



Acts against Civil Law versus Acts Against Criminal Law Versus Rechtsvinding HogeRaad/Supreme Court Judge

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Abstract - An unlawful act in Dutch is called "onrechmatige daad," and in English, it is called "tort," which means "wrong" (wrong). the word "tort" develops to mean civil "mistake," which does not come from "default." So it is similar to the meaning of "unlawful act," which is called "onrechmatigedaad" in the Dutch legal system. The word "tort" comes from the Latin word "torquere" or "tortus" in language French, like the word "wrong" comes from the French word "wrung," which means "mistake or loss" (injury). The aim research is to know the challenges facing soes and soe subsidiaries toward business tranformation law enforcement and human rights protection (Post Constitutional Court Decision Number 01/PHPU-PRES/XVII/2019).This research is a normative legal research. The type of this research is a Normative Legal Research. The result shows that Memorie van Toelichting Wetboek van Strafrecht voor Nederlandsch -Indie(WVSNi) WederrechTelijkheid was not found. What is meant by the word "law" in the phrase "Against the Law". If referring 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 unlawful when the act committed is an act prohibited by law. One of the main elements of a criminal act that is objective is against the law. The Legality Principle of Article 1 paragraph (1) of the Criminal Code. In Dutch, "against the law" is wederrechtelijk (weder: against, against; recht: law). In determining whether an act can be punished, the legislator makes unlawful behavior a written element.

Keywords: Civil law, violation, criminal law

VIII. INTRODUCTION

Acts against the Law (PMH), both civil (OnrechtMatigeDaad) and criminal (WederrechTelijkeDaad), are two key concepts in legal science discourse (Shidarta, 2010, pp. 65-84). In general, especially if you follow the mainstream of legal thought in Indonesia, these two concepts experience divergence (spread) in the direction of their interpretation. Civil unlawful acts (PMH) lead to an extensive (extensive) meaning, namely by interpreting the law as not the same as the law (wet). So, OnrechtMatig Acts Against the Law (PMH) is distinguished from OnwetMatig Acts Against the Law (PMUU). The historical momentum of this expansion occurred after the decision of the Hoge Raad der Nederlanden on January 31, 1919, namely in the case of Lindenbaum versus Cohen. It is different from Acts Against the Law (PMH) in the criminal field, which leads to a narrower (restrictive) meaning, which is more directed to the nature of Acts Against the Law (Formal) (Formele Wederrech TelijkHeid). Before the act is committed, the law usually refers to the provisions of positive norms in the existing, written, and applicable criminal legislation system. Violating this requirement severely violates the principle of legality (Article 1 of the Criminal Code).

Acts Against the Law (PMH) Article 1365 of the Civil Code (Indonesia) has historically had the same meaning as Article 1401 of the Burgerlijk Wetboek (BW) (Netherlands). According to L.C. Hoffmann, from the sound of Article 1401 of the Burgerlijk Wetboek (BW-

Netherlands), there are four elements, namely: (1) someone must do the deed; (2) the act must be against the law; (3) the act must cause harm to another person; and (4) the act was due to a mistake that could be blamed on him. Mariam Darus Badrul Zaman, Article 1401 Burgerlijk Wetboek (BW-Netherlands) specifies an unlawful act (PMH) into five elements: (1) there must be an act (both positive and negative); (2) the act must be against the law; (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, pp. 49-50).

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

The difference between civil law, unlawful acts, and standard law torts Civil Law System. It is more comprehensive because it is formulated and includes violations of other people's rights, violates the perpetrator's legal obligations, or is contrary to decency or propriety in social relations. It also includes limited forms, in the sense that the court has recognized it, which in outline include negligence, defamation, nuisance, injurious falsehood, injurious to domestic relations, injurious to economic and contractual relations, deceit, and malicious prosecution. Common Law/Tort System. There needs to be a 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 of "unlawful acts" (PMH). Similarities between civil law errors (schuld) and common law/tort Elements of error (schuld) can equally take the form of intention (intention) or negligence (carelessness). The element of error (schuld) consists of two meanings, (a) objective, a measure of behavior that is determined according to general standards; people, in general, will act the same in the same circumstances as much as possible to prevent a loss from occurring; (b) subjective, about the perpetrator himself, does he have the ability to overcome a loss that may arise? This will determine whether he is responsible for losses due to his actions.

