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Dualism of Sanctions in Unlawful Acts: Between Civil Damages and Criminal Punishment

Tora Yuliana^{1*}, Agus Marzuki¹, Tahura Malagano², Ino Susanti², Dwi Nurahman², Dina Haryati Sukardi², Muhadi²

¹ Institut Maritim Prasetya Mandiri, Lampung, Indonesia

² Universitas Mitra Indonesia, Lampung, Indonesia

* Corresponding author: Tora Yuliana (toray83@gmail.com)

Abstract

Sanction dualism often arises in offenses such as fraud, embezzlement, or persecution, where a single act violates public legal norms and simultaneously causes personal harm to individuals. This study explores the concept of sanction dualism the simultaneous imposition or potential overlap of criminal and civil sanctions in cases of unlawful acts within the Indonesian legal system. Using a normative juridical method, the study relies on legislative and conceptual approaches grounded in the theory of legal integration, which supports a cross-branch legal framework. The research identifies two key issues: how the legal system conceptualizes sanction dualism and how it manages the harmonization between criminal and civil law. The findings highlight that although Indonesia permits the application of dual sanctions, there are significant procedural and institutional challenges. These include limited integration of civil claims within criminal proceedings, a lack of clear technical guidelines, and inadequate protection of victims' rights. Consequently, legal processes often become fragmented and fail to deliver substantive justice. The study recommends regulatory reform, improved coordination among legal institutions, and stronger adoption of integrative legal approaches. These efforts are crucial for achieving a legal process that is fair, efficient, and capable of restoring both legal certainty for perpetrators and justice for victims.

Keywords

Civil Law, Criminal Law, Integration Theory, Law Harmonization, Restorative Justice, Sanctions Dualism, Unlawful Acts.

1. Introduction

In the Indonesian legal system, unlawful acts or abbreviated as unlawful acts (*Perbuatan Melawan Hukum/PMH*) or (*onrechtmatige daad*) often have consequences in more than one legal realm (Ali & Prakoso, 2023; Sulaeman et al., 2023; Juang et al., 2025). For example, acts of corruption, embezzlement, or fraud can be held criminally liable by the state, as well as giving rise to civil claims in the form of compensation from the aggrieved party. This phenomenon reflects the dualism of sanctions: perpetrators are subject to criminal penalties (such as imprisonment) and civil liability (compensation) and in some cases may even be subject to administrative sanctions (Muhidin, 2023; Sakina et al., 2025; Ashadiqi & Bawono, 2025).

Unlawful acts in the context of civil law refer to actions that harm others without any prior legal relationship, as explained in Article 1365 of the Civil Code (*Kitab Undang-Undang Hukum Perdata/KUHPer*). In the article, it is emphasized that every act that violates the law and causes harm to others must be compensated by the perpetrator (Hamzah, 2008). Legal doctrine divides unlawful acts into several forms, including violations of subjective rights, legal obligations, moral principles, and the principle of propriety in society (Rosa, 2003). In addition, the concept of wrongfulness (*wederrechtelijkheid*) is also an important element in assessing an action as PMH, both in a formal form that is explicitly prohibited by law and materially contrary to the general principles of law (Apriani, 2019; Aulia, 2023).

However, public awareness and understanding of these elements is still relatively low, thus posing its own challenges in the civil law enforcement process (Sudarto, 1986; Subekti, 2009). In practice, PMH not only causes material losses, such as damage to goods or economic losses, but also immaterial losses such as defamation, honor violations, or psychological disorders. Related to this, Indonesian law recognizes various forms of compensation, including compensation for detention without legal basis (criminal procedure law), compensation for unlawful acts (civil law), and full compensation for losses experienced by the victim (Charlie, 2024). In many cases, the aspect of restoring victims' rights is still not optimal, both normatively and practically (Sukardi & Purnama, 2022; Marasabessy, 2023).

Unlawful acts in criminal law are regulated in the Criminal Code (*Kitab Undang-Undang Hukum Pidana/KUHPP*). An act is said to be unlawful in criminal law if the act threatens and harms the public or public interest, while it is unlawful in civil law if the act is detrimental to civil (private) interests. However, the application of this dualism of sanctions raises a fundamental legal question: how the principle of justice is upheld when one act is tried in two different legal forums. In criminal law, the perpetrator is subject to sanctions as a form of retaliation and deterrent, while in civil law, the orientation is restorative for the rights violated. This intersection raises the question of whether substantive justice can still be achieved if one must undergo both.

