

Company Responsibility For Unlawful Acts Committed By Third Party Partners (Case Study Of Karanganyar District Court Decision Number 50/Pid.Sus/2024/PN.Krg Regarding Information Crimes And Electronic Transactions In International Mobile Equipment Identity (IMEI) Registration In Central Java Against PT Telekomunikasi Selular)

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Abstract. *The development of information and communication technology has driven the increasing use of telecommunications devices in Indonesia, including the need for management and verification of the International Mobile Equipment Identity (IMEI). On the other hand, the rampant practice of illegal IMEI registration has caused losses for the state, consumers, and industry players, including PT Telekomunikasi Selular (Telkomsel). One case that has emerged is the Karanganyar District Court Decision Number 50/Pid.Sus/2024/PN.Krg involving a customer service officer from the outsourcing company Infomedia who misused access to Telkomsel's Digital Smart Care (DSC) system to carry out illegal IMEI registrations. This case raises questions about the limits of the company's legal liability for unlawful acts committed by third-party partners. This study aims to: (1) analyze the form and limits of Telkomsel's legal liability for unlawful acts committed by third party partners based on applicable laws and regulations; (2) evaluate the shortcomings of government policies related to limiting corporate liability for unlawful acts by third parties; and (3) examine the development of the concept of vicarious liability in Indonesian civil law and compare it with developments in the Netherlands. This study uses a normative juridical method supported by empirical research. Data were obtained through a literature review of laws and regulations, legal literature, court decisions, and interviews with sources from Telkomsel and the Karanganyar District Attorney's Office. The analysis was conducted descriptively and qualitatively to explain the application of norms and the*

concept of vicarious liability to cases of illegal IMEI registration. The results of this study are expected to provide theoretical contributions to the development of civil liability studies, particularly regarding vicarious liability and corporate responsibility for the actions of third-party partners. Practically, this research is expected to provide consideration for policymakers and industry players in formulating clearer regulations and supervisory standards, thereby providing adequate legal protection for consumers and supporting a healthy digital ecosystem.

Keywords: *Corporate Responsibility; Unlawful Acts; IMEI; Telkomsel; Third Party Partners; Vicarious Liability.*

1. Introduction

In life, every person has their own interests. Interests are individual or group demands that are expected to be met.¹From the moment of conception, humans are the bearers of interests, and throughout their lives, these interests continually evolve. To fulfill their needs, humans require the assistance of others to protect their interests. Cooperating with others makes it easier to achieve or protect desires. Interpersonal contact necessitates the protection of interests, which can be achieved through the creation of guidelines or rules that dictate how humans should behave.²

The development of information and communication technology in Indonesia has played a significant role in changing the lifestyles of Indonesians. This aligns with the government's belief that utilizing information and communication technology in government and economic processes will increase efficiency, effectiveness, transparency, and accountability in implementing the principles of good governance.³Indonesia, which is in the era of globalization, is marked by the era of information technology which introduces cyberspace (virtual world) through the internet network, communication with paperless electronic media.⁴

In accordance with the general explanation of Law No. 11 of 2008 in conjunction with Law No. 19 of 2016 and Law No. 1 of 2024 concerning Electronic Information and Transactions (hereinafter referred to as the "ITE Law"), the use of information technology, media, and communication has changed both the behavior of society and human civilization globally.⁵The development of information and communication technology has also made global relations borderless and caused significant social, economic, and cultural changes to occur at a rapid pace. Although society has widely used information technology products and telecommunications services in their lives, the Indonesian nation has not yet established a public policy for building a reliable National Information Infrastructure to face the global information infrastructure.⁶

The equal standing of legal protection, reliability, and security of information technology will create a sense of "trust" among its users; without this trust, electronic transactions will not develop. This trust can be achieved by providing legal certainty for electronic transactions, including electronic signature activities by related parties. Technology and information are used as a belief that the use of information technology at the cross-border level, both nationally and internationally, will be able to increase the efficiency and speed of business and government administration.