The difference is civil law error. The civil law system of Article 1365 BW still requires an element of the error to be proven, which is also regulated in Article 1865 BW. Common Law/Tort System. A person may be held liable for losses incurred without the need to prove the existence of an element of guilt, as in the concept of strict liability. So there is no need to pay attention to whether someone does it intentionally or negligently. This concept is used in Indonesia for environmental pollution cases.

Equality, elements of Civil Law Losses with Common Law/Tort. The magnitude of the actual loss is used as a benchmark for claims for compensation that will be filed by the plaintiff (Shidarta, 2010). The amount of loss is not determined by the parties themselves but by a judge or court according to their respective circumstances. The compensation given is basically to return the situation to how it was before the tort or tort occurred.

The difference. Civil Law System, The plaintiff must prove the loss. Losses can be material or personal. 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, nominal, and exemplary damages. The similarity of elements of Causality between Civil Law and Common Law/Tort. Actions and consequences (losses) must be directly related or balanced and can be calculated or estimated correctly. The difference. Civil Law System. This element of bad intent must be included in a lawsuit for insult as regulated in Articles 1376 and 1377 paragraph (2) BW. Common Law/Tort System. The element of 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. The aim research is to know the challenges facing soes

and soe subsidiaries toward business tranformation law enforcement and human rights protection (Post Constitutional Court Decision Number 01/PHPU-PRES/XVII/2019).

II. METHOD

This research is a normative legal research. The type of this research is a Normative Legal Research. Normative legal Research is a research which uses the law as foundation of norm. This means that this research is based on the library research focusing on reading and analyzing of the primary and secondary materials (Ibrahim, 2006). According to Jacobstein & Mersky (1981), normative legal research is seeking to find those authorities in the primary sources of the law that are applicable to a particular situation. The search is always first for mandatory primary sources, that are constitutional or statutory provision of the legislature, and court decision of the jurisdiction involved. If these cannot be located, the search then focuses on locating persuasive primary authorities that comprise decisions from courts of other common law jurisdiction.

In this research, the author describes the case, seek, and process a variety of data from the document study (libraries) to generate a report of research findings. In this study, researchers examine the legal norms contained in the legislation systematically. The approach method used is: a. Approach to legislation (statute approach), b. Conceptual approach (conceptual approach).

III. RESULT AND DISCUSSION

Onwet Matige Daad

Burgerlijk Wetboek (BW-Netherlands 1827) is a Dutch watercolour book. Staatsblaad 23 of 1847, Art. 1401 OnwetMatigeDaad (Violating the Law) "Elke onrechthamatigedaad, waardoor aan een ander schade toegebracht wordt, stelt dengene in de verplichting om dezelve te vergoeden." Koninklijk Besuit dated April 10, 1838 vs. Article 1365 Burgerlijk Wetboek (BW-Dutch East Indies) Number 12 of the Staatblatt from 1838 Effective October 1, 1838. Announcement of the Governor General of the Dutch East Indies, December 3, 1847 Effective May 1, 1848 Soebekti Translation, Tjitrosudibio: Onwet Matige Daad (Action Against the Law) "Any unlawful act that causes harm to another person obligates the person who, by mistake, causes the loss to compensate for the loss."

Elements of Onwet Matige Daad (Unlawful Acts)

- a. There are actions (active or passive);
- b. This act is against the law
 1. acts that violate the law;
 2. Acts violating other people's rights (personal rights, property rights, freedom rights, honor rights, reputation rights) which are protected by law;
 3. Actions that are contrary to the legal obligations of the perpetrator;
 4. Actions that are contrary to decency (geode zeden);
 5. Acts that are contrary to good attitudes in society by taking into account the interests of others (principle of decency);
- c. There is an offender.
 1. There is an intentional element;
 2. There is an element of negligence;
 3. There is no justification (Article 48: over-macht/forced) MvT KUHP: "every force, any coercion or pressure that cannot be resisted." Human or natural forces can cause absolute coercion (Vis Asaluta). This coercion is unbearable. Relative Coercion (Vis Compulsiva). The coercion can be resisted, but the person under the coercion cannot be expected that he will be able to put up a fight. Criminal Code Article 49 paragraph (1) good-weer (emergency defense). Article 50 (law order) and Article 51 paragraph (1)

official position order. There is no reason for forgiveness (Article 44 paragraph (1) is unable to be held responsible. Article 49 paragraph (2) noodles-excess. Article 51 paragraph (2) performs in good faith an illegitimate position).

d. Error Eraser From Outside the Law

1. The rights of parents over their children or the rights of teachers over their students
2. The right to office;
3. There is permission from the victim;
4. Representing others;
5. There is no material element against the law;
6. There is no mistake)

e. There are Victim Losses

1. Actual or concrete or material loss;
2. Immaterial or Idill: Fear or pain or loss of pleasure in life;
3. Future losses (potent loss) rehabilitation or recovery).

f. Three Types of OnwetMatigeDaad (Unlawful Acts):

1. Unlawful act on purpose;
2. Unlawful act without fault (without intention or negligence);
3. Unlawful acts due to negligence.