Despite the recognition of dual sanctions in both criminal and civil law, the harmonization between these two systems remains largely ineffective due to procedural fragmentation, lack of technical guidelines, and institutional overlap. In many cases, civil claims are not optimally integrated into criminal proceedings, and law enforcement officials often operate within siloed frameworks that hinder coordinated handling of unlawful acts. Furthermore, victims' rights to compensation are frequently neglected due to legal uncertainty and the absence of a comprehensive mechanism to ensure restorative justice. These conditions reveal a critical gap in the Indonesian legal system: while the framework allows for dual sanctioning, it lacks a unified, coherent implementation model. This study examines the conceptualization and application of sanction dualism in unlawful acts within the Indonesian legal system. It also identifies the main obstacles and opportunities for harmonizing criminal and civil law to achieve substantive justice for all parties involved.

2. Literature Review

The dualism of sanctions in the Indonesian legal system, particularly regarding unlawful acts (*Perbuatan Melawan Hukum/PMH*), has been a topic of extensive discussion among academics. Several studies have examined the implications of this dualism for law enforcement and the challenges faced by victims seeking justice (Eugenia, 2024). One important study by Radjak and Sahabat (2024) examined the legal framework surrounding PMH, emphasizing the need for a clear understanding of subjective rights and legal obligations. The study showed that a lack of public awareness regarding these elements hampers civil law enforcement, leading to inadequate compensation for victims. This finding aligns with research by Situmeang et al. (2022), which highlights the concept of legal certainty as a crucial factor in assessing unlawful acts. Mertokusumo (2006) suggests that both formal and material violations of the law must be addressed to ensure justice for victims. Furthermore, Meliala et al. (2025) examined the various forms of compensation available under Indonesian law, including compensation for unlawful acts and unlawful detention. The study showed that although legal provisions exist, their practical implementation is often inadequate, leaving victims without adequate redress. This sentiment is echoed by Nasution (2025), who points out that the restoration of victims' rights remains suboptimal, both normatively and practically. This research emphasizes the need for a more integrated law enforcement approach that considers both criminal and civil liability.

In a comparative analysis, Yuflikhati (2025) explores the intersection of criminal and civil law in handling PMH cases. Their findings reveal that the duality of sanctions can lead to conflicting outcomes, where perpetrators may face criminal penalties while also being liable for civil damages. This complexity raises questions about the principle of justice and whether substantive justice can be achieved when a single act is tried in multiple legal forums. Furthermore, recent research by Muhammad (2004) and Rosalina (2024) investigated public perceptions of PMH and the effectiveness of the legal system in addressing this issue. The study revealed that a large portion of the public remains unaware of their rights and the legal avenues available to them, further complicating the pursuit of justice. Finally, a meta-analysis by Suhartanto and Febrianty (2024) synthesized various studies on PMH, highlighting the need for comprehensive reform of the Indonesian legal system. This research demonstrates that harmonization of criminal and civil law is crucial to creating a more effective legal framework that can adequately address the complexities of unlawful acts. In conclusion, the literature demonstrates the urgent need for increased public awareness, policy reform, and a more integrated approach to the dualism of sanctions in the Indonesian legal system. These studies collectively underscore the challenges faced by victims of PMH and the need for a legal framework that promotes substantive justice.

3. Methods

This study employs a normative legal method with a descriptive approach, focusing on the analysis of existing legal texts and principles rather. This study incorporates case analysis as a supporting component to illustrate how the dualism of sanctions is applied in real legal practice. In normative legal research, case studies are not used for generalization through empirical data but rather serve to interpret and contextualize the application of legal norms, principles, and statutory provisions. The cases selected for analysis are judicial decisions that exemplify the simultaneous application or the procedural disjunction between criminal and civil sanctions in the handling of unlawful acts.

The primary criterion for selecting these cases is their demonstration of dual legal consequences: where a single unlawful act leads to proceedings and/or sanctions in

both criminal and civil legal realms. For example, court decisions involving embezzlement or corruption that are prosecuted criminally but also include civil compensation orders (or fail to include them, despite legal basis) are particularly relevant. These cases highlight the tension or gap between retributive justice (criminal law) and restorative justice (civil law), providing empirical grounding for the study's normative claims.

