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# Illegal Conduct After the Decision of the Constitutional Court Number 03/Puu-Iv/2006 On Corruption Crime

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## ABSTRACT

This research explores the evolution of the legal concept of "unlawfulness" in corruption cases, focusing on the impact of Constitutional Court Decision No. 03/IV-PUU/2006. The decision limited the scope of "unlawfulness" to violations of formal law, excluding material law from its interpretation. However, the Supreme Court continued to apply the broader concept, considering both formal and material unlawfulness through the "Sens Chair" doctrine, which emphasizes the role of societal justice. The research aims to analyze how the Constitutional Court's decision affects the prosecution of corruption crimes and how the Supreme Court's differing interpretation impacts legal outcomes. Using a normative legal research method with a legislative and conceptual approach, the study draws on primary, secondary, and tertiary legal sources. The results reveal that the Constitutional Court's decision ensures greater legal certainty, while the Supreme Court's broader interpretation allows for a more flexible application of justice. The implications of this research suggest that while the legal system strives for certainty, it must also remain adaptable to the evolving nature of corruption.

***Keywords:*** *Unlawful Acts, PTPK Law, Constitutional Court Decision No. 03/PUU-IV2006.*



## INTRODUCTION

Corruption in Indonesia is said to be an extraordinary crime, its modus operandi continues to develop and vary from time to time, the impact has also spread in various levels of society, both seen from the number of cases and the resulting state losses. In 2009 Indonesia was ranked 110 with an index of 2.8, then in 2010 it rose to rank 100 out of 182 countries with an index value of 3.0. The results of the Transparency International Indonesia survey show that Indonesia's corruption perception index in 2020 ranks 102 out of 180 countries surveyed. Nevertheless, Indonesia's ranking is still better than other Asean countries such as Viet Nam, Thailand, the Philippines, Laos and Cambodia. However, it is still far behind Singapore (score 85), Brunei Darussalam (score 60), Malaysia (score 51), and Timor Leste (score 40).

As a result of corruption that occurs systematically and widely, it not only harms the state finances or the state economy, but also violates the social and economic rights of the people. Therefore, eradication efforts are also needed that are carried out extraordinarily. Or in other words, efforts are needed to eradicate corruption in special ways. Another need is to create a deterrent effect and fear of the public in general (civil and private), and for state civil servants (civil servants and state officials) not to commit corrupt acts. Based on this, prevention and eradication efforts must be further improved and intensified while still upholding the values of law, justice and human rights.

The government and lawmakers must have realized the importance of this, so Law Number 20 of 2001 concerning Amendments to Law Number 3 of 1999 concerning the Eradication of Corruption Crimes was issued (henceforth simply referred to as the PTPK Law). Actually, the existence of laws and regulations regulating corruption in positive law in

Indonesia has existed for a long time, namely since the enactment of the Criminal Code (Wetboek van Strafreeht) known as the Criminal Code, which is the result of the codification and unification of the Netherlands which was enforced in Indonesia as a former Netherlands colony according to the principle of concordance. Which was then promulgated through Staatblaad No. 752 on October 15, 1915.

The Constitutional Court Decision No. 03/2006 has brought a new direction to the enforcement of corruption laws in Indonesia. This is considered very rational and more guarantees the existence of legal certainty, because the meaning or concept of material unlawfulness (materiele wederrechtdelijk) which is based on unwritten law in terms of propriety, prudence and prudence in society which is seen as the norm of justice, is an uncertain and different measure from one particular social environment to its society. So that the measure of what is said to be an unlawful act, perhaps in other places is accepted and recognized as a valid and not unlawful act, narnun in Iain's place is declared as an inappropriate and reprehensible act according to the measure known in the life of the local community.

Despite the Constitutional Court's ruling, the Supreme Court continues to apply both formal and material unlawfulness in its judgments, using the **Sens Clair** doctrine. This doctrine, rooted in French legal theory, allows judges to interpret laws in light of societal values and justice, ensuring that actions detrimental to the public interest are not left unpunished merely because they do not explicitly violate formal law (Sudharmawatiningsih, 2007). This judicial flexibility underscores the ongoing tension between legal certainty and the pursuit of substantive justice in Indonesia's corruption cases.

