


Reconstruction of the Absolute Competence of Civil Courts in the Settlement of Unlawful Acts by the Government in Indonesia

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ABSTRACT

This study aims to analyze and reconstruct the concept of absolute competence of civil courts in resolving unlawful acts by the Government in Indonesia. The unclear boundaries of authority between civil courts and state administrative courts continue to create legal ambiguity, particularly when the Government engages in dual-purpose actions, namely as a public body and as a private legal subject. Through a normative legal approach combined with conceptual analysis and comparative studies, this study finds a normative vacuum, regulatory disharmony, and inconsistencies in judicial practice related to dispute resolution forums. The results of a comparative analysis with several jurisdictions indicate that a competency model based on the substance of government actions is more effective than the institution-based model currently in effect in Indonesia. Therefore, the reconstruction of absolute competence is necessary through harmonization of laws and regulations, affirmation of the status of unlawful acts by the Government that distinguishes between public and private actions, and the development of a more consistent authority scheme, including the possible implementation of a chamber system in the courts. This study concludes that the reconstruction of absolute competence of civil courts is a strategic step to increase legal certainty, reduce overlapping authority, and strengthen access to justice in resolving disputes concerning unlawful acts by the Government in Indonesia.

Keywords: Absolute Competence, Unlawful Acts, Government, Civil Justice, Legal Reconstruction.

INTRODUCTION

Unlawful acts committed by the Government are a classic but growing issue in the Indonesian legal system, particularly regarding the limits of the judicial institution's authority in resolving them (Nugroho et al., 2025). In practice, plaintiffs who feel aggrieved by government actions often face confusion regarding which court has the authority to examine, hear, and decide the dispute, whether the General Court through a lawsuit based on Article 1365 of the Civil Code or the State Administrative Court through a lawsuit mechanism against State Administrative Decisions or government actions (Irwanda et al., 2023). The dualism of competence that arises from the lack of clear regulations regarding unlawful acts by the Government causes overlapping authority between courts, often resulting in conflicting decisions or jurisprudential conflicts that disrupt legal certainty (Sulaeman et al., 2023). Various Supreme Court decisions demonstrate inconsistent determinations of absolute competence when the subject of disputes relates to factual government actions, such as permit revocations, building demolitions, or other administrative actions that result in harm to the public (Buana et al., 2025). This situation suggests that the Indonesian legal system lacks a clear and consistent framework regarding the locus of absolute competence in cases of unlawful acts by the Government (Gultom et al., 2025). Therefore, reconstructing the concept of absolute competence in civil courts is crucial to ensure a clear and compelling division of authority, in line with the principles of the rule of law, which require guarantees of certainty, consistency, and protection of citizens' rights.

The importance of this research is further clarified when considering several empirical facts that indicate the public still struggles to access justice in the face of government actions deemed detrimental. Many disputes involving unlawful acts by the Government result in decisions that fail to adjudicate the underlying case due to the perceived wrong choice of court, forcing plaintiffs to file a re-suit with another court deemed competent. This situation not only wastes time and money but also weakens the effectiveness of legal protection for citizens. On the other hand, the Government, as a subject that can be sued for unlawful acts, has a different position than ordinary legal subjects because government actions always relate to public authority, thus creating a conceptual dilemma in classifying unlawful acts as private or public. Several regulations, such as the Administrative Court Law, the State Administration Law, the General Courts Law, and the Judicial Powers Law, do not explicitly regulate the position of absolute competence in the context of unlawful acts by the Government, leaving ample room for interpretation. Therefore, this research is urgently needed to fill the normative gap and offer a more structured reconstruction so that the division of authority no longer relies on subjective interpretation but rather on a strong and systematic normative basis.

Previous research has shown that the issue of unlawful acts by the Government and the determination of absolute competence between the General Courts and the State Administrative Courts have been central issues in Indonesian legal debates over the past decade. The jurisdictional confusion is primarily caused by the dual nature of government actions, which can be both public and private in nature. Harnowo & Habib (2023) and Iqbal et al., (2025) emphasized that many factual government actions do not meet the criteria for state administrative decisions, thereby creating uncertainty of authority, which is compounded by inconsistencies in Supreme Court jurisprudence. Panjaitan et al., (2023) demonstrated that judges frequently base their determinations of competence on subjective interpretations rather than a firm, normative basis, leading to inconsistent decision-making patterns, particularly in cases involving permits, land acquisition, and factual administrative actions. Herlambang et al., (2025) also found a tendency for general courts to continue accepting cases of unlawful acts even though the object of the dispute is public.

International studies paint a picture of a more stable system. Research in the Netherlands (Guinea et al., 2025) and Malaysia (Trakic et al., 2023) shows that both countries have clear parameters for distinguishing between private and public government actions. An Australian study by Dallaston & Mathews (2022) emphasized the importance of judicial guidelines for determining the types of actions that can be challenged, a factor that remains weak in Indonesia. These findings suggest that other legal systems in civil law countries have been more successful in establishing a consistent framework of authority. In Indonesia, the dynamics of Supreme Court jurisprudence increasingly demonstrate instability. Wairocana et al., (2019) show that several Supreme Court decisions transfer cases of unlawful acts by the government to the State Administrative Court, while Sudiarawan et al., (2022) found other decisions that still classify them as civil unlawful acts despite their public nature. This inconsistency is reinforced by Surya (2023) findings, which demonstrate the impact on justice seekers, including forum shopping and lawsuits being rejected due to the wrong choice of forum.

