

A Study of Unlawful Acts in the Indonesian Legal System

Theofilus Immanuel Pastika Hutabarat¹, Andika Wijaya², Rizki Setyobowo Sangalang³, Charles Hutapea⁴

^{1,2,3,4} Universitas Palangka Raya, Palangka Raya, Indonesia. Email: theofilushutabaratt04@gmail.com¹, andikawijaya@law.upr.ac.id², rizkisetjowowo@law.upr.ac.id³, charles.hutapea90@fisip.upr.ac.id⁴

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ABSTRACT

Unlawful acts are a fundamental concept in Indonesian civil law as stipulated in Article 1365 of the Civil Code as the basis for liability for losses incurred to other parties. Along with the development of society, the meaning of unlawful acts is not only limited to violations of the law, but also includes violations of subjective rights, legal obligations, moral norms, and the principle of propriety. This study aims to analyze the concept and application of unlawful acts in Indonesian civil law by using normative legal research methods through legislative, conceptual, and case approaches. The results of the study show that unlawful acts play an important role in legal protection, but there are still differences in judges' interpretations of its elements that have the potential to cause legal uncertainty. Therefore, consistency of interpretation and strengthening of jurisprudence is needed to realize justice, legal certainty, and utility.

Keywords: Unlawful Acts, Civil Law, Civil Liability, Legal Certainty, Jurisprudence.

I. Introduction

Unlawful acts constitute one of the key institutions within the Indonesian civil law system, functioning as the basis for civil liability arising from acts that cause loss. This concept is normatively regulated in Article 1365 of the Civil Code, which provides that any act that violates the law and causes damage obliges the perpetrator to compensate for such loss. In practice, this provision serves as the primary legal basis for filing civil lawsuits before the courts. However, the development of society and increasingly complex legal relationships have led to an expansion in the interpretation of unlawful acts. They are no longer narrowly understood as mere violations of written law. Legal doctrine and jurisprudence have broadened their scope to include violations of subjective rights, legal obligations, decency, and principles of propriety. This expansion demonstrates that unlawful acts play a strategic role in maintaining a balance of legal interests among individuals. Therefore, an in-depth study of unlawful acts remains highly relevant within the context of Indonesian civil law (Wardhana, 2023). The growing number of civil disputes based on unlawful acts indicates that this concept is increasingly utilized by the public as a means of legal protection. Claims based on unlawful acts are no longer limited to traditional cases such as land disputes but have also emerged in employment relationships, business activities, and modern financial transactions. This trend reflects the high degree of flexibility of unlawful acts in responding to the evolving demands of justice. However, such flexibility also gives rise to challenges in law enforcement practices. Differences in the interpretation of the elements of unlawful acts frequently occur among law enforcers, potentially leading to legal uncertainty for justice

seekers. The inconsistency of court decisions further suggests that the understanding of this concept has not yet reached full coherence. Accordingly, a comprehensive normative study is necessary to strengthen the conceptual framework of unlawful acts (Andryawan, 2024).

Unlawful acts are also often juxtaposed with breach of contract (default) in civil law practice. The distinction between these two concepts is not always clearly understood, both by the general public and by legal practitioners. In certain cases, a single act may be qualified as both a breach of contract and an unlawful act, giving rise to academic debate regarding the conceptual boundaries between the two legal institutions. Misclassification of a legal act may affect the determination of the legal basis of a claim as well as the process of proof in court. Therefore, conceptual clarity regarding unlawful acts is essential to ensure legal certainty. Previous studies have shown that the distinguishing characteristics between breach of contract and unlawful acts are still frequently overlooked in judicial practice. This condition underscores the need for a systematic theoretical analysis of unlawful acts in Indonesian civil law (Suryoutomo, 2025). The phenomenon of unlawful acts is also evident in land disputes involving communities and business actors. Land grabbing, unlawful possession, and unilateral transfers are concrete examples of unlawful acts within the agrarian sector. Such disputes often result in significant losses for the rightful owners. In this context, unlawful acts function as an instrument for the protection of property rights. Nevertheless, the complexity of land issues frequently complicates the process of proving the elements of unlawful acts. This situation is further exacerbated by weak land administration systems and overlapping regulatory frameworks. As a result, court decisions in land-related cases often vary. This phenomenon highlights the importance of a thorough juridical analysis of the application of unlawful acts in land disputes (Nurmiati, 2026).