Definition of Onwet Matige Daad (Unlawful Act):

- a. Not fulfilling his obligation other than contractual or quasi-contractual obligations that issue the right to ask for compensation;
- b. An act or omission that results in a loss for another person without previously having a legal relationship in which the act or omission is either an ordinary act or an accident;
- c. Not fulfilling an obligation imposed by law, which is aimed at everyone in general, and compensation can be requested by not fulfilling this obligation, compensation can be requested;
- d. A civil wrong (civil wrong) against which damages can be sued that is not a default of contract or trust obligations or other equity obligations;
- e. A loss that is not caused by a default on a contract or, more precisely, is an act that harms the rights of other people created by law that does not arise from a contractual relationship;
- f. An act or omission of something that violates the law violates the rights of other people created by law; therefore, compensation can be demanded by the injured party;
- g. The tort is not a contract any more than chemistry is not physics or mathematics.

Arrest Hoge Raad-Netherlands January 5, 1905. OnwetMatige Daad (Action Against the Law) Case of Singer Naaimachine. A trader sells "Singer" brand sewing machines. The machine is not a Singer product. The word "Singer" is written in large letters so that at first glance, you will see only the word "Singer." The merchant was sued in court. The trader's actions are not against the law.

Arrest Hoge Raad-Netherlands June 10, 1910. OnwetMatige Daad (Action Against the Law) Case De Jutphense Juffrouw. Jutphen City. Winter: A lady and a neighbor live in the same apartment in the city. Miss lives in the upper part of the apartment, while her neighbors occupy the lower part. One day, the water pipe in the upper apartment broke, and the water flowed down into the neighboring apartment. The broken water flow from the pipe is located in the lady's apartment, and only she can stop the flow of water by not turning on the bathroom faucet, but the lady does not care about this until her neighbor asks her not to turn it on the faucet. The water, and still, he only paid attention to it once it flowed wet and inundated his neighbor's house.

For this reason, her neighbor sued the lady in the Zutphen Court for Unlawful Acts. The lawsuit reached the Hoge Raad (Dutch Supreme Court). The neighbor's lawsuit was not accepted because Noa's actions did not violate the law (wet) because there was no provision prohibiting the lady from using her bathroom faucet.

Arrest Hoge Raad-Dutch 14 February 1916. OnrechtMatigeDaad

Acts Against Material Law in Negative Functions. Case Water en Melk. Art 344 Vol Verord Juncto Deelneming Delicten. It is prohibited to sell, deliver or have supplies to be delivered, milk with the name pure milk (volle melk) if something is added or removed. Cantonrechter-Amsterdam Court: Punished a milk producer employer and his employee (boyfriend) who distributed milk mixed with water to customers. The Court of Appeal of the Arrondissements Rechtbank- Amsterdam) overturned the court's decision of the first instance by convicting the employer of the criminal act of ordering (doen-pledge) to distribute milk mixed with water, and acquitting the employee (messenger) from the crime, because he was deemed not to have known anything about the existence of mix water in milk. The employer, via the Prosecutor, filed an appeal. Dutch Supreme Court (Hoge-Raad): Released and acquitted the employee (errand boy). Art 344 Vol Verord Amsterdam: does not require an element of "error." Since the Hoge-Raad Jurisprudence, the Geen Straf Zonder Schuld Principle was born. There is no crime without guilt or the Afwezigheid Van Alle Schuld(AVAS) Principle: Forgiveness. Reasons for erasing someone's mistakes from outside the law (mens-rea). Azas Afwezigheid Van Alle Wederrech telijkheid. There is no crime without acts against material law (AVMW): Justification. Not reprehensible (article 48 and article 49 paragraph (2) and article 51 paragraph (2) of the Criminal Code. His actions were right (article 49 paragraph (1) and article 50 and article 51 paragraph (1) of the Criminal Code). Not being able to take responsibility (article 44 paragraph (1) Criminal Code).