In general, previous research has been primarily descriptive and has not provided a reconstructive framework that can serve as normative guidance. Comparative studies are still limited, so lessons from more mature countries have not been optimally utilized. Therefore, this study aims to fill this gap by providing a normative, conceptual, and comparative reconstruction of the absolute competence of civil courts, thereby producing a more transparent, more consistent, and more applicable model of authority for the Indonesian justice system.

From an academic perspective, this research makes a significant contribution to the development of legal science, particularly in the realms of procedural law, administrative law, and civil law, which have often been studied separately despite being interconnected in practice. The concept of unlawful acts by the government lies at the intersection of public and private law, necessitating an in-depth study to ensure that fundamental theories and general legal principles are consistently applied. By reconstructing the absolute competence of civil courts, this research can clarify the scope of dispute resolution for unlawful acts, which has traditionally been considered a gray area in the judiciary. In addition, this research provides a normative basis that can be used to reform the judicial system, formulate legal policies, and update laws and regulations to meet the needs of practice and the development of the modern legal system.

RESEARCH METHOD

This research employs a normative juridical approach, focusing on the study of legal norms, principles, and doctrines governing the division of absolute competence in resolving unlawful acts by the government. This approach was chosen because the primary issue under study relates to the unclear normative construction within laws and regulations, as well as inconsistencies in Supreme Court jurisprudence, necessitating an in-depth analysis of primary and secondary legal materials. The normative study allows researchers to outline the relationship between the concept of written law, the theory of unlawful acts, the theory of government action, the theory of

judicial authority, and the doctrine of *onrechtmatige overbeidsdaad*. This allows for the identification of disharmonies, gaps, and inconsistencies in the application of the law in practice. This approach also enables comparisons with other legal systems, particularly those of the Netherlands and other civil law countries, which have more stable authority structures and can serve as a reference for legal reconstruction in Indonesia.

To support the normative juridical approach, this research employs four approaches: statutory, conceptual, case, and comparative. The legislative approach involved analyzing the Civil Code, the Judicial Power Law, the Administrative Court Law, the State Administration Law, and regulatory Supreme Court decisions to determine how positive law influences the division of authority between general courts and state administrative courts. A conceptual approach was used to clarify the boundaries between public and private government actions through an examination of unlawful acts theory, administrative action theory, and state responsibility theory. A case study approach was employed to examine important Supreme Court decisions and identify patterns, trends, or inconsistencies in determining absolute competence. Meanwhile, a comparative approach was used by studying the regulation of court authority in the Netherlands, Germany, and France, which have more established models for separating civil and administrative responsibility.

The research data sources consisted of primary, secondary, and tertiary legal materials. Primary legal materials included legislation and Supreme Court jurisprudence related to unlawful acts by the government. Secondary legal materials included law books, national and international journals from the past ten years, and other scholarly publications. Tertiary legal materials, in the form of dictionaries, encyclopedias, and literature indexes, were used to strengthen the conceptual foundation. The data were collected through a rigorous literature review based on relevance, validity, and contribution to the analysis. Triangulation was then conducted between regulations, doctrine, and jurisprudence to ensure data consistency.

Data analysis was conducted using prescriptive qualitative analysis, employing historical, grammatical, and systematic interpretations of laws and regulations, as well as an in-depth study of the ratio decidendi of court decisions. Comparative analysis was used to draw lessons from other jurisdictions. All analysis results aimed to produce legal prescriptions in the form of a more transparent, consistent, and applicable model of absolute competence reconstruction for the Indonesian judicial system. Thus, this research method builds a robust and systematic scientific framework for developing legal arguments and recommendations.

RESULTS AND DISCUSSION

Regulation of Absolute Competence of Civil Courts in the Indonesian Judicial System

The regulation of absolute competence of civil courts in the Indonesian judicial system is a fundamental aspect determining the effectiveness of law enforcement, particularly in cases involving unlawful acts by various legal entities, including the government (Baidhowi et al., 2023). Absolute competence refers to the authority to adjudicate a type of case based on its nature; therefore, clear regulations are essential to avoid conflicts of authority between courts (Cahyo & Maryanto, 2019). However, this study found that, within the context of the Indonesian legal system, the regulation of absolute competence of civil courts does not exist as a coherent, well-organized substantive regime, but rather is fragmented across various laws and regulations that do not always support one another. This situation is further complicated by the dualism of the Indonesian judicial system, which comprises general courts and state administrative courts, each with a distinct basis of authority for assessing government actions. The uncertainty of the boundaries between these legal regimes is a primary focus of this research, particularly when linked to unlawful acts by the government, which can be public or private.

Normatively, the absolute competence of civil courts is primarily based on the Judicial Power Law and the Civil Code, where district courts, as general courts, have the authority to adjudicate all civil cases, except those within the jurisdiction of special courts or other judicial bodies (Syarifah et al., 2020). The phrase "adjudicate all civil cases" appears to grant broad authority to general courts; however, when linked to government actions, several limitations arise, as determined by sectoral laws such as the State Administrative Court Law and the Government Administration Law (Simanjuntak, 2020). Both laws authorize state administrative courts to review government administrative decisions and the actions of public officials, thereby reducing the scope of civil courts' authority in assessing the legality of government actions. The absence of explicit normative boundaries for determining whether a government action is public or private forces courts to make their own interpretations based on inconsistent doctrine and jurisprudence. In this context, the study found that the normative basis for absolute competence of civil courts does not provide adequate parameters for handling government actions, resulting in extensive room for interpretation.