2. Research Methods

Research on corporate responsibility for unlawful acts committed by third party partners into the applicable laws and regulations in Indonesia is a normative and empirical juridical research carried out to obtain answers to the main problems formulated in the background of the problem. For this reason, accurate data is needed, the data is obtained from sources, types of data, methods and tools for obtaining data, and data analysis.

The author will examine the laws and regulations related to the elaboration of corporate responsibility for unlawful acts committed by third-party partners, including its relation to a case study of information crimes and electronic transactions in the registration of International Mobile Equipment Identity (IMEI) in Central Java against PT Telekomunikasi Selular. Thus, the research focuses on library research, which means it will examine and review secondary data obtained from the research. In addition, this research is also descriptive in nature because it describes how the elaboration of corporate responsibility for unlawful acts committed by third-party partners.

3. Results and Discussion

3.1. Aspects of Unlawful Acts in Indonesian Law

Law is a regulation that regulates the behavior of individuals in a society, which aims to create order in society, but in reality, someone in society acts not in accordance with legal regulations which causes chaos and disappointment in society, especially for people who are directly involved.⁷This non-conformity does not only occur with regard to legal regulations, but also includes violations of other norms in society.⁸Unlawful Acts in Civil Law in Indonesia are regulated in Book III of the Civil Code starting from Article 1365 of the Civil Code to Article 1380 of the Civil Code.⁹According to Article 1365 of the Civil Code, an unlawful act is an act that violates the law committed by a person because the act causes harm to another person and requires the person who caused the loss to compensate for the loss. The Hoge Raad interprets an unlawful act narrowly as doing or not doing something that violates the rights of another person or is contrary to the legal obligations of the perpetrator as regulated by statutory regulations. Since the Arrest of 1919, the courts have always interpreted the meaning of an unlawful act in a broad sense, an unlawful act in the broad sense, as follows:¹⁰

⁷Wirjono Prodjodikoro, Op.Cit., p. 4.

⁸Ibid., p. 7.

⁹Rosa Agustina, Op.Cit., p. 10

¹⁰Ibid., p. 38

1. Violating the subjective rights of others, namely actions that directly violate the subjective rights of others, which are rights such as honor, freedom, and good name, including the right to property in the form of material rights and other absolute rights. This action is included in unlawful acts, and these actions require a violation of behavior, which should not be violated by the perpetrator based on the law and according to the law there is no justification.
2. In contrast to the legal obligations of the perpetrator, the obligations referred to are obligations according to written and unwritten law, in this case also including criminal acts of theft, embezzlement, fraud and damage.
3. Contrary to the rules of morality, namely contrary to moral norms that are recognized as legal norms in society, according to Utrecht morality is all norms that exist in society, which are not legal norms, customs or religion.

The jurisprudence of the Supreme Court of the Republic of Indonesia in the application of Article 1365 of the Civil Code follows the concept of unlawful acts in a broad sense, namely acts against morality and propriety in social life that are detrimental to oneself or the good name of others can be prosecuted legally based on Article 1365 of the Civil Code, this is reviewed through the Cassation Decision of the Supreme Court of the Republic of Indonesia Number 3191K/Pdt/1984 dated February 8, 1986.¹¹ The word act in unlawful acts includes positive acts in Dutch called *daad* as explained in Article 1365 of the Civil Code and negative acts in Dutch called *matigheid* in Indonesian called negligence or *onvoorzigtigheid* in Indonesian called *kurang hati-hati* as explained in Article 1366 of the Civil Code.¹²

3.2. Unlawful Acts Category

Unlawful acts in legal science are categorized into three categories, as follows:

1. Intentional Unlawful Acts

Intention or in English is called intention, the presence of an intentional element in an unlawful act is characterized by the act being carried out intentionally, resulting in certain consequences to the physical and/or mental or property of the victim, although it does not include the intention to physically and mentally injure the victim. The element of intention is considered to exist in an act when it fulfills the elements, namely the existence of awareness or state of mind to do, the

