the Civil Code (KUHPerdata), are not simply interpreted as acts that are contrary to written laws. In order for an action to qualify

⁸ Ahmad Roeslan, *Indonesian Civil Law and Protection of Individual Rights*, (Bandung: Citra Aditya Bakti, 2019), p.88-112.

as PMH, there are main elements that must be met. These elements serve as guidelines for judges in assessing the validity or not of a civil lawsuit filed by the aggrieved party. The following is an explanation of each element:

a. Deeds (*Daad*)

The first element is the existence of an act, which in Dutch legal terms is called *daad*. This act can be in the form of active actions or passive actions (negligence).⁹

1) Active action (*commission*)

It is a real act committed by the perpetrator that causes losses to other parties. For example, stealing, damaging other people's belongings, spreading slander, or committing fraud. This active action is easy to recognize because it is a direct action that has a negative impact on the victim.

2) Passive actions (*omission /omission*)

It occurs when a person does not perform his obligations so that he causes losses. An example is a building owner who does not repair the damage to the building's structure, which then causes others to be injured. Negligence like this can still be qualified as PMH because it causes real losses. Thus, PMH

⁹ Satjipto Rahardjo, *Progressive Law: Legal Protection and Substantive Justice*, (Jakarta: Kompas, 2019), p.85-112.

is not limited to actual acts only, but also includes negligence or acts of inaction that harm other parties. This element of deeds is important because, without the deed, it is impossible to cause losses that can be claimed for compensation.

b. Unlawful Acts (*Wederrechtelijk*)

The second element is that the act done must be against the law. In the context of civil law, "unlawful" not only means being contrary to a written law (*wettelijke bepalingen*), but also includes several things:

1) Violation of the subjective rights of others.

For example, taking or controlling property belonging to another person without permission, obstructing land rights, or illegally utilizing other people's rights.

2) Contrary to the legal obligations of the perpetrator.

For example, an employer who neglects to maintain the safety of his workers may cause a work accident to occur. This negligence is considered unlawful because it violates obligations that should be fulfilled.

3) Contrary to the norms of morality (*mores*).

For example, spreading slander or insulting people who violate the ethical and moral norms of society. Contrary to propriety and prudence in society (*plichten naar het maatschappelijke fatsoen*), acts contrary to the norms of propriety or negligence that

do not conform to the common standards of prudence in society are also categorized as unlawful.¹⁰ This unlawful aspect shows that PMH has a broad and flexible scope, so that civil law can adjust to the social and cultural development of society.

c. Guilt

The third element is the existence of guilt (*schuld*), which is an action carried out intentionally or an omission. This mistake is the basis for the perpetrator's responsibility of the perpetrator:

1) Intentionality (*Dolus*)

The perpetrator is aware and intends to commit an act that causes loss. For example, someone who deliberately damages someone else's vehicle.

2) Negligence (*Culpa*)

The perpetrator was unintentional, but negligent, causing losses. For example, a driver who neglects to obey traffic rules causes an accident.

Without an element of fault, a person usually cannot be held liable in civil law, unless there is strict

¹⁰ Rudyanto, *Civil Law and Individual Protection*, (Jakarta: Prenadamedia Group, 2019), p.85-89.

liability specifically regulated by law. Therefore, error is an element that determines whether a certain action can be categorized as PMH.

d. Loss (*Damage*)

The fourth element is the loss suffered by other parties due to unlawful acts. These losses can be in the form of:

1) Material

Losses that are tangible and financially measurable, such as loss of money, goods, assets, or income that should have been received.

2) Immaterial

Indirect losses can be measured financially, for example, psychological distress, loss of good name, honor, or reputation.

Losses must be proven concretely, either through documents, witnesses, or other evidence. Without proof of loss, PMH's lawsuit usually cannot be granted, even if the unlawful act has been proven.

e. *Causal Relationship (Causal Verband)*

The fifth element is the causal relationship between unlawful acts and the losses that arise. This means that the losses suffered by the other party must be directly caused by the actions of the perpetrator.

