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INDONESIAN CIVIL ICLR LAW REVIEW

Makanja Group Publishing

Indonesian Civil Law Review 2:1 (2026), pp. 49-72
ISSN 3090-868X (Online) ISSN: 3109-1466 Print

Available online ---
DOI:

Expansion of the Meaning of Unlawful Acts in Corruption Cases: A Civil Law Perspective

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Manuscript ID	**ICLR: 13/Vol.2.No.1/(2026)**
Type	**Articles**
Subject	**Civil Law**
Keywords	***Civil Law; Corruption Cases; State Loss Recovery; Unlawful Acts; Unlawful Acts Expansion***
Author(s) Origin	Indonesia

Abstrak (Indonesia)	*Penelitian ini bertujuan menganalisis perluasan makna perbuatan melawan hukum dalam kasus korupsi dari perspektif hukum perdata sebagai instrumen alternatif pemulihan kerugian negara. Permasalahan utama yang dikaji adalah keterbatasan pendekatan hukum pidana yang belum mampu mengoptimalkan pengembalian kerugian negara akibat korupsi. Penelitian ini menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus, serta didukung oleh bahan hukum primer, sekunder, dan tersier. Hasil penelitian menunjukkan bahwa konsep perbuatan melawan hukum dapat diperluas tidak hanya pada pelanggaran norma hukum tertulis, tetapi juga mencakup pelanggaran terhadap kepentingan publik, prinsip kepatutan, dan tata kelola pemerintahan yang baik (good governance). Dalam hal ini, negara memiliki legitimasi sebagai subjek hukum untuk mengajukan gugatan perdata berdasarkan Pasal 1365 KUHPerdata terhadap pelaku korupsi dan pihak terkait lainnya. Kebaruan penelitian ini terletak pada model integrasi antara hukum pidana dan hukum perdata melalui mekanisme gugatan perdata, termasuk penerapan pembalikan beban pembuktian dan penguatan mekanisme asset recovery. Pendekatan ini diharapkan mampu menciptakan sistem pemberantasan korupsi yang lebih efektif, komprehensif, dan berkeadilan, khususnya dalam aspek pemulihan kerugian negara.*
Abstrack	*This study aims to analyze the expansion of the meaning of unlawful acts in corruption cases from a civil law perspective as an alternative instrument for recovering state losses. The main issue addressed is the limitation of criminal law approaches, which have not been able to optimally restore state losses resulting from corruption. This research employs a normative legal method with statutory, conceptual, and case approaches, supported by primary, secondary, and tertiary legal materials. The findings indicate that the concept of unlawful acts can be expanded beyond violations of written legal norms to include breaches of public interest, propriety principles, and good governance. In this context, the state has legal standing as a subject of law to file civil lawsuits based on Article 1365 of the Civil Code against perpetrators of corruption and related parties. The novelty of this research lies in the integration model between criminal and civil law through civil litigation mechanisms, including the application of reversed burden of proof and the strengthening of asset recovery mechanisms. This approach is expected to create a more effective, comprehensive, and just anti-corruption system, particularly in recovering state losses.*

Submitted: 26-04-2026| Reviewed: 08-06-2026 | Revised: 25- 06-2026 | Accepted: 30-06-2026

I. INTRODUCTION

Corruption is one of the structural problems that continues to undermine the legal system and governance in Indonesia[1]. As a criminal act that has a wide impact on state finances and public welfare, corruption is not only seen as a violation of public law, but also as an act that harms private interests collectively[2]. In law enforcement practice, the handling of corruption has so far been dominated by a criminal law approach through legal instruments such as Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001[3]. However, this approach is considered not yet fully effective in recovering state losses or providing comprehensive justice for the community.

In this context, civil law has a strategic role, especially through the concept of unlawful acts (*onrechtmatige daad*) as stipulated in Article 1365 of the Civil Code[4]. The article emphasizes that every act that violates the law and causes harm to others obliges the perpetrator to compensate for the loss. Classically, the elements of unlawful acts include the existence of acts, unlawful acts, mistakes, losses, and causal relationships. However, the development of legal doctrine shows that the meaning of "unlawful" is no longer limited to violations of the law alone, but also includes violations of the norms of propriety, decency, and the principle of prudence in society.

The expansion of the meaning of this unlawful act becomes very relevant in corruption cases. In many cases, acts of corruption not only violate criminal law norms, but also undermine the principles of justice, transparency, and accountability that should be upheld in the administration of government[5].

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1 Lilis Suryani et al., "Perlindungan Hukum Terhadap Saksi Pelapor Dalam Proses Persidangan Di Bawaslu," *Amsir Law Journal* 6, no. 1 (2024): 9–20, https://doi.org/10.36746/alj.v6i1.591.

2 Mahmud Mulyadi, "INTEGRATIVE APPROACH IN TACKLING CORRUPTION," *Vol 13 No 1 (2018): Journal of Justice Ocean Law* / 13, no. 1 (2018): 1–19.

3 Sanskara Hukum et al., "Revocation of Political Rights in Corruption Crimes: Is It Necessary" 3, no. 02 (2024): 57–67, https://doi.org/10.58812/shh.v3.i02.

4 Maralutan Siregar et al., "The Separation of Torts and Unlawful Acts in the Perspective of Material Law and Application in Court," *Locus Journal of Academic Literature Review* 2, no. 6 (2023): 532–48, https://jurnal.locusmedia.id/index.php/jalr/article/view/187.

5 Besse Desinta et al., "The Young Generation of Anti-Money Politics: Heroes of Anti-Corruption and Clean Democracy," *PESHUM : Journal of Education, Social and Humanities* 4, no. 2 (2025): 2692–98.