Onrecht Matige Daad

Arrest Hoge Raad-Dutch 31 January 1919. OnrechtMatigeDaad. Unlawful Acts (PMH) Printing Case Cohen Vs Lindenbaum Printing. The formulation of PMH elements increases. "Active or passive or negligent is contrary to the public interest and contrary to the rights of other people and contrary to the principle of decency or the principle of decency or the principle of decency in society." The Lindenbaum printing company proliferated when compared to the Cohen printing company. Furthermore, Cohen bribed Lindenbaum employees to provide price lists and lists of customers (consumers) of Lindenbaum. Finally, based on these data, Cohen offered a lower price than its competitors to Lindenbaum's consumers. As a result of Cohen's actions, Lindenbaum suffered a loss and sued Cohen to the Amsterdam Court on charges of Unlawful Acts (PMH) Art 1401 Burgerlijk Wetboek (BW-Netherlands) Vs. Article 1365 BW-Netherlands East Indies. At the first level, the judge granted Plaintiff Lindenbaum's lawsuit. However, at the appellate level, Plaintiff Lindenbaum was defeated by the appeal judge's decision. Finally, Plaintiff Lindenbaum filed an appeal to the Hoge Raad (Dutch Supreme Court), and the Hoge Raad (Dutch Supreme Court) cassation decision granted the Plaintiff's claim. Lindenbaum: Rules of Law:

Actions that are contrary to the legal obligations of the perpetrator;

- 1) Actions that violate the subjective rights of others;
- 2) Actions that are contrary to the rules of general decency;
- 3) Acts that violate the sense of decency in the society.

Legal Considerations: "Any act (active) or negligence (passive) that violates the subjective rights of other people or conflicts with the legal obligations of the perpetrator or conflicts with good decency and/or conflicts with the sense of decency that exists in society is an unlawful act".

Jurisprudence 1939. OnrechtMatigeDaad. Material Unlawful Acts (PMH) in Negative Functions. Bournier's Case. Doctor Bournier performed an abortion on a 14-year-old teenage girl who was the victim of several rapes by several perpetrators.

For this reason, Dr. Bouner was brought to criminal justice for violating Section 58 of the Offence Act 1861. The council (legal counsel) argued that the defendant's actions were based on "therapeutic" intent. Meanwhile, the Attorney (public prosecutor) argued that the defendant's actions endangered other people. Furthermore, the Judge (judge) set aside these two arguments and took his legal considerations that abortion is legal if the consequences of continuing the pregnancy will harm the woman physically and mentally. Abortus Provocatus Therapeutics: a legal reason for medical indications that concludes that the pregnancy will worsen the person's physical and mental health.

Onwet Matige Daad Ruler

Arrest Hoge Raad-Dutch May 29, 1846. OnwetMatigeDaad (Unlawful) Ruler. Ship Vrouwe Elske Versus Mayor Leeuwarden. The owner of the ship Vrouwe Elske while in the public waters of the Municipality of Leeuwarden, hit a pole standing below sea level, resulting in a leak and damage to the ship Vrouwe Elske. The Municipality of Leeuwarden was deemed negligent in adequately managing the waters around the Port Marge Municipality pier. Due to this, the ship's owner, Vrouwe Elske, filed a lawsuit against the Municipality of Leeuwarden. Hoge Raad believes that the Municipal Authority of Leeuwarden, as the government, cannot be sued with civil liability because the Municipal Authority of Leeuwarden does not have the same position as the private sector.

Arrest Hoge Raad-Dutch 21 April 1898. OnwetMatigeDaad (Unlawful) Ruler. Rhedense Koe. Mayor Rheden, as the Municipal Police Chief, ordered the Veldwachters to shoot dead a farmer's buffalo rampaging in his town. The buffalo owner is given money for the proceeds from selling the animal skin: Freies Ermeisen Doctrine (Decrement of Rulers or Authority to Act in a Free State). Mayor Rheden Koe, as Head of Municipal Police, can represent the public interest which has the authority for the public interest to take early prevention of damage caused by buffaloes belonging to the rampaging farmer. These legal events are in public law, not civil law. There is no abuse de pouvoir (arbitrary) in this act.