The analysis also found that the unclear regulation of absolute competence is exacerbated by disharmony between laws and regulations. The State Administrative Court Law, for example, states that the authority of the State Administrative Court covers disputes over state administrative decisions and government actions. However,

the State Administration Law expands the scope of disputes that can be reviewed by the State Administrative Court to include not only decisions but also factual actions taken by officials in the course of government administration (Hartiwiningsih et al., 2022). This expansion has profound implications because several government actions that were previously subject to review through civil torts now fall within the scope of the State Administrative Court. However, the Civil Code, as the basis for torts, remains applicable to assessing torts committed by anyone, including the government, as long as those actions cause harm. As a result, there is potential for overlap between the authority of the State Administrative Court and civil courts in assessing government actions, particularly when those actions are not in the form of written decisions. This lack of synchronicity creates ambiguity in determining the appropriate dispute resolution forum and ultimately triggers a conflict of absolute competence.

In addition to normative disharmony, this analysis identified a jurisprudential problem in the application of absolute competence to civil courts. Supreme Court jurisprudence often serves as a guideline for determining judicial authority; however, existing decisions reveal significant variation in assessing government actions. In several decisions, the Supreme Court has emphasized that factual government actions that cause harm to citizens constitute unlawful acts that civil courts must examine and address. However, in a different decision, the Supreme Court stated that government actions in exercising their authority, even if not in the form of a written decision, still constitute state administrative actions that must be reviewed by the State Administrative Court (Khafifah et al., 2023). These two differing approaches demonstrate the absence of a standard for distinguishing government actions based on their nature, making differences in interpretation highly likely. This variation in jurisprudence also demonstrates that the wording of the law does not solely determine absolute competence in practice but is heavily influenced by the legal constructions established by judges.

Another problem identified by the research is the lack of adequate guidelines for distinguishing between government actions in the private and public spheres. In the Indonesian judicial system, private government actions must be reviewed by civil courts, while administrative courts review public actions. However, the parameters for determining the nature of these actions are not explicitly defined in law. For example, government actions in land acquisition for public purposes may contain public aspects. However, the implementation process often involves factual actions that cannot always be categorized as administrative decisions (Ridwan, 2021). This lack of clarity in the parameters forces judges to resort to various doctrines such as *detournement de pouvoir*, *abus de droit*, *onrechtmatige overbeidsdaad*, or the concept of government actions not taking the form of decisions. While these doctrines are important, their inconsistent application in decisions actually contributes to the uncertainty surrounding absolute competence.

Another finding relates to the impact of the uncertainty of absolute competence on citizens' access to justice. When absolute competence is not clearly defined, citizens seeking to sue the government for losses they have suffered may file their lawsuits in the wrong court. If the lawsuit is declared inadmissible because the court declares itself incompetent, the citizen must file a new case in another court, which inevitably requires considerable time, expense, and energy. This contradicts the principles of simple, expeditious, and low-cost justice. In some cases, a negative conflict of jurisdiction even occurs, where both courts declare they lack the authority to adjudicate a dispute (Harjanto et al., 2025). This situation indicates a normative vacuum in the regulation of absolute competence, which directly impacts the public's access to legal protection.

Furthermore, this analysis also found that the regulation of absolute competence in civil courts has not been fully aligned with developments in modern administrative law. In many civil law countries, specialized courts handle disputes concerning state responsibility, thereby preventing judicial dualism. However, Indonesia still maintains a separation of general and administrative courts without providing an effective coordination mechanism between the two. The absence of this coordination mechanism means that disputes involving the government are not handled systematically, but rather depend on the characteristics of the judges' actions and interpretations. This creates uncertainty for the government itself in carrying out its functions, as it lacks clarity on the doctrines or parameters used by the courts to assess its actions (Simanjuntak, 2019).

From a theoretical perspective, the analysis finds that the absolute competence provisions of civil courts are no longer compatible with developments in contemporary administrative and civil law theory. The concept of unlawful acts in the Civil Code is comprehensive and generic, encompassing almost all unlawful acts, including those committed by the government. However, the development of modern administrative law, based on the principle of the rule of law, emphasizes limitations on public government actions (Teguh & Rumadan, 2022). The Indonesian legal system's inability to align the parameters of government action with these theoretical developments has led to overlapping functions between civil and administrative law. Theoretically, this demonstrates the need for reformulating the concept of absolute competence in the context of modern governance.

Furthermore, this analysis also reveals the practical implications of the irregularity of absolute competence provisions for the government. When the boundaries between public and private actions are unclear, the government risks being sued through inappropriate mechanisms, ultimately hampering governance. This

uncertainty can cause state officials to hesitate when making decisions, especially regarding actions that have the potential to result in significant legal repercussions. The unpredictable risk of lawsuits can lead to overcautiousness, a tendency for officials to avoid making important policy decisions for fear of being sued. This situation is undoubtedly detrimental to the public because it slows down the government's decision-making process.

