Reconstructing The Concept Of Unlawful Acts To Address The Challenges Of Modern Civil Disputes

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Abstract
Tort, or Perbuatan Melawan Hukum (PMH), is a fundamental pillar in Indonesia's civil law system as it serves as the basis for awarding compensation to injured parties. Article 1365 of the Indonesian Civil Code stipulates that anyone who commits an unlawful act causing harm to another is obliged to provide compensation. While this classical formulation was once considered sufficient, the rapid transformation of society and technology has given rise to new forms of disputes that are not fully addressed under the traditional PMH framework. Issues such as personal data breaches, online defamation, fraudulent electronic transactions, and the misuse of intellectual property demonstrate the limitations of the conventional doctrine in addressing contemporary civil disputes. This article aims to explore the necessity of reconstructing the PMH concept to make it more adaptive and responsive to modern challenges. The study employs a normative juridical approach by examining statutory provisions, court decisions, legal doctrines, and relevant scholarly works. The analysis also includes a comparative perspective with tort law in common law jurisdictions, which generally shows greater flexibility in meeting societal needs. Findings highlight the importance of redefining the scope of "unlawful acts," incorporating restorative justice principles, and applying standards of due diligence in the digital context.

1. Introduction

The concept of Perbuatan Melawan Hukum (PMH), or tort, stands as one of the fundamental principles of Indonesian civil law and is rooted in Article 1365 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata, KUHPerdata). This

provision explicitly states that any person who commits an unlawful act that causes harm to another is obliged to compensate for the damage. The formulation was initially derived from classical European civil law traditions, particularly the Dutch civil law system, which emphasized the essential elements of fault, damage, and causal relationship between the act and the harm caused (Meliala, 2018). From the outset, therefore, PMH was understood as a legal instrument aimed at enforcing individual responsibility while simultaneously ensuring justice for the injured party.

Nevertheless, the classical concept of PMH, as embedded in the Civil Code, was conceived in the socio-economic and technological context of the nineteenth century. At that time, social relations were relatively simple, economic transactions occurred directly, and legal interactions were confined to tangible and personal spheres. As a result, the normative provisions on PMH were relatively easy to apply in practice, given that disputes were largely visible and straightforward such as property damage, limited cases of defamation, or negligence in fulfilling specific obligations (Lukito, 2018). Within this framework, the term "unlawful act" was interpreted restrictively, confined to conduct that clearly violated statutes, infringed on another's rights, or breached prevailing moral standards.

However, rapid transformations in modern society reveal significant shifts in the dynamics of civil law relations. Social change, globalization, and the digital revolution have introduced new complexities into civil interactions. Contemporary disputes arise in forms never anticipated by the drafters of the nineteenth-century Civil Code. Examples include digital privacy violations, misuse of personal data on online platforms, cross-border electronic transactions that cause consumer losses, defamation through social media, and even liability issues stemming from artificial intelligence (AI). Within this context, the classical PMH framework increasingly shows its limitations, as it cannot fully respond to modern disputes that are more abstract, cross-jurisdictional, and technologically driven (Prasetyo & Trisyanti, 2018).

One concrete illustration of such limitations lies in cases involving personal data misuse. Data breaches affecting consumers or the wider public occur frequently in practice. For instance, the leakage of user information from a financial application that is later exploited for fraud. Normatively, the harm is evident, but proving it under the classical PMH

doctrine is far from straightforward. Establishing fault (schuld) becomes problematic when the alleged wrongdoer is a corporation whose liability derives not from direct intentional conduct but from negligence in safeguarding its security systems. Moreover, causality is also difficult to prove, since harm from data breaches often manifests indirectly and involves multiple actors. This demonstrates that the classical PMH paradigm, which heavily emphasizes individual fault, is no longer adequate to address the complexities of modern disputes.

In addition, the rise of digital technology has generated new categories of harm, particularly non-material losses. Classical doctrine primarily focused on material damages that could be quantified, such as property destruction or financial loss. Yet in the digital era, many harms are immaterial in nature, including online reputational damage, loss of public trust, or psychological suffering from cyberbullying. From the perspective of traditional PMH, such injuries are often difficult to classify as "actual damages" warranting compensation. In reality, however, immaterial losses may prove more damaging than material ones. Thus, a more inclusive reconstruction of PMH is required to accommodate these new types of harm (Widyastuti, 2020).

Global economic integration further compounds the challenge. Commercial transactions are no longer confined to domestic borders but frequently extend across jurisdictions through e-commerce and digital contracts. Disputes often involve parties from multiple countries operating under different legal systems. In this transnational setting, applying Article 1365 KUHPerdata becomes increasingly problematic. How should an "unlawful act" be defined if the conduct occurs abroad but its impact is felt in Indonesia? Which legal system applies, and which forum holds jurisdiction to resolve the dispute? Such questions underscore the need to reconceptualize PMH from a purely domestic perspective to one that incorporates transnational dimensions.

Legal scholarship and judicial practice have, to some extent, already broadened the interpretation of PMH. Jurisprudence illustrates a gradual shift from a narrow to a more expansive understanding. A landmark case is the 1919 decision of the Dutch Supreme Court (Hoge Raad) in Lindenbaum v. Cohen, which expanded the notion of "unlawful act" beyond statutory violations to include actions contrary to propriety, prudence, and moral norms. This broader interpretation has influenced Indonesian judicial practice as well. Thus,

embryonic efforts at conceptual reconstruction have emerged through case law. Nonetheless, further development is required to ensure adaptability in addressing modern challenges.