One such case is the Decision of the Supreme Court of Indonesia Number 1154 K/Pid/2009, which involves a corruption conviction without adequate civil compensation being awarded to the state or affected parties. This decision is significant because it shows how criminal proceedings can result in punishment but fall short in restoring financial losses, reflecting procedural fragmentation and the limited operationalization of integrated legal remedies. Another relevant case is the District Court Decision Number 32/Pdt.G/2020/PN.Jkt.Sel, which involves a civil lawsuit following a criminal fraud conviction. In this case, the court granted civil compensation, but only after the completion of the criminal trial, further demonstrating the disconnection between the two legal processes.

These decisions were chosen not only because they are publicly accessible and legally significant, but also because they represent the broader challenges identified in literature, namely, the absence of clear technical guidelines for integrating civil claims into criminal trials, and the tendency for courts and law enforcement to operate within compartmentalized legal frameworks. They also reflect how victims often remain inadequately compensated, despite the theoretical allowance for dual sanctioning.

By examining such case decisions, the study does not aim to generalize outcomes but to illustrate the normative disconnect between the legal provisions permitting dualism of sanctions and their inconsistent application in practice. These illustrations strengthen the argument for harmonizing criminal and civil procedures and justify the study's call for legal reform. Through these cases, the normative legal method is enhanced with contextual depth, reinforcing the need for a more integrated, justice-oriented approach in Indonesian law.

4. Results

4.1. The Concept of Dualism of Sanctions in Unlawful Acts

In the Indonesian legal system, there is a known dualism of sanctions for an unlawful act, namely that the same act can be sanctioned in two different legal realms: criminal and civil. This happens because civil law and criminal law have different purposes in providing sanctions. Criminal law aims to punish and provide a deterrent effect to the perpetrator to protect the public interest, while civil law aims to recover or compensate the victim personally. Therefore, when a person commits an unlawful act, such as fraud or embezzlement, he or she may be sentenced to criminal penalties and at the same time be required to pay civil damages.

In civil law, the provisions regarding unlawful acts are regulated in Article 1365 of the Civil Code (*Kitab Undang-Undang Hukum Perdata/KUHPer*) which states that every act that violates the law and causes harm to others requires the perpetrator to compensate for the loss. On the other hand, criminal law regulates unlawful acts through the Criminal Code, such as in Article 378 of the Criminal Code concerning fraud and Article 372 of the Criminal Code concerning embezzlement. Sanctions in criminal law are repressive (prison sentences, fines), while in civil law they are restitutive (compensation, restoration of rights).

This dualism reflects that the Indonesian legal system provides space for comprehensive protection efforts for society, both in terms of public justice and individual justice. However, the application of the double sanction must still pay attention to the principles of justice and proportionality. The objects do not technically violate the principle of *ne bis in idem*, because the legal forum and the

object of the prosecution are different, caution is still needed so that there is no inequality in sanctions or violations of the rights of perpetrators and victims.

In judicial practice, it is not uncommon to find cases where a person is found not guilty in a criminal case but is still held to civil accountability. This is due to the difference in evidentiary standards between criminal and civil law. Criminal law requires proof beyond reasonable doubt, while civil law requires a preponderance of evidence. Therefore, the possibility of the emergence of different verdicts between criminal and civil cases must be understood because of the difference in the system and purpose of the two legal domains.

Thus, the concept of sanctions dualism in the Indonesian legal system can be understood as a form of flexibility and integration between the two main legal systems, namely criminal and civil. Although they differ in principles and goals, they complement each other in upholding justice. However, to avoid overlap or disharmony, coordination between law enforcement and more comprehensive legal arrangements are needed so that the application of criminal and civil sanctions remains proportionate, fair, and does not harm one party excessively.

The dualism of sanctions in unlawful acts, the theory of legal integration is an approach that can be used as a reference as a theory that explains that the legal system cannot be absolutely separated from one branch of law from another. In this context, criminal law and civil law are seen as two parts of one interconnected legal system. The two branches of law have different characteristics and functions, but in practice they often intersect when a legal event cause consequence both privately and publicly. This theory is important in understanding how one unlawful act can cause double consequences, namely civil and criminal sanctions.