1) Without a clear cause-and-effect relationship,

a civil lawsuit is unacceptable. For example, if the loss suffered by the victim occurs due to external factors that are not related to the perpetrator's actions, then the lawsuit cannot be granted.

- 2) This causal relationship is important so that court decisions can uphold justice, ensuring that compensation is only given to those who are truly harmed by unlawful acts.

These five elements, namely acts, unlawful, mistakes, losses, and causal relationships, are the main basis for assessing Unlawful Acts (PMH). Each element needs to be clearly proven so that the civil lawsuit can be granted. The fulfillment of these elements not only ensures justice for the aggrieved party but also provides legal certainty for the perpetrators, so that every action of the community remains within a clear legal framework. By understanding and applying these five elements consistently, judges are able to make decisions that are fair, proportionate, and provide legal protection for individuals and the public interest. PMH functions not only as a tool to provide compensation, but also as a means of prevention in preventing acts that are detrimental to society.

3. Expanding the Meaning of Unlawful Acts

The definition of Unlawful Acts (PMH) initially had a fairly limited meaning. In the initial

understanding, PMH only includes actions that directly violate the provisions of a written law or *wettelijke bepalingen*. This means that any act that is not explicitly regulated by law, even though it causes losses to other parties, is not considered PMH. This view follows the Dutch legal tradition before the beginning of the 20th century, where civil law placed more emphasis on adherence to strict written norms and doctrines. However, this paradigm began to change along with the development of jurisprudence in the Netherlands, especially through the Dutch Hoge Raad decision in 1919 in the case of *Cohen vs Lindenbaum*.

This decision is an important milestone in the expansion of the PMH concept. The Dutch Supreme Court ruled that PMH is not only limited to acts that violate written laws, but also covers various forms of actions that are detrimental to other parties, even though they are not explicitly regulated in the law. This expansion emphasizes the aspects of individual subjective rights, legal obligations, as well as norms of decency and propriety that apply in society. In more detail, the *Cohen vs Lindenbaum* decision states that PMH includes four categories of acts. First, acts that violate the law remain the main category. Second, acts that violate the subjective rights of others, such as property rights, rights to good name, or the right to personal integrity. Third, acts that are contrary to the legal obligations of the perpetrator, such as contractual

obligations or special legal obligations attached to the Position perpetrators. Fourth, acts that are contrary to morality and propriety in society, which emphasizes the moral and social dimensions of PMH, so that acts that harm others but do not formally violate the law can still be categorized as PMH. This expansion of meaning has significant implications in legal practice, especially in civil contexts. In Indonesia, the concept of PMH from the Dutch Hoge Raad decision was adopted through the Civil Code (KUHPerduta) which is a legacy of Dutch colonial law. The Civil Code recognizes that actions that cause losses do not always have to be contrary to the written law to be qualified as PMH.

Thus, judges in civil disputes can assess actions based on their impact on the rights of other parties, legal obligations, and moral norms that apply in society. The adoption of this concept in Indonesia also enriched the foundation of civil jurisprudence. Court decisions, both at the District Court and High Court levels, often refer to the principle that PMH is not limited to violations of written laws. This provides flexibility for judges to assess cases more fairly and contextually, taking into account the social, moral, and economic aspects of the parties to the dispute.

In addition, the expansion of the definition of PMH allows for more comprehensive legal protection for aggrieved individuals. For example, in the case of a business dispute, an act of manipulation of information

or fraudulent practices that harm another party may be categorized as PMH even though there is no law that specifically governs it. Likewise, in social cases, acts that damage a person's reputation or good name can be prosecuted as PMH, because it is contrary to the subjective rights and moral norms of society. Thus, the Dutch *Hoge Raad* decision of 1919 not only changed the formal limits of PMH, but also developed the principle of substantive justice in civil law.

This concept emphasizes that civil law must be able to adapt to social dynamics and community development, so that it is not solely fixated on written rules. The application of this principle in Indonesia strengthens the function of PMH as an instrument for the protection of individual rights, as well as a preventive mechanism to prevent adverse actions that can cause social and economic conflicts.