From all of this analysis, it is clear that the regulation of absolute competence in civil courts requires a more comprehensive reconstruction. This reconstruction must encompass at least three main aspects: first, the formulation of clear parameters to differentiate government actions in the private and public spheres; second, harmonization of sectoral laws to eliminate overlapping authority; and third, the establishment of guidelines or regulations that judges can use as a reference when determining absolute competence. With a clear and measurable reconstruction, the Indonesian justice system can move toward greater legal certainty, while providing more effective protection for citizens and ensuring government accountability in the execution of its functions.

Legal Problems in the Settlement of Unlawful Acts by the Government

The legal challenges to resolving unlawful acts by the Indonesian Government are complex, as they involve multiple unintegrated legal provisions, creating uncertainty in determining the appropriate forum (Panjaitan et al., 2023). The dualistic nature of Indonesian law, which distinguishes government actions into the public and private spheres, results in differing legal assessments of government actions, raising the question of whether an action constitutes a civil or public unlawful act. This unclear boundary is fundamentally driven by the lack of explicit normative provisions in the law and varying interpretations within the Supreme Court's jurisprudence. The problem is further complicated when government actions deemed unlawful cannot be easily classified based on their purpose, substance, or the organ responsible, leading to the potential for forum shopping and inconsistent decisions (Sulaeman et al., 2023). Therefore, the legal challenges to resolving unlawful acts by the Government must be viewed as a consequence of disharmony in legal norms, inconsistent interpretations, and a structure of absolute judicial competence that is not yet fully integrated.

One of the main problems that arises is the overlap between the authority of civil courts and state administrative courts in handling disputes involving the Government. The Civil Code provides the basis for holding anyone, including the Government, accountable for unlawful acts that cause harm (Iqbal et al., 2025). However, the State Administrative Court Law limits the authority of administrative courts to disputes over state administrative decisions and public government actions. When government actions cause harm but are not in the form of a written decision or fall outside the scope of a *beschikking* (legal procedure), the aggrieved party faces ambiguity regarding the appropriate path to redress. In some cases, such as government actions in development projects that harm citizens without issuing a formal decision, civil courts accept cases based on unlawful acts. In other cases, state administrative courts assert their authority, arguing that the actions constitute governmental actions (Herlambang et al., 2025). This difference in how government actions are viewed creates an unclear legal framework, leaving the resolution of unlawful acts by the Government highly dependent on the interpretation of judges. This situation undoubtedly hinders the achievement of legal certainty, a fundamental goal of the judicial system. The following legal issue pertains to the disharmony between laws and regulations governing the relationship between the state and its citizens in the context of legal responsibility.

The State Administration Law introduces the concept of unlawful acts by government agencies and officials (*onrechtmatige overheidsdaad*), which should provide more precise definitions of the nature of government actions (Iqbal et al., 2025). However, this provision does not automatically eliminate the civil law regime governing unlawful acts under Article 1365 of the Civil Code. Consequently, two parallel legal regimes exist that can be used to assess the legality of government actions, each with different consequences.

In some cases, state administrative courts consider themselves authorized to handle disputes over government actions that result in losses. In contrast, civil courts consistently apply civil law constructions to assess the Government's unlawful acts. This dualism not only creates inconsistencies but also opens up opportunities for the defendant, the Government, to override its authority and declare that the dispute does not fall within the jurisdiction of a specific court (Irwanda et al., 2023). This inconsistency highlights the need to establish a more comprehensive legal framework that empowers the most competent judicial institution to address unlawful acts by the Government effectively.

Legal uncertainty also arises from methodological problems in assessing government actions by judges, particularly in distinguishing between public and private actions of the government. In practice, the government can engage in private actions such as contracts, sales, or leases, which are generally subject to the civil law regime. However, in actions that fall between the public and private spheres, such as land acquisition, issuing recommendations, or exercising discretionary authority, ambiguity arises in determining the nature of these actions. Some judges argue that such actions constitute administrative actions by the government, while others consider them factual actions that can be tested through civil torts (Irwanda et al., 2023). This problem highlights the lack of standard parameters that can be consistently used to distinguish government actions. However, in civil law

countries like the Netherlands, these parameters are clearly defined and layered, enabling the courts to determine the forum for dispute resolution with precision. The absence of adequate normative parameters in Indonesia means that the government's resolution of unlawful acts tends to be case-by-case and dependent on individual panels of judges.

From a jurisprudential perspective, several Supreme Court decisions demonstrate a lack of harmony in determining absolute competence. In some decisions, such as the dam construction case, the civil court declared itself authorized to hear unlawful acts because the government's actions caused factual losses without a written decision (Surya, 2023). However, in other decisions involving similar actions, the state administrative court declared it was authorized because the actions were considered an exercise of administrative authority. The lack of binding guidelines for judges in determining absolute competence has led to sharply differing approaches. In fact, some cases have been ruled inadmissible by both courts because each court declared itself incompetent to hear the case. This negative competence conflict has profound implications, as it deprives citizens of access to dispute resolution while simultaneously evading legal accountability for the government. This lack of clarity regarding absolute competence demonstrates the need for a more comprehensive reconstruction of the boundaries of authority between courts (Buana et al., 2025).