Another pressing issue concerns the subject of liability. Initially, PMH was understood in the context of interpersonal relations (person-to-person). Yet in the contemporary era, perpetrators of unlawful acts are not only individuals but also large corporations, international legal entities, and even autonomous algorithms or AI systems. This raises fundamental questions: can corporations or AI be held accountable for unlawful acts? What mechanisms of liability should apply? These questions necessitate a reconfiguration of PMH to align with technological and economic realities.

The urgency of PMH reconstruction also lies in its relationship to justice. The primary purpose of civil law is to protect injured parties and provide legal certainty in transactions. When PMH no longer adequately addresses emerging forms of disputes, civil law loses its effectiveness. The absence of an effective legal instrument risks perpetuating injustice, where victims fail to receive appropriate compensation while wrongdoers evade accountability. Thus, reconstructing PMH is not merely an academic exercise but a practical necessity to uphold substantive justice.

Legal certainty presents another dimension of urgency. In practice, many modern disputes cannot be adjudicated consistently because the existing PMH framework lacks clarity. For example, in data protection cases, some judges interpret data breaches as negligence that constitutes PMH, while others rule that in the absence of explicit statutory provisions, no unlawful act has occurred. This inconsistency generates unpredictability and undermines public trust in the legal system. A comprehensive reconstruction would establish clearer normative standards, enabling more consistent and predictable judicial decisions.

Moreover, rethinking PMH forms part of the broader modernization of Indonesian civil law. The Civil Code, inherited from Dutch colonial rule, has remained largely unchanged for over a century, despite the dramatic transformation of Indonesian society. Updating the PMH doctrine could serve as a starting point for more comprehensive civil law reform. Such reform is vital to ensure that Indonesian civil law remains relevant, competitive, and capable of providing effective legal protection in the twenty-first century.

In light of these developments, the urgency of PMH reconstruction can be examined through three primary dimensions. First is the dimension of legal protection, emphasizing the need for PMH to safeguard society against novel harms emerging from digitalization and globalization. Second is the dimension of legal certainty, which requires reconstruction to establish clearer and more consistent standards in applying PMH. Third is the dimension of substantive justice, underscoring the importance of ensuring compensation for both material and immaterial harms. Taken together, these dimensions demonstrate that PMH reconstruction is not optional but imperative for addressing modern civil disputes.

Accordingly, this article seeks to examine the urgency of reconstructing PMH by analyzing the limitations of its classical paradigm while proposing directions for a more adaptive framework. The discussion highlights the expansion of the notion of "unlawful act," the recognition of immaterial damages, the accountability of corporations and non-human entities, the incorporation of globalization dynamics, and the pivotal role of jurisprudence in shaping doctrinal evolution. Through this analysis, the study aims to establish a stronger normative foundation for PMH, enabling it to address the complexities of modern civil disputes, strengthen legal protection, and ultimately achieve substantive justice for all members of society.

2. Research Method

This study adopts a normative juridical approach, which focuses on the examination of positive legal norms, legal principles, and evolving legal doctrines. The normative approach is chosen because the core of this research lies in the conceptual reconstruction of Perbuatan Melawan Hukum (PMH), or tort, as regulated under Article 1365 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata) and its relevance in addressing contemporary civil disputes. Rather than merely analyzing written provisions, this approach also investigates how such rules are interpreted, applied, and developed through legal doctrines and judicial decisions (Rahayu, 2020).

The study is descriptive-analytical in nature. This means that it not only presents existing statutory regulations and legal doctrines but also critically evaluates the adequacy, limitations, and relevance of the PMH concept within today's social, economic, and technological contexts. Through this method, the research seeks to portray the current state of Indonesian civil law and assess its capacity to respond to modern

disputes, particularly issues such as personal data misuse, non-material damages, and corporate liability.

The legal materials examined are divided into three categories. First, primary legal materials, which include statutes such as the Indonesian Civil Code, the Electronic Information and Transactions Law, the Personal Data Protection Law, and relevant court rulings at both national and international levels concerning PMH. Second, secondary legal materials, consisting of scholarly writings, academic journals, legal commentaries, and studies by civil law and modern law experts. These sources provide theoretical perspectives and insights into the development of legal doctrines. Third, tertiary legal materials, including legal dictionaries, encyclopedias, and credible online resources, which serve to clarify terminology and contextual understanding.

The collection of legal materials was conducted through library research. All sources were examined systematically, with emphasis on their relevance to the research problem. This process involved reviewing statutory documents, conducting comparative analyses of regulations and jurisprudence, and engaging in critical reflection on academic literature. In this way, the data gathered is not only textual but also contextual, thereby supporting a more comprehensive analysis.