In conclusion, the evolution of the concept of PMH from a narrow understanding that only refers to the violation of written laws to a broader and more flexible understanding shows the ability of civil law to evolve as society changes. In Indonesia, the adoption of this principle through the Civil Code and jurisprudence provides a strong legal basis for aggrieved parties to claim compensation, restitution, or cancellation of adverse acts. This also emphasizes that PMH is not only related to formal legal aspects, but also to substantive justice and the protection of individual rights in

community life.

4. Purpose of PMH Regulation in Civil Law

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Indonesia, the adoption of this principle through the Civil Code and jurisprudence provides a strong legal basis for aggrieved parties to claim compensation, restitution, or cancellation of adverse acts. This also emphasizes that PMH is not only related to formal legal aspects, but also to substantive justice and the protection of individual rights in community life.

5. The Difference Between PMH and *Default*

Unlawful Acts (PMH) and *default* are two important concepts in civil law that often arise in compensation disputes, but they both have different basis, characteristics, and applications. A deep understanding of these differences is essential for judges, lawyers, and parties involved in disputes, so that the rights that have been harmed can be restored appropriately and in accordance with applicable law. *Default* or breach of promise is a civil law term that arises when a party fails to fulfill the obligations that have been agreed upon in an agreement or contract.¹¹

In other words, *default* always stems from a breach of a legally valid contract. For example, if a seller fails to deliver goods according to a sale-purchase contract agreement, or a service provider does not complete the work according to the agreement, the action may be

¹¹ , *Principles of Civil Law*, (Jakarta: Intermasa, 2019), p.125-128.

categorized as a *default*. The legal basis for suing for *default* usually lies in the provisions that govern the agreement in the Civil Code (KUHPerdata), especially Articles 1238 to 1243 which regulate the rights and obligations of the parties to the agreement and the legal consequences of breach of promise.

On the contrary, PMH arises not because of a breach of contract, but because of an act that causes losses and is contrary to the law, both written law and moral norms that apply in society. This means that PMH can occur even if there is no contract or agreement that binds the parties. Examples include defamation, destruction of other people's property, or the spread of false information that harms certain parties. The legal basis for PMH in Indonesia is contained in Article 1365 of the Civil Code, which states that every act that violates the law and causes harm to others requires the perpetrator to compensate for the loss.

Another fundamental difference between PMH and default lies in the nature of the action and the origin of the liability. In *default*, obligations arise from a mutually agreed contract or agreement, so that breach of contract automatically gives rise to legal liability. Meanwhile, PMH is independent of the agreement, because legal liability arises from violations of applicable laws or norms, which incur losses to other parties. In other words, PMH emphasizes more on protecting the subjective rights of individuals or aggrieved parties,

while *default* emphasizes more on fulfilling contractual obligations.

Although they differ in origin and characteristics, PMH and *default* have important similarities: they can be the basis for filing a claim for damages. In either case, the aggrieved party can demand recovery of rights or financial compensation from the infringing party. This shows that even though PMH was born without an agreement, the legal effects it causes can be similar to *default*, namely giving the aggrieved party the right to obtain compensation. In addition, in practice, civil dispute cases often involve a combination of PMH and *default*. For example, in an employment or business contract, the perpetrator may commit an act that not only breaks a promise, but also violates moral norms or harms other parties more broadly.

In such a situation, the judge is required to assess the elements of both, such as the existence of an agreement, breach of contractual obligations, the existence of losses, and the causality relationship between the action and the loss. This approach ensures that dispute resolution is carried out comprehensively, fairly, and provides maximum legal protection for the aggrieved party. The difference between PMH and default also has an impact on the legal strategies used by the parties to the dispute. In a default case, the plaintiff usually emphasizes evidence of a valid agreement, the obligations of the parties, and specific violations of the

contract. Meanwhile, in the case of PMH, the plaintiff must show that the actions taken by the perpetrator are contrary to the law or norms of propriety, cause real or immaterial damage, and there is a cause-and-effect relationship between the perpetrator's actions and the losses experienced.

