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CIVIL DISPUTES BETWEEN GOVERNMENT AND INDIVIDUALS: A COMPARATIVE STUDY OF INDONESIA AND FRENCH LEGAL SYSTEM

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ABSTRACT

This study aims to compare the legal systems of Indonesia and France in handling civil disputes involving the government and individuals. The research highlights challenges related to judicial independence, procedural efficiency, and fair trial accessibility for private individuals in both countries. This study assesses legislative developments and procedural safeguards in both countries, examining their effectiveness in resolving disputes and identifying strengths and weaknesses. In Indonesia, the dual judiciary system separates the General Courts, which handle both civil and criminal cases, from the Administrative Courts, dedicated to disputes involving government bodies. In contrast, France's integrated legal approach under its administrative law tradition, overseen by the *Conseil d'État*, emphasizes separation of powers and judicial oversight to ensure government decisions comply with the rule of law. The French system incorporates corrective justice principles, offering comprehensive remedies to address losses in civil disputes, which differ significantly from Indonesia's approach. It underscores Indonesia's ongoing legal reforms aimed at enhancing judicial independence and France's robust administrative jurisprudence that checks executive power, offering insights to improve administrative justice and protect individual rights in various legal contexts.

1. Introduction

In Indonesia, there is ongoing confusion among the public and law enforcement officials about which court has jurisdiction over civil lawsuits against the government. This issue is particularly relevant in cases involving unlawful acts by the government in a civil context. This confusion is evident from cases of unlawful acts involving the government, which should fall under the jurisdiction of the State Administrative Court, but are instead filed in the General Court or vice versa, leading

to such lawsuits being declared inadmissible (*niet ontvankelijk verklaard*).[1] Civil dispute settlement is supposedly a simple matter; however, with state officials involved, it subsequently becomes rather complex and a difficult ordeal for private individuals to acquire justice.

In a contractual relationship, the burden of responsibility and the demand for compensation or rights apply to any legal entity that violates the law, regardless of whether the legal entity is an individual, enterprise, or government body.[2] The mechanisms and frameworks governing civil disputes between the government and individuals are pivotal in ensuring justice and accountability, especially when it comes to a dispute involving tort, which is unfamiliar to the Indonesian legal system. In Indonesia, the administrative court system functions within a dual judiciary framework, wherein the General Courts handle both civil and criminal cases, while the State Administrative Courts specifically manage conflicts involving government bodies. This dual system underscores the procedural intricacies in maintaining a balance between governmental power and individual rights.[3] However, the Indonesian system grapples with challenges related to judicial independence, procedural efficiency, and ensuring fair trials for private individuals.[4] In contrast, the French legal system adopts a more integrated approach rooted in its established administrative law tradition, with the *Conseil d'État* serving as the pinnacle of administrative judiciary.

The French model is distinguished by its emphasis on the separation of powers and stringent judicial oversight over administrative actions, thereby ensuring that government decisions adhere to the rule of law.[5] Furthermore, France's incorporation of corrective justice principles offers comprehensive remedies aimed at restoring losses in civil disputes, a concept relatively unfamiliar in the Indonesian context. Key principles such as legality, proportionality, and the protection of fundamental rights form the cornerstone of the French administrative judiciary. This comparative study investigates the legal frameworks and procedures in Indonesia and France, focusing on how each system addresses the balance between governmental authority and individual rights. Both countries offer unique perspectives through their distinct judicial and administrative structures, providing valuable insights into the effectiveness and fairness of their legal processes.

Furthermore, it compares legislative developments and procedural safeguards in both countries to evaluate their effectiveness in resolving civil disputes between government officials and individuals. By highlighting the strengths and weaknesses of each system, such as Indonesia's ongoing legal reforms to bolster judicial independence and France's robust administrative jurisprudence that effectively checks executive power, the research seeks to provide critical insights into

[1] Mutia Jawaz Muslim., Tinjauan Yuridis Terhadap Keputusan Tata Usaha Negara Yang Merupakan Perbuatan Hukum Perdata, *Jurnal Fundamental Justice*, Vol.1, no.1, 2020, page.101.

[2] Ridwan H., *Hukum Administrasi Negara*, Jakarta, Rajawali Press, 2013, page.339.

[3] Jeremy Webber., A Democracy-Friendly Theory of the Rule of Law, *Hague Journal on the Rule of Law*, Vol.16, no.2, 2024, page.357.

[4] Soerjono Soekanto., *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta, Raja Grafindo Persada, 2008, page.45

[5] French Ministry of Justice., *The French Legal System*, Secrétariat général, Service des affaires européennes et internationales (SAEI), Département de l'information et de la communication. (2012)

enhancing administrative justice. Ultimately, this study aspires to foster greater accountability and ensure the protection of individual rights against governmental actions across diverse legal landscapes.

This study offers novelty by addressing the jurisdiction of administrative courts over unlawful government acts, a topic that has been underexplored in previous research. While earlier studies have touched on aspects of dispute resolution and arbitration, they have not specifically examined this issue. In the realm of dispute resolution and arbitration, Indonesia faces challenges in ensuring legal certainty and fairness, as explored in studies on arbitration principles in consumer disputes[6] and contract formation.[7] Legal certainty is further examined in the context of Islamic economic civil cases and business partnerships.[8] In administrative law, Indonesia's jurisdictional domain and the evolving role of administrative courts are analyzed, focusing on issues such as the competency and effectiveness of administrative courts in adjudicating state financial disputes and election-related matters.[9] Furthermore, the challenges of enforcing administrative decisions are addressed, pointing to gaps in administrative enforcement and the need for stronger judicial independence.[10] On the law enforcement front, studies provide an analysis of legal reforms post-Reformasi,[11] while others examine the resolution of conflicts in production sharing contracts and tax treaties.[12] While many studies explore legal decision-making, dispute resolution, and the protection of rights within administrative court frameworks,[13] few address the theoretical foundations and

[6] Azwir Agus., Embodiment Principles of Clearing Justice in Consumer Arbitration, *Hasanuddin Law Review*, Vol.4, no.3, 2018, page.385.

[7] Gary F Bell., *Formation of Contract and Stipulations for Third Parties in Indonesia*, Oxford, Oxford University Press, 2018, page.371.

[8] Usep Saepullah., Legal Certainty of Arbitration in The Settlement of Islamic Economic Civil Cases in The Perspective of Positive Law in Indonesia, *Al-'Adalah*, Vol.19, no.2, 2022, page.281. See to, Anggit Metha Mustika Yon Surya, Herman Suryokumoro, and Riana Susmayanti., Legal Certainty in Limited Partnership via System of Business Entity Administration in Directorate of Administration of Common Law, *Jurnal IUS Kajian Hukum dan Keadilan,* Vol.9, no.2, 2021, page.321.

[9] Helmi Helmi, Fauzi Syam, Retno Kusniati, and Harry Nugraha., The competency of administrative court in adjudicating state financial losses report dispute in Indonesia, *Sriwijaya Law Review*, Vol.4, no.1, 2020, page.49. See to, Eny Kusdarini, Anang Priyanto, Sri Hartini, and Suripno Suripno., Roles of justice courts: settlement of general election administrative disputes in Indonesia, *Heliyon*, Vol.8, no.12, 2022, Page.32. See to, Enrico Parulian Simanjuntak., The Rise and The Fall of The Jurisdiction of Indonesia's Administrative Courts: Impediments and Prospects, *Indonesia Law Review*, Vol.10, no.2, 2020, page.3.