Arrest Hoge Raad-Dutch May 10, 1901. OnwetMatigeDaad (Unlawful) Ruler. Mayor of Amsterdam. The municipality of Amsterdam ordered homeowners to repair the walls of their houses. Homeowners ignore orders. Then the Municipality of Amsterdam-Netherlands took action to demolish the walls of the house.

Onrecht Matige Daad Ruler

Arrest Hoge Raad-Dutch 20 November 1924. OnrechtMatige OverheidsDaad(PMH-Master) The Detournemen du Puvoir Doctrine. Osterman Butter Exporter. The Osterman entrepreneur who exports butter goods will export his butter goods and have submitted them to the Amsterdam Customs Officer (douane employee) for inspection. The Amsterdam Customs Officer (douane employee) refused by not responding well to the request. In the end, the goods were exported late, resulting in the loss of Osterman, the exporter of the butter goods. The entrepreneur, Osterman, the exporter of butter goods, filed a lawsuit against the Customs and Excise Agency (douane authorities) in Amsterdam, the Netherlands. Hoge Raad: that the actions of the douane rulers are contrary to their legal obligations by not taking action (passively), this is an onrechtmatigdaad (unlawful act) because it conflicts with the rights of others.

Arrest Hoge Raad-Dutch 20 December 1940. OnrechtMatige OverheidsDaad(PMH-Penguasa) Veehouder(Cowboy) Cattle Farmer. Cattle Entrepreneurs or Cattle Breeders own cows. At that time, some laws prohibited acts. The local authority or government orders the registration officer to sell cows owned by Veehouder (Cowboy) cattle entrepreneurs or breeders, and the proceeds from selling these cows are 100 guilders. However, according to Veehouder (Cowboy), a Cattle Entrepreneur or Cattle Farmer, if the Registration Officer sells properly and correctly, sales will result in more than that value because these cows are "Stamock Vokvee or Quality Cattle." The cows' owner filed a lawsuit against the state for the actions of the government or authorities. Hoge Raad: "The authorities' actions are onrecht matigdaad (unlawful acts) because they sell cows belonging to other people at low prices

and these actions are onrecht matigdaad (unlawful acts) because they do not pay attention to the legal interests of the owners of the cows."

Arrest Hoge Raad-Dutch 09 January 1942. OnrechtMatige OverheidsDaad(PMH-Penguasa) Wegdek Rider Motor. a motorcyclist had an accident caused by an excavated hole on the Friese Township highway. For the accident, the motorcycle rider Wegdek sued the government to compensate for the losses incurred by the plaintiff. Hoge Raad that the actions of the Friese Municipality authorities, who did not take good care of and maintain the condition of the highways in their territory, which are a legal obligation for him and caused harm to road users, are onrecht matilda (an illegal act).

Arrest Hoge Raad-Dutch 24 June 1949. OnrechtMatige Overheids Daad(PMH-Penguasa) Groningen. The territory of the Northeastern Province Bordering Lower Saxony (State of Germany). The Dutch government claimed KwelderGronden in the Northeast Province of Groningen in the Netherlands near the border with Lower Saxony (State of Germany). This was done based on the existence of Algemene Voderings Besluit in 1940. The government demanded to eliminate the conflict between the government and the landowners. The Hoge Raad believes that the government's actions are onrecht matigdaad (an act against the law).

Jurisprudence March 20, 1977. OnrechtMatigeDaad. Material Unlawful Acts (PMH) in Negative Functions. Violators of the Principles of Formiele Wederrech Telijkheid. The act is not reprehensible, and the conditions are: no self-benefit and no loss to the state and prioritizing the public interest is fulfilled (principle of expediency); there are excuses or justification reasons. Cassation Decision No. 81 K/Kr/1973. On behalf of the TIPIKOR Defendant Ir. Otjo Dana Atmadja. The Defendant's Actions: 1. Defendant had a fundamental goal of benefiting the public interest that the legislator wanted to protect; 2. The defendant protects a legal interest higher than the legal interest aimed at formulating the crime he violated; 3. The defendant has more value for the community's interests than his interests.

Jurisprudence, 19 November 1977 OnrechtMatigeDaad. Material Unlawful Acts (MUA) in a Beneficial Role Banda Aceh District Court Decision. Juncto Cassation Decision Number 93 K/Cr Punish the male defendant and female defendant (for the traditional crime of adultery). Emergency Law Number 1 (Drt) 1951, Article 5, paragraph 3, letter b.