This strategy requires a more in-depth analysis of social facts, legal norms, and the impact they cause. Thus, understanding the difference between PMH and *default* is essential for the civil justice system. PMH allows for the protection of individual rights more broadly, including situations outside of formal contracts, while *defaulters* enforce compliance with agreed agreements. These two concepts complement each other in providing legal protection, upholding justice, and ensuring that the aggrieved party can obtain adequate recovery in accordance with the nature of the violation that occurred.

In conclusion, although PMH and *default* differ in the origin and character of the action, they are both important legal instruments in the enforcement of civil rights. These differences must be well understood by all parties involved in the civil dispute so that a legal strategy can be drafted appropriately, lawsuits can be filed on a strong legal basis, and court decisions can reflect substantive justice for the aggrieved party. With a deep understanding, civil law can function effectively as a means of protecting individual rights while upholding the principle of justice in society.

Application of PMH Regulations in Case No. 29/Pdt G/2025/PN Kwg Basis of Reconvension Lawsuit: Unlawful Acts

- a. In the reconvention, H. Aban Subandi (Convention Defendant / Reconvention Plaintiff) and Titut Hartadi, S.Pd (Convention Defendant / Reconvention Plaintiff) postulated that Ela Komalasari, S.Pd (Convention Plaintiff / Convention Defendant) had committed an act that met the elements of PMH.
- b. The action was in the form of bidding and conditioning of a fictitious auction that resulted in large financial losses to the Defendant / Plaintiff of the Convention.

This is clearly related to Article 1365 of the Civil Code, because the act causes losses and is considered unlawful (both positive law and norms of propriety).

2. Elements of PMH in this case

If associated with the elements of PMH :

a. Deeds

The action of Ela Komalasari, who offered the object of auction land/shophouse and received money with the promise of conditioning.

b. Against the law

- 1) Violating the principle of trust in civil law transactions.

2) Breach Rights Subjective Parties
Defendant / The Reconviction
Plaintiff is entitled to his money.

c. Error

There is an indication of intentionality (*dolus*) by persuading and promising conditions so that the auction is won.

d. Disadvantages

The real loss is Rp. 1,000,400,000 as detailed in the receipt and transfer receipt.

e. Causality

Losses arise directly due to the actions of the Convention Plaintiff who did not refund the funds even though the auction object was never realized.

Thus, the five elements of PMH are fulfilled in this case.

3. The Relationship of PMH with Criminal Reports

a. This case has also been reported to the Karawang Police with allegations of fraud and embezzlement by Ela Komalasari.

b. This shows that there is an overlap between the

civil and criminal realms. In law, the same act can be sued civil (damages) and criminal (liability for crimes).

- c. However, the civil judge can still decide the compensation case even though the criminal case is still ongoing, as long as the civil elements (PMH) have been met.

4. Basic *Ne Bis In Ditto*

- a. The principle *ne bis in idem* does not apply here because of civil cases (PMH compensation) Criminal cases (fraud/embezzlement) have different characteristics, subjects, and objectives.
- b. Criminal focuses on punishment, while civil focuses on restoring rights and compensation.

5. Relevance of Jurisprudence

- a. The Supreme Court in its various decisions (for example, Supreme Court Decision No. 3191 K/Pdt/1984 and Supreme Court Decision No. 3651 K/Pdt/1985) affirms that an act can be processed criminally and civilly at the same time, as long as the aspects prosecuted are different.

- b. In this context, Ela Komalasari can be convicted of fraud as well as be asked to be civilly responsible to return losses due to PMH.

C. The Relationship of Unlawful Acts to Criminal Reports

In legal practice in Indonesia, there are often situations where one act can cause double legal consequences, namely in the civil and criminal realms at the same time.¹² In civil law, these acts are qualified as Unlawful Acts (PMH) as stipulated in Article 1365 of the Civil Code, because they cause losses to certain parties. Meanwhile, in criminal law, the same act can be categorized as a criminal offense if it meets the elements specified in the Criminal Code (KUHP) or special criminal law. An example is in the case of embezzlement and fraud.