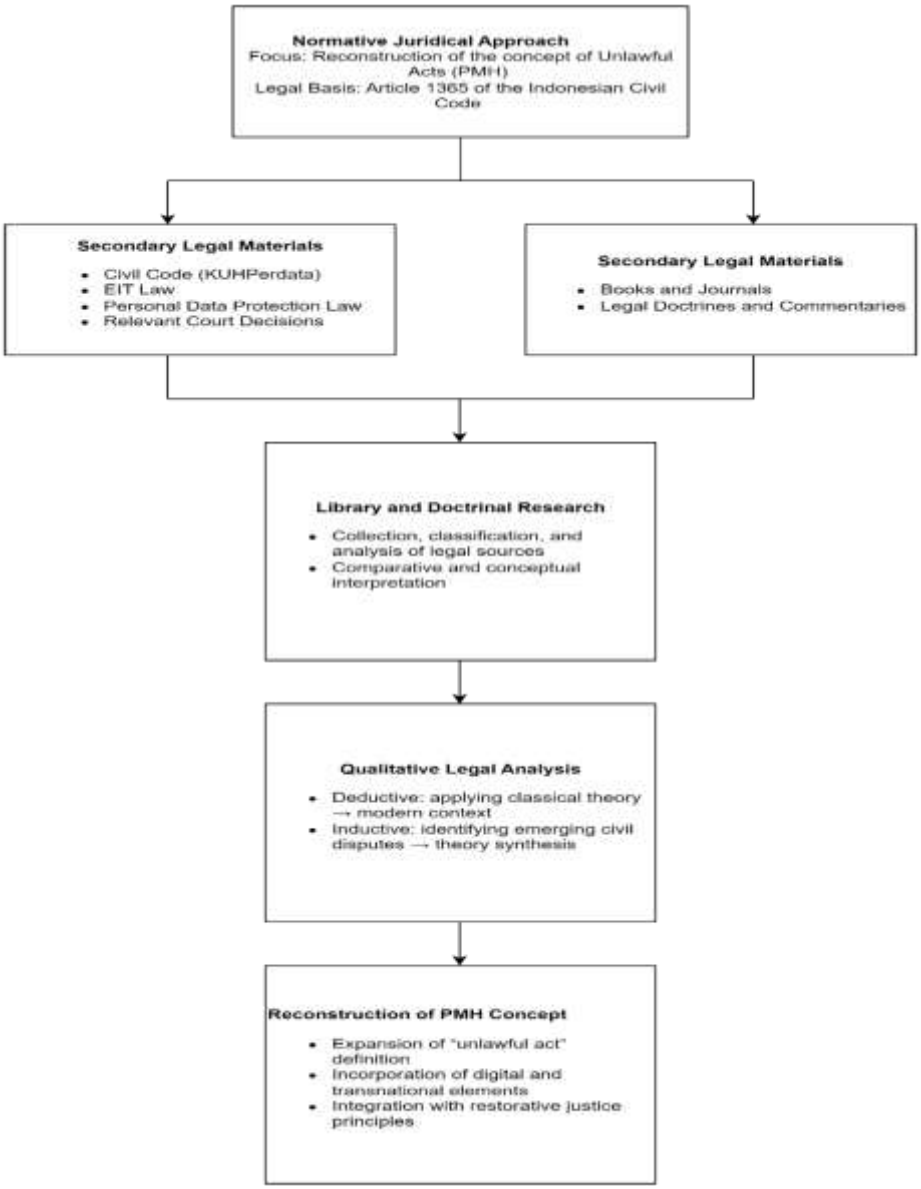
The analytical method employed is qualitative, utilizing both deductive and inductive reasoning. Deductive analysis is applied to trace the implications of classical legal theories within the modern context, while inductive analysis is used to identify emerging patterns in civil disputes that necessitate the reconstruction of PMH. The analysis juxtaposes existing normative provisions with the evolving needs of contemporary society, leading to the formulation of a more responsive conceptual model.

In addition, this research relies on a conceptual approach, which involves examining legal doctrines at both national and international levels. This approach is essential since PMH is not a static concept but one that continually evolves alongside societal developments. As such, reconstructing the PMH framework requires an in-depth understanding of civil law theories, liability doctrines, and principles of substantive justice. By combining normative and conceptual approaches, the study seeks to provide sharper analysis and stronger arguments in proposing a reconstructed model of PMH.

Ultimately, the methodological design of this research aims to yield both academic

and practical contributions. On the academic side, it enriches civil law scholarship by offering new perspectives on the PMH doctrine. On the practical side, the findings are expected to serve as a reference for policymakers, judges, lawyers, and other legal practitioners in handling contemporary civil disputes. In short, the chosen methodology bridges the gap between legal theory and legal practice, ensuring that the reconstruction of PMH becomes a meaningful response to the challenges of the modern era.

Figure 1. Research Framework Diagram



3. Results and Discussion

1. The Classical Concept of Unlawful Acts

Perbuatan Melawan Hukum (PMH), or unlawful acts, represents a foundational concept in Indonesian civil law and plays a critical role in shaping civil dispute resolution. This principle serves as a legal instrument allowing aggrieved parties to claim compensation, while simultaneously delineating behaviors deemed unacceptable in societal interactions. Historically, the concept of PMH in Indonesia is grounded in Article 1365 of the Civil Code (Kitab Undang-Undang Hukum Perdata), which states: "Any act that violates the law and causes harm to another obliges the person at fault to compensate for the resulting damage." This concise provision comprises four essential elements: the existence of an unlawful act, the presence of fault by the actor, the occurrence of harm to another party, and a causal link between the act and the harm (Subekti, 2008).

Initially, the interpretation of "unlawful act" was narrow and formalistic. The term was primarily associated with conduct that directly contravened written statutory provisions. In other words, an act could only be classified as PMH if there was an explicit violation of positive law. This legalistic view reflects the characteristics of the Continental European legal system of the time, which emphasized the supremacy of codified law as the principal source of legal authority. Consequently, even when an act caused evident harm, it would not be deemed unlawful unless it breached a specific statute.

This restricted understanding began to evolve significantly following a landmark decision by the Dutch Supreme Court (Hoge Raad) in 1919 in the case of Lindenbaum vs. Cohen. The dispute arose from a business rivalry between Lindenbaum and Cohen. Cohen engaged in unethical business practices, including exploiting Lindenbaum's employees to obtain competitor trade secrets. Normatively, Cohen's conduct did not violate any written law, yet it clearly inflicted harm on Lindenbaum. The Hoge Raad's ruling expanded the meaning of "unlawful act" beyond mere statutory violations to encompass actions that contravened propriety, societal morality, and prevailing social norms (Ridwan, 2016).