In addition to private relationships, unlawful acts may also be committed by the government or public authorities. Government actions that violate the rights of citizens can be classified as unlawful acts, demonstrating that the principle of legal responsibility applies not only to individuals but also to the state. Claims based on unlawful acts committed by the government serve as a mechanism for controlling the exercise of public power. However, in practice, establishing such claims is not straightforward. It requires a thorough analysis of the scope of authority, applicable procedures, and the legal consequences of governmental actions. Uncertainty in assessing the elements of unlawful acts committed by public authorities may weaken legal protection for citizens. Therefore, normative studies on unlawful acts by the government are essential within the framework of the rule of law (Halim & Indrianto, 2016). Economic and technological developments have also given rise to new forms of unlawful acts. Digital financial transactions, including securities crowdfunding, create opportunities for types of misconduct that were previously unknown. In practice, violations of legal obligations in digital transactions may result in significant losses for investors. Civil law is thus required to accommodate these developments through the doctrine of unlawful acts. However, the lack of comprehensive regulation often hampers effective law enforcement. Courts are therefore required to adopt a progressive interpretation of Article 1365 of the Civil Code, which presents its own challenges in maintaining a balance between legal certainty and justice. Accordingly, a normative analysis of unlawful acts within the context of the modern economy is highly relevant (Rizky, 2026).

In employment relationships, unlawful acts also serve as a legal basis for protecting both workers and employers. Violations of workers' rights that are not explicitly regulated in employment agreements may be pursued through claims of unlawful acts. This demonstrates the corrective function of unlawful acts in addressing injustices within employment relationships. However, the distinction between breach of contract and unlawful acts in this context is often subject to debate. Such ambiguity may affect the effectiveness of legal protection for the parties involved. Therefore, a comprehensive understanding of the application of unlawful acts in employment relationships is necessary. Normative studies can provide a clear conceptual framework for law enforcement. This phenomenon further underscores the relevance of unlawful acts across various aspects of civil law (Nugroho, 2026). From a comparative perspective, the concept of unlawful acts in Indonesia shows similarities to the concept of tort in various legal systems, although fundamental differences remain in terms of their elements and application. A comparative legal approach provides a broader analytical framework for understanding the characteristics and particularities of the doctrine of unlawful acts in

Indonesia. Various studies indicate that consistency in interpreting the elements of unlawful acts is a key factor in ensuring legal certainty. Countries with well-established tort law traditions tend to have more stable and structured doctrines, whereas Indonesia continues to face challenges in achieving such consistency. Therefore, comparative studies are important as a means of enriching the development of national civil law doctrine (Gosal et al., 2025; Az-Zahra et al., 2025).

In the context of judicial practice, court decisions play a central role in shaping and developing the doctrine of unlawful acts. Judges not only act as law enforcers but also as interpreters who adapt legal norms to evolving social dynamics. However, differences in judicial approaches often result in inconsistent rulings, which may lead to legal uncertainty for justice seekers. An analysis of court decisions is essential to identify patterns in unlawful acts, particularly regarding the elements of fault and causation, which are frequently subject to debate. Inconsistencies in assessing these elements may affect the realization of substantive justice. Therefore, a normative study of court decisions is indispensable (Iqbal et al., 2026; Auliany et al., 2026). Based on these dynamics, unlawful acts can be understood as a legal institution that is dynamic and continuously evolving in response to social change. This concept holds a strategic position in providing legal protection to the public and serves as an important instrument in resolving civil disputes. However, these developments also present challenges, particularly in terms of differing interpretations, the complexity of cases, and the need to adapt to societal changes. In this context, normative legal research represents a relevant approach for examining unlawful acts in a systematic and comprehensive manner. Through such research, it is expected that a deeper understanding can be achieved, along with a meaningful contribution to strengthening the doctrine and practice of civil law in Indonesia. Accordingly, research on unlawful acts carries significant theoretical and practical importance in supporting the development of a legal system that is just, certain, and beneficial (Kalele & Hosein, 2024; Soemartono, 2025).