Therefore, the civil law approach can be used as an additional instrument to hold corrupt perpetrators accountable, especially in terms of recovering state losses through civil lawsuits.

This development cannot be separated from the influence of legal doctrine that has developed since the Hoge Raad decision of January 31, 1919 (Lindenbaum vs Cohen), which expanded the definition of unlawful acts from simply a violation of the law to a violation of the norms that live in society. The decision became an important milestone in the evolution of the concept of *onrechtmatige daad*, which was later adopted in various legal systems, including Indonesia. Thus, the concept of unlawful acts in Indonesian civil law has the flexibility to be applied in various contexts, including in corruption cases[6].

In Indonesia, efforts to integrate a civil law approach in the eradication of corruption are beginning to receive attention, especially in the context of *asset recovery*. Institutions such as the Corruption Eradication Commission have developed strategies that focus not only on criminalizing perpetrators, but also on restoring state losses through civil and administrative mechanisms. This approach is in line with the principle that the eradication of corruption is not only aimed at punishing perpetrators, but also recovering the losses caused.

However, the application of the concept of unlawful acts in corruption cases still faces various challenges. One of the main obstacles is the conceptual boundary between criminal law and civil law, which often raises debates about competence and jurisdiction. In addition, proving the elements of unlawful acts in the context of corruption is also not always easy, especially in terms of proving the causal relationship between the perpetrator's actions and the losses caused.

On the other hand, there is a need to develop a more progressive approach to understanding unlawful acts, especially in the context of *extraordinary crimes* such as corruption[7]. This approach requires a reinterpretation of classical legal concepts to be more responsive to social dynamics and the need for substantive justice. In this case, civil law is no longer seen as a passive instrument, but as an active means of upholding justice and protecting the public interest.

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[6] Dudi Mulyadi, Tri Yanuaria, and Herry M Polontoh, "PERBUATAN MELAWAN HUKUM DALAM PARADIGMA HUKUM PROGRESIF : Hukum Progresif : Refleksi Atas Kesadaran Berhukum," *Semarang Law Review (SLR)* 6, no. 1 (2025): 22–35, https://journals.usm.ac.id/index.php/slr/article/view/11446.

[7] Ewaprilyandi Fahmi Saputra and Hery Firmansyah, "Legal Politics in Efforts to Eradicate Corruption Through the Reform of Corruption as an Extraordinary Crime in the National Criminal Code," *UNES Law Review* 6, no. 2 (2023): 4493, https://review-unes.com/law/article/view/1284.

The expansion of the meaning of unlawful acts in corruption cases is also closely related to the broader principle of legal responsibility, including the responsibility of corporations and public officials[8]. In many cases, corruption involves complex networks, so an individual approach alone is not enough to uncover and address its impacts. Therefore, the concept of unlawful acts needs to be developed to include various forms of involvement, both direct and indirect, in acts of corruption.

In the past decade, the face of corruption in Indonesia has undergone an alarming transformation, both in terms of mode and the scale of losses. If in the period from 2016 to 2019 the average state losses were in the single digit trillion rupiah with the dominance of bribery cases and the procurement of goods and services, entering the 2020s era this figure jumped dramatically to reach unprecedented levels[9].

The peak can be seen in the 2024–2025 report for the period, where the state loss figure touched a fantastic record of over Rp300 trillion. This surge was triggered by the revelation of "mega corruption" scandals in the natural resources sector, such as the tin trading system case that not only harmed the state's finances directly, but also created massive ecological losses. Other major cases such as the misuse of investment funds in ASABRI and Jiwasraya, as well as the seizure of forest land by Duta Palma, have changed the map of corruption perception from mere "lubricating money" to the destruction of the country's economic foundation[10].

Furthermore, this approach also opens up space for strengthening the role of the community in demanding legal accountability for corrupt perpetrators. Through the civil lawsuit mechanism, the community or aggrieved parties can actively fight for their rights, without having to rely entirely on the criminal process. This is in line with the principle of access to *justice* which is one of the main pillars in the modern legal system.

In the academic framework, studies on the expansion of the meaning of unlawful acts in corruption cases are still relatively limited, especially those that

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[8] Ramadhani Bimo Setiadi and Alpi Sahari, "The Application of the Principle of Material Unlawful Acts in the Legal Perspective of Corruption in the Prosecutor*'s Office," IURIS STUDIA: Journal of Legal Studies* 6, no. 1 (2025): 145–50, https://jurnal.bundamediagrup.co.id/index.php/iuris/article/viewFile/850/545.

[9] Indonesia Corruption Watch (ICW), "Report on the Monitoring of Trends in Anti-Corruption Enforcement for the Period 2016–2025," 2025, https://antikorupsi.org/sites/default/files/dokumen/Tren Penindakan Tahun 2022.pdf.

[10] (ICW).

comprehensively examine the relationship between civil law and criminal law in the context of corruption eradication. Most of the research still focuses on the criminal aspect, while the civil dimension has not been explored in depth. Therefore, this research has important significance in filling this gap, as well as contributing to the development of legal science, especially in the field of civil law and anti-corruption law.

This research aims to analyze how the expansion of the meaning of unlawful acts can be applied in corruption cases, as well as how its implications are for law enforcement and the recovery of state losses. Using a normative juridical approach, this study will examine various legal sources, including laws and regulations, court decisions, and relevant legal doctrines. In addition, this study will also compare practices in Indonesia with developments in other countries, in order to gain a broader perspective.