From a criminal perspective, embezzlement, as stipulated in Article 372 of the Criminal Code, and fraud, in Article 378 of the Criminal Code, are included among crimes that are threatened with imprisonment. However, on the other hand, victims of embezzlement or fraud also

¹² Marzuki, *Introduction to Law*, (Jakarta: Prenadamedia Group, 2021), p.180-186.

suffer real financial losses, so they have the right to claim compensation through civil channels on the basis of PMH. This shows that there is a close relationship between unlawful acts in the civil context and criminal reports in the context of public law. In such a situation, the question arises about the principle *ne bis in idem*, which is a principle that prohibits a person from being tried twice for the same case. It is important to understand that this principle applies in the realm of criminal law, so that a person cannot be convicted twice for the same act. However, the principle *ne bis in idem* does not necessarily apply between criminal and civil cases, because the object and purpose of settlement are different. Criminal cases aim to uphold public order and provide a deterrent effect, while civil cases aim to restore individual rights through compensation or restoration of circumstances.¹³

Thus, even if a perpetrator has been sentenced for fraud, the victim can still file a civil lawsuit for the material or immaterial losses he has experienced. This is in line with a number of Supreme Court decisions that recognize the independence between criminal and civil cases. For example, in Case No. 29/Pdt.G/2025/PN Kwg In a *quo case*, the act postulated as a fictitious auction

¹³ Jimly Asshiddiqie, *Constitutional Law and Criminal Law*, (Jakarta: Rajawali Press, 2017), p.78-80.

became the core of the dispute. The Convention Plaintiff postulates that he was harmed by the Defendant's actions, while the Convention Defendant actually asserts that it was the Plaintiff who offered the auction scheme, received the deposit of funds, but failed to realize the auction object.

This fact then gives rise to two different legal consequences. First, from a civil perspective, the Convention Defendant / Reconvention Plaintiff filed a reconvention lawsuit based its claim on Article 1365 of the Civil Code. According to the postulate, the actions of the Convention Plaintiffs meet the elements of PMH, namely:

1. The existence of an act in the form of receiving a certain amount of funds that are diverted through transfers and cash payments

Showing that there is real action (*daad*) from the party that carried out PMH. This action is in the form of receiving money either through transfers or cash payments, which is a form of active act. This element is important because civil law requires an action that causes harm to other parties as the basis for filing a compensation lawsuit. Without concrete actions like this, it cannot be categorized as PMH.

2. This act is against the law because the promised auction object turns out to be fictitious

Acts are considered against the law (*wederrechtelijk*) because they violate the provisions of

the law and applicable norms. In this case, the party receiving the funds offers an unreal auction, thus deceiving the other party. The unlawful element is not only limited to violating the law, but also includes acts that harm the rights of others, are contrary to morality, and violate the norms of propriety that apply in society.

3. The existence of guilt in the form of intentionally deceiving and persuading the defendant to participate in the auction

The element of fault refers to the intention or negligence of the perpetrator. In this case, the mistake is in the form of *dolus* or intentionality, because the perpetrator consciously commits a deceptive act and influences the other party to participate in a fictitious auction. This intentionality strengthens the basis for legal liability because the aggrieved party can prove that the perpetrator acted with the intention of obtaining profits illegally.

- a. Tangible losses amounting to Rp. 1,000,400,000 as evidenced by receipts and proof of transfer

The element of loss (*schade*) shows the impact of the unlawful act. The losses here are material, as they involve large amounts of money. Evidence such as receipts and proof of transfer is a concrete means of evidence, so that the court can assess the amount of loss objectively. Without clear and provable losses, PMH's lawsuit is unacceptable.

- b. There is a causal relationship between the actions of the Convention Plaintiff and the losses suffered by the Convention Defendant and the Convention Co-Defendant

The element of causality (*causal verband*) emphasizes that the losses suffered by the defendant are directly caused by the unlawful actions of the convention plaintiff. This cause-and-effect relationship is an important requirement in civil law, because if the loss arises from other factors or is not directly related to the perpetrator's actions, the lawsuit cannot be granted. This causal relationship ensures that there is a clear relationship between the perpetrator's actions and the losses suffered by the victim.¹⁴

Second, from a criminal perspective, the Convention Defendant has reported the Convention Plaintiff to the Karawang Police for alleged fraud and embezzlement. The report was based on Articles 372 and 378 of the Criminal Code, which are relevant because the Plaintiff allegedly received a sum of funds but did not return them, and the object of the auction proved to be unreal. In the investigation stage, it was even found that there were three other complainants who claimed to be victims of a similar mode. This condition illustrates the

¹⁴ *Civil Law Concepts: Theoretical and Practical Analysis*, (Bandung: Citra Aditya)

close relationship between PMH and criminal reports, where one act can be qualified as an unlawful act in the civil realm as well as a criminal act.

