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Legal Certainty Regarding the Rules for Qualifying Unlawful Acts and Defaults in the Framework of Civil Law Reform in Indonesia

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Abstract

Various phenomena have emerged at the level of the practice of resolving Unlawful Acts and Defaults cases through litigation in court which have also attracted attention for research. Most studies discuss the merging and separation of Unlawful Acts and Defaults lawsuits in court. However, research that tries to criticize and offer a new concept of the rules on Unlawful Acts and Defaults in order to realize legal reform that provides certainty has not been widely carried out. This study will discuss how the concept of Unlawful Acts and Defaults in positive law in Indonesia, how to qualify it, and what are the weaknesses of the current rules. The study adopts normative legal research, also known as doctrinal legal research, supplemented by interviews with Judges from the Medan District Court and Advocates, using interview guidelines as a data collection tool. The results of the study indicate that the concept of rules in qualifying Unlawful Acts and Defaults in Indonesia is currently considered unable to realize legal certainty. Therefore, it is necessary to update the Civil Law regarding the rules for qualifying Unlawful Acts and Defaults in Indonesia which can create legal certainty.

Keywords

Civil Law Reform, Legal Certainty, Normative Legal Research, Unlawful Act.

1. Introduction

Unlawful Acts and Defaults always appear in civil law and often overlap in interpretation, both in academic discussions and judicial practice. Book III of the Civil Code, which regulates both in a generic manner, creates inconsistencies in case resolution, hindering legal certainty in judicial proceedings (Suhendro, 2014; Shcherbanyuk et al., 2023). This gap arises from the concept of agreements functioning as law, leading to the perception that violating an agreement equates to violating the law. Defaults can serve as the basis for claims related to breach of contract but may also provide grounds for Unlawful Acts lawsuits (Ariadin, 2023; Widijowati, 2023). Therefore, clearer qualification rules are needed to ensure legal consistency.

Various phenomena also appear at the level of the practice of resolving Unlawful Acts and Defaults cases through litigation in court which also invites attention for research. Siregar (2023) found research results in the form of combined and separated Unlawful Act and Defaults lawsuits, where each of these lawsuits was granted and not. Zaenuddin (2020) and Phillips (2021) found that there has been a development in the practice of court decisions, where there is a shift in thinking which is basically that the prohibition on merging Defaults and Unlawful Acts lawsuits cannot be maintained. This is also different from Abduh (2014) found that it is not permissible to mix claims for Defaults and Violations Against the Law, unless the position has been clearly explained and separated in relation to their respective legal facts (Abduh, 2014).

Research criticizing and proposing new concepts for Unlawful Acts and Defaults remains limited. Legal certainty must first be established to ensure justice and benefits in resolving cases (Faiz et al., 2023). However, Material Civil Law regulations in Indonesia still contain weaknesses that lead to legal uncertainty. At a theoretical level, the Dutch-inherited rules in the Civil Code appear problem-free, but their flaws become evident when applied to real-world cases. Thus, revising qualification rules is essential to improving legal certainty.

This study itself has also found 4 (four) different decisions on the Unlawful Act lawsuit and shows that there is a very thin line and a very strong relationship between Unlawful Act and Defaults. The four decisions are Decision No. 4/Pdt.GS/2023/PN Mdn, Decision No. 5/Pdt.GS/2023/PN Mdn, Decision No. 809 K/Pdt/2018, and Decision No. 160 K/Pdt/2018. The difference in perspective between Judges and Advocates in the process of resolving Unlawful Act and Defaults cases in court is considered to be one sign that the current regulations have not been able to accommodate and provide full legal certainty. This is reflected in several different decisions and lawsuits as previously stated. There is an assumption that such conditions indicate an overlapping of thinking in qualifying Unlawful Acts and Defaults (Brenncke, 2024). The most fundamental influence related to this is caused by the weakness of the rules on Unlawful Acts and Defaults.