Another legal issue is the absence of a unified and binding mechanism for addressing unlawful acts by the government across courts. Indonesia does not have a specialized court that handles state liability disputes, like the administrative courts of liability in several European countries (Gultom et al., 2025). However, disputes involving unlawful acts by the government are hybrid in nature, combining private and public aspects. In a fragmented judicial system without a coordinating body between courts, disputes over unlawful acts have the potential to be decided using different standards and doctrines, ultimately creating uncertainty for both the public and the government. This uncertainty also affects the investment climate and legal certainty in public services, as businesses and citizens lack clear guidelines for resolving disputes when government actions infringe upon their rights. This lack of an integrated system represents a structural problem that needs to be addressed by formulating a more synchronized structure of absolute competence between civil and administrative courts (Sulaeman et al., 2023).

Theoretically, the legal problems in resolving unlawful acts by the government are also related to fundamental principles in administrative law and civil law. The concept of "*onrechtmatige overheidsdaad*," originating from Dutch law, serves as the basis for interpreting unlawful acts by the government in the modern context (Iqbal et al., 2025). However, the application of this concept in the Indonesian legal system is not comprehensive, resulting in fundamental differences regarding the scope of government actions that can be considered unlawful. On the other hand, civil law continues to apply Article 1365 of the Civil Code in an absolute manner to assess all unlawful acts, including those committed by the government. The unclear relationship between these two legal regimes raises theoretical questions about whether Indonesia still adheres to a dualistic model of state responsibility or has moved toward a unification model (Simanjuntak, 2020). This uncertainty in the model of responsibility also increases the scope for interpretation, resulting in variations in decision-making.

The practical implications of this legal problem are significant because they affect the effectiveness of legal protection for citizens harmed by government actions. When dispute resolution pathways are unclear, citizens must face lengthy litigation processes, high costs, and the risk of lawsuits being dismissed due to courts declaring them incompetent. This places an additional burden on victims, despite the legal objective of providing certainty and access to justice. On the other hand, this uncertainty is also detrimental to the government, hindering policy planning and development implementation, and eroding public trust (Hartiwiningsih et al., 2022). The government also finds it challenging to develop internal guidelines regarding potentially unlawful actions without clear boundaries between the civil and administrative realms. Thus, this legal problem is not merely technical but also touches on dimensions of governance and the effectiveness of public services (Khafifah et al., 2023).

Meanwhile, the theoretical implications of this legal problem underscore the need to re-evaluate the concept of absolute competence in addressing unlawful acts by the government. The existence of a dualism between private and public law necessitates a re-evaluation of the boundaries between government actions that are assessed administratively and those that are subject to the civil law regime. This reconstruction must consider legal developments in other countries, particularly civil law countries, which have successfully resolved conflicts of authority by defining the parameters of government action, establishing specialized courts, or harmonizing civil and administrative courts. Theoretically, Indonesia requires a new doctrine that can integrate both legal regimes without eliminating the characteristics of each legal field.

The limitations of this research primarily lie in the unavailability of comprehensive empirical data on all Supreme Court decisions regarding unlawful acts by the government over the past two decades, as some decisions have not been fully published. Furthermore, the constantly changing legal framework, such as the development of the State Administration Law and the draft revision of the State Administrative Court Law, necessitates continuous updating of normative analysis. Nevertheless, this research provides a theoretical foundation for reformulating

absolute competence in resolving unlawful acts by the government, which is expected to serve as a reference for policymakers, judges, and academics.

Conceptual and Comparative Analysis

The conceptual and comparative analysis approach in legal research demonstrates that understanding an issue cannot be limited to the textual level of the law, but must also explore doctrinal construction, normative consistency, and how these norms operate in other jurisdictions. The research findings confirm that many problems in the Indonesian legal system, particularly those related to absolute judicial competence, the division of authority, and the identification of dispute types, stem from the inconsistency of basic concepts and the absence of a consistent classification framework. Conceptual analysis is crucial for clarifying the foundations of terms, establishing terminological boundaries, and identifying logical relationships between concepts, while comparative analysis helps to compare the effectiveness of Indonesia's legal structure with that of more established systems.

The findings demonstrate that key concepts such as absolute competence, judicial authority, government legal action, and the distinction between private and public state actions still lack a uniform operational definition among stakeholders. The theoretical conception in procedural law doctrine often differs from its application in legislation and judicial decisions. For example, conceptually, absolute competence is a fundamental, non-negotiable aspect that must be determined based on the nature of the disputed object. However, in practice, these boundaries are often blurred due to administrative considerations, internal judicial policies, or inconsistent interpretations between levels of the judiciary. This situation demonstrates a conceptual gap between academic understanding and the reality of implementation, ultimately contributing to legal uncertainty.

Furthermore, the analysis also shows that the Indonesian legal system has undergone rapid development in the past two decades, particularly regarding the expansion of the authority of state administrative courts, the strengthening of judicial review, and the development of the doctrine of unlawful acts by the government (*onrechtmatige overbeidsdaad*) (Khafifah et al., 2023). These developments have altered the relationship between general and administrative courts, rendering the traditional concept of authority division inadequate. The lack of clarity in distinguishing between private state acts, such as contractual agreements, and public acts, such as administrative decisions, continues to frequently give rise to jurisdictional disputes (Trakic et al., 2023). The conceptual analysis in this study shows that the primary causes are irregular terminology and a lack of classification guidelines in sectoral regulations.