The Lindenbaum vs. Cohen case is regarded as a milestone in the development of modern civil law, marking the emergence of a broader understanding of PMH. This broader interpretation reflects the open-system principle in civil law, which allows the legal

framework to adapt to social dynamics. Under this expanded view, judges are empowered to recognize an act as unlawful even in the absence of an explicit statutory prohibition, provided that it contradicts principles of propriety and justice.

In the Indonesian context, although Lindenbaum vs. Cohen originates from Dutch jurisprudence, its influence extended to the Dutch East Indies and subsequently independent Indonesia. The broader notion of PMH became widely applied by Indonesian judges in resolving civil disputes, particularly in cases involving social and moral norms not explicitly codified in legislation.

Despite this expansion, classical PMH still exhibits notable limitations. First, the scope of "propriety" and "morality" remains inherently abstract and subjective. Judicial interpretations of these norms can vary, potentially creating legal uncertainty. For example, what one judge deems inappropriate in a modern business dispute may be considered acceptable by another, depending on prevailing social standards.

Second, classical PMH places significant emphasis on the presence of fault (schuld) by the actor. To obtain compensation, the injured party must prove that the act occurred due to negligence or intentional wrongdoing. In contemporary contexts, particularly those involving technology or automated systems, this requirement often poses difficulties. For instance, in incidents arising from software malfunctions or digital system failures, damages may result not from direct human fault but from systemic failures. Under the classical framework, such events are challenging to qualify as PMH.

Third, classical PMH predominantly focuses on individual legal relationships between the actor and the victim. However, many contemporary PMH cases involve collective or public dimensions, such as environmental pollution affecting entire communities, mass consumer rights violations due to defective products, or the dissemination of false information (hoaxes) online, which can generate widespread social unrest. In these scenarios, the classical individual-centric paradigm of PMH proves inadequate.

Additional challenges stem from the complexity of legal relationships in the digital era. For example, in cases of personal data breaches due to platform provider negligence, it is difficult to classify the act as PMH if the traditional focus on individual fault is maintained. Nevertheless, the resulting harm is tangible and affects a broad user base. Such examples

highlight the urgent need to reconstruct PMH to address new forms of violations arising from digitalization and globalization.

Nonetheless, it is important to acknowledge the significant advancements brought by the classical concept of PMH. From its original narrow and statute-bound form, the concept has evolved into a more flexible and adaptive legal tool. The expansion achieved through Lindenbaum vs. Cohen created space for civil law to respond more effectively to social dynamics. This development reflects a functional approach to law, where the legal system is not merely a set of codified rules but also a mechanism for achieving substantive justice.

From a legal philosophy perspective, the classical PMH framework demonstrates a paradigm shift from rigid legal positivism toward a more sociological and realistic approach. Initially, law was perceived as a formal and certain set of rules. Through the evolution of PMH, however, law is increasingly viewed as a living institution that must continuously align with evolving social, moral, and ethical values. In other words, law cannot be detached from social reality, as its primary purpose is to protect societal interests and maintain order.

Therefore, despite its limitations, the classical concept of PMH remains essential for study and understanding. It provides the foundational framework for the development of modern civil law and offers an initial lens through which the need for legal reform in contemporary contexts can be assessed. As legal scholars often emphasize, mastering the classical understanding of PMH constitutes the first step toward developing a more relevant and effective doctrine for present-day challenges.

2. Challenges in Modern Civil Disputes

The structure of civil disputes in Indonesia has undergone significant transformation in recent decades. Traditionally, disputes were relatively straightforward, mostly revolving around breach of contract, simple torts, or ownership conflicts. The legal frameworks developed in the early codifications of civil law, such as the Indonesian Civil Code (KUHPerdata), were adequate to address these disputes because they assumed direct, individual relationships between the parties involved. However, contemporary society has evolved rapidly, and these traditional frameworks often fail to capture the complexity of modern disputes.

One of the most significant drivers of this complexity is technological advancement.

With the widespread adoption of digital platforms, e-commerce, and online financial services, commercial transactions are increasingly conducted electronically. This transformation has facilitated economic growth but has also introduced unprecedented legal challenges. For instance, disputes may arise from system errors, cyber fraud, or unauthorized access to confidential data, situations that the classical doctrine of civil liability does not explicitly regulate.

In digital disputes, the question of responsibility becomes intricate. Unlike traditional torts, where an individual's fault is clearly identifiable, harm in a digital context may result from complex software interactions, systemic vulnerabilities, or multiple actors across jurisdictions. Determining the scope of liability in such scenarios requires reinterpretation of the classical principles of Perbuatan Melawan Hukum (PMH) to accommodate indirect or collective causation (Nasution, 2021).

Another challenge stems from the value and protection of personal data. In modern society, personal information is considered an asset with significant economic and social value. Unauthorized use, leaks, or theft of personal data can inflict widespread harm, including identity theft, financial loss, and reputational damage. Classical PMH frameworks, which focus on direct causation and individual fault, often fail to adequately address the harm caused by digital breaches affecting multiple victims simultaneously (Putri, 2022).

Beyond digital issues, environmental degradation has emerged as a central concern in modern civil disputes. Cases of water and air pollution, deforestation, and ecosystem destruction increasingly involve corporate entities whose activities produce wide-reaching impacts. Traditional PMH, which emphasizes interpersonal disputes and compensation for individual harm, struggles to provide justice for collective or long-term environmental damage.