## METHOD

This research utilizes a normative legal research method, which is aimed at analyzing legal norms and principles based on existing statutory regulations, court decisions, and scholarly literature. The primary focus is to explore how the legal concept of unlawfulness has evolved before and after the Constitutional Court Decision No. 03/IV-PUU/2006, with particular attention to corruption crimes. The study is descriptive-analytical in nature, as it seeks to describe and analyze the differences in the interpretation of formal and material unlawfulness within Indonesia's legal framework.

Data collection for this research is conducted through a document-based approach. The primary legal materials consist of statutory regulations, including the PTPK Law (Law No. 31 of 1999 and Law No. 20 of 2001), as well as relevant court decisions, such as Constitutional Court Decision No. 03/IV-PUU/2006 and several Supreme Court rulings. Secondary legal materials include academic literature, legal journals, and textbooks, which provide expert insights on the principles of unlawfulness and legality. Tertiary legal materials, such as legal dictionaries and encyclopedias, are also utilized to support the analysis.

The research employs qualitative data derived from legal texts and judicial decisions, supplemented by quantitative data, which includes statistics related to corruption cases before and after the Constitutional Court ruling. This combination of data types helps in understanding both the legal context and the practical application of the law in corruption cases.

For data analysis, the research follows a qualitative analysis approach. The data is examined through content analysis to interpret the legal texts and court rulings, comparing the different

interpretations provided by the Constitutional Court and the Supreme Court. The comparative analysis highlights the divergence in judicial reasoning, particularly regarding the use of the Sens Clair doctrine by the Supreme Court. Additionally, historical analysis is employed to trace the development of the concept of unlawfulness in Indonesian law from its colonial origins to its current form under the PTPK Law. This comprehensive analysis provides insights into the evolving nature of corruption and its legal interpretation in Indonesia.

## RESULTS AND DISCUSSION

### Development of the Meaning of Unlawful Acts Before and After the Constitutional Court Decision Number 03/PUU-IV/2006 on Corruption Crimes

Unlawful acts have been known since humans began to know the law, because unlawful provisions are one of the oldest written legal provisions in the world. In the oldest book of law in history, namely the Hammurabi law book, there are several articles that regulate the consequences of the law if someone commits a certain act which is actually classified as an unlawful act (Kusuma et al., 2023)

The term unlawful, according to some experts, gives his opinion or view as conveyed by Noyon, which according to him has 3 (three) meanings of wederrechtelijk, namely contrary to objective hükum, contrary to the subjective rights of others, and without rights. While Van Bemmelen interpreted against hükum in the sense given by Hoge Arrest of January 31, 1919 in the case of Zindenbaum vs Cohen, that the act against hükum should be regarded as doing atmı not doing anything contrary to:

1. The subjective rights of others.
2. Obligation of the perpetrator.
3. Rules of decency.
4. Propriety in society,

Pompe was of the view that 'wederrechtelijk' means 'In strijd met het recht' or contrary to hükum which has a more luaş meaning than simply 'in strijd met de wet', or contrary to the law, the law. According to him, wederrechlelijk is in line with the definition of onrechtmatig daad referred to in Article 1365 BW (Pompe, W., & Van Bemmelen, 2003)

In some of these differences and debates, the criminal ahlİ hükum seems to want to explain the term that is widely found in the articles of the Criminal Code. Furthermore, Lamintang is of the view that differences among these experts occur, among other things, because the word recht in Netherlands can be interpreted as "law" and can mean "right". In Indonesian, the word "wederrechtelijk" means "unlawfully" which can include the meaning "contrary to objective law and contrary to the rights of others or subjective law".

Regarding the definition of the element of 'unlawful', the formulation of the PTPK Law still follows the pattern in Law No. 3/1971, which makes unlawful acts an element that is explicitly / written in the formulation of the delicacy. This is because the modus operandi of all forms of financing the country's finances and economy has become more developed, more sophisticated and more complicated. This can be seen from the General Explanation of the PTPK Law, which states:

"In order to reach various modes of operation of state financial irregularities or the state economy that are increasingly sophisticated and complicated, the criminal acts regulated in this Law are formulated in such a way that they include acts of enriching oneself or a person

or a corporation in an "unlawful" manner in a formal and material sense. According to this formulation, the definition of unlawful acts in corruption crimes can also include reprehensible acts that according to the community's sense of justice must be prosecuted and punished."