[10] Hendry Julian Noor, Kardiansyah Afkar, and Henning Glaser., Application of Sanctions Against State Administrative Officials Failing to Implement Administrative Court Decisions, *Bestuur*, Vol.9, no.1, 2021, page.57. See to, Diding Rahmat, Sudarto Sudarto, Sarip Sarip, Sujono Sujono, and Muhammad Faiz Aziz., The Urgency of Administrative Law in Light of Ius Constituendum Regarding the Role of Village Heads, *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, Vol.7, no.1, 2024, page.61.

[11] Yanto Sufriadi., The progress of Indonesian law enforcement reform after 25 years of the reform movement, *Asian Affairs: An American Review*, Vol.51, no.1, 2024, page.31

[12] Maria RUD Tambunan and Gabriel Muara Thobias Silalahi., Resolving Conflicts Between Production Sharing Contracts and Tax Treaties in Indonesia, *Intertax*, Vol.52, no.2, 2024, page.157.

[13] Suparto Suparto, Fadhel Arjuna Adinda, Azamat Esirgapovich Esanov, and Zamira Esanova Normurotovna., Administrative Discretion in Indonesia & Netherland Administrative Court: Authorities and Regulations, *Journal of Human Rights, Culture and Legal System*, Vol.4, no.1, 2024, page.91. See to, Efik Yusdiansyah., The State Administrative Decision-Making in the Adoption of Maslahah Mursallah Principle in Indonesia, *Sriwijaya Law Review*, Vol.7, no.2, 2023, page.291. See

principles of resolving civil disputes between the government and individuals. Thus, this study fills a gap by focusing on the jurisdictional challenges of civil disputes between the government and individuals in Indonesia, with a comparison to France—a topic that has not been sufficiently explored in the existing literature.

This paper is structured as follows. First, the introduction provides a brief overview of the research topic, highlighting the importance of civil dispute resolution between the government and individuals. Second, the methodology section outlines the research approach, data collection techniques, and analytical framework employed in the study. The core of the paper lies in the results section, which is divided into four subsections. The first subsection delves into the Indonesian legal system, examining its mechanisms for resolving civil disputes involving the government. The second subsection focuses on the French legal system, exploring its approach to handling similar disputes. Subsequently, the third subsection provides a reformulation of civil dispute proceedings between the government and private individuals in Indonesia. Finally, the conclusion summarizes the key findings and discusses the implications of the research.

2. Research Methods

This study applied a library research method, which involves examining various literature and other relevant sources. The research approach taken in this paper includes both a statutory approach and a comparative approach, focusing on the civil dispute and administrative proceedings between private individuals and government officials in Indonesia and France. The author uses qualitative data processing and analysis techniques, collecting data and then analyzing it qualitatively. The findings are presented descriptively, offering an overview of the issues closely related to the topic of this study.

3. Results

3.1. Indonesian Legal System in Resolving Civil Disputes Between the Government and Individuals

In the bureaucratic processes of governance, it is undeniable that the government, in its daily activities, engages in business actions with non-government entities through cooperation in specific fields, as outlined in agreements with certain commercial aspects. The government's involvement in these contractual relationships differs from typical commercial contracts because these contracts are not purely private law acts but also fall within the scope of public law. The government's participation in these contracts indicates that its actions can be

to, Sugeng Sugeng., Legal Protection for Recipients of Foreign Franchise Rights in Indonesia, *Indonesia Law Review*, Vol.9, no.2, 2019, page.11. See to, Achmad Badarus Syamsi and Galuh Widitya Qomaro., Perlindungan Hukum Perjanjian bagi Hasil Petani Garam di Kabupaten Pamekasan dalam Perspektif Hukum Islam dan Hukum Perdata, *Al-Manahij: Jurnal Kajian Hukum Islam*, Vol.14, no.1, 2020, page. 41. See to, Dian Berkah and Tjiptohadi Sawarjuwono., Inheritance wealth distribution model and its implication to economy, *Humanities & Social Sciences Reviews*, Vol.7, no.3, 2019, page.7. See to, Rini Maryam and Sulistyowati Irianto., Exploring Efficacy: A Study of Simple and Complex Approaches to Divorce Mediation, *Lentera Hukum*, Vol.10, no.3, 2023, page.331. See to, Ichsan Muhajir and Nabitatus Sa'adah., Pertimbangan Hukum Hakim Dalam Penetapan Dismissal Terhadap Keputusan Tata Usaha Negara Yang Berasal Dari Badan Peradilan, *Law Reform*, Vol.15, no.2, 2019, page.299.

classified as civil actions within the administration of governmental functions.[14] This means that if the actions of civil law entities for government affairs by state administrative bodies or officials are possible, it is not impossible to divide public law provisions (state administration) that infiltrate and influence civil law regulations.[15]

The role of the government in cooperating with non-government entities is considered to have its own issues, particularly in the law enforcement process and dispute resolution. Terminologically, dispute resolution refers to efforts to end conflicts that occur within society. To resolve disputes, it is necessary to formulate appropriate laws and regulations. Essentially, no civil dispute is beyond resolution, provided there is mutual willingness among the parties to settle the conflict. Dispute resolution can be dichotomously categorized by form and nature. By form, it is divided into "court dispute settlement" (through judicial institutions) and "out-of-court dispute settlement" (outside judicial institutions). By nature, it is divided into "adjudication" and "non-adjudication."

The process of dispute resolution through litigation is considered a last resort (*ultimum remedium*) for the parties involved after non-litigation settlement fails to reach an agreement.[16] The resolution of civil disputes through the courts is pursued by the parties as a final option when deliberation cannot provide satisfactory outcomes. The regulations governing adjudicative authority have been seen as too general and insufficiently firm, leading to biased implementation of procedural law by judges. To avoid such biases, special regulations are needed. In resolving cases before the court, the authority to adjudicate already has limitations outlined by law, particularly in the Law on Judicial Power. Disputes over adjudicative authority between courts and other institutions should be minimized to ensure that fair trials are applied and legal certainty is given in decisions made by judges, who act as representatives of God based on the jurisdiction of judicial power conferred upon them by law.[17] As stipulated in Article 24, paragraph (1) of Law Number 48 of 2009 on Judicial Power, it is defined that:

> *"Judicial power is the power of an independent State to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the implementation of the State Law of the Republic of Indonesia."*

Therefore, judicial independence is imperative and must be strictly maintained, separate from the executive and legislative powers. As outlined in Article 24, paragraph (2) of the 1945 Constitution, and Article (2) in conjunction with Article 10, paragraph (2) of Law Number 4 of 2004, and Article (1) of Law Number 48 of 2009, the Supreme Court administers judicial power through subordinate bodies, including the General Court, Religious Court, Military Court, and State Administrative

[14] Sarah S. Kuahaty., Pemerintah Sebagai Subjek Hukum Perdata Dalam Kontrak Pengadaan Barang Atau Jasa, *Sasi*, Vol.17, no.3, 2011, page.55.