II. Literature Review and Hypothesis Development

2.1. The Concept of Unlawful Acts in Civil Law

Unlawful acts are a basic concept in Indonesian civil law which is rooted in the provisions of Article 1365 of the Civil Code. Classically, an act against the law is interpreted as any act that is contrary to the law and causes harm to others. However, the development of legal doctrine shows an expansion of meaning, as influenced by modern legal thinking that is no longer limited to written normative violations, but also includes violations of subjective rights, legal obligations, moral norms, and the principle of propriety in society. Thus, this concept becomes more flexible and adaptive to social dynamics.

2.2. Elements of Unlawful Acts

In the doctrine of civil law, an act can be categorized as an unlawful act if it fulfills several elements, namely the existence of an act, the existence of an unlawful nature, the existence of guilt, the existence of loss, and the existence of a causal relationship between the act and the loss caused. Legal experts emphasized that the five elements must be met cumulatively. However, in practice, interpretations of these elements often vary, especially with regard to proving errors and causal relationships. This shows that the application of the concept of unlawful acts is not only normative, but also greatly influenced by judges' considerations in assessing facts and substantive justice.

2.3. Development of Jurisprudence and Application in Judicial Practice

The development of unlawful acts in Indonesia is inseparable from the role of jurisprudence that provides a broader interpretation of the concept. Court rulings, including those referring to the influence of Dutch law such as the *Lindenbaum vs Cohen* case, have broadened the meaning of "unlawful" to be not only

contrary to the law, but also to the norms of propriety and prudence in society. In Indonesian judicial practice, judges often use a contextual approach in assessing cases of unlawful acts. However, differences in interpretation between decisions still occur, causing challenges in realizing legal certainty. Therefore, the consistency of jurisprudence is important in strengthening the application of the doctrine of unlawful acts.

III. Research Method

This research uses a normative legal research method that aims to examine the legal norms that regulate unlawful acts in the Indonesian legal system. Normative legal research was chosen because the focus of this study is on the analysis of the provisions of laws and regulations, legal doctrines, and court decisions related to unlawful acts. This approach allows researchers to understand the concept of unlawful acts systematically and comprehensively within the framework of civil law. The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include the Civil Code, especially Article 1365, as well as relevant court decisions. The use of these legal materials aims to examine the normative basis and application of unlawful acts in judicial practice (Waluyo, 2022; Wardhana, 2023). The approaches used in this study include a legislative approach (legal approach), a conceptual approach (conceptual approach), and a case approach (case approach). The legislative approach is used to analyze positive legal provisions that regulate unlawful acts. The conceptual approach is used to examine the views of legal experts regarding the elements of unlawful acts and their development in civil law doctrine. Meanwhile, the case approach is used to examine court decisions related to unlawful acts to see the pattern of application and interpretation of its elements. Analysis of court decisions is important to understand the dynamics of legal practice and the differences in interpretation that occur in the application of unlawful acts. By using these three approaches, this study is expected to be able to provide a complete picture of the concept and application of unlawful acts in Indonesia (Andryawan et al., 2024; Yuflikhati et al., 2025). The technique of collecting legal materials is carried out through literature studies of laws and regulations, scientific journals, legal textbooks, and scientific articles relevant to the research topic. All legal materials obtained were analyzed qualitatively using descriptive-analytical analysis methods. The analysis is carried out by examining the conformity between the applicable legal norms and their application in judicial practice. The results of the analysis are then compiled systematically to answer the research problems and draw conclusions. Through this research method, it is hoped that the research will be able to make a theoretical and practical contribution to the development of civil law, especially related to unlawful acts in the Indonesian legal system (Suryoutomo et al., 2025; Kalele & Hosein, 2024).