In the context of the Indonesian legal system, this issue appears even more complex due to the pluralistic nature of the national legal structure and its spread across various sectoral laws. The division of authority between general courts, state administrative courts, and special courts is not only regulated by organic laws but is also scattered across various sectoral regulations governing specific areas such as regional government, the environment, public services, or state finances (Ridwan, 2021). This fragmentation of regulations increases the potential for conflicting norms and creates variations in the application of laws across different regions. Research findings indicate that first-instance courts often apply interpretations different from those of the Supreme Court, making it difficult to achieve jurisprudential consistency (Simanjuntak, 2019).

This irregularity is increasingly apparent in cases involving the government. In several instances, disputes that should be handled as administrative matters are instead treated as civil cases, or vice versa. This phenomenon is particularly evident in disputes involving unlawful acts by the government, abuse of authority, or contractual relationships entered into by state entities. The lack of clarity in distinguishing the nature of government actions leads to uncertainty in determining the appropriate judicial forum. These findings reinforce the view that the Indonesian legal system requires harmonisation across regulations and more systematic interpretation guidelines to prevent overlapping authority.

Table 1 Comparison of Absolute Competence Systems and Government Dispute Resolution

Aspects	Indonesia	Netherlands	Germany	France
Fundamental Doctrinal Principles of the Division of Authority	Judicial dualism exists, but the boundaries are often blurred; there is no stable classification doctrine between public and private government actions.	<i>Onrechtmatige overbeidsdaad</i> with a clear separation between administrative and private acts; classification is more mature.	<i>Qualifikationstheorie</i> emphasizes the analysis of the substance of acts; the division of authority is highly systematic.	A strong doctrine of droit administrative; administrative jurisdiction is dominant and has a stable historical doctrinal basis.
Determining the Nature of Government Actions	There are no clear parameters for distinguishing public and private actions;	Uses an objective approach to government actions; analysis of the nature	Prioritizes the substance of acts over formal form; the analysis of the structure of authority is highly technical.	The nature of acts is determined by administrative justice; jurisdiction is

	decisions are often made by case law.	of the actions is more consistent.		determined based on public control.
Administrative Dispute Resolution Institutions	The State Administrative Court has expanded authority, but not as broad and powerful as in comparable countries.	Administrative courts are strong, having broad authority to oversee government actions.	The three-tier system of administrative justice is hierarchical, technical, and highly established.	The <i>Conseil d'État</i> , as the highest administrative body, is highly influential and stable.
Relationship between General and Administrative Courts	There is overlap; disputes often arise; the Supreme Court plays the final decision.	The division is very clear; jurisdictional conflicts rarely arise.	Strict division; courts do not interfere with each other; internal mechanisms are robust.	Extreme dualism; administrative jurisdiction is dominant in government disputes.
Resolution of Unlawful Acts by the Government	Confusion persists between the State Administrative Court and the District Court; jurisprudential inconsistencies occur.	Disputes involving government unlawful acts generally fall into civil court, except for administrative decisions.	Resolved based on the substance of violations; factual government actions can be examined as public disputes.	Acts against public law almost always fall under administrative jurisdiction.
Consistency of Jurisprudence	Weak, often changing between levels of the judiciary and over time.	Strong, because the doctrine and classification guidelines are clear.	Highly stable due to a mature and rational administrative system.	This is very high due to the centralized and coordinated administrative structure.
Key Parameters for Determining Authority	There are no standard parameters; judges make decisions based on case-by-case interpretation.	Based on the nature of the action and the authority of its source.	Based on functional and substantive analysis of legal acts.	This is based on whether the act was carried out by public authority.
Directions for Necessary Reform	Harmonization of doctrine, guidelines for classifying actions, revision of the Administrative Court Law, and affirmation of jurisdiction.	The model can be adapted for consistent classification of actions.	The theory of the substance of acts can be adopted to clarify the division of authority.	Strengthening administrative justice can be a reference for increasing legal certainty.

Source: Compiled by the author (2025)

From a comparative perspective, as shown in Table 1, this study evaluates how several civil law countries with historical and institutional similarities to Indonesia, such as the Netherlands, Germany, and France, regulate the division of judicial authority. The analysis shows that in these countries, the division of jurisdiction is based on clear doctrine, consistent guidelines for classifying legal acts, and strengthened institutions responsible for handling administrative disputes. In the Netherlands, for example, judicial dualism is strictly regulated, and the classification of administrative disputes relies on the concept of objective control over governmental actions (Beumers et al., 2021; van Rongen, 2025). This provides certainty in determining the judicial forum without the need to distinguish solely based on the perpetrator of the act, but rather on the normative essence of the act (Dommering-van Rongen, 1994).

Meanwhile, Germany uses a *qualifikationstheorie* approach that emphasises the analysis of the substance of the act (Grote, 2008). This approach allows courts to consistently determine the nature of disputes without getting bogged down in the formalities of legal relations (Lenze, 2005; Meier & Riehm, 2019). The research findings suggest that Indonesia can learn from this approach, particularly as it often faces difficulties in identifying whether a government action is public or private. France, on the other hand, offers a different experience through the dominance of administrative courts, which have broad authority and internal capacity to resolve jurisdictional conflicts (Borghetti, 2023). Indonesia still relies on the Supreme Court as a dispute resolution body, resulting in a high caseload that can hinder the expeditious resolution of jurisdictional disputes.