The existing research gap shows that studies on Unlawful Acts and Defaults mainly focus on merging or separating lawsuits in court decisions (Ejjami, 2024). However, few critically examine qualification rules within Material Civil Law or propose a new legal framework for legal certainty. This gap leads to judicial inconsistencies, affecting law enforcement and causing uncertainty for legal practitioners. The core issue is the overlapping understanding between Unlawful Acts and Defaults, rooted in the concept of agreements as binding law. Book III of the Civil Code regulates both in a generic manner, causing ambiguity in practice. Weak qualification rules result in contradictory court decisions, undermining legal certainty. This study aims to analyze the concept of Unlawful Acts and Defaults in Indonesian positive law, examine qualification methods, and identify regulatory

weaknesses. It seeks to propose legal reforms to establish a consistent framework in Civil Law Reform.

2. Literature Review

Unlawful Acts and Defaults always appear in civil law and often overlap in interpretation, both in academic discussions and judicial practice (Hadi & Suhartono, 2023). Book III of the Civil Code, which regulates both in a generic manner, creates inconsistencies in case resolution, hindering legal certainty in judicial proceedings (Suhendro, 2014). This gap arises from the concept of agreements functioning as law, leading to the perception that violating an agreement equates to violating the law. Defaults can serve as the basis for claims related to breach of contract but may also provide grounds for Unlawful Acts lawsuits (Ariadin, 2023). Therefore, clearer qualification rules are needed to ensure legal consistency

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Research criticizing and proposing new concepts for Unlawful Acts and Defaults remains limited. Legal certainty must first be established to ensure justice and benefits in resolving cases. However, Material Civil Law regulations in Indonesia still contain weaknesses that lead to legal uncertainty. At a theoretical level, the Dutch-inherited rules in the Civil Code appear problem-free, but their flaws become evident when applied to real-world cases. Thus, revising qualification rules is essential to improving legal certainty.

3. Methods

The type of research used is normative legal research, which in some literature is also referred to as normative legal research or doctrinal legal research as stated by Sunggono (2007). The characteristics of normative or doctrinal legal research also tend to be conceptualized in everything written in Indonesia law or law as a guideline, a reference for humans in behaving appropriately as stated by Sihombing and Hadita, (2022). The data source used in this study is secondary data, which includes legislation, legal literature, academic journals, and legal doctrines, where the data presented is only based on independent research.

The views of judges, the community or parties involved in this are not used as respondents, but the author conducted a study on how the substance runs in accordance with the legal basis, literature and existing theories, interviews with relevant informants to add and enrich the data. Because the approach used is more doctrinal, which focuses on examining the applicable legal norms. To enrich the analysis, empirical enrichment was conducted through interviews with informants, namely Judges at the Medan District Court and Advocates, using interview guidelines as data collection tools. These informants do not act as respondents, but rather as sources providing perspectives on the implementation of legal provisions in judicial practice, helping to clarify how legal norms are applied and highlighting challenges within the legal system. Thus, this study clearly distinguishes between doctrinal analysis, which examines legal norms and theoretical concepts, and

empirical enrichment, which validates and clarifies the application of law in judicial practice. The combination of both approaches ensures analytical depth and strengthens the legal recommendations proposed in this study. This combined methodological approach ensures analytical depth, robustly supporting the legal recommendations and enhancing the study's overall validity and impact.

4. Results

4.1. Unlawful Acts and Defaults in Indonesian Positive Law

Material Civil Law in Indonesia regulated by the Civil Code (*Burgerlijk Wetboek*), remains effect based on Article 1 of the Transitional Provisions of the 1945 Constitution. Book III of the Civil Code discusses Contract Law and has not been replaced by a new law. The Draft Contract Law still under review. Article 1233 states that contracts from agreements or laws, and Article 1352 explains that obligations can arise from legal or illegal acts (Badruzaman, 2006; Meliala, 2024). Unlawful Acts in Indonesian civil law arise as obligations from human actions, necessitating element of the act itself. Article 1365 of the Civil Code states that anyone violates law due to a mistake must compensate for resulting losses. However, the Civil Code lacks a concrete definition of Unlawful Acts, as noted by Djojodirjo (1982), who argues that efforts to define them are futile. The concept of Unlawful Acts (*Onrechtmatige daad*) in Indonesia is closely linked to counterpart in the Netherlands.