Thus, it is hoped that this research can provide a deeper understanding of the role of civil law in the eradication of corruption, as well as encourage the development of a more integrative and effective legal approach. Expanding the meaning of unlawful acts is not only a conceptual need, but also a strategic step in realizing a more fair, responsive, and oriented legal system that is oriented towards recovering losses and protecting the public interest.

II. METHODOLOGY

This research uses a normative legal research method[11], which is research that focuses on the analysis of legal norms written in laws and regulations, court decisions, and doctrines or opinions of legal experts[12]. This approach was chosen because the study of expanding the meaning of unlawful acts in corruption cases focuses on conceptual aspects, principles, and legal construction in the positive legal system in Indonesia.

The approaches used include the statute *approach*, the *conceptual approach*, and the *case approach*[13]. The legislative approach is carried out by examining various relevant regulations, such as the Civil Code, especially the provisions of unlawful

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11 Zainuddin Ali, "Legal Research Methods" (East Java: Sinar Grafika, 2010), p. 99.

12 Noviyanti Tue et al., "Public Service System at The Monano Sub-District Office in North Gorontalo as an Implementation of Good Governance in The Pandemic Era," *Ideas: Jurnal Pendidikan, Sosial, Dan Budaya* 9, no. 4 (2023): 1241, https://doi.org/10.32884/ideas.v9i4.1459.

13 Jupri Jupri et al., "Anti-Money Politics Village as a Strategy to Anticipate the 2024 Fraudulent Regional Elections in Gorontalo Province," *Journal of Ideas: Education, Social, and Culture* 9, no. 4 (2023): 1185–93.

acts, and Law Number 31 of 1999 concerning the Eradication of Corruption and its amendments. The conceptual approach is used to examine the development of doctrine regarding the expansion of the meaning of *onrechtmatige daad*, including the views of legal scholars[14]. Meanwhile, the case approach is carried out by analyzing relevant court decisions to see the application of the concept in practice.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations and court decisions, secondary legal materials in the form of books, scientific journals, and the results of previous research, while tertiary legal materials include legal dictionaries and encyclopedias. The technique of collecting legal materials is carried out through library *research*. The analysis of legal materials is carried out qualitatively using legal interpretation methods, both grammatical, systematic, and telelogical. The results of the analysis are presented in a descriptive-analytical manner to obtain a comprehensive conclusion regarding the expansion of the meaning of unlawful acts in the perspective of civil law in corruption cases.

III. CONCEPTUALIZATION OF UNLAWFUL ACTS IN CIVIL LAW

The concept *of unlawful acts* (*onrechtmatige daad*) is one of the fundamental pillars in civil law, especially in the liability *based on fault*[15] regime. In the Indonesian legal system, this concept is rooted in the provisions of Article 1365 of the Civil Code (KUHPerdata) which states that every unlawful act that causes harm to others requires the perpetrator to compensate for the loss[16]. This formulation classically contains four main elements, namely the existence of an act, the existence of an element of error, the existence of a loss, and the existence of a causal relationship between the act and the loss that arises. These four elements are the basis for analysis in determining whether an action can be qualified as an unlawful act.

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14 Jupri; Jupri et al., "The Role of the Saber Extortion Task Force (Sweeping Illegal Charges Task Force) in The Eradication of Criminal Acts of Corruption," Jurnal Hukum Volkgeist 6, no. 2 (2022): 186–95.

15 Deviana Yuanitasari, Hazar Kusmayanti, and Agus Suwandono, "A Comparison Study of Strict Liability Principles Implementation for the Product Liability within Indonesian Consumer Protection Law between Indonesia and United States of America Law Implementation for the Product Liability within Indonesian Consumer Protection Law between Indonesia and United States of America Law," *Cogent Social Sciences* 9, no. 2 (2023), https://doi.org/10.1080/23311886.2023.2246748.

16 Agnes Widananti, "Legal Liability Based on Article 1365 of the Civil Code for Insured Persons Who Suffer Losses in Life Insurance Default Cases," *Socius: Journal of Social Sciences* Research 6, no. 1 (2024): 8-.

However, if we dig deeper, the meaning of the element of "unlawful" in Article 1365 of the Civil Code is not static. At the beginning of its development, especially in the Continental European legal tradition, unlawful acts were interpreted narrowly, i.e. limited to acts that explicitly violate the law (*wettelijke onrechtmatigheid*).[17] This approach places the law as a rigid written norm, so that an act can only be considered unlawful if it is contrary to the provisions of the applicable laws and regulations. As a result, many acts that are socially harmful, but not explicitly regulated in the law, cannot be reached by this concept.

Important developments occurred through jurisprudence in the Netherlands, in particular through *the Hoge Raad* decision in *the case of Lindenbaum vs Cohen* in 1919, which expanded the meaning of unlawful acts. In the ruling, the court stated that unlawful acts include not only violations of the law, but also include violations of the subjective rights of others, violations of the legal obligations of the perpetrators, and acts that are contrary to the norms of decency and propriety in society. This expansion is known as *the maatschappelijke zorgvuldigheidsnorm* or the standard of prudence in society. Since then, the concept of unlawful acts has become more flexible and able to accommodate the development of social values[18].

In the context of Indonesian law, the influence of the expansion of this meaning is significant. Indonesian legal scholars, such as Subekti and R. Setiawan, have adopted the view that unlawful acts are not only limited to violations of written norms, but also include unwritten norms that live in society[19]. Thus, civil law functions not only as a tool to enforce formal rules, but also as an instrument for realizing substantive justice[20]. This is in line with the characteristics of civil law which is open *system*, thus allowing interpretation to develop according to the needs of society.