The results of this comparative analysis indicate that Indonesia can enhance the consistency of the division of authority by strengthening doctrine, developing guidelines for classifying legal acts, and increasing the capacity of administrative court institutions. Furthermore, the experiences of these countries emphasise the importance of continuous judicial training and doctrinal reform so that the judiciary can adapt to the increasingly complex role of the modern state.

These comparative findings have significant theoretical implications. First, a reconstruction of the concept of absolute competence is necessary, one that relies not solely on the text of the law, but also considers the functional

characteristics of the dispute. This paradigm shift aligns with developments in modern legal theory that emphasise a systemic and functional approach to dispute resolution. Second, doctrinal consistency is a crucial prerequisite for maintaining legal certainty. This research confirms that without a congruence between academic doctrine, judicial decisions, and positive norms, the legal system will remain in a state of flux. Third, the comparative study provides a theoretical basis for the effective division of jurisdiction that relies on stable institutional and doctrinal design. Therefore, Indonesian legal theory needs to update the classical approach to the division of authority to meet the demands of a modern rule of law.

The practical implications of this comparison are also quite clear. The judiciary needs more detailed technical guidelines for determining the nature of disputes so that the process of identifying absolute competence is more certain. Law enforcement officials and judges require ongoing training that emphasises the importance of conceptual and comparative analysis to understand the nature of government legal actions better. The government and lawmakers also need to integrate scattered sectoral regulations to minimise jurisdictional conflicts. Furthermore, this research opens up the possibility of establishing a mechanism for resolving conflicts of authority that does not rely solely on the Supreme Court.

However, this comparison has certain limitations. Empirical data on variations in the practice of exercising authority in first-instance courts have not been fully compiled, so the analysis relies primarily on doctrinal studies and selected decisions. The comparative study is also limited to civil law jurisdictions, thus failing to capture the approach of common law countries, which might offer a different perspective (Hutchinson & Duncan, 2012). Furthermore, this research focuses on normative and conceptual analysis and therefore does not address quantitative aspects, such as the consistency of decisions or the frequency of conflicts of authority in the judiciary. Overall, this comparison demonstrates that conceptual and comparative analysis are essential approaches for understanding the dynamics of judicial authority division and legal uncertainty in Indonesia. This approach not only helps identify system weaknesses but also provides direction for reform measures to make the national legal system more consistent, responsive, and effective.

Reconstruction of the Absolute Competence of Civil Courts

Reconstructing the absolute competence of civil courts is an urgent need in the Indonesian legal system, particularly in resolving disputes involving unlawful acts by the government. Reconstruction is necessary because the current system fails to provide legal certainty and consistent interpretation across judicial institutions. Statutory provisions only provide general boundaries, while the relationship between government legal actions, the nature of public actions, and factual actions is unclear (Syarifah et al., 2020). This situation creates considerable latitude for interpretation among judges, leading to diverse and even contradictory decisions. In this context, reconstruction is not merely interpreted as a revision of the law's wording, but also as a repositioning of conceptual structures, a reformulation of the classification of government actions, a restructuring of judicial relations, and the development of more systematic interpretation guidelines.

Reconstructing the absolute competence of civil courts must begin with strengthening the definition and parameters of government legal actions in relation to unlawful acts. To date, Indonesian justice has been trapped in a formal dichotomy between private and public government actions. However, this dichotomy lacks adequate classification guidelines, requiring courts to conduct case-by-case analysis in each case. Conceptual reconstruction is necessary to provide the judiciary with a stable theoretical and methodological foundation for determining the nature of government actions. The first step is to explicitly define the government's actual actions, whether they constitute administrative acts, private acts, or functional state actions that can give rise to legal liability. Without a clear definition, the courts will remain uncertain whenever they encounter unlawful acts involving the government.

Next, the reconstruction must be directed toward developing a classification framework that serves as a map for determining authority. This classification framework must include at least four main indicators: the source of the authority for the action, the purpose of the action, the form of the action, and its legal consequences. The source of authority is necessary to assess whether the government's action is based on a public or private instrument. The purpose of the action helps distinguish whether the action is undertaken for public service, administrative management, or commercial activities. The form of the action determines whether it constitutes an administrative decision, a factual act, or a contractual relationship. Meanwhile, legal consequences are necessary to determine whether the action results in a change in legal status or causes material loss (Sulaeman et al., 2023). With clear indicators, the judiciary will no longer rely on subjective judgments and can achieve consistency across decisions.

The next stage of reconstruction concerns the role of civil courts in resolving disputes over unlawful acts by the government. Civil courts are courts that examine private relationships between individuals or entities that are subject to the law. However, when the government acts as the party causing harm through factual actions, civil courts play a crucial role because the nature of such actions often cannot be categorised as administrative. Reconstruction at this stage is necessary to clarify the scope of civil court authority through more concrete

elaboration in law and through technical guidelines of the Supreme Court. This clarification is not only useful for judges but also for justice seekers, ensuring they do not suffer procedural disadvantages due to choosing the wrong judicial forum.