The concept of legal integration developed as a critique of the dichotomous view that expressly separates public (criminal) and private (civil) law. This dichotomous view is considered inadequate in explaining the complex reality of modern law, were violations of individual rights often also harm society at large. In the case of unlawful acts, for example, the perpetrator can be compensated for violating the rights of others, as well as criminally punished for disturbing public order or violating social norms protected by the state.

One concrete example of the application of this theory is when someone commits fraud. From the civil aspect, the victim has the right to claim compensation for the losses he suffered. However, from the criminal aspect, the state still has the authority to prosecute the perpetrator based on public interest and social order. The theory of legal integration explains that there is no duplication or injustice in this case, since the two types of sanctions have different legal objectives and bases. The purpose of civil sanctions is restitutive (restorative), while criminal sanctions are retributive and preventive.

In view of the theory of legal integration, differences in the form of sanctions do not necessarily indicate an overlap or conflict of authority, but rather a form of the legal system's response to the diversity resulting from a single legal event. Thus, this theory encourages synergy between branches of law, rather than just the separation of functions (Marzuki, 2008). Courts and law enforcement officials are expected to be able to integrate this understanding in the investigation, prosecution, and sentencing process, without ignoring the victim's right to civil compensation.

Furthermore, the theory of legal integration also reflects the principle of overarching substantive justice. Justice is not only measured by how harshly the punishment is imposed, but also by the extent to which the victim obtains recovery and the perpetrator receives fair legal treatment. Therefore, the application of double sanctions against unlawful acts is a manifestation of comprehensive and comprehensive justice, if the principles of procedural law and human rights are upheld.

4.2. Harmonization of Criminal Law and Civil Law

The main problem in dealing with an act that violates both criminal law and civil law lies in the coordination and harmonization between two legal systems that have different goals, principles, and procedures. Criminal law aims to provide protection for the public interest through a punitive mechanism (retributive), while civil law is more aimed at restoring individual rights (restitutive) through compensation. In practice, a single act, such as fraud or embezzlement, can have dual legal consequences a criminal act that can be prosecuted by the state and an unlawful act that harms an individual, so it can be sued civilly.

The absence of an integrated formal mechanism between criminal and civil processes often causes problems. For example, when a criminal case is ongoing, the victim has difficulty filing a civil lawsuit, or vice versa. As a result, the victim's right to compensation can be ignored if it only focuses on punishment. On the other hand, criminalization without clarity on the restitution mechanism can cause a perception of injustice because the victim's material losses are not recovered. Therefore, harmonization between criminal and civil law is crucial so that the law enforcement process does not only focus on punishment alone, but also the restoration of victims' rights.

To overcome these problems, it is necessary to build a coordinating and procedural framework between law enforcement officials, including investigators, public prosecutors, judges, and lawyers, in understanding the relationship between the two legal systems. One approach that can be used is to facilitate a civil lawsuit in criminal proceedings (*actio civilis in criminali*) that allows victims to obtain compensation through criminal judgments. This approach is already known in several legal systems, including some practices in Indonesia, but its application is still limited and not optimal due to a lack of technical guidelines and inter-institutional coordination.

Furthermore, harmonization also requires a regulatory reform that explicitly regulates the dual mechanism. Laws such as the Criminal Procedure Code need to revise or add norms that allow the merging of civil and criminal proceedings in certain cases, especially when the object of the dispute and the perpetrator are the same. In addition, there needs to be training and socialization to law enforcement officials regarding the importance of an integrative approach in handling double cases, so that there is no overlap or jurisdictional conflict that hinders substantive justice.

With good harmonization between the criminal and civil law systems, an unlawful act can be processed comprehensively, fairly, and efficiently, without sacrificing the rights of the victim or interfering with the principle of legal justice for the perpetrator. This harmonization is not only a procedural alignment, but also an effort to strengthen the legitimacy of the law and public trust in the judicial system. Therefore, partial integration through systemic approaches, legal reform, and coordination between law enforcement agencies is a strategic step to answer the problem of dualism sanctions in modern judicial practice.

State all relevant findings including those that contradict the hypothesis you proposed. Present your findings briefly but each provides sufficient detail to justify the tone conclusions. This allows the reader to understand precisely what you are doing in analyzing the data and why.