Environmental disputes also raise unique evidentiary challenges. Quantifying damages, establishing causal links, and identifying responsible actors in cases of environmental harm often demand scientific expertise and comprehensive environmental assessments. This multidimensionality exceeds the capabilities of classical PMH, which was designed for clear-cut, individual claims (Wahyudi, 2019).

The globalization of commerce further complicates civil disputes. International trade,

cross-border investment, and multinational contracts introduce layers of complexity that classical PMH does not fully address. Modern disputes may involve multiple legal jurisdictions, differing contractual standards, and transnational norms, creating gaps between domestic law and global commercial expectations.

In addition, public expectations of justice have evolved. Society increasingly demands not only legal remedies but also substantive justice that recognizes harm beyond financial loss. For example, consumers harmed by defective products expect accountability, sometimes invoking strict liability principles rather than demonstrating individual fault. These expectations challenge the fault-based paradigm of classical PMH (Syahrani, 2020).

Class action lawsuits illustrate another modern challenge. Mass claims, whether for consumer rights, environmental damage, or data breaches, involve collective harm affecting hundreds or thousands of individuals. Classical PMH, which centers on individual claims, lacks mechanisms for managing collective disputes, including proportional compensation, aggregation of claims, and efficient judicial processes.

Litigation in mass disputes also raises strategic and procedural concerns. Courts must navigate complex issues of representative plaintiffs, collective causation, and equitable remedies. Furthermore, adjudicating collective claims often requires balancing individual and collective interests, a task beyond the scope envisioned by traditional PMH frameworks.

Another layer of complexity arises from technological convergence and the use of automated decision-making systems. In scenarios where algorithms or artificial intelligence contribute to harm, assigning responsibility becomes challenging. Legal systems must consider whether developers, operators, or users bear liability, and under what conditions, expanding the conventional understanding of “fault” in civil law.

Modern civil disputes also intersect with regulatory frameworks. Data protection laws, consumer protection statutes, environmental regulations, and cross-border trade rules create a complex legal landscape. These overlapping regulations necessitate a more flexible approach to PMH, incorporating principles from multiple legal domains and ensuring consistency with contemporary societal norms.

Cybersecurity threats, in particular, highlight the tension between technological innovation and legal liability. Companies may face lawsuits not only for breaches but also for

failing to implement adequate security measures. Such cases test the boundaries of PMH, demanding reinterpretation of duty of care and foreseeability in digital contexts.

The pace of technological change exacerbates the problem. Legal systems, often slow to adapt, risk being outpaced by innovations in fintech, e-commerce, and social media platforms. Courts and legislators must proactively adapt PMH concepts to remain relevant, ensuring that victims of modern harms receive effective remedies.

Social media and information dissemination introduce yet another challenge. Defamation, misinformation, and reputation damage can occur rapidly and widely, affecting individuals and organizations simultaneously. Classical PMH frameworks, focused on identifiable interpersonal harm, struggle to address diffuse and real-time damage affecting thousands of potential victims.

Moreover, public policy considerations increasingly influence modern civil dispute resolution. Courts may seek to incorporate principles of restorative justice, consumer protection, and environmental stewardship. Such approaches aim to provide broader societal benefits, requiring an expansion of PMH beyond its traditional, narrow fault-based focus.

The need for legal innovation is clear. Solutions may include revising the legal definition of PMH, integrating collective liability mechanisms, establishing alternative dispute resolution platforms, and embedding flexibility to handle digital and environmental harms. These measures are crucial to align civil law with the expectations of modern society and global standards.

In conclusion, the challenges of modern civil disputes in Indonesia are multifaceted. Digitalization, environmental issues, globalization, evolving societal expectations, and collective claims all necessitate a fundamental reconsideration of classical PMH. Adapting legal doctrines to meet these realities is essential to ensure effective, equitable, and contemporary protection of rights in an increasingly complex legal environment.

3. Limitations of the Classical Concept of Unlawful Acts (PMH) in Modern Context

The classical concept of Unlawful Acts, as stipulated in Article 1365 of the Indonesian Civil Code, has long served as a foundational instrument to provide legal protection for those who suffer harm. This framework, deeply rooted in civil law traditions, emphasizes the elements of fault, causation, and compensable loss as essential criteria to establish liability.

Yet, as society has evolved, the rigid structure of classical PMH has revealed its limitations in addressing the complexities of modern civil disputes.

One of the primary constraints lies in the requirement of fault, or schuld, which remains central to proving liability under classical PMH. The traditional approach presumes that damages must result from an individual's intentional or negligent conduct. However, in contemporary contexts, many harms arise not from personal wrongdoing but from systemic failures, technological malfunctions, or inherent business risks.

Consider, for example, the growing prevalence of cyberattacks and digital data breaches. When a user's personal information is compromised, it is often challenging to pinpoint the responsible party. Hackers may operate anonymously or from foreign jurisdictions, and the platforms themselves may have robust security protocols yet still experience breaches. Under the fault-based classical PMH framework, establishing liability is often cumbersome, leaving victims with inadequate remedies (Nasution, 2021).

Another limitation concerns the types of losses that classical PMH recognizes. Traditionally, the legal framework emphasizes tangible, material damages. Non-material harms such as violations of privacy, psychological distress, or reputational damage are often marginalized or compensated insufficiently. In the digital era, these non-material harms have become increasingly significant, exemplified by the widespread consequences of misinformation, online harassment, and reputational attacks (Syahrani, 2020).