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17 Shihaf Ismi Salman Najib, "Disputes over unlawful acts in the Civil Law, Common Law, and Islamic Law systems," *Jurist-Diction* 7, no. 4 (2024): 2133, https://doi.org/10.20473/jd.v7i4.63931.

18 Mulyadi, Yanuaria, and Polontoh, "PERBUATAN MELAWAN HUKUM DALAM PARADIGMA HUKUM PROGRESIF : Hukum Progresif : Refleksi Atas Kesadaran Berhukum."

19 Victorius Ary Subekti, "Tax Investigation Warrant Against Bankrupt Debtors is an Unlawful Act (Case Study of Decision No. 750/Pdt.G/2019/PN. DPS)," *LOCUS JOURNAL: Research & Service* 4, no. 11 (2025): 10238–51, https://locus.rivierapublishing.id/index.php/jl/article/view/4967.

20 Against the Law et al., "Legal Liability of Heirs for Unlawful Acts in Grant Deeds: A Study of Supreme Court Decision Number 3013 K/Pdt/2022.," *Lex Generalis* Law 6, no. 6 (2025): 1–30, https://www.ojs.rewangrencang.com/index.php/JHLG/article/view/3128.

In further analysis, the elements of unlawful acts need to be understood comprehensively. The first element, namely the existence of an act, is not only limited to active actions (*commission*), but also includes passive actions (*omission*) or negligence[21]. In many cases, negligence is the main source of loss. The second element, namely fault (*schuld*), includes both intentionality (*opzet*) and negligence (*culpa*).[22] In practice, proving the element of error is a challenge in itself, especially in cases involving complex organizational structures.

The third element is schade, which in civil law is not only limited to material losses, but can also include immaterial losses[23]. Material losses are usually financial losses that can be calculated concretely, while immaterial losses include psychological suffering, loss of reputation, or other non-economic losses[24]. In the modern context, the recognition of immaterial losses suggests that civil law is increasingly sensitive to the humanitarian dimension in legal relationships.

The fourth element is the causal relationship between the act and the loss. In this case, the causality theory used greatly determines whether an act can be considered a cause of loss. The theory of *conditio sine qua non* and the theory *of adequate justification* are often used in analyzing the cause-effect relationship[25]. The approach used must be able to provide justice, both for the victim and the perpetrator, taking into account the complexity of the factual relationship that occurs.

When associated with the development of modern law, the concept of unlawful acts has undergone a significant transformation. The law is no longer seen as a closed and rigid system, but rather as a dynamic and responsive system

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21 Systemic Bullying, "RECONSTRUCTION OF EDUCATIONAL CORPORATION CRIMINAL LIABILITY BEYOND THE DOCTRINE OF INDIVIDUAL OMISSION IN CASES OF SYSTEMIC BULLYING," *Journal of Supremacy* 16, no. 35 (2026): 59–72, http://ejournal.unisbablitar.ac.id/index.php/supremasi/article/view/5643.

22 Muhammad Yusni et al., "THE PRINCIPLE OF CRIMINAL ACCOUNTABILITY WITHOUT FAULT IN CORPORATE CRIME," *Urnal SOMASI (Social Humanities Communication)* 6, no. 2 (2025): 330–42, https://jurnal.ceredindonesia.or.id/index.php/somasi/article/view/1545.

23 Sharfina Milla Atsari, "Determination of Immaterial Damages in Unlawful Acts in Indonesia, the Netherlands, and California (Comparative Analysis of Traffic Accident Judgments in Indonesia, the Netherlands, and California, United States)," *Lex Patrimonium* 4, no. 3 (2025): 1, https://scholarhub.ui.ac.id/lexpatri/vol4/iss3/3/.

24 Amran Rabani Zubaidi, Puguh Aji Hari Setiawan, and Dewi Iryani, "Legal Protection for Investors Who Suffer Unlawful Losses Due to Insider Trading Practices in the Market," *SETARA : Journal of Law* 4, no. 1 (2023): 1, https://doi.org/10.59017/setara.v4i1.397.

25 Demet Sengul and Ilker Sengul, "Repercussion of Thyroid Dysfunctions in Thyroidology on the Reproductive System : Conditio Sine qua Non ?," *Sengul, D., Sengul, I., & Soares, J. M.* 68, no. 6 (2022): 721–22, https://doi.org/10.1590/1806-9282.20220255.

to social change[26]. In this context, unlawful acts serve not only as a basis for individual responsibility, but also as an instrument to regulate social behavior more broadly. This can be seen from the increasing number of cases in which courts use this concept to enforce the principle of justice, even though no written rule is explicitly violated.

In a broader framework of analysis, the expansion of the meaning of unlawful acts can also be seen as a form of *judicial activism*, in which judges play an active role in developing the law through interpretation[27]. This approach is often needed to address legal *gaps* or unclear norms. However, this expansion must also be done carefully so as not to create legal uncertainty. Therefore, a balance between flexibility and legal certainty is needed in the application of this concept.

In relation to this research, the conceptualization of unlawful acts is very relevant to be studied further in the context of corruption crimes. Corruption, as an *extraordinary crime*, not only causes financial losses to the state, but also damages social order and public trust[28]. So far, the approach used in handling corruption has focused more on criminal law, with an emphasis on the punishment aspect. However, this approach is often not optimal in recovering state losses.

This is where civil law, through the concept of unlawful acts, has the potential to play a more active role. By expanding the meaning of unlawful acts, acts of corruption can be seen not only as a violation of criminal law, but also as a violation of the rights and interests of the state as a subject of civil law. This opens up opportunities to use the civil lawsuit mechanism as a means to demand compensation against corrupt perpetrators.