¹¹Gita Anggreina Kamagi, "Unlawful Acts (*Onrechtmatige Daad*) According to Article 1365 of the Civil Code and Its Development," *Jurnal Lex Privatum*, Vol 6 No. 5 (2018), p. 60

¹²Markus Suryoutomo, Siti Mariam, and Adhi Putra Satria, "Coherence of Judges' Decisions in Proving Intangible Compensation for Unlawful Acts," *Indonesian Journal of Legal Development*, Vol. 4 No. 1 (2022), p. 134.

existence of consequences of the act, and the awareness to do which is the belief that the action will certainly cause consequences. The law pays attention to the consequences of the intentional act experienced by the victim rather than seeing the real purpose of the perpetrator, although it still requires the existence of an intentional element, in this case the law is more accepting of an objective approach.

2. Unlawful Acts without Fault in this case without any element of intent or negligence

Generally, unlawful acts impose responsibility in the form of an obligation to pay compensation if the perpetrator is proven to have committed and is guilty of the act he committed, legally guilty is defined as the presence of intent or negligence, but in law there is responsibility without fault in English called liability without fault or absolute responsibility in English called strict liability or absolute liability.

Absolute liability is the legal responsibility of the perpetrator of an unlawful act without considering whether the perpetrator's actions include an element of error or not, where in the actions carried out by the perpetrator there is no element of intent or negligence, carelessness, or impropriety, so that absolute liability is usually called liability without fault. Error in this case is an error in the legal sense, but it does not rule out the possibility that the act is a moral error. Vicarious Liability is included in the form of absolute liability.¹³

3. Unlawful Acts Due to Negligence

An unlawful act due to negligence is an act in which the perpetrator does not intend to cause harm due to his actions, it is possible that the perpetrator wishes to prevent harm from occurring due to his actions, this is different from an unlawful act with an intentional element in which there is an intention in the perpetrator's heart to cause harm to the victim or the perpetrator knows that there will be consequences for the actions he has done.¹⁴In the element of intent, intention or mental attitude is important, but in the element of negligence, the important factor is the outward attitude or actions carried out without considering what is in the mind of the perpetrator. An act must fulfill the basic elements so that an act can be declared negligence, namely the existence of an act or ignoring something that should be done, the existence of a duty of care, failure to carry out the duty of care, the existence of harm to others due to the act or neglect, and whether or not there is a causal relationship between the act and the harm

¹³Munir Fuady, Op.Cit., p. 198

¹⁴Ibid., p. 73

caused. Unlawful acts caused by negligence are regulated in Article 1366 of the Civil Code.¹⁵

3.3. Elements of Unlawful Acts

In Article 1365 of the Civil Code, in addition to explaining unlawful acts, the Article also explains the elements that must be fulfilled to declare an act to be an unlawful act. These elements include the existence of an act, the existence of an act that violates legal provisions, the existence of an error committed by the perpetrator, the existence of losses incurred, and the existence of a causal relationship between the act and the loss. These elements must be fulfilled to prove that an act is included in an unlawful act. The explanation of each element of the unlawful act is as follows:¹⁶

1. The Existence of an Act

An unlawful act occurs when an act is carried out by the perpetrator, the act referred to in this case is an act in the active sense, or doing something, or an act in the passive sense, or not doing something.

2. This act is an act that is against legal provisions.

An unlawful act is defined as an act that is contrary to the rights of others, in this case the subjective rights of others that have been regulated by law. Thus, subjective rights here are limited to a number of rights that are stated in the law only.¹⁷ The actions carried out by the perpetrator must be against the provisions of the law, the element of being against the law can be interpreted broadly, namely actions that violate applicable laws and regulations, actions that violate the rights of others that have been guaranteed by law, actions that are contrary to the legal obligations of the perpetrator, actions that are contrary to moral norms, or actions that are contrary to attitudes in society to pay attention to the interests of others.

