

Judge's understanding of unlawful elements in the verdict of corruption cases in indonesia

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Abstract: Corruption is a crime with far-reaching consequences for state finances, national development, and public trust in the administration of government. One of the essential elements that must be proven in corruption cases is the element of *unlawfulness* (melawan hukum), which determines whether an act may be classified as a criminal offense and whether the perpetrator may be held criminally liable. This study aims to analyze the concept of the unlawfulness element in the crime of corruption and to understand how judges interpret and apply it in court decisions. The research method used is normative legal research with a statutory approach and a case approach, through the analysis of various court decisions. The results show that the concept of unlawfulness in corruption offenses can be understood through two approaches: formal unlawfulness and substantive (material) unlawfulness. However, developments in the law particularly Constitutional Court Decision No. 003/PUU-IV/2006 have limited the application of the substantive-unlawfulness concept in corruption cases. In addition, Constitutional Court Decision No. 25/PUU-XIV/2016 changed the understanding of the state-loss element from a potential loss to an actual loss. Nevertheless, in judicial practice judges still take substantive considerations into account such as the public interest, benefit to society, and state losses in determining criminal liability. Clear regulation of the unlawfulness element is therefore needed so that the enforcement of corruption law can provide legal certainty while also reflecting a sense of justice.

Keywords: Unlawfulness Element; Judges; Corruption Crime.

INTRODUCTION

Corruption remains one of the serious problems faced by many countries, including Indonesia. Corruption not only causes losses to state finances but also has far-reaching consequences for society, national development, and public trust in government institutions. Therefore, corruption is often categorized as an *extraordinary crime* that requires serious and effective law enforcement efforts (Ifrani, 2018). The Government of Indonesia has established various legal instruments to eradicate corruption, including

Law No. 31 of 1999 concerning the Eradication of Corruption, as amended by Law No. 20 of 2001. In practice, however, the effectiveness of corruption eradication depends not only on the existence of statutory regulations but also on the ability of judges to interpret and apply the elements of criminal offenses accurately.

One of the essential elements in proving corruption offenses is the element of unlawfulness (*wederrechtelijkheid*) (Prastowo, 2006). One of the essential elements in proving corruption offenses is the element of unlawfulness (*wederrechtelijkheid*). This element occupies a central position in the formulation of criminal offenses, particularly under Article 2 paragraph (1) of the Anti-Corruption Law, which requires an unlawful act of enriching oneself, another person, or a corporation that may cause losses to state finances or the state economy. The interpretation of unlawfulness determines the boundary between conduct that satisfies the requirements of a criminal offense and conduct that may constitute an administrative violation or procedural irregularity without necessarily amounting to a crime. Accordingly, the element of unlawfulness must be established on the basis of relevant legal provisions, facts established during trial, and legally justifiable judicial reasoning (Putra, 2016). An erroneous interpretation of this element may undermine legal certainty, either by extending criminal liability beyond legally justified boundaries or by inadequately assessing whether the elements of the offense have been fulfilled.

Criminal law doctrine distinguishes between formal unlawfulness and material unlawfulness. Formal unlawfulness generally concerns conduct that contravenes applicable legal provisions, whereas material unlawfulness concerns a substantive assessment of the wrongful character of conduct in relation to legally relevant interests and values. In Indonesia, the debate over these concepts has received significant attention through Constitutional Court Decision No. 003/PUU-IV/2006. In this decision, the Constitutional Court declared that the elucidation of Article 2 paragraph (1) of the Anti-Corruption Law, which extended the meaning of unlawfulness to include conduct considered reprehensible according to unwritten standards of justice or social norms, had no binding legal force. This decision underscores the importance of the principles of legality and legal certainty in the application of criminal law and provides an essential normative basis for examining how judges understand and apply the element of unlawfulness in corruption cases.

Although the Constitutional Court has established constitutional limitations on the interpretation of unlawfulness, the application of this element in judicial reasoning continues to require further examination. In adjudicating corruption cases, judges must assess the relationship between the alleged conduct, the applicable legal provisions, the facts established at trial, and the constituent elements of the offense. Problems may arise when abuse of authority, state financial losses, procedural violations, or principles of good governance are invoked to establish unlawfulness without adequately explaining the legal basis and the relationship between those considerations and the statutory elements of the offense. Judicial reasoning must therefore be examined to determine whether the interpretation of unlawfulness is based on structured legal arguments and consistent with the principle of legality. The role of judges in determining whether the elements of a criminal offense have been fulfilled is an essential component of criminal law enforcement (Hasanal Mulkan, 2021).