This analysis shows that there is room to integrate the civil law approach in the eradication of corruption. This approach is not intended to replace criminal law, but to complement it, especially in the aspect of recovering losses. Thus, the concept of unlawful acts can serve as a bridge between private law and public law, which have tended to be strictly separated.

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[26] Ayu Oktavia et al., "The Relationship of Social Change and Legal Change in the Open Legal System," Syiyasah: Journal of Constitutional Law 04, no. 2 (2024): 123–36, https://doi.org/10.32332/siyasah.v4i1.

[27] Fitri Nabila et al., "The History of the Role of Judges in the Civil Law System," *Journal of Academic Media (JMA)* 3, no. 1 (2025): 45, https://jurnal.mediaakademik.com/index.php/jma/article/download/1514/1335.

[28] Dewi Asri Puanandini, Vita Suci Maharani, and Putri Anasela, "Corruption as an Extraordinary Crime: Impact Analysis and Law Enforcement Efforts," *Journal of Socio-Political, Government and Law* 4, no. 1 (2025), https://doi.org/10.59818/jps.v3i3.1173.

Discussing the expansion of the meaning *of unlawful acts* in the context of corruption, a theoretical foundation is needed that is able to explain the paradigm shift from a classical approach to a progressive approach. One of the relevant theories is the theory *of corrective justice* proposed by Aristotle[29]. This theory emphasizes that law serves to restore the balance that is disturbed by actions that harm other parties. In the civil context, this is reflected in the obligation of the perpetrator to compensate for the damages caused. If it is associated with corruption, then state losses arising from these acts should be recovered through legal mechanisms, not only through criminal sanctions, but also through civil liability.

In addition, the theory *of law as a tool of social engineering* introduced by Roscoe Pound provides the perspective that law can be used as an instrument to engineer social change[30]. In this case, the expansion of the meaning of unlawful acts can be seen as an attempt to adapt the law to the increasingly complex needs of society. Corruption as a destructive social phenomenon is not adequately addressed with conventional [31] approaches. Therefore, civil law needs to be optimized as a tool to create a deterrent effect while effectively recovering state losses.

Furthermore, the *progressive legal* theory developed by Satjipto Rahardjo becomes very relevant in this context[32]. This theory emphasizes that the law should not be trapped in formalities, but should be on the side of substantive justice. In this framework, the expansion of the meaning of unlawful acts is a form of courage to break out of narrow normative boundaries in order to achieve broader justice. This approach allows judges to interpret the law contextually, taking into account the values of justice, propriety, and utility.

From the perspective of analysis, the expansion of the meaning of unlawful acts in corruption cases can be seen as a form of integration between public law and private law. Traditionally, corruption has been positioned as a violation of criminal law that is the domain of the state. However, from the point of view of

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29 Febrian Duta Pratama, Rafly Pebriansya, and Mohammad Alvi Pratama, "The Concept of Justice in Aristotle's Thought," Praxis: Journal of Applied Philosophy 1, no. 2 (2024): 1–23, https://doi.org/10.11111/praxis.xxxxxxx.

30 Wenni Syafitri et al., "Social Engineering Attacks Prevention : A Systematic Literature Review," IEEE Access 10 (2022): 39325–43, https://doi.org/10.1109/ACCESS.2022.3162594.

31 Alex O Acheampong, "Does Corruption Drive Foreign Direct Investment ? Insight from Developing Economies," International Economics 186, no. March (2026): 100704, https://doi.org/10.1016/j.inteco.2026.100704.

32 Acheampong.

civil law, corruption can also be qualified as an act that is detrimental to the legal interests of the state as a subject of law. Thus, the state has the legitimacy to file a civil lawsuit based on Article 1365 of the Civil Code against corrupt perpetrators.

This analysis shows an important shift in the way of looking at the relationship between criminal law and civil law. If previously these two regimes were strictly separated, then in modern development the two can complement each other. Criminal law serves to provide a deterrent effect through sanctions, while civil law serves to recover losses. The combination of the two is expected to result in a more effective and fair law enforcement system.

Furthermore, in practice, the expansion of the meaning of unlawful acts faces a number of challenges. One of them is the proof of elements in civil lawsuits, especially related to the relationship between causality and the amount of state losses. In complex corruption cases, it is often difficult to directly prove the relationship between the perpetrator's actions and the losses incurred. Therefore, a more flexible approach to proof is needed, including the use of *indirect evidence* and reversal of the burden of proof under certain conditions.

On the other hand, this expansion also has implications for legal certainty. Interpretation that is too broad has the potential to create uncertainty if it is not balanced with clear guidelines. Therefore, the role of jurisprudence is very important in providing direction and limits to the application of this concept. Consistent court decisions will help to form legal standards that can be used as a reference in similar cases.

Normatively, the expansion of the meaning of unlawful acts in the context of corruption can also be seen as a form of strengthening the principle of accountability. Corrupt perpetrators are not only criminally responsible, but also civilly for the losses caused. This is in line with the principle *of no one shall be unjustly enriched*, which emphasizes that no one should gain unlawfully from his actions.

Thus, this theoretical and normative analysis shows that the expansion of the meaning of unlawful acts has a strong basis, both in terms of theory and practice. This approach not only contributes to the development of legal science, but also offers concrete solutions in efforts to eradicate corruption, especially in the aspect of recovering state losses. Therefore, it is necessary to strengthen judicial regulations and practices that support the implementation of this concept consistently and fairly.