However, it should be noted that the principle *ne bis in idem* does not apply across domains, so even if the criminal process is ongoing, the aggrieved party still has the right to file a civil lawsuit to claim compensation. In other words, the criminal route aims to punish the perpetrator for the public interest, while the civil route aims to restore the rights of the victim for the losses suffered. The Supreme Court, in several of its jurisprudence (e.g., Decision No. 1238 K/Pdt/2006), emphasized that criminal judgments do not preclude the victim's right to claim compensation through a civil lawsuit. This principle can be applied in this case, because even though the criminal report is being processed at the Karawang Police Station, the Convention Defendant / Reconviction Plaintiff still has the right to pursue a reconvention lawsuit to demand a refund of Rp. 1,000,400,000.

Thus, case No. 29/Pdt.G/2025/PN Kwg shows how one legal act can have double implications. Judges in deciding this civil case are required to distinguish between the public interest protected by criminal law and the interests of individuals protected by civil law. However, judges also need to see the two as a series that complement each other, so that civil judgments not only

focus on legal certainty, but also provide justice and benefits for the parties.

1. The Basis of *Ne Bis In Idem* in This Matter

The principle *ne bis in idem* is a principle of criminal law that states that a person should not be prosecuted or convicted twice for the same criminal case, with identical objects, subjects, and legal basis.¹⁵ This principle aims to protect the rights of defendants from being prosecuted for the same act, while providing legal certainty and preventing abuse of the criminal process. However, in this case, there is a situation where the same event gives rise to two different legal paths:

- a. A civil lawsuit was filed by the aggrieved party to demand a refund of IDR 1,000,400,000. The basis is Unlawful Acts (PMH) as regulated in Article 1365 of the Civil Code. The main focus of the civil route is the restoration of individual rights, namely restoring losses suffered by victims due to unlawful acts, without demanding punishment for the perpetrator.
- b. The criminal process was filed on suspicion of

¹⁵ Mochtar Kusumaatmadja, *Principles of Criminal Law*, (Jakarta: Djambatan, 2016), p.54-56.

fraud and embezzlement, which is a criminal offense under the Criminal Code. The focus of the criminal route is law enforcement for the public interest, providing a deterrent effect to the perpetrators, and maintaining public order and trust in the legal system.

Because the purpose and consequences are different (civil focuses on recovering losses, criminal focuses on punishing the perpetrator), the principle *ne bis in idem* does not apply here. In other words, even though the case in question departs from the same event, civil and criminal proceedings can run in parallel.

2. Relevant Supreme Court Jurisprudence

In Indonesian legal practice, there is often a phenomenon of overlap between the civil and criminal realms, especially in cases that originate from the same act. This phenomenon raises fundamental questions about whether the aggrieved party can take the civil and criminal routes at the same time, as well as how judges assess and distinguish between the two legal domains. The Supreme Court (MA) has given consistent affirmations regarding this matter through a number of its decisions.

a. Supreme Court Decision No. 997 K/Sip/1971

In this decision, the Supreme Court affirmed the principle that civil and criminal

cases can be filed simultaneously, as long as they have different legal objectives and sanctions. In the context of civil law, the aggrieved party demands compensation or restoration of rights lost due to unlawful acts. On the other hand, criminal cases focus on punishing the perpetrator, with the aim of safeguarding the public interest, providing a deterrent effect, and preventing similar violations in society.