From a theoretical perspective, unlawfulness cannot be separated from the assessment of the relationship between conduct and the applicable legal order. Andi Hamzah emphasizes the importance of understanding unlawfulness within the framework of criminal law, while Sudarto's approach places unlawfulness as a fundamental concept in determining whether conduct conflicts with legal norms (Hamzah, 2017; Puspita, 2014). These perspectives are relevant to examining judicial reasoning in corruption cases, particularly when judges must determine the legal grounds for classifying certain conduct as criminal. Judicial interpretation should not merely assert that conduct is contrary to propriety or has caused adverse consequences; rather, it must explain the relevance of such considerations to the statutory elements of the offense and the applicable legal provisions.

The urgency of this research lies in the need to examine how judges understand and apply the element of unlawfulness in corruption judgments and how their legal reasoning reflects the principles of legality and legal certainty. Previous studies have discussed the concept of unlawfulness in corruption offenses, the distinction between formal and material unlawfulness, and the role of judges in criminal law enforcement (Apriani, 2019; Hasanul Mulkan, 2021; Prastowo, 2006). Nevertheless, conceptual discussions of unlawfulness need to be complemented by an analysis of the legal reasoning actually employed by judges in their decisions. The issue is not merely whether judges adopt a formal or material approach, but how they construct their arguments to establish unlawfulness, what legal grounds they rely upon, and how their interpretations relate to the facts proven at trial. Such an analysis is necessary to assess the consistency of judicial reasoning and identify problems in the application of law that may affect legal certainty in corruption cases. Accordingly, this research connects the doctrinal debate on unlawfulness with its practical application in judicial reasoning.

Based on the foregoing discussion, this study aims to analyze judges' understanding of the element of unlawfulness in corruption judgments in Indonesia, particularly the legal grounds for its interpretation and application in judicial reasoning. To establish a clear analytical direction and delimit the scope of the study, the research addresses two questions. First, how do judges interpret and apply the element of unlawfulness in the corruption judgments examined in this study, particularly in understanding formal and material unlawfulness? Second, how does judicial reasoning in applying the element of unlawfulness reflect the principles of legality and legal certainty in the adjudication of corruption cases? By answering these questions, this research seeks to provide a more systematic understanding of judicial reasoning in establishing unlawfulness and its implications for consistency and legal certainty in corruption enforcement in Indonesia.

METHODS

This study employs normative legal research, which examines legal norms, principles, and doctrines through the analysis of legal materials (Nurhayati et al., 2021). It applies three approaches: the statute approach to examine the legal framework governing unlawfulness in corruption offenses, particularly Law No. 31 of 1999 as amended by Law No. 20 of 2001; the case approach to analyze relevant Constitutional Court and Supreme Court decisions, particularly Constitutional Court Decision No. 003/PUU-IV/2006; and the conceptual approach to examine doctrines of formal and material unlawfulness and their relationship to the principles of legality and legal certainty. The

legal materials consist of primary materials, including legislation and judicial decisions; secondary materials, including legal textbooks, scientific journals, and scholarly opinions; and tertiary materials, including legal dictionaries and encyclopedias. These materials are collected through library research and analyzed qualitatively using a descriptive-analytical method by examining judicial reasoning, identifying the legal basis for interpreting the unlawfulness element, and assessing its application in relation to the relevant legal provisions and criminal law doctrines. The analysis aims to determine how judges interpret and apply the unlawfulness element in corruption cases and the implications of their reasoning for legal certainty and consistency in judicial decisions.

RESULTS AND DISCUSSION

Judicial Interpretation and Application of the Unlawfulness Element in Corruption Cases

The element of unlawfulness is an essential component of corruption offenses because it determines whether the conduct of a defendant satisfies the relevant statutory requirements for criminal liability. In Indonesian criminal law, unlawfulness is generally examined through two approaches: formal unlawfulness and material unlawfulness. Formal unlawfulness refers to conduct that contravenes applicable statutory provisions, whereas material unlawfulness traditionally considers whether conduct violates substantive legal interests, principles of justice, or other values recognized within the legal system. Although these concepts provide a framework for understanding unlawfulness, their application in corruption cases must remain consistent with the principle of legality and the requirements of applicable criminal legislation (Apriani, 2019; Prastowo, 2006).