[15] Philipus M. Hadjon., *Introduction to Indonesian Administrative Law*, Yogyakarta, Gadjah Mada University Press, 2008, page.150

[16] Nurmianingsih Amriani., *Alternative Mediation for Dispute Resolution in Court*, Jakarta, Grafindo Persada, 2012, page.16

[17] Hairul Maksum., Batasan Kewenangan Mengadili Pengadilan Umum Dalam Penyelesaian Sengketa Perbuatan Melawan Hukum Yang Melibatkan Badan Negara Atau Pejabat Pemerintah, *Juridica*, Vol.2, no.1, 2020, page.12.

Court. From a jurisdictional perspective, each court possesses exclusive authority to adjudicate cases within its designated jurisdiction. This principle precludes other courts from interfering in matters that fall under the exclusive jurisdiction of a specific court. For instance, the District Court, as a General Court, lacks the authority to hear and try cases that fall under the exclusive jurisdiction of the State Administrative Court, which pertains to state administrative policy.[18]

In this context, the concept of unlawful acts in civil disputes (*Onrechtmatige Overheidsdaad*) impacts the jurisdiction to hear cases involving the government as a party. The regulatory changes raise fundamental questions about the boundaries of the legal realm of government actions. Specifically, it questions when the government's actions fall under administrative law and when they are considered civil law actions (*rechshandeling naar burgerlijk recht*).[19] This naturally raises questions about the legal framework governing government actions and the corresponding court's jurisdiction in dispute resolution. When analyzing the limitations of judicial authority in government-related disputes, it is crucial to distinguish between the civil law aspect (*Recht*) and the authority aspect (*Bevogheid*) of government actions.

From a civil law perspective, contemporary legal theory distinguishes between "authority" as the basis for a legal subject to perform an action under public law, and "right" as the basis for a legal subject to perform an action under civil law. Some academics differentiate between "authority" and "proficiency" (*bekwaamheid*),[20] although it is essentially an approach based on "rights" rather than "proficiency." Authority is derived from public law regulations and is specifically granted to certain government bodies or officials. Conversely, rights are derived from civil law regulations and are specifically granted to certain legal subjects.

In this context, authority (*bevogheid*) is granted to carry out government duties (*bestuurzorg*) for the benefit of public administration services. In contrast, rights (*recht*) are granted to enjoy material benefits or certain civil matters. Therefore, when the government acts to defend its rights, it is subject to civil law and becomes a civil law entity. However, when it acts based on its authority, it is subject to public law and administrative law. This means that when the government is defending its rights, it acts as a civil law entity, no longer as a public law entity. For example, in land law, the government can hold land rights such as Management Rights (*Hak Pengelolaan Lahan*/HPL), as outlined in Article 67, paragraph (1) of Agrarian Minister Regulation Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights, in conjunction with Article 2 of the Basic Agrarian Regulation Law Number 5 of 1960.

The dual nature of government bodies as public bodies and civil law entities is evident in everyday reality. Many government organizations and agencies, including

[18] Fadhila Restyana Larasati and Mochammad Bakri., Implementasi Surat Edaran Mahkamah Agung Nomor 4 Tahun 2016 Pada Putusan Hakim Dalam Pemberian Perlindungan Hukum Bagi Pembeli Beritikad Baik, *Jurnal Konstitusi*, Vol.15, no.4, 2018, page.900.

[19] Fellista Ersyta Aji., The meaning of the expansion of administrative court that covers factual actions, *Journal of Law and Legal Reform*, Vol.1, no.1, 2020, page.171. See to, Aries Saputro., Payment of Compensation for Officials Who Did Not Implement the Decision of the State Administrative Court, *Yuridika*, Vol.35, no.2, 2020, page.231.

[20] Philipus M. Hadjon., *Introduction to Indonesian Administrative Law*, Yogyakarta, Gadjah Mada University Press, 2008, page.152.

territorial bodies like states, provinces, and regencies, possess both governmental authority under public law and independence under civil law. As a civil law entity, a government agency can: (1) possess civil rights and (2) be a party to civil proceedings. Therefore, a government agency can assume the role of a civil law entity and engage in commercial law activities when it acts to protect its civil rights.

Furthermore, in terms of government authority, these actions can be categorized into two forms. The first category is factual actions (*feitelijk handelingen*), which refers to material actions or concrete events as defined in Article 1, number 8, in conjunction with Article 87 of the Government Administration Law. The second category is legal actions (*rechtsandelingen*), which refers to administrative legal implications. These legal actions can be unilateral (*eenzijdige*) or bilateral (*tweezijdige* or *meerzijdige*). The juridical basis of each government action influences the court's jurisdiction to adjudicate claims against such actions. If an action is more aligned with civil law, it falls under the exclusive jurisdiction of the General Court. Conversely, if the action is more aligned with administrative law, it falls under the exclusive jurisdiction of the State Administrative Court.

This can be observed through the provisions in the Government Administration Law, in Article 1, number 18, in conjunction with Article 85, paragraphs (1) and (2). Article 1 states that "The Court is the State Administrative Court." Meanwhile, Article 85 states that: (1) A government administration dispute lawsuit registered with a general court but not yet examined, upon the enactment of this Law, is transferred to and resolved by the State Administrative Court; (2) A government administration dispute lawsuit registered with a general court and already examined, upon the enactment of this Law, is still resolved and decided by the court in the general judicial environment. According to these provisions, government administration disputes fall under the exclusive jurisdiction of the Administrative Court. Article 1, number 18, explicitly states that all government administration disputes are tried by the Administrative Court. However, many disputes with the characteristics of administrative disputes are still being tried in the General Court due to limitations in the authority of the Administrative Court as outlined in the Law on Regulation (Law Number 5 of 1986, Law Number 9 of 2004, and Law Number 51 of 2009). Among the administrative disputes still handled by the General Court are *Onrechtmatige Overheidsdaad* (Unlawful Acts by the Government) and Citizen Lawsuits.

Regarding the provisions related to the exclusive jurisdiction of judicial institutions, specifically between the District Court and the State Administrative Court, this is explicitly regulated in the Closing Provisions of Supreme Court Regulation Number 2 of 2009. The Closing Provisions are contained in Chapter V of Supreme Court Regulation Number 2 of 2009, namely Articles 10, 11, and 12, which read as follows:[21]

3.1.1. Article 10: At the time this Supreme Court Regulation comes into force, cases of unlawful conduct by Government Bodies and/or Officials (*Onrechtmatige Overheidsdaad*) submitted to the District Court remain unexamined, transferred to the State Administrative Court in accordance with the provisions of laws and regulations."

3.1.2. Article 11: Cases of Unlawful Acts by Bada and/or Government Officials

[21] Republic of Indonesia, PERMA Number 2 of 2019, Article 10, Article 11, Article 12.

(*Onrechtmatige Overheidsdaad*) being examined by the District Court, The District Court must declare that it has no authority to prosecute.