IV. Result and Discussion

4.1. Analysis Result

The results of this study were obtained through an analysis of primary, secondary, and tertiary legal materials related to unlawful acts in the Indonesian legal system. The main focus of the research is directed at the normative provisions of Article 1365 of the Civil Code, civil law doctrines, and relevant court decisions in the last five years. Based on the results of the normative review, it was found that unlawful acts are the main basis for civil liability outside the contractual relationship. This provision is widely used in various types of civil disputes, ranging from land disputes, labor relations, business activities, to government actions. The use of the concept of unlawful acts shows high flexibility in responding to the dynamics of legal relations in society. However, this flexibility also has implications for the variation in the application of elements of unlawful acts in judicial practice. The results of the study show that there is a tendency to expand the meaning of unlawful acts which are no longer limited to violations of written laws. This development is in line with the doctrine and jurisprudence that has developed in Indonesian civil law (Waluyo, 2022; Wardhana, 2023). Based on the results of normative research on legal literature and scientific journals, the elements of unlawful acts consistently

include the existence of unlawful acts, unlawful nature, errors, losses, and causal relationships. Although these elements are theoretically well established, their application in practice shows variations in interpretation. Some court decisions emphasize the unlawful element as a violation of written norms, while other decisions focus on violations of the principles of propriety and decency. This shows that the unlawful element has normative and sociological dimensions. In addition, the element of fault is also not always understood uniformly, especially in cases involving legal entities or the government. Losses in unlawful acts are not only limited to material losses, but also include immaterial losses. The causal relationship is the most often debated element in proving in court. These findings show that elements of unlawful acts are dynamic in Indonesian civil law practice (Andryawan et al., 2024; Yuflikhati et al., 2025).

Table 1. Elements of Unlawful Acts in Indonesian Civil Law

No.	Elements of Unlawful Acts	Normative Description
1	Act	Active or passive conduct performed by a legal subject
2	Unlawfulness	Conduct that is contrary to the law, subjective rights, legal obligations, morality, or principles of propriety
3	Fault	The existence of intent or negligence
4	Damage	Material and/or immaterial loss
5	Causal Relationship	A causal link between the act and the resulting damage

Source: Processed from Waluyo (2022); Wardhana (2023)

The results of the study also show that unlawful acts are often used as the basis for lawsuits in various sectors of civil law life. In land disputes, unlawful acts are used to protect property rights from unauthorized possession, seizure, and unilateral sale. In employment relations, unlawful acts are the basis for a lawsuit for violations of rights that are not explicitly regulated in the employment agreement. Meanwhile, in modern business activities and transactions, unlawful acts are used to demand responsibility for losses arising from violations of legal obligations. This study found that the concept of unlawful acts has a wide scope of application and cross-sector. This shows the strategic role of unlawful acts as an instrument of legal protection. However, the breadth of this scope also has the potential to cause legal uncertainty if it is not accompanied by consistent interpretation. These findings show that unlawful acts are the main means of seeking justice in Indonesian civil law (Malau et al., 2026; Nugroho, 2026).

Table 2. Fields of Application of Unlawful Acts in Judicial Practice

No.	Areas of Dispute	Example Cases
1	Land	Land grabbing; unlawful possession
2	Employment Relationships	Violations of workers' rights
3	Business Activities	Losses resulting from improper conduct
4	Financial Transactions	Securities crowdfunding disputes
5	Government	Government actions that harm citizens

Source: Processed from Malau et al. (2026); Rizky (2026); Syfar et al. (2025)

In addition, the results of the research on court decisions show that there are variations in the interpretation of judges in assessing the elements of unlawful acts. This variation is seen in the determination of unlawful nature and causal relationships. In some rulings, judges interpreted unlawfulness broadly by taking into account the principles of justice and propriety. However, in other rulings, judges tend to stick to the violation of written norms. This difference affects the final result of the decision and the amount of compensation awarded. The results of the study also show that not all lawsuits for unlawful acts are granted by the court. This is caused by the failure to prove one of the elements of unlawful acts. This finding confirms the importance of clarity of elements and evidence in a lawsuit for unlawful acts. Thus, judicial practice still faces challenges in applying the concept of unlawful acts consistently (Iqbal et al., 2026; Auliany et al., 2026).