In the context of corruption, the element of unlawfulness is particularly significant because alleged corrupt conduct may involve abuse of authority, irregularities in administrative procedures, or transactions that appear formally valid but allegedly violate statutory obligations. Article 2(1) of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law No. 20 of 2001, requires the relevant elements of the offense to be established through legally admissible evidence. Accordingly, an administrative irregularity cannot automatically be equated with a corruption offense. The court must identify the applicable legal norm, establish the defendant's conduct, and explain how that conduct satisfies the statutory elements of the offense. (Apriani, 2019; Prastowo, 2006)

The distinction between formal and material unlawfulness became particularly important following Constitutional Court Decision No. 003/PUU-IV/2006. Through this decision, the Constitutional Court declared the relevant explanation of Article 2(1) of the Anti-Corruption Law to have no binding legal force insofar as it extended unlawfulness to conduct considered contrary to unwritten legal principles or the community's sense of justice. This decision established an important limitation on the use of material unlawfulness as a basis for criminal liability, particularly where the interpretation would permit criminal punishment without a sufficiently clear statutory basis (Adhari, 2018; Fality, 2017; Prastowo, 2006).

The implications of this decision must be understood carefully. It does not prevent judges from examining the substantive circumstances of an alleged offense, including

the defendant's conduct, the consequences of the act, and the evidence presented at trial. Rather, it limits the use of unwritten standards of justice or social propriety as an independent basis for establishing criminal liability under the relevant provision. Consequently, judicial reasoning must distinguish between evaluating the substantive facts of a case and treating a general assessment of social or moral reprehensibility as a substitute for the statutory elements of a criminal offense (Adhari, 2018; Prastowo, 2006; Supriyanta & Kusumo, 2025).

The development of judicial interpretation can also be examined through Supreme Court Decision No. 42 K/Kr/1965 dated 8 January 1966, which is frequently discussed in relation to the doctrine of material unlawfulness and its negative function. This decision is relevant to the historical development of the doctrine because it illustrates the importance of examining the circumstances and legal significance of the conduct rather than relying exclusively on its formal appearance. Nevertheless, the decision must be analyzed within its own factual and legal context and should not automatically be treated as establishing an unrestricted authority to exclude criminal liability based on unwritten standards of justice (Prastowo, 2006).

The application of the unlawfulness element must also be distinguished from the assessment of fault and criminal responsibility. An act may involve an administrative irregularity, but criminal liability requires the prosecution to establish the elements prescribed by the relevant criminal provision. In this regard, the judicial analysis should address the legal basis for the alleged unlawfulness, the evidence supporting the allegation, and the relationship between the defendant's conduct and the statutory elements of the offense. This approach is necessary to avoid treating every procedural violation or administrative error as a criminal act of corruption (Apriani, 2019; Prastowo, 2006).

Another important development is Constitutional Court Decision No. 25/PUU-XIV/2016, which removed the word *dapat* from the state-financial-loss element in Articles 2(1) and 3 of the Anti-Corruption Law. The decision is relevant to the evidentiary requirements concerning state financial losses, but it should not be interpreted as directly changing the doctrine of material unlawfulness into formal unlawfulness. The question of whether state financial loss has occurred is legally distinct from the question of whether the defendant's conduct satisfies the unlawfulness element. Both issues must therefore be analyzed separately, although they may be related in the assessment of a particular corruption case.

The judicial decisions examined in this study should consequently be compared according to the legal issues they address, the statutory provisions applied, the evidence considered, and the reasons given for determining whether unlawfulness has been established. Particular attention should be paid to whether the courts identify a specific legal norm that has been violated and whether their conclusions are supported by the facts established at trial. Such an approach makes it possible to distinguish decisions that rely on applicable legal provisions from those that rely primarily on general assessments of propriety, public benefit, or the community's sense of justice. (Adhari, 2018; Prastowo, 2006; Supriyanta & Kusumo, 2025)

Accordingly, the interpretation and application of the unlawfulness element in corruption cases cannot be evaluated solely by determining whether a court refers to formal or material unlawfulness. The decisive consideration is whether the court

provides a legally sufficient explanation of the relationship between the defendant's conduct, the applicable statutory provisions, and the evidence presented. This framework answers the first research question by placing judicial reasoning, rather than abstract definitions alone, at the center of the analysis.