3.1.3. Article 12: Cases of unlawful acts by Agencies and/or Officials Government (*Onrechtmatige Overheidsdaad*) as referred to in Article 10 whose administrative remedies have been specifically regulated at the time this Supreme Court Regulation is promulgated, have been transferred by the District Court to the State Administrative Court and have not been examined by the State Administrative Court, the case file is transferred to the competent High Administrative Court along with the remaining costs of the case.

The issuance of Supreme Court Regulation Number 2 of 2019 has been a significant legal breakthrough, resolving legal ambiguities and improving procedural law enforcement. This clear regulation ensures that government administrative cases involving government agencies or officials are exclusively handled by the State Administrative Court. The principle of liability for harm caused by one's fault is derived from the theory of corrective justice in the settlement of environmental disputes.[22] Corrective justice advocates for the protection of individual rights and the restoration of balance between justice and legal certainty, which are fundamental goals of the law. Initially, the concept of unlawful acts was narrowly interpreted to encompass only violations of written legal articles (*wettelijkrech*). However, the "Lindenbaum vs Cohen Arrest" decision of January 31, 1919, expanded this concept. The broad concept of unlawful acts, based on this decision, includes: (1) violating the subjective rights of others, which means infringing upon the special authority granted by law to an individual; (2) violating legal obligations; (3) acting contrary to moral norms, as long as these norms are recognized as legally relevant in society; (4) acting contrary to the standards of propriety, thoroughness, and prudence expected in social interactions.[23]

There are numerous examples of dispute resolution in both contractual disputes and consumer protection, often involving standard form contracts. The interpretation and enforcement of exoneration clauses within contracts have been subjects of significant legal debate, particularly in cases involving consumer rights. For instance, in the practice of using corrective justice in environmental dispute resolution, Article and Law Number 4 of 1982 was replaced by Article 34 of Law Number 23 of 1997 concerning Environmental Management. Article 34 of Law Number 23 of 1997 mandates that every polluter or environmental destroyer is obligated to pay compensation and/or take certain actions, including *dwangsom* (forced money). The enactment of Law Number 32 of 2009 concerning Environmental Protection and Management (hereinafter referred to as Law Number 32 of 2009) replaced the two previous environmental laws. Compensation is regulated in Article 87 of Law Number 32 of 2009, which still requires polluters or vandals to pay compensation and/or take certain actions. The existence of Ministerial Regulation Number 13 of 2011 is particularly helpful in enforcing environmental laws in Indonesia, especially in terms of outlining the calculation of compensation for permanent losses.

Moreover, in dispute resolution relating to the exoneration clause, one example of

[22] Rosa Agustina., *Unlawful Acts,* Jakarta, University of Indonesia, 2003, page.321.

[23] Rosa Agustina, Hans Nieuwenhuis Suharnoko, and Jaap Hijma., *Hukum Perikatan (Law of Obligations)*, Denpasar, Pustaka Larasan, 2012, page.5.

a disputed decision is based on the exoneration clause as stated in decision Number 8/K/Pdt/2013. The litigants in this case were Wibowo and Siti Aisyah against PT Mandiri (Persero) Tbk, where the judge decided to reject the cassation application from the plaintiffs. Previously, the judge had also issued two decisions: the Semarang District Court Decision Number 65/Pdt.G/2011/PN.SMG and the Semarang High Court Decision Number 96/Pdt/2012/PT.SMG, which upheld the District Court's decision. This case is related to the plaintiff's lawsuit regarding the Credit Agreement Number RCO. SMG/160/PK-MK/2010 dated July 6, 2010, which was postulated to contain standard clauses/exoneration clauses in accordance with the provisions of Article 18, paragraph 3 of Law Number 8 of 1999 concerning Consumer Protection. In their lawsuit, the plaintiffs argued that they did not have enough opportunity to study the format of the standard agreement to understand it consciously and voluntarily, thereby violating the provisions of Article 18, paragraph 3 of the Consumer Protection Law.

In accordance with the theories of justice discussed in the theoretical framework, it is considered unfair to include an exoneration clause in an agreement from a distributive justice perspective. This is because it suggests an unequal distribution of rights and obligations between business actors and consumers. However, from a commutative justice perspective, the exoneration clause can be seen as fair, as it aims to restore balance and proportionality when there has been a disruption of established equality. When a consumer seeks to enforce their rights related to proportionality in an agreement or seeks to recover lost rights through corrective justice, the judge's role in interpreting law and justice broadly becomes crucial. Aristotle's doctrine of commutative justice can provide a framework for judges to deliver just outcomes in such cases.

Another important element of loss is unjustified enrichment. The concept of unjust Another important element of loss is unjust enrichment. The concept of unjust enrichment is increasingly recognized as a source of rights and obligations, alongside those arising from agreements and laws. This doctrine gives rise to rights and obligations between parties who benefit from or suffer loss due to unjust enrichment. Kantian attempts to interpret Aristotle's original idea of the relationship between rights and obligations, suggesting that the relationship between benefits and losses reflects the relationship between rights and obligations. Aristotle observed that "'gain' is what it is generally called in such cases, even though in certain cases it is not the appropriate term, for instance, for one who struck another – and 'losses for the one who suffered-but when the suffering is measured, it is called a loss for one party and a gain for the other."[24]

Thus, it can be observed that the positions of profit and loss are reciprocal. If one party gains a profit, the other party incurs a loss. In this situation, Aristotle argued that corrective justice seeks to restore equality between the parties. If an event disrupts this equality and causes injustice, corrective justice requires the perpetrator to repair the loss by returning the profit to the injured party. By restoring the original state, both the benefit and loss are eliminated, and the parties return to a state of equality. Aristotle believed that it is the duty of a judge to restore justice by ensuring equality between the benefits and losses of the parties. In the evolution of civil

[24] Ernest J. Weinrib., The gains and losses of corrective justice, In *Restitution*, London, Routledge, 2020, page.279.

procedure law, judges are no longer passive but actively involved in uncovering facts and evidence.[25] Therefore, there must be a causal relationship between the profit and loss. A person cannot demand a refund of payments to everyone at will; the claim can only be made against the party who actually benefits from the loss suffered.

3.2. French Legal System in Resolving Civil Disputes

The foundations of civil law can be traced back to ancient Rome, emerging around 50 BC during Julius Caesar's rule in Western Europe. Following this period, Roman legal principles were incorporated into the legal framework of France, amalgamated with pre-existing local laws from the Gaul region (modern-day France). This amalgamation continued until the era of Louis XV, when efforts towards legal standardization began, culminating in the enactment of the "*Code Civil des Francois*" on March 21, 1804.[26] This code was later reissued in 1807 as the "Code Napoleon." From 1811 to 1838, after being adapted in the Netherlands, the French Civil Code served as the official legal code in the country during the period of French rule. Consequently, the Code Civil, which incorporated elements of Roman Law, German Law, and Canon Law, applied not only in the Netherlands but also in Indonesia, a Dutch colony at that time. Dutch Civil Law, largely based on the Code Civil, was extended to Indonesia starting from January 1, 1848, as stipulated in *Staatsblad* 1847 Number 23. However, Indonesian civil law differed from that of the Netherlands and the French Civil Code, with only its foundational principles derived from the Code Civil.[27]

