

Civil Liability for Criminal Acts at Indonesian Law

Opinion of

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Comments and suggestions are welcomed. To submit your comments, please email [Tim Lindsey](#).

Do civil rights need to be established under statute at Indonesian law?

Because Indonesia has a Civil Law, not a Common Law, legal system, most legal action taken is initiated by reference to a statute (*undang undang*) or one of a variety of lower level regulations, such as Government Regulations in Lieu of Law (*Peraturan Pemerintah or Perpu*).

There are specific provisions in Indonesia's Criminal Code (*Kitab Undang-undang Hukum Pidana*) and Civil Code (*Kitab Undang-undang Hukum Perdata*) dealing with civil liability for lower-level crimes and torts such as arson, theft and minor assault.

Generally speaking, there is no extra-statutory notion of tortious liability, at least not as understood in Common Law jurisdictions such as Australia.

Is there civil liability for criminal acts at Indonesian law?

There appears to be no general principle of Indonesian law that would prevent a plaintiff from bringing civil proceedings arising out of an act which has also been subject to a criminal prosecution by the state.

Indeed, civil action may even be taken during the course of criminal proceedings and in the same trial. Article 98 of the Criminal Procedural Code (*Kitab Undang-undang Acara Pidana*) allows a victim to sue for compensation for any loss arising out of any crime during criminal proceedings regarding that crime.

However, it should be noted that a civil action for loss arising out of a criminal act does not have to be heard in conjunction with a criminal trial. Criminal and civil trials regarding the same set of circumstances can be heard separately. Judges have indicated that it is possible for a plaintiff to use evidence adduced in a criminal trial in any civil proceedings he or she may initiate because of loss suffered as a result of the crime. While these judges have described this process specifically in the context of intellectual property cases, there seems nothing to prevent a victim of petty crime from seeking damages in a civil action using evidence adduced in a prior criminal case dealing with the same issue.

Is there an exception in the case of adat crimes?

It is also possible that actions for some petty crimes may be brought pursuant to adat (customary) law. Adat laws are largely unwritten; differ (sometimes to a minor degree but often significantly) between areas of Indonesia; and are often uncertain and unpredictable in their application. They are usually applied (and regularly distorted) by the *Pengadilan Negeri* (State or District courts, Indonesia's local courts of first instance).

Significantly, under Article 76 of the Criminal Code, a defendant cannot be prosecuted twice for the same crime if an Indonesian judge has already decided the case and no avenues of appeal remain.

The implications of these provisions for cases where *adat*-based actions on the same facts have already been concluded is not clear. It is probably the case that if an accused had already been subjected to a criminal penalty or civil liability at adat by a state court, then he or she could not then be prosecuted or sued under statute or other state law.

Much less clear still are the consequences of informal *adat* sanctions imposed outside the courts. It is possible that a defendant can still be tried or sued in state courts if he or she has previously been penalised by a local *adat* tribunal that has not been officially sanctioned by the state because the head of the tribunal would usually not be considered a 'judge' for the purposes of Article 76 of the Criminal Code.