Moreover, the classical framework demands a clear causal link between the wrongful act and the harm suffered. This linear causation model struggles to accommodate the diffuse and delayed nature of many contemporary harms. Environmental pollution, for instance, may have latent effects on communities and ecosystems that emerge over decades, spanning multiple generations. Similarly, algorithmic biases in digital systems can produce discriminatory outcomes without a clear, identifiable human agent directly responsible (Wahyudi, 2019).

In addition, the classical PMH framework is primarily designed to resolve individual disputes between clearly defined parties. Contemporary issues, however, often involve collective or mass harm. Cases of mass consumer rights violations, environmental disasters, or large-scale data breaches affect hundreds or even thousands of individuals. In these

scenarios, traditional PMH lacks the procedural mechanisms and doctrinal support for class actions or collective compensation schemes.

The limitation extends to cross-border disputes as well. In today's interconnected economy, civil wrongs may involve parties from multiple jurisdictions. For example, a consumer in Indonesia could suffer harm caused by an international e-commerce company operating from abroad. Applying Article 1365 in such contexts encounters obstacles related to jurisdiction, choice of law, and enforceability of judgments, underscoring the need for PMH to adapt to transnational contexts (Ridwan, 2016).

Furthermore, flexibility within classical PMH is inconsistently applied. Landmark cases such as Lindenbaum vs Cohen have extended the notion of "unlawful acts" to include breaches of propriety, morality, and social norms. While this expansion theoretically allows courts to consider societal standards, its practical application varies widely across cases, leading to legal uncertainty, especially in rapidly evolving domains like digital privacy and consumer protection.

The rigid emphasis on individual fault also clashes with contemporary concepts such as strict liability. In product liability, environmental torts, and data protection cases, victims may expect accountability even when no specific individual can be proven negligent. Classical PMH does not fully incorporate these emerging doctrines, limiting its effectiveness in protecting vulnerable parties.

Additionally, non-linear causation challenges the predictability of outcomes under classical PMH. Modern harms often result from a confluence of factors, including technology, organizational policies, and collective societal behaviors. Isolating one actor to establish liability is difficult, and traditional courts may struggle to adequately compensate all affected parties.

Modern societal expectations also expose another limitation. Citizens increasingly demand justice that reflects both substantive fairness and societal values. They are less concerned with formalistic proofs of fault and more interested in remedies that prevent future harm, compensate victims equitably, and reinforce ethical standards.

The rise of class actions and mass litigation highlights deficiencies in classical PMH. Collective claims necessitate procedural innovations, such as representative plaintiffs, pooled

claims, and proportional damages distribution. Classical doctrines, oriented towards dyadic disputes, are ill-equipped to accommodate these innovations.

Technological systems further complicate liability determinations. In automated decision-making and artificial intelligence, harm may arise without direct human intervention. Classical PMH, predicated on individual action and fault, does not provide clear guidance on whether system designers, operators, or users should bear responsibility.

The globalized economy amplifies these constraints. International trade, multi-jurisdictional contracts, and cross-border investments introduce legal ambiguities that classical PMH is not designed to resolve. Differences in national law, contract standards, and enforcement procedures create gaps that hinder effective dispute resolution.

Digital communication platforms exacerbate the problem. Social media, instant messaging, and online forums enable rapid dissemination of harmful content, leading to collective reputational damage and psychological harm. Classical PMH cannot easily quantify or attribute liability for such diffuse and rapidly spreading harm.

Another constraint involves regulatory integration. Modern disputes increasingly intersect with consumer protection laws, environmental regulations, and data privacy statutes. Classical PMH, confined to traditional civil law principles, cannot independently address the complexities of these overlapping legal frameworks.

Finally, the speed of societal and technological change often outpaces legal evolution. Emerging norms and expectations around privacy, environmental stewardship, and corporate responsibility demand more adaptable legal instruments. Classical PMH's limited responsiveness creates gaps in legal protection and uncertainty for both plaintiffs and defendants.

In summary, while the classical concept of PMH remains foundational in Indonesian civil law, it faces multiple limitations in the modern era. Fault-based liability, linear causation, narrow definitions of harm, individualistic focus, and domestic orientation all restrict its capacity to address contemporary disputes effectively. To remain relevant, PMH must evolve to accommodate collective claims, digital harms, cross-border disputes, and emerging societal expectations, ensuring comprehensive protection in an increasingly complex legal landscape.

4. Prospects of Constitutional Reform and Its Relevance for Indonesia

The discussion surrounding the prospect of constitutional reform in Indonesia, particularly regarding the President's authority to dissolve the House of Representatives (DPR), reflects an ongoing debate within the country's political and legal discourse. While the amendments to the 1945 Constitution have explicitly removed the possibility for the President to dissolve the DPR, academic debates on this issue persist, often in response to contemporary political challenges that raise questions about governance efficiency.

Historical experience underscores the risks associated with granting such powers to the executive. During the Guided Democracy era, the President exercised the authority to dissolve the legislature directly, and under the New Order, the DPR functioned in a largely subordinate role to the executive. These historical instances illustrate that the power to dissolve the legislature can be prone to misuse, potentially leading to authoritarian practices, which is why constitutional framers deliberately removed this authority to preserve the separation of powers.

Nevertheless, contemporary political dynamics present new challenges that cannot be ignored. High levels of party fragmentation, conflicting parliamentary interests, and potential legislative deadlocks often create uncertainty about the stability of government operations. In scenarios where the DPR systematically rejects key government agendas without clear justification, some argue that a presidential mechanism to resolve impasses could theoretically restore political functionality.