Based on this, what is called an act of corruption is an act that aims or intends to enrich oneself or a person or a corporation. As for the means, it is unlawful. The consequences arising from the act in question are that it can harm the country's finances or economy; Unlawful acts are seen as a means, not only unlawful acts in the formal sense, but also in the material sense. This is in accordance with the formulation of Article 2 paragraph (1) of Law 21/1999 which states:

"Every person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the country's economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

Furthermore, it is explained again in the explanation of Article 2 paragraph (1) of the PTPK Law which states:

"What is meant by "unlawfully" in this article includes unlawful acts in the formal sense as well as in the material sense, which even though the act is not regulated in laws and regulations, if the act is considered reprehensible because it is not in accordance with the sense of justice or the norms of social life in society, then the act can be punished."

Based on the formulation and explanation of the PI'PK Law, it is once again said that against the law is interpreted in a broad sense, both formal and material. Unlawful is intended only as a means of enriching oneself or another person or a corporation. So, what should be the emphasis of his actions and must be proven is an act that enriches himself or another person or a corporation is carried out in an unlawful way. Or in other words, there must be a close relationship (innerlijke sammenhang) between enrichment as an end and unlawfulness as a means.

A very significant development regarding the shift in the meaning of unlawfulness in Article 2 paragraph (1) of the PTPK Law, occurred on July 25, 2006 when the Constitutional Court decided the case No. 03/2006, which in its decision stated that the explanation of Article 2 paragraph (l) of the PTPK Law is contrary to the 1945 Constitution of the Republic of Indonesia, and therefore declared to have no binding legal force. The Constitutional Court ruled that the explanation of Article 2 paragraph (1) was contrary to the 1945 Constitution, because it caused legal uncertainty.

Furthermore, according to the Constitutional Court's view, Article 28 D paragraph (1) protects the constitutional right of citizens to obtain guaranteed and definite legal protection, which in criminal law is referred to as the principle of legality. This principle requires that the formulations of articles must contain a form of act, so that it can be seen as a criminal act, and must be formulated and promulgated in written regulations first. More specifically, the Constitutional Court's considerations regarding the Explanation of Article 2 paragraph (1) are as follows:

Considering, that the Court considers that there is indeed a constitutionality issue in the first sentence of the Explanation of Article 2 paragraph (l) of the PTPK Law so that the Court needs to further consider the following matters:

1. Article 28D paragraph (1) recognizes and protects the constitutional right of citizens to obtain guaranteed and definite protection of human rights, which in the field of criminal law is translated as the principle of legality contained in Article 1 paragraph (l) of the Criminal Code, that the principle provides for a demand for certainty of human rights in which people can only be prosecuted and tried on the basis of a law and regulation that has existed before;
2. This requires that a criminal act has an unlawful element, which must first be in writing, which formulates what act or what consequences of human actions are clearly and strictly prohibited so that it can therefore be prosecuted and punished, in accordance with the principle of nullum crimensine lege stricta;
3. The concept of countering formally written hükum (formele wederrechtelijk), which obliges lawmakers to formulate as carefully and in detail as possible (vide Jan Remmelink, Criminal Law, 2003:358) is a condition to guarantee legal certainty (lex certa) or dikcnal also known as the term Bestimmheitsgebot;

   The conceptual method of the Constitutional Court Decision No. 03/2006 has annulled the explanation of Article 2 paragraph (I) OF THE PTPK LAW. Since the concept of material hükum in the positive function embraced in the PTPK Law has been annulled by the Constitutional Court Decision No. 03/2006, the logical consequence should be interpreted by ansich as a teaching of the nature of opposing formal and material hükum in its negative function. Considering that the Constitutional Court decision No. 03/2006 is limited to canceling the explanation of the concept of material unlawful acts in its positive function.