The Supreme Court emphasized that there is no legal conflict between civil and criminal channels if the purpose and legal basis used as a reference are different. In other words, the same action can have two legal consequences at once: recovery of losses for victims through civil channels and sanctions for perpetrators through criminal channels. This shows the flexibility of Indonesian law in providing fair protection for individuals and society.¹⁶

b. Supreme Court Decision No. 360 K/Sip/1973

This ruling reinforces the previous principle by affirming that even though

¹⁶ Barda Nawawi Arief, *Criminal Law and Community Protection*, (Bandung: Citra Aditya Bakti, 2019), p.40-45.

criminal cases are still ongoing, civil lawsuits can still be filed. Key to this decision is the difference in focus between the two legal tracks: civil aims to restore the rights of the aggrieved party, while criminal aims to punish the perpetrator and safeguard the public interest. In practice, this ruling provides legal certainty for the aggrieved party. They do not need to wait for the completion of the criminal process to claim their rights. This is very important because the losses suffered by victims, both material and immaterial, require immediate recovery actions so that the negative impact does not continue to develop. This Supreme Court decision also prioritizes the principle of access to justice, where victims are given the opportunity to take an effective and independent legal route.

c. Supreme Court Decision No. 2683 K/Pdt/2008

In the case of questions about fictitious transactions, the Supreme Court emphasized that losses arising from unlawful acts can be prosecuted through a civil lawsuit, although criminal reports related to alleged fraud are also being processed. These results emphasize several important principles:

1) Difference in focus

Civil is oriented towards the restoration of individual rights; criminal is oriented towards the public interest.

2) Legal certainty

The victim's right to compensation does not depend on the course of the criminal process.

3) Independence of the judiciary

Civil and criminal courts must run independently, so that criminal judgments do not hinder the course of civil cases.

This decision is an important jurisprudence basis for judges in assessing reconvention lawsuits or civil claims that arise along with criminal reports. By this principle, the civil route remains valid, even when a criminal case is ongoing, as long as the goal is the recovery of damages.

d. Implications in Case No. 29/Pdt.G/2025/PN Kwg

In the case of Ela Komalasari against H. Aban Subandi and Titut Hartadi, this overlapping phenomenon is clearly visible. The case began with allegations of fictitious auctions

that caused financial losses for the plaintiff. This allegation has two legal consequences:

1) Civil

The reconvention lawsuit demands a refund of Rp 1,000,400,000, which is a real loss due to unlawful acts.

2) Criminal

The report was filed regarding allegations of fraud and embezzlement, which targeted the public interest and punished the perpetrators.

Based on the previous Supreme Court ruling, civil lawsuits can still be accepted by the court even though the criminal report is ongoing. This affirms the principle of judicial independence, where the civil and criminal courts operate independently to achieve their respective goals.

e. The Principle of Independence and Ultimum Remedium

This overlapping phenomenon can also be analyzed through two important principles:

1) The principle of judicial independence

Emphasizing that civil and criminal channels must run independently. There is no

single legal route that can delay or influence other legal pathways.

2) The *ultimate remedium foundation*

Use criminal law as a last resort if other legal avenues (e.g., civil) are unable to provide effective remedies. In practice, although this principle exists, often the aggrieved party chooses the criminal route first to strengthen its position in civil disputes.

By understanding these two principles, judges can enforce the law fairly, proportionately, and consistently. Civil judgments that restore victims' rights not only provide individual justice but also prevent the abuse of criminal remedies as a tool of pressure in civil disputes.¹⁷

3. Application to Case No. 29/Pdt.G/2025/PN Kwg

a. Unlawful Acts (PMH)

In this case, the action of the plaintiff, Ela Komalasari, who received the auction funds and did not return them after it was proven that the auction was fictitious, was categorized as an Unlawful Act (PMH). According to Article 1365 of the Civil Code, every act that violates the law

¹⁷ Salim H.S, *Civil Law: A Review of Materials and Procedures*, (Jakarta: Sinar Grafika, 2017), p.72-75.

and causes harm to other parties obliges the perpetrator to compensate for damages.

The material loss suffered by the defendants (H. Aban Subandi and Titut Hartadi) was in the form of loss of money in the amount of Rp. 1,000,400,000.