The concept of Unlawful Acts expanded in Netherlands following Hoge Raad decision case of *Lindenbaum vs. Cohen* in 1919, which involved unfair business competition. Cohen bribed Lindenbaum's employees, who then sued under Unlawful Acts (*Onrechtmatige daad*) under Article 1401 BW (Article 1365 of the Indonesian Civil Code). Although he lost appeal, the cassation court ruled in Lindenbaum's favor, ruling that Unlawful Acts include violations of other people's rights and social norms. Islamic law also discusses Unlawful Acts in the Compilation of Sharia Economic Law (KHES) through Supreme Court Regulation No. 2 of 2008, which requires compensation for losses caused intentionally or negligently (Putra, 2021).

Unlawful Acts in Indonesian Criminal Law differ from Civil Law, as the principle of legality requires such acts, or *wederrechtelijk*, to be regulated in written law, with Article 2 paragraph 1 of the Corruption Eradication Law expanding this definition to include acts not in accordance with justice and community norms, allowing for a broader interpretation of punishment (Sari, 2020). In Civil Law, compensation for Unlawful Acts is divided into general, regulated in Article 1243 of the Civil Code, and special, arising from specific obligations (Apriani, 2020), such as compensation for negligence and actions of others (Articles 1366–1367), for animal owners (Article 1368), for owners of collapsed buildings (Article 1369), for families left behind by a murdered person (Article 1370), for injuries or physical disabilities (Article 1371), and for insulting acts (Articles 1372–1380).

Compensation for Unlawful Acts is similar to Defaults, but the Civil Code does not regulate in detail. Abdulkadir (2016) classifies losses into material and immaterial, and Badruzama (2006) states that the provisions for Defaults can be applied analogously. Defaults require a contractual relationship, while Unlawful Acts do not (Prayogo, 2016). Next element of Defaults is negligence or neglect of one party in carrying out its obligations, where one party cannot fulfill the agreed performance. Negligence can be: 1) no achievement at all, 2) inadequate performance, 3) late achievement, and 4) violation of the agreement by committing a prohibited act.

All forms of Defaults can be attributed to negligence by one party, unless exceptional circumstances, like emergencies, are proven. Determining negligence is challenging, as the debtor must prove their lack of fault if they deny negligence (Subekti, 2010). Article 1238 of the Civil Code states that a summons is used to assess

a debtor's negligence. If a legally issued summons is ignored without justification, the debtor is deemed negligent (Satrio, 2014). While Civil Code outlines compensation for Defaults in Articles 1243–1252, uses similar terms for both Defaults and Unlawful Acts, differing only in the origin of the loss: agreements for Defaults and acts for Unlawful Acts (Gegen, 2021).

4.2. Qualifying Unlawful Acts and Defaults in Civil Law

In classifying Unlawful Acts and Defaults, refer to source of the agreement. Defaults occur due to violations of the agreement, while Unlawful Acts arise from violations of the law. Lisdiyono (2019) explains losses in Defaults are material, and the compensation is in the form of money, Unlawful Acts can involve material and immaterial losses, as well as a return to the original state. Defaults do not require proof of the debtor's fault, while Unlawful Acts must prove perpetrator's fault, although there is a reversal of the burden proof.

Based on Article 1365 of the Civil Code, the elements of an Unlawful Act include: 1) the existence of an action; 2) unlawful action; 3) the perpetrator's fault; 4) loss to the victim; and 5) a causal relationship between the action and the loss (Tobing et al., 2024). The qualification of Defaults refers to the actions of the debtor who cannot fulfill the achievements in the agreement. In classical theory, if the Plaintiff's goal is to put in a position as if the agreement has been fulfilled, it is a Defaults lawsuit; If the goal is to restore the situation before the Unlawful Act, then it is an Unlawful Act (Tobing et al., 2024).