Jurisprudence October 8, 1979. OnrechtMatigeDaad. Material Unlawful Acts (PMH) in a Positive Function. Violators of the Principle of Materiele Wederrech Telijkheid. Violators of disgraceful behavior in society. Emergency Law Number 1/Drt/1951. Article 5 paragraph (3) letter b: 1. For an act considered a customary crime but has no equivalent to the activities regulated in the Criminal Code, the judge can impose a maximum penalty of 3 (three) months in prison and/or fine. 2. If the act (which has no equivalent to the actions stipulated in the Criminal Code) has a sanction/traditional punishment that is higher than what is specified (higher than just a sentence of 3 months in prison and/or a fine of Rp. 500) then the judge (court) can impose on the perpetrators of customary crimes with a maximum threat of 10 (ten) years in prison. 3. For an act that is considered a customary crime, but there is an equivalent to the activities regulated in the Criminal Code. The perpetrators of the customary crime may be subject to punishment similar to the provisions in the criminal code and criminal juncto.

Balinese tradition: "Sanggraha Logic". Book of Super Religions, Article 359:

1. There is a love relationship (dating) between a man and a woman who are both not married;
2. Between a man and a woman who are making love, sexual relations are established based on consensual;
3. The man has promised to marry the woman;
4. Sexual intercourse that has been done causes the woman to become pregnant;
5. The man broke his promise to marry the woman. Gianjar District Court Decision. Bali. Juncto MA-RI Decision Number 195 K/Cr. October 8, 1979. Sentenced a man who had violated the customary law of "Sanggraha Logic." Emergency Law Number 1/Drt/1951. Article 5 paragraph (3) letter b. Post August 16, 1999.

OnrechtMatigeDaad. Material Unlawful Acts (PMH) in Negative and Positive Functions. Law of the Republic of Indonesia Number 20 of 2001. November 21, 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. August 16, 1999 (State Gazette of the Republic of Indonesia Year 1999 Number 140. Supplement to the State Gazette of the Republic of Indonesia Number 3874) concerning Eradication of Criminal Acts of Corruption (TIPIKOR). Explanation of Article 2 paragraph (1). Post July 25, 2006. OnrechtMatigeDaad. Material Unlawful Acts (PMH) in Negative Functions. The decision of the Constitutional Court of the Republic of Indonesia. Case Number 003/PUU-IV/2006. Concerning Judicial Review and Cancellation of the Elucidation of Article 2 paragraph (1) of the TIPIKOR Law. Post February 28, 2007. OnrechtMatigeDaad. Material Unlawful Acts (PMH) in Negative and Positive Functions.

6. TIPIKOR Cassation Decision Number 103 K/Pid/2007. February 28, 2007.
7. Decision of the Central Jakarta District Court. TIPIKOR Number 16/Pid.B/TPK/2005.PN.Jkt.Pst. Juncto High Court-Jakarta Decision. 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.
8. Decision of the Padang District Court. TIPIKOR Number 16/Pid.Sus/2014/PN. Rev. Juncto Padang High Court Decision. TIPIKOR Appeal No. 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.
9. Decision of the Semarang District Court. TIPIKOR Number 54/Pid.Sus/TPK/2014/PN.Smg. Juncto Decision of the Semarang High Court. 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.
10. Decision of the Banda Aceh District Court. TIPIKOR Number 26/Pid.Sus/TPK/2013/PN.BNA. Juncto Cassation Decision. TIPIKOR Number 397 K/Pid.Sus/2014. Defendant Imanuddin bin Tulus.
11. TIPIKOR Cassation Decision Number 417 K/Pid.Sus/2014. Defendant Hotasi Nababan. Main Director of Merpati Nusantara Airlines (Persero) Juncto Decree of the Supreme Court of the Republic of Indonesia Number 142/KMA/SK/IX/2011. Dated September 19, 2011, concerning Guidelines for Implementing the Chamber System. Juncto Decree of the Supreme Court-RI Number 213/KMA/SK/XII/2014. December 30, 2014. Juncto SEMA-RI Number 10/BUA.6/HS/SP/IX/2012. September 12, 2012. Juncto SEMA-RI Number 07 of 2012. March 8 - 10, 2012, regarding the Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guideline for implementing Tasks for the Special Crimes Court.

Bill-KUHP-National. 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 law that lives in society, which determines that a person should be punished even though the act is not regulated in laws and regulations. Paragraph (2): The law that lives in society, as referred to in paragraph (1), applies as long as it is by the values contained in Pancasila, Human Rights, and general legal principles recognized by the people of nations.