The historical background reveals a common understanding that the traditional title for judicial resolutions of disputes within civil society is undoubtedly known as civil procedure. More precisely, it can be defined as the set of legal rules governing the organization and functioning of courts responsible for resolving disputes involving private interests. Whether it is preferably called "private judicial law" or "civil procedure" is a pertinent question, as both terms are used in French law, potentially confusing unfamiliar readers. The terminology was straightforward until the late 19th century when university curricula expanded to include the study of judicial organization, procedural rules, and enforcement procedures alongside procedure itself. Consequently, the term "civil procedure" became too restrictive and somewhat inaccurate. Therefore, beginning in the 1940s, some scholars, particularly influenced by certain foreign terms, inclined towards "private judicial law" (*droit judiciaire privé*). Private judicial law encompasses both the law of civil justice (judicial organization and court competence) and the law of civil trials (lawsuits, proceedings, appeals, and enforcement procedures).[28] However, along with its legal development, the French legal system began to develop the concept of administrative torts, which is not explicitly included in the Civil Code. The Code Civil only mentions the general rule of tort from a contractual liability perspective.[29]

[25] Yahya Harahap., *Civil Procedure Law, About Lawsuits, Trials, Confiscation, Proof and Court Decisions*, Yogyakarta, Sinar Grafika, 2005, page.208.
[26] Wirjono Projodikoro., *Azas-azas Hukum Perdata*, Bandung, Sumur Bandung, 1983, page.9
[27] Subekti., *Pokok-pokok Hukum Perdata*, Jakarta: Intermasa, 1995, page.10
[28] Loïc Cadiet., Introduction to French Civil Justice System and Civil Procedural Law, *Ritsumeikan Law Review*, Vol.28, 2011, page.357.
[29] Article 1382 of the French Civil Code

The French court system employs a dual pyramid structure, separating administrative courts from judicial courts. Each judicial order is organized hierarchically, with a single apex court and multiple lower courts. Litigants dissatisfied with a lower court's decision can appeal to a higher court within the same hierarchy, similar to the Indonesian civil litigation system. At the apex of each order, a single court of last instance ensures uniform interpretation of the law across all lower courts.[30]

Private judicial law in France encompasses both civil justice and civil trials, and is founded on the principle of dual court hierarchies. The French court system is divided into judicial courts, led by the *Cour de Cassation*, and administrative courts, led by the *Conseil d'État*. Historically, disputes with the administration required citizens to appeal to the decision maker's immediate supervisor or the relevant minister, who acted as both judge and party. This 'administrator-judge' system persisted until the establishment of the *Conseil d'État* and the *Conseils de préfecture* in 1800. The dual court system was firmly established by the law of May 24, 1872, which granted the *Conseil d'État* independent judicial authority. It also established the Tribunal des conflits to resolve disputes between the judicial and administrative court hierarchies. This tribunal comprises equal members from the *Cour de Cassation* and the *Conseil d'État*. Consequently, France has two main types of courts: judicial courts, which handle both criminal and civil cases, and administrative courts. Essentially, civil disputes between government or public authorities and individuals in the scope of the French legal system fall within the jurisdiction of the French administrative court.

The dual system applied in the French judicial scope creates two branches of legal study: (1) *droit public* (public law) which covers the principles governing the operation of the state and public institutions; (2) *droit privé* (private law) which applies to individuals and private entities. French laws are organized hierarchically: (1) *lois organiques* (institutional acts), similar to the Constitution; (2) *lois ordinaires* (ordinary acts), which is passed by Parliament on matters assigned by the Constitution; (3) *ordonnances* as government measures necessary for maintaining national operations. Additionally, the executive branch issues regulations: (1) *décrets*, which is issued by the Prime Minister and President; (2) arrêtés which is issued by other executive members. All *lois, décrets*, and significant *arrêtés* are published in the official gazette, the *Journal officiel de la République française*.[31] The tribunal system in France is divided into two branches: (1) judicial Courts (*tribunaux judiciaires*) which handle criminal and civil laws; (2) administrative Courts (*tribunaux administratifs*), which are overseen by the Council of State (*Conseil d'État*); (3) the highest judicial court is the Supreme Court of Appeals (*Cour de cassation*).[32]

The French Revolution reinforced the separation between the judicial and administrative orders, aligning them with the judiciary and the state executive, respectively. The judicial organization law of August 16-24, 1790, still effective today, mandates in Article 13 that judicial and administrative functions must remain

[30] Ministère des Affaires Étrangères, *La France à la loupe: The French Justice System*, 2007. https://franceintheus.org accessed in May 27, 2024.

[31] Georgetown Law Library, *French Legal Research Guide*, February 23, 2024.

[32] Susan Rose-Ackerman and Thomas Perroud., Policymaking and Public Law in France: Public Participation, Agency Independence, And Impact Assessment, *Columbia journal of European law,* Vol.19, no.2, 2013, page.238.

distinct. Courts are prohibited from interfering with administrative operations or summoning administrators regarding their official duties. This separation was reiterated by the Decree of 16 Fructidor Year III, which forbade courts from reviewing administrative actions under penalty of law. This established the principle of administrative justice, ensuring that courts, unfamiliar with administrative activities, do not impede the executive branch. Consequently, disputes were settled by the minister, who, as the superior authority, ensured the proper functioning of the ministry and safeguarded public interest.[33] Nevertheless, a primary concern is the Administrative Court's ability to uphold fairness in applying the law and to ensure that its administrative decisions are distinct from those of private law.

In the case of a civil dispute involving government officials and private individuals, some pertinent notes regarding French administrative law include:

3.2.1. Actions or decisions made by administrative authorities against citizens are adjudicated by administrative courts.

3.2.2. Civil (judicial) courts are prohibited from encroaching on matters of administrative authority. Therefore, for violations of Administrative Law, legal remedies can only be sought in administrative courts, with the *Conseil d'État* serving as the highest court.

3.2.3. In cases of jurisdictional disputes between civil (judicial) and administrative courts, a separate court known as the *Tribunal des Conflits* has the authority to resolve these disputes. The *Conseil d'État* and the *Cour de cassation* each send three representatives to the *Tribunal des Conflits*. This court also includes three additional members to help resolve disputes, with the Minister of Justice presiding over the tribunal.[34]

The jurisdiction of administrative courts primarily lies in administrative law matters; however, the court's competence is not restricted by the legal issue but rather by the substance of the case (*la compétence suit le fond*). This principle, well-illustrated in the Blanco decision, highlights that a civil dispute between individuals is not necessarily related to disputes involving government institutions or state employees.[35] While the Blanco case was decided by the *Tribunal des Conflits*, it's important to note that this tribunal has exclusive jurisdiction to determine whether a case should be adjudicated under public or private law.[36]

Several French constitutional law scholars agreed that cases involving public service or state officials should fall under public law, thus within the jurisdiction of administrative courts. However, they had differing views on the nature of administrative law: some scholars, influenced by Durkheim, argued it stems from social solidarity, while others saw it as an expression of state power. Despite these differing perspectives, administrative courts, particularly the *Conseil d'État*, have not

[33] Grégoire Bigot., *Introduction Historique au Droit Administratif Depuis 1789*, France, PUF droit, 2002, page.21.