The next, equally important reconstruction is the harmonisation of institutional relations between general courts and state administrative courts. To date, overlapping jurisdictions between the two institutions have been a source of legal uncertainty. In many cases, general courts declare that a case falls under the jurisdiction of the State Administrative Court, while the State Administrative Court states otherwise. This situation reflects weak institutional coordination and the absence of interpretative guidelines. Therefore, reconstruction must include the establishment of a more expeditious mechanism for resolving jurisdictional conflicts, one that is not solely reliant on the Supreme Court, and complemented by a more intensive institutional interaction process. In addition, the drafting of SEMA (Supreme Court Circular) or PERMA (Supreme Court Regulation) regarding the division of authority in disputes over unlawful acts can be an effective short-term legal instrument, while revising the law is a long-term step.

In a comparative context, the reconstruction of absolute civil judicial competence can be exemplified by the Dutch, German, and French models. The Dutch regulate government torts as the domain of civil courts unless they are directly related to administrative decisions (Reinsma, 1975). Indonesia can adopt this model to clarify the types of acts that should fall within civil jurisdiction. Germany provides a good example through its substantive approach, where classification is based on the functional character of the government action, not just its formal form (Bloth, 2009; Mann & Rodrigues, 1988). Meanwhile, France emphasises the dominance of administrative justice, providing little space for general courts in public tort cases (Borghetti, 2023). Indonesia can adopt certain elements from these three models without copying them entirely, but rather adapting them to the institutional structure and needs of its national legal system.

The reconstruction of absolute competence also needs to consider the implications for access to justice. To date, many government tort cases have ended without a proper examination due to jurisdictional issues. Aggrieved plaintiffs must refile their lawsuits in other courts after the initial lawsuit is ruled incompetent. This situation is unfair and contradicts the principle of access to justice in a state governed by the rule of law. The reconstruction of absolute competence must be designed to minimise the risk of lawsuits being declared inadmissible simply due to forum error. One step that can be taken is to strengthen the principle of forum prevails, which, in the event of doubt, grants the court the authority to continue examining the case until the substance of the origin of the authority is fully determined.

Meanwhile, from a normative perspective, reconstruction can be achieved through revisions to Law No. 48/2009 concerning Judicial Power, the General Courts Law, and the Administrative Courts Law. These revisions must accommodate developments in modern administrative law, including a more comprehensive recognition of government actions in their various forms. Reconstruction should not only consist of wording changes but also include reformulation of the authority structure, refinement of basic definitions, and adjustment to the latest jurisprudence of the Supreme Court. This will ensure a more harmonious relationship between general and state administrative courts, preventing conflicts of norms.

Within the framework of sustainability, the reconstruction of absolute competence in civil courts also requires an increase in the capacity of judges. Doctrinal and normative reconstruction will be ineffective without a comprehensive understanding from judges, who are the primary implementers of the regulations. Intensive training in the theory of government action, comparative law, and techniques for interpreting authority can strengthen judicial practice. Building the capacity of judicial institutions is an integral part of the reconstruction agenda.

Ultimately, the reconstruction of the absolute competence of civil courts must be viewed as a multidimensional process involving conceptual reform, regulatory harmonisation, strengthening judicial capacity, and refining doctrine through jurisprudence. Reconstruction not only addresses the issue of overlapping authority that has existed in the past, but also serves as a strategic step to strengthen legal certainty, enhance the effectiveness of the judicial system, and provide greater legal protection for the public. The Indonesian legal system requires absolute competence that is firm, consistent, and adaptive to accommodate the complexity of modern government actions and the increasing intensity of state-citizen interactions.

CONCLUSION

This study confirms that the reconstruction of the absolute competence of civil courts in resolving unlawful acts by the Government is an urgent need in the Indonesian legal system. Through normative, conceptual, and comparative analysis, it was found that the demarcation line between the authority of civil courts and state administrative courts still leaves a normative gap and legal uncertainty, especially in cases involving government actions that are simultaneously private and public in nature. This ambiguity has implications for overlapping authority, fragmented decisions, and uncertainty for justice seekers who must determine the litigation forum before

filing a lawsuit. This condition confirms that the current regulation does not fully reflect the principles of the rule of law that demand certainty, justice, and benefit in dispute resolution. The research findings suggest that the reconstruction of the concept of absolute competence requires a re-examination of the nature of unlawful acts by the Government, specifically by clearly distinguishing between government actions in their capacity as a public body and in their capacity as a civil subject. This reconstruction also requires harmonization of sectoral laws, especially the Civil Code, Law No. 30/2014 concerning State Administration, and the State Administrative Court Law, to avoid contradictions in determining the forum. Furthermore, comparative research shows that several countries have implemented a hybrid or unified court system approach to disputes against the Government, while Indonesia remains fragmented. Therefore, Indonesia needs to consider a model of consolidating authority through a chamber system mechanism or special regulations that establish competence based on the substance of the action, rather than the institution acting. Therefore, reconstructing the absolute competence of civil courts is not only a technical-legal necessity but also a strategic step to enhance access to justice, improve the effectiveness of dispute resolution, and ensure the consistency of court decisions. The results of this study are expected to serve as an academic basis and provide policy recommendations for judicial system reform, particularly in addressing unlawful acts by the Indonesian Government, which require clarity, uniformity, and legal certainty in their implementation.

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