**Validity of the Supreme Court's Decision that Does Not Apply the Constitutional Court's Decision No. 03/PUU-IV/2006 in Several Decisions**

The element against hükum (wederrechtelijkeheid) in Article 2 paragraph (1) of the PTPK Law occupies the main element, because this element can prove the existence or absence of acts of corruption. Furthermore, the PTPK Law also explains that what is called corruption is the enrichment of oneself or another person or a corporation. The means used are 'sccara mclawan law'. The consequence of these acts is that they can harm the country's finances or economy. Acts against hükum are interpreted as means, not only acts that are carried out against hükum in a formal sense, but also in a material sense. Based on that thought, the criminal act of corruption is formulated in Article 2 paragraph (1) of the PTPK Law, namely:

Any person who defiantly commits an act of enriching himself or another person or a corporation that may harm the state finances or the country's economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

From the formulation of the article, grammatically the element of unlawful is intended as a means of crime or act that enriches oneself or another person or a corporation. So, what should be proven in proof is whether the enrichment act, which has been done in an unlawful way, or not. Or in other words, there must be a close relationship between the act of enrichment and its unlawful nature.

The use of the phrase unlawful (wederrechttelijk) is often found in various delicacies, both in the Criminal Code and outside the Criminal Code. It is used to show the illegitimacy of an

action or a tnaksud. By including the element of unlawfulness in the element of delix, lawmakers want to ensure that those who exercise rights or authority in line with the law are not necessarily threatened with criminal offense. The unlawful nature of an act will always be considered to exist in criminal delicacies, the inclusion of unlawful elements as an element of deliberation has the consequence that the unlawful element must be included in the indictment and proven by the Public Prosecutor in front of the trial.

Against the material law of self is distinguished in (2) two functions, namely against material hukurn in negative functions and in positive functions. Negative function means that an act can lose its unlawful nature even though the act has actually fulfilled the delicacy formula. On the other hand, violating the law has a positive function that can be said to expand the formulation of delik by opening up the possibility of being able to commit acts that were not previously regulated in the law, but in fact the act violates the values that live in society.

In its validity and application, even though the Constitutional Court's Decision is final and binding, the Supreme Court still gives the meaning of unlawful acts referred to in Article paragraph (1) of the PTPK Law both in the formal and material sense. This can be seen in 2 (two) decisions, namely:

1. Supreme Court Decision Number 2608 K/Pid/2006 dated February 21, 2007, in the case on behalf of the defendant Achmad Rojadi, S. sos.
2. Supreme Court Decision Number 2065 K/Pid/2007 dated February 28, 2007, in the case on behalf of the defendant Drs. Kuntjoro Hendrartono, MBA.

The Supreme Court reasoned, that with the Constitutional Court decision No. 03/2006, the meaning of unlawfulness in Article 2 paragraph (1) of the PTPK Law became unclear, so based on the doctrine of Sens Clair (la doctrine du sens Clair), the judge must make a legal discovery, the judge in seeking the meaning of unlawfulness should search and find the public will that is unlawful at the time when the provision is applied to concrete cases (Uloli, F., Nur, R., & Arti, 2024). The affirmation of the Supreme Court's stance was found in Decision No. 2608 K/Pid/2006 dated February 21, 2007 which was then followed by Decision No. 2065 K/Pid/2007 dated February 28, 2007. Seldin, in relation to the objection, is not exaggerated if the Supreme Court's stance is still given the meaning of "unlawful acts" as stated in Article 2 paragraph 1 of Law No. 31 of 1999 both in the formal and material sense, even though Olch's decision of the Constitutional Court dated July 25, 2006, No. 003/PUU-IV/2006 explains Article 2 paragraph 1 of Law No. 20 of 2001 jo. Law No. 31 of 1999 "has been declared that you do not have the force of binding".

## CONCLUSION

From the above description, conclusions can be drawn:

1. The Constitutional Court (MK) Decision No. 03/2006 has annulled the explanation of Article 2 paragraph (1) of the Law on the Eradication of Corruption Crimes (PTPK Law), which adopts the concept of material law in its positive function. As a result of this decision, the concept of unlawfulness in the PTPK Law should be interpreted as a teaching of formal and material unlawfulness in its negative function. The principle of legality is the main principle in criminal law, which aims to protect human rights from the arbitrary attitude of the ruler and

2. The Supreme Court in several of its decisions still maintains the meaning of unlawful acts in the formal and material sense in its positive function, based on the doctrine of "Sens Clair" where judges must make legal discoveries. In practice, the Supreme Court still uses laws and regulations as a benchmark to assess whether there are illegal acts committed by the defendant. This shows that even though the Supreme Court interprets illegal acts formally and materially in its positive function, they can still ensnare the perpetrators of corruption crimes and punish the defendants based on existing laws and regulations.

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