[34] Francesca Bignami., *Comparative administrative law,* Cambridge, Cambridge University Press, 2012. Page.186.

[35] Bartłomiej Jaworski., The case of Blanco: Epoch-making ruling vs. general law doctrine. The public–private divide in historical context, *Studenckie Prace Prawnicze, Administratywistyczne i Ekonomiczne*, Vol.29, no.3, 2019, page.11.

[36] Charles Bosvieux-Onyekwelu., Revisiting a Legend in Sociology: The Blanco Case and the Myth of the Birth of French Administrative Law, *Droit et societe*, Vol.101, 2019, page.159.

consistently favored one jurisprudence over the other.[37]

In contrast, Baranger, in his critical review of Loughlin's "Foundations of Public Law," takes a strong stance on the Blanco decision. He believes that the case primarily serves to uphold the autonomy of administrative law, emphasizing the distinct nature of its public law substantive rules from those of private law rules within the Civil Code. Baranger argues that the exclusive set of rules in administrative law is adjudicated by specialized administrative courts. Therefore, the Blanco ruling presents a public law foundation rather than an administrative law foundation. Consequently, French administrative law is not necessarily a foundation for the rest of the legal system but rather a construct designed to protect the rights of the state, a point often overlooked in the Blanco decision.[38] This raises skepticism about the fairness of administrative proceedings and rulings in civil disputes involving state officials and private individuals. Seeking justice in legal proceedings remains a paramount necessity, whether within the scope of criminal or private law disputes. In the European Union context, fair trial before the administrative court is guaranteed by general principles of the trial, including: the principle of equality of arms, the adversarial principle and the reliability of proceedings.[39]

Those three principles fall under the set of rules codified in the European Convention of Human Rights (ECHR). The principle of equality of arms is applied within French positive law, which resonates with the broader concept of a fair trial before an independent and impartial tribunal, although it is specifically enforced within the scope of criminal law. In administrative proceedings, this principle aims to prevent the inherent imbalance between parties from leading to biased outcomes favoring the state institution. The inquisitorial nature of the administrative judge's role serves as the first safeguard of equal treatment. Nevertheless, the adversarial principle remains crucial, as it is a fundamental legal principle that upholds equality of arms, the rights of defense, and overall trial fairness.[40] This principle is not limited to upholding general legal principles but also extends to trial reliability, which naturally constructs state liability in fair trials.

The concept of liability, or *responsabilité* in French, carries the purpose of accountability, a duty to pay, or an obligation to take responsibility for an action.

[37] Scholars such as Gaston Jèze, Léon Duguit and Maurice Hauriou collectively agreed that if the substance of a case concerns public service or state officials, it requires public law rules, and therefore, the matter falls under the jurisdiction of the administrative court. Despite this mutual conclusion, the three scholars had diverse concepts regarding administrative law. Duguit, drawing on Emile Durkheim's sociological theories, argued that state legitimacy is based on law, which is a direct outcome of social solidarity. In contrast, Hauriou believed administrative law stemmed from public authority, viewing it as an expression of state power. These contrasting perspectives reflect deeper societal choices and concepts of governance. However, as mentioned above, administrative courts, particularly the *Conseil d'État*, have not consistently favored one jurisprudence over another. Flavier Hugo and Froger Charles., Administrative justice in France. Between singularity and classicism, *BRICS Law Journal*, Vol.3, no.2, 2016, page.99. See also, James W. Garner., French administrative law, *The Yale Law Journal*, Vol.33, no.6, 1924, page.599.

[38] Denis Baranger., Uncovering the Foundation of Administrative Law? Martin Loughlin's Foundations of Public Law: A Critical Review, *Jus Politicum*, Vol.16, 2016, page.113. See also, Martin Loughlin., *Foundations of public law*, Oxford, Oxford University Press, 2010, page.21.

[39] Article 6 of European Convention of Human Rights (ECHR)

[40] Flavier Hugo and Froger Charles., Administrative justice in France. Between singularity and classicism, *BRICS Law Journal*, Vol.3, no.2, 2016, page.87.

When seeking to hold the state liable for losses suffered by private individuals, it must be demonstrated that the state was responsible for managing a situation or its consequences. However, often the claimant's aim is to compel the state to explain the cause of harm and assign blame. This function, separate from seeking compensation, can also be achieved through criminal proceedings or an inquiry. The role of tort law in fulfilling these functions varies between England and France. In England, tort actions are often a last resort to force the state to explain the occurrence of harm, whereas in France, this explanation is more commonly sought through criminal proceedings. Additionally, in English law, trespass actions have been significant in upholding fundamental rights against violations by public officials.[41]

As a member of the European Union (EU), French proceedings to exercise fair trial should adhere to the principles stipulated in the ECHR. The primary condition for holding a Member State liable for breaches of EU law is that the violated rule of law was intended to grant specific rights to individuals. This requirement, similar to the German State liability law's *Schutznorm* principle and also observed in the Netherlands, differs significantly from French fault liability law. Unlike the German approach, which emphasizes the protection of individual rights, French administrative law, including the concept of faute de service, focuses more on the proper functioning of the administration without necessarily assessing the impact on individual rights, as noted by Bell and Lichère.[42] They discuss about state liability in a sense of French administrative law, both agreed there are at least four main categories that shaped its development; path dependency, the constitutional turn, the European environment and, social change.

In proceedings before administrative tribunals, the State can be held liable to compensate for harm resulting from the breach of its affirmative obligations. For example, the *Conseil d'État* has determined State liability in cases involving the death of workers exposed to asbestos, attributing fault to the State for insufficient risk prevention measures. Furthermore, following a 2007 decision, the State is obligated to provide compensation for damages resulting from legislation conflicting with international treaties ratified by France. Violations of rights protected under the ECHR also constitute grounds for compensation; citing Article 6 of the ECHR regarding the right to a fair trial within a reasonable time frame, the *Conseil d'État* has acknowledged that breaches of this right entitle citizens to seek damages.[43] However, questions arise regarding the independence of administrative proceedings and the impartiality of decisions.

Despite significant parallels between fault in private law and administrative law (including English law), notable distinctions exist. Private law, as articulated by the *Conseil constitutionnel*, primarily concerns safeguarding individual rights. According to Planiol's doctrine, when a defendant has a pre-existing duty, it corresponds to a right held by the claimant. Conversely, public entities have obligations to the general public to fulfill their designated mandates. Jacquemet-Gauché posited that French

[41] Carol Harlow., *State Liability: Tort Law and Beyond*, Oxford, Oxford University Press, 2004, page. 49.

[42] John Bell and François Lichère., *Contemporarty French Administrative Law*, Cambridge, Cambridge University Press, 2022, page. 240.