3. There was an error made by the perpetrator

One of the elements of an unlawful act, namely the existence of an error in the act carried out by the perpetrator, statutory regulations and jurisprudence require that the perpetrator in carrying out his act must contain an element of error in Dutch called *schuldement*, so that responsibility without error or strict liability is

¹⁵Ibid.

¹⁶Ibid., pp. 10-11

¹⁷Prihati Yuniarlin, "Application of the Elements of Unlawful Acts to Creditors Who Do Not Register Fiduciary Guarantees," *Jurnal Media Hukum*, Vol. 19 No. 1 (2012), p. 7.

not included in responsibility based on the provisions of Article 1365 of the Civil Code because this Article requires an element of error in an unlawful act. An action is considered to contain an element of error so that it can be held legally responsible if it fulfills the elements, namely the element of intent or negligence and there is no justification or excuse in this case, coercive circumstances, self-defense, insanity, and so on. Then the question arises whether it is necessary to require the element of error in addition to the unlawful element to determine an unlawful act or is only one element sufficient?

4. There is a Loss Incurred

The definition of loss refers to losses resulting from an unlawful act. This element is one of the requirements for an act to be categorized as an unlawful act. According to jurisprudence, losses in unlawful acts recognize the concepts of material and immaterial losses, which can then be estimated in monetary terms. The purpose of seeking compensation for unlawful acts is to restore the victim to the condition they were in before the unlawful act occurred.¹⁸

5. There is a causal relationship between the act committed and the loss

The causal relationship between the act committed and the loss is one of the elements that is a condition for determining an unlawful act. There are two theories on causal relationships, namely the factual relationship theory and the approximate cause theory. A factual cause and effect relationship or causation in fact is the fact that every cause that causes loss can be a factual cause, provided that the loss would never have occurred without a cause, this causality is often referred to as the law regarding but for or sine qua non. The concept of proximate cause, which was created to be more practical and achieve elements of legal certainty and give birth to just laws, is the most confusing part and most contradictory to other opinions on unlawful acts, this causality is often referred to as the term legal cause. This concept of proximate cause places what should be suspected as the main factor.

4. Conclusion

Based on the applicable laws and regulations and the results of the analysis of the Karanganyar District Court Decision Number 50/Pid.Sus/2024/PN.Krg in conjunction with the Semarang High Court Decision Number 550/PID.SUS/2024/PT SMG, it can be concluded that PT Telekomunikasi Selular cannot automatically be held legally responsible for unlawful acts committed by

¹⁸Puti Sheila, "Comparative Study of Unlawful Acts in the Civil Code with the English Law of Tort (Application in Medical Malpractice)," (Bachelor's Thesis, Faculty of Law, University of Indonesia, Depok, 2011), p. 25.

third party partners through the application of the doctrine of vicarious liability. This is because the illegal IMEI registration act was carried out by the partner's Customer Service officer in violation of Telkomsel's Standard Operating Procedures (SOP) and the partnership agreement, and was carried out for the perpetrator's personal interests, not in the context of carrying out legitimate work for the benefit of the company. Thus, the element "in carrying out work for which the person is used" as referred to in Article 1367 paragraph (3) of the Civil Code is not fulfilled, so that legal responsibility lies with the individual perpetrator and the direct employer partner, not with Telkomsel as a company. This study concludes that government policy still lacks clear boundaries regarding corporate liability for unlawful acts committed by third-party partners. The provisions of Article 1367 of the Civil Code are still general and do not specifically accommodate modern employment relationships based on outsourcing and partnerships. Furthermore, the Electronic Information and Transactions Law and Regulation of the Minister of Communication and Informatics Number 1 of 2020 concerning IMEI Control emphasize the technical and administrative aspects of system control, but do not explicitly regulate the limits of corporate civil liability if violations are committed by partners acting outside of SOPs and agreements. This situation creates legal uncertainty for both business actors and the public.

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