Table 1. An analysis table that integrates legal rules, relevant theories, and non-conformities (normative and practice gaps) in the context of expanding the meaning of *unlawful acts* in corruption cases:

No	Legal Regulation	Regulatory Substance	Relevant Theory	Inconsistency (Normative & Practice)
1	Article 1365 of the Civil Code	Regulates unlawful acts as the basis for claims for compensation	Corrective Justice Theory – Aristotle	Limited to private relations, not yet optimally utilized for recovering state losses due to corruption
2	Anti-Corruption Law	Emphasizes criminal sanctions and recovery of state losses	Law as a Tool of Social Engineering – Roscoe Pound	Criminal approach dominates; civil mechanisms have not been maximized as complementary instruments
3	Court Decisions (Tort Jurisprudence)	Expands the meaning of unlawful acts to include propriety and morality	Progressive Legal Theory – Satjipto Rahardjo	Inconsistent application in courts; no standardized framework in corruption cases
4	Criminal Procedure Code & Criminal Justice System	Focuses on proving criminal liability of the offender	Public and Private Law Integration Theory	Does not optimally accommodate parallel civil claims for loss recovery
5	Principle of Civil Liability	Obligation to compensate for damages caused by fault	Unjust Enrichment Theory	Not widely applied in corruption cases to pursue illicit assets
6	Onrechtmatige Daad Doctrine (Netherlands)	Expands unlawful acts to include social norms and propriety	Modern Legal Dynamics Theory	Conceptually adopted but not yet optimally implemented in the Indonesian legal system

Table 1. above shows that there is a gap between the available legal norms and law enforcement practices in Indonesia. Theoretically, the concept *of unlawful acts* has developed widely and allows it to be used as an instrument for recovering state losses. However, in practice, there is still a dominance of the criminal law approach in handling corruption. As a result, the potential of civil law as a means of recovery has not been utilized to the fullest. Therefore, harmonization between rules, theories, and practices is needed so that the expansion of the meaning of unlawful acts can be applied effectively and make a real contribution to the eradication of corruption.

IV. EXPANSION OF THE MEANING OF UNLAWFUL ACTS IN CORRUPTION CASES AS THE BASIS FOR CIVIL LAWSUITS

Expanding the meaning of *unlawful acts* (*onrechtmatige daad*) in the context of corruption is one of the important efforts to strengthen the effectiveness of the legal system in recovering state losses[33]. So far, the legal approach to corruption in Indonesia tends to be oriented towards criminal law, which focuses on proving mistakes and imposing sanctions on perpetrators[34]. However, this approach has not been able to restore all the state losses incurred, both due to the limitations of the asset forfeiture mechanism, and due to the complexity of proof in criminal cases. Therefore, an alternative approach through civil law is needed by making the concept of unlawful acts as the basis for lawsuits against corrupt perpetrators.

Normatively, the main basis for a civil lawsuit against unlawful acts is found in Article 1365 of the Civil Code, which states that every unlawful act that causes harm to another person requires the perpetrator to compensate for the loss. In this context, the state can be positioned as a party aggrieved by acts of corruption, so it has the right to claim compensation through civil mechanisms. In addition, Article 1366 of the Civil Code emphasizes that liability also applies to losses arising from negligence, while Article 1367 of the Civil Code regulates responsibility for the actions of others, including in employment relationships or positions. These provisions provide a strong legal basis to ensnare corrupt perpetrators, including parties who are also indirectly responsible.

In relation to criminal law, the Law on the Eradication of Corruption (Corruption Law) has actually regulated a mechanism for restoring state losses, including through additional penalties in the form of payment of compensation[35]. However, this provision is often ineffective in practice, especially when the perpetrator does not have sufficient assets or has hidden the proceeds of the crime. In such situations, a civil lawsuit can be an alternative instrument to trace and execute the perpetrator's assets, including through a lawsuit mechanism against third parties who receive the flow of funds from corruption.

From the perspective of legal theory, the expansion of the meaning of unlawful acts in corruption cases can be explained through the theory of *corrective*

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33 Askarial, "Interpretation or Interpretation as a Method of Legal Discovery," *Menara Ilmu* XII, no. 2 (2018): 79.

34 System Lawrence M Freidman, "CORRUPTION ERADICATION IN INDONESIA: A LEGAL SYSTEM PERSPECTIVE," *El-Dusturie: Journal of Law and Legislation* 1, no. 1 (2022): 24, https://jurnal.iainponorogo.ac.id/index.php/eldusturie/article/view/23-42.

35 Lia Hartika, Indri Dithisari, and Syarifah Lisa Andriati, "The Urgency of the Implementation of Additional Criminal Execution of Substitute Money by Executing Prosecutors in Corruption Cases," *Https://Ejournal.Hukumunkris.Id/Index.Php/Binamulia/Article/View/297* 11, no. 2 (2022): 127–37, https://doi.org/10.37893/jbh.v11i2.709.

justice proposed by Aristotle. This theory emphasizes that the law must be able to restore the balance that is disturbed due to adverse acts. In the context of corruption, the balance is disturbed due to the unauthorized transfer of state resources to certain individuals or groups. Therefore, the perpetrator must be obliged to return the loss through an effective legal mechanism[36].

In addition, Roscoe Pound's theory of *law as a tool of social engineering* provides justification that law can be used as a tool to encourage social change, including in efforts to eradicate corruption. By expanding the meaning of unlawful acts, civil law can function as an instrument to create a deterrent effect, while encouraging accountability in the management of state finances[37]. This approach is also in line with the progressive legal theory developed by Satjipto Rahardjo, which emphasizes the importance of having the courage to interpret law contextually in order to achieve substantive justice.