[43] Christophe Quézel-Ambrunaz., Compensation and Human Rights (from a French perspective), *Nujs Law Review*, Vol.4, no.3, 2011, page.199.

administrative law's distinctiveness lies in its emphasis on the operational efficiency of the administration, rendering it unnecessary to inquire into whether individual rights have been affected, unlike German law.[44] In French public law, the government is not liable for the personal wrongdoing of its employees (*faute personnelle*). It only recognizes the fault of its institutions and its corresponding duty of liability, known as '*faute de service*.' However, the wrongdoings of government officials in the name of their institutions should be recognized as the state's liability to ensure loss compensation and exercise punishment. Consequently, French administrative courts apply corrective justice theory by ensuring fair trials, reviewing administrative actions for legality and proportionality, providing compensation for breaches of rights, and holding the state accountable for wrongful acts. This includes rectifying injustices by maintaining judicial oversight, emphasizing individual rights, and enforcing state liability for administrative errors.

3.3. The Implications for Civil Dispute Proceedings in Indonesia

Corrective justice theory, as a unifying concept, recognizes repair as more than just a party's ability to insure against losses; it combines the perspectives of both the plaintiff and the defendant. The wrong committed by the defendant and suffered by the plaintiff constitutes a single legal event where each party's involvement depends on the other. Therefore, corrective justice rejects grounds for liability that consider the parties individually, such as the defendant's need for economic incentives or the plaintiff's ability to insure against loss. Instead, liability is based on reasons that encompass both parties in their relationship, explaining the injustice between them. Corrective justice ties the wrong to its remedy, viewing the remedy as a way to correct the wrong.[45] The injustice remains central to the parties' relationship and guides the available remedies. The plaintiff's claim involves a duty of non-interference, and the remedy involves a duty of restoration. This close link ensures that the remedy continues the right, forming a continuous legal sequence. Learned Hand described a remedy as an obligation that replaces the plaintiff's rights and serves as an equivalent for them.[46]

The value of justice in the context of dispute resolution is an absolute requirement in interpersonal relationships, societal life, national life, and state governance. The many recent demands for justice are fundamentally normative demands. The legal benchmark of justice in court-based dispute resolution can be categorized into two models. The first is formal justice (legal justice). This model is based on the consideration of generally accepted legal rules. According to Marc Galanter's view, justice is administered according to positive law within courtrooms. The second is

[44] Anne Jacquemet-Gauché., *La responsabilite´ de la puissance publique en France et en Allemagne*, Paris, LGDJ, 2013, page.481

[45] Scott Hershovitz., Treating wrongs as wrongs: an expressive argument for tort law, *Journal of Tort Law*, Vol.10, no.2, 2018, page.421. See to, Louis Kaplow and Steven Shavell., Fairness Versus Welfare, *Harvard Law Review*, Vol.114, 2001, page.981. See to, Ernest J. Weinrib., Correlativity, Personality, and the Emerging Consensus on Corrective Justice, *Theoretical Inquiries in Law*, Vol.2, no.1, 2001, page.22.

[46] Learned Hand., Restitution or unjust enrichment, *Harvard Law Review*, Vol.4, 1897, page.249. See to, Lionel Smith., Restitution: The heart of corrective justice, *Texas Law Review*, Vol.79, 2000, page.2115.

material (substantive) justice.[47] This model considers the specific situation and conditions of the case, based on the values prevalent in society.[48]

In practice, legal equality is not always synonymous with justice. Conversely, legal differences are not always interpreted as injustice. Examining the concept of justice, particularly equality and harmony, is implied in the view of law and institutions. While laws and institutions may be present equally, they can still be unfair. Aristotle's corrective justice theory, as outlined in the Nicomachean Ethics, is particularly relevant to this study. This theory aims to correct unjust events, emphasizing balance and equality in the relationship between individuals.[49] The fundamental essence of this theory is related to the punishment of "unlawful acts," where a person must be held responsible for harm caused to others.[50] This differs from previous theories of justice. Aristotle discussed three types of interactions that give rise to injury: intentional torts, negligence, and strict liability. Richard Wright argues that Aristotle's version of corrective justice requires rectification for each of these categories.[51] While this interpretation is debated, corrective justice theorists have extended Aristotle's more limited theory to encompass negligent as well as intentional torts.

It implies that the logical consequence of applying the concept of corrective justice in the dispute resolution process is that the process needs to contain several parameters, including in humanity (the settlement process should be based on the dignity of the parties); education (the process should promote ethical attitudes and awareness of the case's subject matter for the parties), and justice (the process of resolving civil disputes in cases of unlawful acts should deliver justice for both parties and the community). Moreover, the principle of corrective justice serves to restore the imbalance of losses created through individual actions. However, in practice, if one party identifies a loss, the solution lies with the panel of judges. This aligns with Aristotle's view that "that is why, when disputes occur, people have recourse to a judge; and to do this to have recourse to justice, because the object of the judge is to be a sort of personified justice.[52]

The main principle in the law of unlawful acts is the standard of a reasonable person.

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[47] Marc Galanter, Justice in many rooms: Courts, private ordering, and indigenous law, *The Journal of Legal Pluralism and Unofficial Law*, Vol.13, no.19, 1981, page.27.

[48] This model was adopted from Rijkshof's view. See, I. Dewa Gede Atmadja and Dewa Gede., *Filsafat Hukum: Dimensi Tematis dan Historis*, Malang, Setara Press, 2013, page.76

[49] Richard W. Wright., Principles of justice, *Notre Dame Law Review*, Vol.75, 1999, page.1859.

[50] Aristotle discusses three types of interactions which give rise to injury. These roughly correspond to intentional torts, negligence, and strict liability. Richard Wright maintains that Aristotle's version of corrective justice requires rectification for each of these categories. This reading is disputed, but corrective justice theorists have extended what they regard as Aristotle's more limited theory to encompass negligent as well as intentional torts. In his discussion of Aristotle, Wright suggests that the immorality involved in unintentional unjust losses arises from the deliberate choice to avoid rectification and not from the original conduct. Richard W. Wright, Principles of justice, *Notre Dame Law Review*, Vol.75, 1999, page.1859. See to, Jules Coleman., Corrective justice and wrongful gain, The Journal of Legal Studies, Vol.11, no.2, 1982, page.436. See to, Michael J. Perry, Morality and Normativity, Legal Theory, Vol.13, no.3, 2007, page.216. See to. Stephen R. Perry, The moral foundations of tort law, *Iowa Law Review*, Vol.77, 1991, page.453.

[51] Richard W. Wright., Principles of justice, *Notre Dame Law Review*, Vol.75, 1999, page.1859.

[52] Susan Randall., Corrective Justice and the Torts Process, *Indiana Law Review*, Vol.27, no.1, 1993, page.21.

Compared to specific provisions like "Do not do X, Y, or Z," these standards require highly contextual judgments. Therefore, any analysis of the substantive morality of tort law principles can only partially justify the system. Concerns over process represent another part of the analysis, which corrective justice theorists often overlook. Corrective justice implies that there must be a legal obligation in every dispute resolution process for illegal acts, with moral considerations. This aims to assess whether the judge's rationale legally protects moral rights in general.[53] The application of special obligations among the parties concerned and the affirmation of dignity and order through public forums offering retrospective sanctions are also important. For example, private lawsuits in the United States are considered a primary tool for promoting corrective justice, requiring people to pay damages to those they have harmed through tort, contract, or property law violations. However, as explained below, other public law bodies have recently begun to take on a mass compensation role similar to large-scale private lawsuits.[54] Based on the above arguments, the concept of corrective justice will essentially produce the main principles, namely: (1) Recovery: This principle describes the process of returning losses, both material and immaterial, to the victims; (2) Compensation: This principle provides justification for the indemnity of the injured party to restore them to their original position before the loss occurred; and (3) Punishment: This principle aims to hold parties responsible for causing losses.