Judicial Reasoning on Unlawfulness in Light of the Principles of Legality and Legal Certainty

The interpretation of the unlawfulness element must be evaluated in light of the principle of legality and the principle of legal certainty. The principle of legality requires criminal liability to be grounded in applicable criminal law, while the principle of *lex certa* emphasizes the need for sufficiently clear and precise formulations of criminal offenses. These principles protect individuals against arbitrary criminalization and require judges to explain the legal basis for their conclusions. In corruption cases, they are particularly important because the distinction between administrative irregularities and criminal conduct may be difficult to establish without a clear analysis of the relevant legal provisions and evidence (Adhari, 2018; Apriani, 2019; Prastowo, 2006).

Constitutional Court Decision No. 003/PUU-IV/2006 is central to this analysis because it limits the use of the relevant explanation of Article 2(1) of the Anti-Corruption Law as a basis for extending criminal liability through unwritten standards of justice. The decision reinforces the requirement that the determination of unlawfulness must remain within the boundaries of the applicable criminal law. Therefore, a judge's reference to public interest, social propriety, or moral considerations cannot, by itself, replace the statutory requirements for establishing a corruption offense. Such considerations may be relevant to understanding the circumstances of a case, but the court must still demonstrate that the legal elements of the offense have been satisfied (Faluty, 2017; Prastowo, 2006; Supriyanta & Kusumo, 2025).

The negative function of material unlawfulness, which has traditionally been discussed in Indonesian criminal-law doctrine, raises a related issue. In theory, the negative function concerns circumstances in which conduct that appears to satisfy the formal elements of an offense may nevertheless be considered not unlawful because of legally relevant justifying circumstances. Its application, however, requires careful reasoning and an adequate legal basis. A claim that an act benefited the community, served an administrative objective, or did not produce a particular disadvantage cannot automatically exclude criminal liability. The court must determine whether the relevant facts and applicable law support that conclusion and whether all statutory elements have been properly assessed (Adhari, 2018; Prastowo, 2006; Sudharmawatiningsih, 2007).

The positive function of material unlawfulness raises a different concern. Historically, this function has been associated with treating conduct as unlawful because it conflicts with unwritten legal principles or the community's sense of justice, even where the conduct does not clearly violate a written statutory provision. In the context of criminal liability for corruption, this approach creates a risk of uncertainty if general social or moral assessments are used to establish an offense independently of the statutory requirements. Following Constitutional Court Decision No. 003/PUU-IV/2006, such assessments cannot be used to disregard the legal limits established by the principle of legality (Faluty, 2017; Prastowo, 2006; Supriyanta & Kusumo, 2025).

Legal certainty also requires consistency in judicial reasoning. Where courts reach different conclusions in cases involving comparable legal issues, the differences should be explained by reference to relevant distinctions in the facts, evidence, applicable provisions, or legal reasoning. Without such explanations, differences in interpretation may create uncertainty concerning the scope of criminal liability. Consistency does not require identical outcomes in every case; rather, it requires courts to explain why materially similar cases are treated alike and why materially different cases warrant different conclusions (Adhari, 2018).

Constitutional Court Decision No. 25/PUU-XIV/2016 must also be considered within this framework. The requirement to establish actual state financial loss concerns the proof of a particular element of the offense under Articles 2(1) and 3 of the Anti-Corruption Law. It does not remove the need to establish unlawfulness or other elements of criminal liability. Accordingly, judicial reasoning should separately identify the evidence supporting the existence of state financial loss and the legal grounds for finding that the defendant's conduct was unlawful. Maintaining this distinction helps prevent the conflation of separate elements of the offense and strengthens the transparency of judicial decisions (Prastowo, 2006).

The selected Supreme Court decisions, including Decisions No. 996 K/Pid/2006 and No. 1974 K/Pid/2006, should be evaluated by examining their official texts and the specific grounds on which the courts reached their conclusions. Their relevance to the present research depends on whether the reasoning in each decision directly addresses the unlawfulness element, the interpretation of the applicable criminal provisions, or circumstances affecting criminal liability. The analysis should not infer that a decision applies the negative or positive function of material unlawfulness merely because the defendant was acquitted, the sentence was reduced, or the court referred to public benefit. Those conclusions must be supported by the actual judicial considerations.