Supporters of granting the President limited dissolution powers draw comparisons to parliamentary systems such as those in the United Kingdom, Japan, or India, where the dissolution of parliament serves as a democratic mechanism to reestablish legitimacy through elections. In these systems, dissolving the legislative body can reset political mandates and ensure that government actions reflect public consent.

However, such analogies must be approached with caution. Presidential systems, including those in the United States and Brazil, differ fundamentally from parliamentary regimes because both the executive and the legislature derive legitimacy directly from the electorate. Consequently, no branch holds authority to dissolve the other, making the direct transfer of parliamentary mechanisms into a presidential framework inappropriate.

In Indonesia, post-reform constitutional design reinforces a strong presidential

system. Reintroducing the power to dissolve the DPR would effectively blur the distinction between presidential and parliamentary models, shifting the system toward a semi-presidential arrangement and potentially destabilizing established institutional balances.

Arguments supporting the restoration of dissolution authority emphasize its potential as a corrective tool against legislative inefficiency or obstruction. Proponents suggest that such powers could be strictly regulated, for example, by requiring prior approval from the Constitutional Court or another independent institution, to prevent abuse while still providing a mechanism to address severe legislative deadlock.

Critics, on the other hand, argue that reinstating this authority fundamentally contradicts the principles of presidentialism and carries a high risk of enabling authoritarian tendencies. They contend that political deadlocks should be resolved through institutional dialogue, party negotiations, and mediation rather than granting the executive a potentially unilateral and coercive tool.

From an institutional reform perspective, alternative solutions exist that do not require constitutional amendments. Enhancing executive-legislative relations, strengthening political parties, and improving internal party accountability can mitigate legislative fragmentation and reduce the likelihood of deadlocks. Such measures can achieve stable governance without resorting to extraordinary presidential powers.

Strengthening the party system could involve reducing the number of political parties, improving transparency in campaign financing, and enforcing internal accountability mechanisms. By consolidating party structures, the DPR would function more cohesively, and legislative obstruction could be minimized, thereby preserving stability within the presidential framework.

Legal mechanisms can also be optimized to resolve conflicts between the executive and legislature. Judicial review, for example, allows courts to assess the constitutionality of legislative actions that impede government policy, providing a lawful means to address disputes without undermining the separation of powers.

The long-term discourse surrounding presidential authority to dissolve the DPR should be framed as an academic reflection rather than an immediate reform agenda. Key questions include whether Indonesia's purely presidential system aligns with its multi-party

political landscape or whether a semi-presidential model would provide greater flexibility in managing political impasses.

Historical lessons caution against hasty restoration of dissolution powers. Indonesia's experience demonstrates that concentrated executive authority can threaten democratic consolidation. Any attempt to reintroduce such powers must carefully weigh the risks of undermining democratic institutions and destabilizing governance structures.

Contemporary challenges require balancing government stability with democratic accountability. Citizens increasingly demand that political institutions operate efficiently while adhering to constitutional principles, emphasizing the importance of reform strategies that strengthen existing systems rather than expanding executive prerogatives.

Restoring dissolution powers risks creating unintended consequences. Even with legal safeguards, granting the President the ability to dissolve the DPR could incentivize strategic manipulation of legislative processes, reduce parliamentary independence, and weaken checks and balances fundamental to democratic governance.

A more sustainable approach is to focus on enhancing the effectiveness of the existing constitutional framework. Strengthening democratic culture, improving legislative efficiency, and fostering transparent executive-legislative interactions can resolve many issues that proponents of dissolution powers cite, without compromising institutional integrity.

By reinforcing party structures, implementing transparent policy-making processes, and enhancing legal mechanisms for dispute resolution, Indonesia can maintain a stable, accountable government while adhering to the principles of constitutional democracy. Such reforms offer practical solutions that address contemporary challenges without the need for drastic constitutional changes.

In conclusion, the relevance of the debate over presidential authority to dissolve the DPR lies in assessing the balance between government stability and democratic accountability. Restoring such powers is not a solution to existing governance challenges; rather, it risks introducing new political and constitutional vulnerabilities. The focus should remain on consolidating and strengthening existing institutions, ensuring they function effectively, transparently, and in line with the constitutional aspirations of Indonesia's ongoing democratic development.

5. Theoretical and Practical Implications of Reconstructing Presidential Authority in the Context of Indonesian Democracy

The discussion surrounding the potential reconstruction of presidential authority to dissolve the House of Representatives (DPR) extends beyond constitutional and normative dimensions, reaching into both theoretical and practical considerations in the study of constitutional law and the practice of democracy in Indonesia.

From a theoretical perspective, this issue prompts critical debates regarding the coherence of Indonesia's post-amendment presidential system. The presidential system is founded on a strict separation of powers among the executive, legislative, and judiciary, with each branch deriving legitimacy directly from the electorate. Therefore, granting the President authority to dissolve the DPR could create a fundamental contradiction, as it would allow one popularly elected body to invalidate the mandate of another equally democratically chosen institution (Asshiddiqie, 2006).

Such a contradiction would undermine the essential checks and balances that are central to the functioning of a presidential system. The principle of mutual oversight between branches ensures that no single institution can dominate decision-making processes or compromise the integrity of democratic governance. Introducing dissolution powers could therefore destabilize this delicate balance.

Practically, the discourse cannot be separated from the real political dynamics faced in Indonesia. The nation's multi-party system, pragmatic political bargaining, and frequent legislative deadlocks complicate the effective implementation of governmental agendas. In practice, the President may encounter obstacles in executing policies due to strategic or obstructionist behaviors by the DPR.