CONCLUSION

Memorie van Toelichting Wetboek van Strafrecht voor Nederlandsch -Indie(WVSNi) WederrechTelijkheid was not found. What is meant by the word "law" in the phrase "Against

the Law". If referring to the Postulate *Contra Legem facit qui id facit quod lex prohibet; in fraudem vero qui, salvis verbis legis, sententiam ejus circumvenit*. A person is declared unlawful when the act committed is an act prohibited by law. One of the main elements of a criminal act that is objective is against the law. The Legality Principle of Article 1 paragraph (1) of the Criminal Code. In Dutch, "against the law" is *wederrechtelijk* (weder: against, against; recht: law). In determining whether an act can be punished, the legislator makes unlawful behavior a written element. With this element, the formulation of the law would be narrower. In addition, reproachable nature is sometimes included in *culpa* offenses. The doctrine of unlawful nature has an important position in criminal law besides Indonesia, and there are unwritten laws, namely customary law. Nevertheless, the recognition and application of unlawful material teaching were only carried out in 1965. In its development, this unlawful teaching was then formalized. If you examine the articles in the Criminal Code, the words against the law (*wederrechtelijke*) are listed to show 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 denote a purpose, or cog mark 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 467KUHP.

Acts Against the Law (PMH) Criminal: 1. Formal view: the element against the law is not an absolute element of a criminal act. Against the law is an element of a criminal act if it is expressly stated in the formulation of the offense. Opinion of Professor Pompe, "*wederrechtelijkheid is dus in het algemeen geen bestanddeel van het strafbare feit, tenzij uitdrukkelijk in de wettelijke omschrijving opgenomen*". Unlawful nature is generally not an element of a criminal act unless expressly stated in the formulation of the law. Article 338 of the Criminal Code: "Whoever deliberately takes the lives of other people, is threatened with murder with a maximum imprisonment of fifteen years." Comparison of Article 362 of the Criminal Code: "Anyone who takes goods that wholly or partly belong to another person, intending to unlawfully possess them, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of sixty rupiahs."

Material view: against the law is an absolute element of every criminal act. Opinion of Vos and Moeljatno. Hazewinkel Suringa: that unlawfulness is a constant and permanent element of every criminal act if it is mentioned, as well as accountability. A criminal act is not only behavior that fulfills the formulation of a delict but requires both, first is against the law, and second is that the perpetrator can be held accountable. 3. Middle View: Opinion of Hazewinkel Suringa: "*De wederrechtelijkheid is slechts daar, waar wet haar noemt elementen verder allen maar het kenmerk van ieder delict...*". The nature of unlawfulness is an absolute element if stated in the formulation of the offense. Otherwise, being against the law is only a sign of an offense.

Recognize the Nature of Criminally Illegal Acts (PMH) The doctrine distinguishes: 1. acts against formal law, namely acts against the law if the act has been regulated in law, a 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 accused act must be an act that is prohibited and punishable by criminal law, and the act is also against the law. Every criminal act is always contrary to statutory regulations or the law unless there are justifiable reasons or excuses. Nature's legal defense is formal *wederrechtelijkheid* and material *wederrechtelijkheid*. This accommodates customary laws still valid in various regions, and most still need to be written down. There is a principle of balance between formal benchmarks (legal certainty) and material benchmarks (value of justice). In concrete events, the two push each other, then in Article 19 of the RUU-KUHP-National.

Guidelines for Judges: Judges must prioritize values as far as possible justice in deciding a case faced from the certainty value of the concept of material legality as well as the teaching of material lawlessness in the current Criminal Code is unknown.

AndiHamza's opinion. Unlawful in the formal sense is defined as contrary to law. If an act has matched the formulation of the offense, it is usually said to have been formally against the law. Violating the material law must mean only in a negative sense, meaning that if there is no material violation, then it is a basis for justification. In sentencing, it must be used against formal law, which means that it is contrary to written positive law for reasons *nullum crimen sine lege stricta* stated in Article 1 paragraph (1) of the Criminal Code.

Opinion of Satochi Kartanegara. "against the law" (*Wederrech telijk*) in criminal law is divided into 1. *Wederrech telijkformil*, when an act is prohibited and threatened with punishment by law. 2. *Wederrechtelijk Material*, namely an act of "possible" *wederrechtelijk*, although not expressly prohibited and threatened with punishment by law.

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