Table 3. Interpretation Pattern of PMH Elements in Court Decisions

Elements	Interpretation Patterns
Against the law	Narrow (written norms) and broad (propriety & decency)
Error	Intentionality and omission
Disadvantages	Material and immaterial
Causality	Direct and indirect

Source: Processed from Andryawan et al. (2024); Iqbal et al. (2026)

The results of comparative research show that the concept of unlawful acts in Indonesia has similarities with the concept of tort in the legal systems of other countries. The similarity lies in the elements of acts, mistakes, and losses. However, differences arise in terms of interpretation and proof approaches. Other legal systems tend to have a more stable and consistent doctrine in the application of tort law. Meanwhile, Indonesia is still experiencing dynamics in building consistency in the interpretation of unlawful acts. These findings show that the Indonesian legal system is still in the stage of doctrinal development. The legal comparison provides an overview of the potential for strengthening the doctrine of unlawful acts in Indonesia. The results of this study affirm the importance of normative studies in identifying weaknesses and potential for the development of the concept of unlawful acts. Thus, the results of this study provide a strong basis for further discussion of unlawful acts in the Indonesian legal system (Gosal et al., 2025; Az-Zahra et al., 2025). The concept of unlawful acts in the Indonesian legal system cannot be separated from the development of civil law doctrine which originated from Dutch jurisprudence. The most influential theory in the development of unlawful acts is the Theory of Extension of Unlawful Acts which was born from the decision of the Dutch Hoge Raad in the case of *Lindenbaum vs Cohen* in 1919. The decision marks a fundamental change in the meaning of unlawful acts that were previously understood narrowly as violations of written laws. Since the ruling, unlawful acts have been interpreted more broadly, including acts that violate the subjective rights of others, legal obligations, morality, and the principle of propriety in society. This theory was then adopted in the doctrine and practice of civil law in Indonesia through Article 1365 of the Civil Code. Thus, unlawful acts are not only normative-formal, but also have ethical and social dimensions. This theory is the main conceptual foundation in assessing various forms of acts that harm other parties. Therefore, the relevance of *Lindenbaum vs Cohen* theory remains strong in the Indonesian legal system to this day (Waluyo, 2022; Wardhana, 2023). The results of the study show that the application of unlawful acts in Indonesian judicial practice has reflected this expansion theory.

The element of "against the law" is no longer interpreted solely as a violation of laws and regulations, but also as a violation of the principles of propriety and decency. This can be seen in various court decisions that consider an unlawful act even though there is no explicit prohibition in the law. This approach is in line with the *Lindenbaum vs Cohen* doctrine which places the interests of law and substantive justice as the basis of judgment. However, the application of this theory has not been completely consistent throughout court decisions. Some judges still use a narrow approach with an emphasis on violations of written norms. These differences in approaches show that there are dynamics in the application of the theory of unlawful acts in Indonesia. This condition is also reflected in the variety of legal considerations used by judges in assessing the elements of unlawful acts. Thus, the *Lindenbaum vs Cohen* theory has been implicitly recognized, but has not been fully uniformly applied (Andryawan et al., 2024; Yuflikhati et al., 2025). In the context of land disputes, the theory of expanding unlawful acts has a very significant role. Many cases of land grabbing and possession without rights are considered as unlawful acts even though the perpetrators do not directly violate criminal provisions. Judges tend to use a propriety approach and the protection of the subjective rights of landowners. This approach is in line with the *Lindenbaum vs Cohen* theory which places the protection of legal interests at the core of unlawful acts. The results of the study show that this theory allows the court to provide more effective legal protection to the aggrieved party. However, proving the elements of error and causal relationships remains the main challenge in land cases. This shows that although the theory has evolved, the technical aspects of proof still need to be strengthened. Thus, the theory of unlawful acts serves as a normative