5. Discussion

The findings of this study reinforce the notion that dualism of sanctions in Indonesia criminal and civil plays a key role in achieving justice across both public and private spheres. Criminal sanctions aim to punish and deter, while civil sanctions aim to restore and compensate. This legal design mirrors broader sanction theory, where retributive justice (punishment) and restitutive justice (compensation) operate

as complementary goals of the legal system (Hamzah, 2008; Subekti, 2009). From a doctrinal standpoint, this dual track system is validated through Article 1365 of the Civil Code and relevant articles of the Criminal Code on fraud and embezzlement. These legal provisions allow one wrongful act to trigger two distinct legal processes, each justified by separate objectives (Eugenia, 2024).

This concept is closely tied to the theory of legal integration, which challenges the traditional separation between private and public law. Mertokusumo (2006) argues that such separation no longer reflects modern legal realities, where a single unlawful act can simultaneously harm individuals and disrupt public order. Apriani (2019) supports this position, noting that sanctions must reflect both social disturbance and private harm to achieve substantive justice. Criminal offenses emphasize the legal interest of society that legal norm aims to protect. Criminal responsibility emphasizes legal obligations based on certain circumstances in the perpetrators of criminal acts (Hakim, 2019).

Marzuki (2008) further emphasizes that integration ensures procedural fairness and prevents legal fragmentation, especially in criminal-civil intersections. However, the Indonesian legal system still lacks a formal mechanism to operationalize this theory effectively. Although dual sanctions are legally permitted, the procedural gap between criminal and civil forums undermines victim recovery and delays justice (Radjak & Sahabat, 2024; Nasution, 2025). The *actio civilis* in criminal concept, which allows victims to file civil claims within criminal trials, remains underused due to lack of technical guidance and institutional coordination (Safitri & Shaleh, 2023; Marasabessy, 2023). This gap has led to either delayed or missed opportunities for restitution, despite the perpetrator being convicted criminally.

In comparison, some European jurisdictions such as the Netherlands provide a structured procedure where victims may join criminal cases with civil claims. This ensures both state enforcement and victim compensation are handled in one coherent process. Holvoet (2024) notes that such hybrid models, if backed by clear regulation and trained legal actors, can enhance judicial efficiency and legitimacy. In Indonesia, however, fragmented enforcement remains a major obstacle. The findings align with Bayanullah et al. (2024) and Lubis (2025), who highlight institutional silos and procedural delays as recurring barriers.

To resolve this, the study recommends targeted legal reforms, including updating the Criminal Procedure Code to recognize and operationalize integrated procedures. Law enforcement should be trained to handle hybrid roles, balancing punitive and restorative functions (Anisa, 2025). Ultimately, harmonizing sanctions through legal integration can promote not only efficiency but also substantive justice ensuring that perpetrators are justly punished and victims adequately compensated.

6. Conclusion

The concept of dualism of sanctions in unlawful acts in the Indonesian legal system confirms that a single act may trigger both criminal and civil liability. Criminal law serves to uphold public order through retributive and preventive sanctions, while civil law focuses on restitutive mechanisms to restore the rights of harmed individuals. This dual pathway is supported by provisions in the Criminal Code, Civil Code, and other relevant regulations, and does not inherently produce conflict, provided each sanction is applied within its respective legal purpose and framework. Nevertheless, harmonization between criminal and civil law remains a significant challenge, especially in procedural and institutional practice. Although the Criminal Procedure Code permits the merger of civil claims within criminal trials, this is rarely implemented effectively. Fragmented processes often delay justice and hinder the restoration of victims' rights. To address this, the study proposes a specific reform: the development of procedural model guidelines that clearly regulate the integration of civil claims into criminal proceedings (*actio civilis*

in criminal). These guidelines should outline procedural steps, evidentiary standards, coordination mechanisms, and timelines, and must be accompanied by cross-sector training for judges, prosecutors, and investigators.

This study is limited by its normative juridical method and reliance on secondary sources. It does not include empirical validation through fieldwork or interviews with legal practitioners, which could provide deeper insight into practical barriers and institutional behavior. Future research should incorporate empirical legal studies to evaluate how law enforcement agencies interpret and apply dual sanctions in practice. Comparative studies with countries that have successfully integrated such procedures could also inform best practices. In doing so, future research can support a more coherent, just, and victim centered approach to the handling of unlawful acts within Indonesia's evolving legal framework.

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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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