A similar evidentiary standard must be applied to more recent decisions included in the manuscript. Before drawing conclusions from Supreme Court Decision No. 9136 K/Pid.Sus/2025 or the Central Jakarta Corruption Court Decision No. 45/Pid.Sus-Tipikor/2024, the case numbers, parties, legal issues, judgments, and judicial considerations must be verified against the official decisions. If a decision does not concern the unlawfulness element or cannot be verified, it should not be used as evidence for the article's central argument. This verification is necessary to ensure that the analysis rests on reliable judicial materials rather than assumptions about the facts or outcomes of particular cases.

From the perspective of legal certainty, the principal issue is therefore not whether judges may consider the substantive circumstances of an alleged corruption offense, but how those circumstances are incorporated into legally permissible reasoning. Judges must identify the relevant statutory provisions, explain the facts established by the evidence, and demonstrate how those facts satisfy or fail to satisfy the elements of the offense. This approach allows substantive circumstances to be considered without permitting unwritten moral or social standards to replace the statutory basis for criminal liability (Adhari, 2018; Apriani, 2019; Prastowo, 2006).

The findings indicate that the interpretation of unlawfulness in corruption cases requires a structured approach that distinguishes the statutory elements of the offense, the evidence supporting each element, and the legal significance of the circumstances

surrounding the alleged conduct. Such an approach promotes consistency in judicial reasoning while preserving the distinction between administrative violations and criminal offenses. It also reduces the risk that either an overly broad interpretation or an excessively formalistic assessment will undermine the legitimacy of corruption adjudication (Fality, 2017; Prastowo, 2006; Supriyanta & Kusumo, 2025).

In conclusion, judicial interpretation of the unlawfulness element must balance effective corruption enforcement with the requirements of legality and legal certainty. The substantive circumstances of an alleged offense remain relevant to the evaluation of facts and evidence, but they cannot independently replace the statutory basis required for criminal liability. Clearer judicial reasoning, careful differentiation between the elements of an offense, and consistent application of applicable legal provisions are therefore essential to strengthening the quality, predictability, and fairness of corruption judgments in Indonesia.

CONCLUSIONS

Based on the first research question, this study finds that the transformation of the *Omnibus Law* technique from a conditionally unconstitutional status following Constitutional Court Decision Number 91/PUU-XVIII/2020 into a formally valid legislative method through Law Number 13 of 2022 is a legal development that is procedural and prospective in nature. Law Number 13 of 2022 provides a legal basis for the use of the omnibus method through Article 42A, Article 64 paragraphs (1a) and (1b), and Article 97A of Law Number 12 of 2011, but does not by itself resolve the constitutional status of the Job Creation Law that was the object of Decision Number 91/PUU-XVIII/2020. The resolution of that case-specific problem took place through Government Regulation in Lieu of Law Number 2 of 2022, which was subsequently enacted as Law Number 6 of 2023 and thereafter declared not contrary to the 1945 Constitution through a Constitutional Court decision on its formal review. Accordingly, the formal legalization of the omnibus technique and the resolution of the constitutional status of the Job Creation Law are two distinct legal tracks. The implication is that the existence of a formal legal basis for the omnibus technique cannot be understood as an automatic elimination of the legal consequences of Decision Number 91/PUU-XVIII/2020, but rather as the establishment of a new procedural basis that must still be implemented together with the obligations of harmonization, synchronization, and meaningful participation in the formation of laws and regulations.

Based on the second research question, this study finds that the formal validity of the *Omnibus Law* technique does not yet fully guarantee substantive legal certainty when tested against the principle of clarity of formulation. The application of the indicators of clarity of formulation and legal certainty shows that the omnibus technique faces problems primarily in the aspects of predictability, accessibility, and coherence between parent regulations and implementing regulations, which relate to the scale of cross-sectoral consolidation, the complexity of amendments to various laws, and the breadth of delegation of regulation to implementing regulations. This condition shows that legal certainty is determined not solely by the availability of a formal legal basis for the omnibus technique, but also by the technique's capacity to produce norms that are clear, consistent, traceable, easily accessible, and predictable for legal subjects. Therefore, the use of the omnibus technique in Indonesia's *civil law* system needs to be

accompanied by consistent application of the obligations of harmonization and synchronization, fulfillment of the principle of clarity of formulation, and implementation of meaningful participation adapted to the instrument of formation used. With such fulfillment, the omnibus technique can be used as a legislative instrument in the civil law system without setting aside the demands of substantive legal certainty.

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