In practice, the application of civil lawsuits against corrupt perpetrators requires a careful analysis of the elements of unlawful acts. The first element, namely the existence of an act, can be in the form of an active action such as abuse of authority, or a passive action such as allowing corruption to occur. The second element, namely error, includes both intentionality and negligence. In many cases of corruption, the element of intentionality can usually be proven through the existence of an intention to gain personal or group benefits.

Unsur ketiga adalah kerugian, yang dalam konteks korupsi umumnya berupa kerugian keuangan negara. Namun, perluasan makna perbuatan melawan hukum memungkinkan pengakuan terhadap kerugian immateriil, seperti rusaknya kepercayaan publik dan terganggunya fungsi pemerintahan. Unsur keempat adalah hubungan kausalitas antara perbuatan dan kerugian. Dalam kasus korupsi yang kompleks, pembuktian hubungan ini seringkali menjadi tantangan, terutama ketika melibatkan banyak pihak dan transaksi yang berlapis.

One of the main challenges in the application of civil lawsuits is the evidentiary aspect. In contrast to criminal law which requires proof "beyond reasonable doubt", civil law uses a lighter standard of proof, namely

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36 Mahkota Fadia et al., "Pertimbangan Hakim Mengenai Kekuatan Mengikat Akta Pembagian Harta Bersama Berdasarkan Keadilan Distributif Aristoteles," *Indonesian Journal of Social Sciences and Humanities* 6, no. 1 (2026): 129–38, https://journal.publication-center.com/index.php/ijssh/article/view/2362.

37 Desi Apriani, Zulherman Idris, and M Nasir, "Sanctions Provisions According to Indonesian Business Competition Law Examined from the Aspect of Law Is a Tool of Social Engineering," *UIR Law Review* 9, no. 1 (2025): 32–46, https://journal.uir.ac.id/index.php/uirlawreview/article/view/24394.

"preponderance of evidence". This actually provides an advantage in the context of proving corruption cases, as it allows judges to consider indirect evidence. In addition, under certain conditions, the application of reversal of the burden of proof can be considered, especially related to the origin of unreasonable wealth.

In terms of analysis, the expansion of the meaning of unlawful acts in corruption cases shows a paradigm shift in the Indonesian legal system. Law is no longer seen as sectoral, but as an integrated system between public law and private law. This approach allows the simultaneous use of various legal instruments to achieve the same goal, namely the eradication of corruption and the recovery of state losses.

Nevertheless, this expansion must also be balanced with clear arrangements to maintain legal certainty. Without firm limits, overly broad interpretations can create uncertainty and potential abuse. Therefore, an active role of lawmakers and courts is needed to formulate clear guidelines regarding the application of this concept.

In addition, it is also important to strengthen the capacity of law enforcement institutions in handling civil lawsuits related to corruption. This includes the ability to conduct asset tracking, financial analysis, and coordination between institutions. Without adequate institutional support, the potential of civil law as an instrument of recovery will be difficult to realize optimally.

In the context of legal policy, the expansion of the meaning of unlawful acts can be used as a basis for formulating new regulations that explicitly regulate the mechanism of civil lawsuits in corruption cases. These regulations can include provisions regarding the reversal of the burden of proof, protection of third parties in good faith, and effective decision execution mechanisms. Thus, civil law is not only a complement, but also an integral part of the corruption eradication system.

In closing, it can be concluded that the expansion of the meaning of unlawful acts in corruption cases has a strong normative, theoretical, and practical basis. This approach offers a more comprehensive solution in dealing with corruption, not only from the aspect of punishment, but also from the aspect of recovering state losses. Therefore, a commitment from all stakeholders is needed to develop and implement this concept consistently, so that it can make a real contribution to realizing a fair, effective, and equitable legal system.

V. THE IDEAL CONCEPT OF EXPANDING UNLAWFUL ACTS AS AN INSTRUMENT OF CIVIL LAWSUITS IN CORRUPTION CASES

The ideal concept of expanding the meaning *of unlawful acts* (*onrechtmatige daad*) in the context of corruption basically departs from the need to overcome the limitations of the criminal law approach in recovering state losses. So far, the corruption eradication system in Indonesia has focused more on criminalizing perpetrators through criminal law mechanisms, including the imposition of additional penalties in the form of payment of substitute money. However, in practice, these mechanisms are often unable to optimally recover state losses. Many cases show that assets resulting from corruption have been transferred, hidden, or placed in the name of a third party, making them difficult to reach through criminal instruments alone. Therefore, an alternative concept is needed that is able to expand the function of civil law as a strategic instrument in recovering state losses.

The concept offered in this study is a reconstruction of the meaning of *unlawful acts* that are not only limited to private relationships between individuals, but also include violations of the public and financial interests of the state. In this case, the state is positioned as a legal subject that has a civil right to demand compensation for losses caused by acts of corruption. This approach expands the scope of Article 1365 of the Civil Code by progressively interpreting the element of "unlawful" to include not only violations of the law, but also of the principles of *good governance*, the principles of propriety, and the public interest.

Theoretically, this concept can be justified through the theory *of corrective justice* put forward by Aristotle, which emphasizes the importance of restoring the balance due to losses caused by an act. In the context of corruption, the balance is disturbed due to the unauthorized transfer of public resources to private hands. Therefore, perpetrators must be obliged to return these losses through effective legal mechanisms. In addition, Roscoe Pound's *theory of law as a tool of social engineering* provides the basis that law can be used as a tool to drive social change, including in creating a more accountable and transparent system[38].