In court practice, law enforcers, including judges and advocates, have same understanding in classifying Unlawful Acts and Defaults. Eli Yurita, a judge at the Medan District Court, stated that Unlawful Acts occur if: 1) there is an unlawful act; 2) there is an error; 3) there is a loss; and 4) there is a causal relationship between the error and the loss. For Defaults, what considered is: 1) existence of an agreement; and 2) one party does not fulfill the agreement. Munthe (2024) added that the qualification is sufficient to be seen from the basis of the lawsuit; if based on an agreement, it is Defaults, if not, it is Unlawful Act. Harahap (2000) stated that the Plaintiff's *posita* argument is the benchmark; if it mentions statutory regulations, it is Unlawful Act, while if it mentions the rules in the agreement, it is Defaults. However, Sinulingga (2022) emphasized that not everything that comes from an agreement can qualified as Defaults, such as in the case of unilateral cancellation which can be considered an Unlawful Act based on jurisprudence. The qualification of Unlawful Acts and Defaults in Substantive Civil Law in Indonesia tends to refer to the source of the agreement, but still causes practical problems and legal uncertainty in process of filing lawsuits and decisions.

4.3. Weaknesses in Rules for Unlawful Acts and Defaults

Legal certainty important for justice seekers, with Van Apeldoorn emphasizing that the judge's decision must include justice, certainty, and legal benefits (Desril, 2021). Suhendro (2014) criticized the misclassification of decisions between Unlawful Acts and Breach of Promise. Siregar's (2023) research shows an overlap between the two in the Medan District Court, with four decisions reflecting a strong relationship. There are three weaknesses in the qualification of Unlawful Acts and Breach of Promise in Indonesia: first, the unclear nomenclature, because the Civil Code does not emphasize the requirements of Unlawful Acts and does not mention the term, causing dualism in interpretation.

People without legal background have difficulty understanding the difference between Unlawful Acts and Defaults from the Civil Code alone. The term defaults can be confusing, so it is proposed to replace it with acts to violate agreements to make it easier to understand. Prof. Johannes Gunawan stated that not fulfilling an agreement is the same as violating an agreement. There is no assertion that Defaults

are a form of Unlawful Act in broad sense. Hartkamp (2015) state that there is no fundamental difference between the two. Harahap (2000) emphasizes that the debtor's negligence violates the creditor's rights, and Satrio (2014) argues that Defaults are Unlawful Acts by the debtor.

The closeness between Defaults and Unlawful Acts seen from the principle of *Pacta Sunt Servanda*, where a breach of agreement is the same as a breach of law. The orientation of both is towards compensation that restores the expectation of performance must be carried out by the violator, in accordance with the thoughts of Prof. Edy Lisdiyono in his book selected chapters of civil law. Unclear regulations regarding Breach of Promise as part of Unlawful Acts that result in violation of the law. Examples of cases such as shophouse rentals, carrier errors, and car credit agreements show errors in the classification of violations, whether they are Unlawful Acts or Defaults, which can be detrimental parties seeking justice (Suhendro, 2014).

The lack of clarity regulations regarding Unlawful Acts and Breach of Promise opens legal loopholes for certain parties to avoid obligations. It is important to explain in Indonesian Material Civil Law that Unlawful Acts include Breach of Agreement (Lisdiyono, 2019), to provide legal certainty for justice seekers. If unlawful acts are described as a genus and defaults as a species in substantive civil law, justice seekers can file a lawsuit through the unlawful act civil lawsuit. However, uncertainty regarding the agreements that can be claimed, including immaterial agreements, makes the decision very dependent on the judge's belief (Sari, 2020).

5. Discussion

In Indonesian Civil Law, Unlawful Acts and Defaults have significant differences. Civil Law is regulated by the Civil Code, which is a legacy of Dutch colonial law. Although the Draft Law on Contract Law being discussed, Book III of the Civil Code which regulates Contract Law remains in effect. Unlawful Acts are regulated in Article 1365, but do not have a clear definition (Djojodirjo, 1982). In Criminal Law, Unlawful Acts must be regulated in written law, with a stricter definition (Sari, 2020). Compensation for Unlawful Acts and Defaults has similarities, but the provisions for Unlawful Acts are not regulated in detail (Badrulzama, 2006). Losses can be classified into material and immaterial (Abdulkadir, 2016). Negligence in Defaults can appear in various forms, such as not fulfilling performance or violating the terms of the agreement. Determining negligence is a legal challenge, because debtors must prove that they are not at fault (Subekti, 2010). This discussion shows the complexity of the interaction between civil law and criminal law in Indonesia, as well as the challenges in law enforcement related to unlawful acts and defaults.