In light of these practical challenges, some scholars and political analysts argue for granting the President limited dissolution powers as a corrective mechanism against prolonged legislative deadlock. Such powers could theoretically enable the executive to overcome political impasses that hinder governance and policy implementation.

Historical experience, however, demonstrates the risks of concentrating excessive authority in the presidency. During Indonesia's Guided Democracy era and under the New Order, extensive executive powers were often misused, resulting in authoritarian tendencies

and a weakening of democratic institutions. Therefore, any consideration of reconstructing presidential authority must be grounded in a critical and cautious framework rather than being treated as an immediate solution to political challenges.

The potential implications of granting dissolution authority extend to the quality of democracy itself. While the measure might enhance governmental efficiency, it could simultaneously weaken democratic norms by enabling a resurgence of executive dominance. Indonesia's democratic consolidation is ongoing, and institutional stability remains fragile, making the preservation of checks and balances essential.

A more constructive approach emphasizes the reinforcement of alternative mechanisms to manage executive-legislative tensions. For instance, expanding the role of the Constitutional Court in mediating disputes between branches could provide a legal and impartial solution without altering the balance of power.

Strengthening the party system is another viable strategy. Simplifying the number of political parties, enhancing transparency in political financing, and improving internal accountability could reduce legislative fragmentation and prevent prolonged deadlocks, thereby preserving governmental stability.

Transparency and accountability measures within the DPR itself are critical for ensuring effective legislative oversight while minimizing obstructionist practices. By promoting responsible parliamentary behavior, the executive can function more efficiently without the need for extraordinary dissolution powers.

From a theoretical standpoint, the debate also raises fundamental questions regarding the suitability of Indonesia's purely presidential system. Some argue that a semi-presidential model might offer greater flexibility in managing political impasses, allowing for more adaptive governance while maintaining democratic legitimacy.

Should future reforms consider a shift toward semi-presidentialism, discussions about presidential authority to dissolve the DPR might gain relevance. Such a transition would require careful deliberation to ensure that executive powers are balanced with parliamentary safeguards and that democratic principles remain intact.

Conversely, if Indonesia remains committed to a strengthened presidential system, granting the President dissolution authority would conflict with the constitutional framework

established through four amendments to the 1945 Constitution. In this context, the debate transcends technical institutional concerns and touches on broader ideological choices about the country's democratic trajectory.

Practically, any attempt to expand presidential authority risks unintended consequences, such as strategic manipulation of legislative processes or weakening of parliamentary independence. Such outcomes would be detrimental to Indonesia's ongoing democratic consolidation.

Instead of constitutional amendments, pragmatic solutions should focus on reinforcing the effectiveness of existing mechanisms. Judicial review, enhanced inter-branch dialogue, and political negotiation can provide lawful and democratic methods to address conflicts without compromising institutional balance.

Moreover, preserving institutional integrity requires long-term strategies that strengthen democratic culture, promote civic engagement, and support professional and accountable political parties. These strategies create a resilient political system capable of managing conflicts within the established constitutional framework.

In summary, the theoretical and practical implications of reconstructing presidential authority in Indonesia reveal a tension between efficiency in governance and the preservation of democratic principles. While the idea might address some immediate executive challenges, it carries substantial risks to the stability and quality of democracy.

Ultimately, discussions about the potential reconstruction of presidential powers should prioritize institutional consolidation and democratic accountability. Strengthening party systems, legislative transparency, and judicial mediation mechanisms can resolve executive-legislative conflicts effectively, without resorting to measures that might undermine the foundational principles of Indonesia's presidential system.

Figure 2. Conceptual Flow of Discussion on PMH Reconstruction



4. Conclusion

Based on the discussion of the classical concept of tortious acts (Perbuatan Melawan Hukum or PMH) and its subsequent development, it can be concluded that PMH serves as a fundamental pillar of Indonesian civil law, functioning as a mechanism to protect both individual rights and broader societal interests. Initially, PMH was narrowly defined, limited to violations of written statutes as outlined in Article 1365 of the Indonesian Civil Code. This

legalistic-formal approach positioned legislation as the sole benchmark for determining the existence of unlawful conduct. However, this paradigm proved insufficient when addressing actions that clearly caused harm but were not explicitly regulated in statutory law.

A significant shift occurred with the 1919 Lindenbaum vs. Cohen ruling, which broadened the definition of "unlawful acts" to include not only violations of legislation but also actions contrary to societal norms of propriety, ethics, and principles of justice. This expansion marked a milestone in the evolution of modern civil law, allowing judges greater flexibility to assess harmful acts even when they were not explicitly addressed in written law. Consequently, PMH transformed from a closed system into an open system, capable of adapting to dynamic social realities.

Despite its progressive nature for its time, the classical concept of PMH possesses notable limitations. Elements such as propriety and ethical standards are often abstract and difficult to measure, resulting in legal uncertainty. The emphasis on individual fault is also less suitable in addressing contemporary cases, including technological accidents or damages arising from system failures. Moreover, the individualistic orientation of classical PMH is insufficient for handling collective or public-dimensioned cases, such as environmental pollution, mass consumer rights violations, and data breaches in the digital era.

Therefore, while the classical concept of PMH remains important as a foundational and theoretical reference, there is a pressing need to reconstruct its understanding in a broader, more comprehensive, and contextual manner. Modern PMH must be capable of addressing the challenges of contemporary times, spanning technological developments, global economic interactions, and social issues with collective impact. By doing so, civil law can continue to serve as a living instrument of justice adaptive, effective, and able to safeguard societal interests more comprehensively.

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