framework, but its effectiveness depends on its application in practice (Malau et al., 2026; Nurmiati et al., 2026). In employment relationships and business activities, Lindenbaum vs Cohen's theory also provides space for legal protection outside of contractual relationships. Violations of workers' or business actors' rights that are not explicitly regulated in the agreement can be sued through unlawful acts. This reflects the flexibility of the theory of unlawful acts in answering the needs of social justice. The results of the study show that the court uses the concept of propriety and general legal obligations in assessing the actions of the parties. However, the distinction between default and unlawful acts still often raises debate.

The Lindenbaum vs Cohen theory is not intended to remove such limitations, but rather to expand legal protections when the contractual relationship is inadequate. Therefore, a proper understanding of this theory is essential so that there are no misunderstandings of legal qualifications. With the right approach, this theory can strengthen substantive justice without sacrificing legal certainty (Suryoutomo et al., 2025; Nugroho, 2026). In terms of involving the government, the theory of unlawful acts is also an important basis for assessing the actions of the rulers. Government actions that violate the rights of citizens can be considered as unlawful acts even if they are carried out in the context of exercising authority. This approach is in line with Lindenbaum vs Cohen's theory which places propriety and protection of rights as benchmarks of judgment. The results of the study show that lawsuits for unlawful acts against the government function as an instrument of control over power. However, the application of this theory faces challenges in the form of the doctrine of immunity and government discretion. Therefore, a balance is needed between the protection of citizens' rights and the effectiveness of government administration. The theory of unlawful acts provides a normative framework to achieve this balance. Thus, the Lindenbaum vs Cohen theory remains relevant in the context of the modern legal state (Syafar et al., 2025; Halim & Indrianto, 2026). Based on this description, it can be obtained that the Theory of the Expansion of Unlawful Acts initiated through the Lindenbaum vs Cohen decision in 1919 is the main foundation for the application of unlawful acts in the Indonesian legal system. This theory explains why unlawful acts have a wide and flexible scope in judicial practice. The results of the study show that this theory has influenced the interpretation of judges in various types of civil cases. However, its application still faces challenges in the form of inuniform interpretation and proof of elements. Therefore, strengthening the understanding of this theory is important for the consistency of law enforcement. With a comprehensive understanding, the theory of unlawful acts can continue to function as an effective instrument of legal protection. This is in line with the legal goal of realizing justice, legal certainty, and utility in the Indonesian legal system (Kalele & Hosein, 2024; Soemartono, 2025).

V. Conclusion

Based on the results of normative research and the discussion that has been described, it can be concluded that the concept of unlawful acts in the Indonesian legal system has undergone significant development, especially through the adoption of the Theory of Expansion of Unlawful Acts initiated in the Lindenbaum vs Cohen case in 1919. Article 1365 of the Civil Code is no longer interpreted narrowly as a violation of a written law, but also includes violations of the subjective rights of others, legal obligations, morality, and the principle of propriety in society. The application of this concept in Indonesian judicial practice shows that there are efforts to realize substantive justice. However, the results of the study also show that the application of the element of unlawful acts by judges is not completely consistent, especially in distinguishing between default and unlawful acts as well as in proving the elements of guilt and causal relationships. Based on this conclusion, it is recommended that law enforcement officials, especially judges, have a more comprehensive and uniform understanding of the theory of unlawful acts so that there are no differences in interpretation that have the potential to cause legal uncertainty. In addition, the renewal and strengthening of the doctrine of unlawful acts through court decisions and academic studies needs to be continued so that this concept remains relevant to the development of society and the dynamics of modern law. For academics, further research is recommended to examine the application of unlawful acts in specific

sectors, such as digital disputes, consumer protection, and government responsibility, in order to enrich Indonesia's civil law treasure and support the realization of a fair and responsive legal system.

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