The classification of unlawful acts and defaults in Indonesian Civil Law depends on the source of the agreement. Defaults occur due to violations of the agreement, while Unlawful Acts arise from unlawful acts (Lisdiyono, 2019). The main difference lies in the form of losses and proof of fault; Defaults result in material losses with monetary compensation, while Unlawful Acts can include immaterial losses and returns to their original state (Tobing et al., 2024). In practice, judges and advocates have a similar understanding in classifying both. Eli Yurita, a Medan judge, stated that Unlawful Acts require proof of unlawful acts, errors, losses, and causal relationships (Munthe, 2024). However, not everything that comes from an agreement can be categorized as Defaults; for example, unilateral cancellation can be considered an Unlawful Act based on jurisprudence (Sinulingga, 2022). This shows that although the classification follows the source of the agreement, practice in the field still faces legal challenges and uncertainties.

The discussion on legal certainty in the context of Unlawful Acts and Defaults highlights the importance of a clear understanding of the law for justice seekers. Van Apeldoorn emphasized that legal certainty is the basis for resolving cases in court, where the judge's decision must cover three legal objectives: Justice, Certainty, and

Legal Benefits (Desril, 2021). Suhendro (2014) criticized the misclassification of decisions between Unlawful Acts and Defaults, while Siregar's research (2023) showed overlap between the two in several decisions at the Medan District Court.

Deficiencies in legal nomenclature, such as the unclear term defaults, can confuse the public. The proposal to replace the term with acts violating agreements aims to facilitate understanding. Hartkamp (2015) emphasized that there is no fundamental difference between Unlawful Acts and Defaults, where a violation of an agreement is the same as a violation of the law. The lack of clarity in the regulations opens up legal loopholes for certain parties to avoid obligations, which can cause legal uncertainty for justice seekers. Therefore, it is important to explain that the Unlawful Acts cover Breach of Agreement, so that justice seekers can file a lawsuit through one door, namely the unlawful act civil lawsuit. In addition, the lack of certainty regarding the compensation that can be claimed is also a problem, where the decision regarding compensation is very dependent on the judge's belief.

6. Conclusion

The current framework for qualifying Unlawful Acts and Defaults in Indonesia remains inadequate in ensuring legal certainty. At first glance, distinguishing between the two appears straightforward defaults arise from contractual agreements, while unlawful acts occur outside such agreements. However, practical implementation reveals inconsistencies, particularly when faced with concrete legal cases. Judicial disparities and various studies indicate ongoing uncertainty in resolving disputes involving Unlawful Acts and Defaults, emphasizing the need for comprehensive civil law reform. This study underscores the urgency of refining Indonesia's civil law framework to enhance clarity and consistency. Key areas for reform include establishing clear nomenclature and definitions to eliminate interpretative ambiguities, clarifying the classification of Defaults as a subset (species) of Unlawful Acts, and standardizing compensation mechanisms for both categories to ensure fairness in civil disputes. These reforms hold significant implications for law and policy, as a more precise legal framework would contribute to greater predictability in court rulings, strengthen contract enforcement, and promote a more reliable judicial system. Despite these contributions, this study acknowledges several limitations, such as scope constraints and reliance on judicial interpretations. Future research could address these gaps by conducting comparative legal analyses, integrating broader case studies, and incorporating empirical findings to further strengthen the discourse on civil law reform. Strengthening Indonesia's legal framework through these reforms could ultimately lead to a more transparent, predictable, and effective civil justice system. Let me know if you would like further refinements to align with specific journal standards.

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The authors declare that there is no conflict of interest.

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Ethical approval was obtained for this study. The manuscript represents original work and has not been previously published, nor is it under consideration by another journal.

Data Disclosure Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.



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