[38] S Assauri, S., Amin, M., & Warjiyati, "TEORI KEADILAN DAN MORALITAS," *Jurnal Ilmiah Pendidikan Dasar* 09, no. 2 (2024): 211–21, https://journal.unpas.ac.id/index.php/pendas/article/view/20482.

Furthermore, the progressive legal theory developed by Satjipto Rahardjo is an important foundation in formulating this concept. Progressive law emphasizes that the law should not be trapped in mere formalities, but must be able to respond to the needs of society substantively. In this case, expanding the meaning of unlawful acts is a form of courage to interpret the law contextually in order to achieve broader justice. This approach allows judges to see the substance of an act, not just its formal form, so that it can provide a fairer verdict.

In terms of normative analysis, this concept requires an integration between criminal law and civil law in handling corruption cases. Criminal law continues to function as the main instrument to punish perpetrators and provide a deterrent effect, while civil law serves as a mechanism to recover state losses. This integration can be carried out through a civil lawsuit mechanism filed in parallel or after a criminal verdict has permanent legal force. In this case, the state can file a lawsuit under Article 1365 of the Civil Code against corrupt perpetrators, as well as against third parties who also enjoy the proceeds of crime.

One of the important elements of this concept is the application of the reversal of the burden of proof in civil lawsuits, particularly related to the unjust origins of wealth. In practice, it is often difficult for the state to prove directly that an asset originated from a criminal act of corruption. Therefore, a more effective approach is to require the perpetrator to prove that his wealth was obtained legally. This approach is in line with the principle of *unjust enrichment*, which states that no one should unlawfully profit from his or her actions.

In addition, this concept also includes strengthening *asset tracing and recovery* mechanisms. In many cases, assets resulting from corruption are hidden through complex schemes, including the use of shell companies and offshore accounts. Therefore, cooperation between institutions, both at the national and international levels, is required to trace and return these assets. Civil law can play an important role in this process, especially through lawsuits against third parties involved in asset transfers.

From the perspective of judicial practice, the implementation of this concept requires clear guidelines regarding the procedure for filing lawsuits, evidentiary standards, and the mechanism for the execution of decisions. Without clear guidelines, there is a risk of inconsistencies in the application of the law, which can disrupt legal certainty. Therefore, an active role is needed from the

Supreme Court and lawmakers to formulate regulations that support the consistent application of this concept.

Table 2. Proposed Ideal Concept

No	Aspect	Ideal Concept	Objective	Challenges
1	Meaning of Unlawful Acts	Expanded to include public interest and state finances	Strengthening the basis for civil lawsuits	Resistance to paradigm shifts
2	Legal Subject	The state as an active plaintiff	Optimizing recovery of state losses	Limited institutional capacity
3	Evidence	Reversal of the burden of proof	Facilitating proof of illicit assets	Risk of violating due process principles
4	Legal Integration	Synergy between criminal and civil law	Comprehensive law enforcement	Sectoral ego among institutions
5	Asset Recovery	Asset tracing and confiscation	Recovery of state losses	Complexity of global financial networks
6	Regulation	Special guidelines for civil lawsuits in corruption cases	Legal certainty and consistency	Delays in regulatory reform

Analysis of the table shows that this ideal concept not only offers normative solutions, but also considers practical and institutional aspects. Each element in this concept is interrelated and must be implemented simultaneously in order to provide optimal results. For example, the expansion of the meaning of unlawful acts must be followed by the strengthening of the mechanism of proof and asset tracking, and supported by adequate regulations.

However, the implementation of this concept is inseparable from various challenges. One of the main challenges is the resistance to paradigm shifts, both among legal practitioners and law enforcement institutions. In addition, there is also a risk of violations of legal principles, such as the principle of presumption of innocence and the right to self-defense, if the reversal of the burden of proof is not applied carefully. Therefore, a balance is needed between effectiveness and protection of human rights in the application of this concept.

In closing, the ideal concept of expanding unlawful acts as an instrument of civil lawsuits in corruption cases is an innovation that has great potential to strengthen the corruption eradication system in Indonesia. By integrating criminal and civil law approaches, and supported by a strong theoretical framework and adequate regulations, this concept is expected to make a real contribution to realizing justice and recovering state losses effectively.

VI. CONCLUSION

The concept *of unlawful acts* in civil law has developed from a narrow meaning to a broader and progressive meaning. The expansion of corruption is not only seen as a criminal offense, but also as a violation of the state's civil rights that gives rise to the obligation to compensate. Thus, civil law has strategic potential as an instrument for recovering state losses through lawsuits based on Article 1365 of the Civil Code. The ideal concept offered emphasizes the integration between criminal and civil law, the implementation of reversal of the burden of proof, and the strengthening of the tracking and recovery mechanism of assets, thereby creating a more comprehensive and fair law enforcement system.

The suggestion put forward is the need for a reformulation of regulations that explicitly accommodate civil lawsuits in corruption cases, including technical guidelines for law enforcement officials. In addition, it is necessary to strengthen institutional capacity in conducting asset recovery and increase the consistency of jurisprudence by the judiciary. A progressive approach must still pay attention to the principles of legal certainty and human rights protection, so that the expansion of the meaning of unlawful acts can be applied effectively, proportionately, and sustainably in the Indonesian legal system.

ACKNOWLEDGMENTS

The authors may recognize those who helped in the research, especially funding supporters of research. The acknowledgment can include individuals who have assisted you in your study: Advisors, Financial supporters, or other supporters, i.e., Proofreaders, Typists, and Suppliers who may have given materials.

COMPETING INTEREST

The authors will be asked to sign this statement once the submission has been accepted.

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