- 1) This action is not only financially detrimental but also involves an element of intentionality, where the plaintiff knowingly intends to profit from a transaction that is known to be fictitious.
- 2) Thus, the requirements of PMH are met, namely, there is an act against the law, there is an error, there is a loss, and there is a causal relationship between the plaintiff's actions and the defendant's losses.

PMH here becomes the basis for the defendant to file a civil/reconvencion lawsuit, demand a refund or compensation.

b. Criminal Reports

In addition to the civil route, the defendant also filed a criminal report against the plaintiff for alleged embezzlement and fraud.

- 1) The criminal elements are met, including intentionality (*dolus*), unlawful acts in the criminal context, and losses to other parties who

are victims.

- 2) This criminal report aims to protect the public interest and enforce the law, so that the plaintiff can be subject to criminal sanctions according to the Criminal Code.

This shows the dualism of legal consequences, where one action can cause civil (restoration of victims' rights) and criminal consequences (punishment of perpetrators).¹⁸

c. *ne bis in ditto*

The principle *ne bis in idem* states that a person should not be prosecuted twice for the same criminal case. However, in this context:

- 1) Civil lawsuits demand restitution of losses, while criminal proceedings demand the punishment of the plaintiff.
- 2) The purpose and sanctions of the two legal channels are different, so the principle *ne bis in idem* does not apply.
- 3) In other words, even if the two cases depart from the same event (fictitious auction), civil and criminal proceedings can run in parallel without violating legal principles.

¹⁸ Eva Yustina, *Legal Responsibility in the Context of Unlawful Acts*, (Journal: Law, 2014), Vol.7, No.3, p.203-207

d. Supreme Court (MA) Jurisprudence

The Supreme Court (MA) has affirmed through its various decisions that:

- 1) Civil proceedings can still run even if there are parallel criminal proceedings, as long as the legal objectives are different.
- 2) Supreme Court Decision No. 997 K/Sip/1971
Civil and criminal cases can be filed at the same time due to different purposes (compensation vs punishment). Supreme Court Decision No. 360 K/Sip/1973 Civil lawsuits can still be filed even though criminal cases are still ongoing, as long as it concerns the restoration of rights.
- 3) Supreme Court Decision No. 2683 K/Pdt/2008

Losses from fictitious transactions can be sued civilly even if a criminal report is also filed.

Based on this jurisprudence, the civil judge in case No. 29/Pdt.G/2025/PN Kwg still has the authority to adjudicate PMH/reconvention lawsuits, even though criminal reports on alleged fraud and embezzlement are being processed.

Thus, the relationship between PMH and criminal reports can be described as two different but complementary legal paths. The criminal route is tasked with punishing the perpetrator for his actions against the public interest, while the civil route is tasked with restoring or restoring the victim's rights for the losses

suffered. The presence of these two pathways is expected to be able to provide comprehensive legal protection for the community, both in terms of public interest and individual interests.¹⁹

D. CONCLUSION

First, Decision Number 29/Pdt.G/2025/PN.Kwg demonstrates that the judge strictly applied formal principles of civil procedural law. The conventional and reconventional claims were declared inadmissible (niet ontvankelijke verklaard) due to their obscurity (obscuur libel) and the dominant presence of criminal elements. Although the plaintiff based the claim on unlawful acts under Article 1365 of the Indonesian Civil Code (KUHPerdata), the lack of clarity and completeness in fulfilling formal requirements prevented further substantive examination. This decision underscores the necessity of clear and well-structured claims, particularly in the formulation of the *posita* and *petitum*, as prerequisites for judicial review. Second, the decision reflects judicial caution in delineating the boundaries between civil and criminal law to avoid overlapping jurisdiction. In cases containing criminal elements, the

¹⁹ Satrio, *Civil Lawsuit on the Basis of Insult as an Unlawful Act*, (Jakarta: Sinar Grafika, 2007), p.8-9.

court tends to prioritize criminal proceedings before civil claims are pursued. This approach reinforces the theoretical distinction between criminal law, which serves public interests, and civil law, which protects private interests. However, this stance differs from the more progressive jurisprudence of the Supreme Court, which in certain circumstances allows civil claims to proceed concurrently with criminal proceedings, provided that the loss or damage can be sufficiently proven.

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