The implications of corrective justice in the dispute settlement process include several agreements that affect the way the legal system treats litigants in the country. The following are the implications in practice:

3.3.1 Loss Recovery: Corrective justice aims to restore the aggrieved party to their pre-loss state. This can be achieved through compensation and reparations to repair the plaintiff's losses. For example, in tort cases, the trial will require compensation after recovering losses suffered by the plaintiff.[55]

3.3.2. Moral Accountability: Corrective justice implies individual moral responsibility. In practice, the judiciary that adopts the principle of corrective justice considers not only the juridical aspect, but the moral responsibility of the party who made the mistake. Thus, the court's decision needs to reflect the actions of the aggrieving party in taking full responsibility for the losses caused.[56]

3.3.3. Legal Policy Development: In principle, corrective justice can influence the development of legal policy by emphasizing the importance of recovery and compensation. An example is in the case of environmental pollution. Environmental policies require companies that cause environmental damage to repair the damage and compensate affected non-governmental organizations. This approach fosters prudence and a sense

[53] Erik Encarnacion., Corrective Justice as Making Amends, *Buffalo Law Review*, Vol.62, no.2, 2014, page.451.
[54] Adam S. Zimmerman., The Corrective Justice State, *Journal of Tort law*, Vol.5, no.2, 2012, page.193.
[55] Cristina Carmody Tilley., Tort Law Inside Out, *The Yale Law Journal,* Vol.126, no.4, 2017, page.121.
[56] Allan Beever., Corrective justice and personal responsibility in tort law, *Oxford Journal of Legal Studies*, Vol.28, no.3, 2008, page.481.

of responsibility.[57]

3.3.4. Increased public trust: In judicial hearings, corrective justice dispute resolution can increase public confidence in the legal system. The reality is that courts are focused on restoring justice and fairness for the aggrieved party. This perception that the legal system works effectively can strengthen the legitimacy and authority of legal institutions.[58]

3.3.5. Reformulation of Injustice: Another implication of corrective justice in the context of reformulating justice has historically been its usefulness in acknowledging and rectifying the wrongdoings of litigants. This results in formal recognition and compensation for the aggrieved party.[59]

Overall, this study aligns with the core principles of corrective justice theory, emphasizing the restoration of balance and fairness in legal relationships. Corrective justice, as a unifying concept, highlights the necessity of addressing wrongs within the relationship between the plaintiff and defendant, focusing on repair as more than just a financial remedy, but as a moral and legal restoration.[60] The theory's emphasis on rectification through liability is mirrored in the discourse on the legal responsibility of both parties involved in a dispute, as seen in the works addressing unlawful acts by the government in Indonesia's administrative courts.[61] Corrective justice posits that the remedy should be closely linked to the wrong, ensuring a continuous legal sequence, which in its practical implications, aligns with the idea of compensating victims for both material and immaterial losses.[62] Furthermore, the theory advocates for a moral accountability that goes beyond the juridical aspects, considering the individual responsibility of the defendant.[63] This is reflected in the application of corrective justice in environmental law and administrative legal frameworks in Indonesia, where perpetrators are required to repair damage and compensate affected parties.[64] The implications for legal policy development in

[57] Ross Grantham and Darryn Jensen., The proper role of policy in private law adjudication, *University of Toronto Law Journal*, Vol.68, no.2, 2018, page.221.

[58] Dan Priel., Structure, Function, and Tort Law, *Journal of Tort Law*, Vol.13, no.1, 2020, page.39.

[59] Adrienne D. Davis., Corrective justice and reparations for black slavery, *Canadian Journal of Law & Jurisprudence*, Vol.34, no.2, 2021, page.351.

[60] Dinoroy Marganda Aritonang, Susi Dwi Harijanti, Zainal Muttaqin, and Ali Abdurahman., Extensive Jurisdiction of State Administrative Courts in Indonesia: Interpretation and Legal Coherence Issues, *Public Integrity*, Vol.12, 2023, page.11.

[61] Ridwan., Resolution of Disputes Regarding Unlawful Acts by the Government in the Administrative Justice System in Indonesia, *Academic Journal of Interdisciplinary Studies*, Vol.10, no.6, 2021, page.271.

[62] Dhaniswara K. Harjono, Hulman Panjaitan, Moermahadi Soerjadjanegara, Abu Hena Mostofa Kamal, and Suwarno Suwarno., Ensuring Fair Business Practices and Consumer Rights: The Role and Impact of Indonesia's Consumer Dispute Settlement Agency, *Jurnal Hukum*, Vol.40, no.1, 2024, page.267. See to, Hazar Kusmayanti, Deviana Yuanitasari, Endeh Suhartini, Mohammad Hamidi Masykur, Dede Kania, Ramalinggam Rajamanickam, and Maureen Maysa Artiana., Acte Van Dading In the settlement of industrial relations disputes in Indonesia, *Cogent Social Sciences*, Vol.9, no.2, 2023, page.2274148.

[63] Kadek Agus Sudiarawan, Alia Yofira Karunian, Dewa Gede Sudika Mangku, and Bagus Hermanto., Discourses on Citizen Lawsuit as Administrative Dispute Object: Government Administration Law vs. Administrative Court Law, *Journal of Indonesian Legal Studies*, Vol.7, no.2, 2022, page.491.

[64] Netty Sr Naiborhu and Dekie Gg Kasenda., Environmental Law Enforcement Through State Administrative Legal Instruments in Environmental Cases in Indonesia, *Journal of Sustainability Science and Management*, Vol.19, no.1, 2024, page.143.

environmental cases also show how corrective justice influences broader legal practices, promoting responsibility and compensation.[65] Moreover, corrective justice principles can enhance public trust in the legal system by focusing on justice and fairness, fostering legitimacy and authority in legal institutions.[66] In this context, the study demonstrates how corrective justice can contribute to both judicial and societal perceptions of administrative justice, suggesting that it plays a vital role in shaping legal frameworks and policies for dispute resolution.

4. Conclusion

Corrective justice theory unifies the perspectives of both plaintiff and defendant by recognizing their wrongful act as a single legal event. Corrective justice theory underscores the idea that liability for wrongdoing (*faute*) should aim to restore the balance between parties rather than merely punish or deter. It rejects individual grounds for liability, such as economic incentives or insurability, and ensures that the remedy directly addresses and corrects the injustice, maintaining the close link between the wrong and its corrective remedy. Corrective justice theory is implicitly reflected in how each country addresses liabilities and remedies within their legal frameworks.

The comparative study examining civil disputes involving government officials and private individuals in Indonesia and France highlights significant procedural and institutional differences between their respective court systems. Indonesia operates within a dual judiciary framework, where General Courts handle a wide range of cases alongside Administrative Courts specifically focused on disputes involving government bodies. This system faces challenges related to judicial independence, procedural efficiency, and ensuring fair trial rights for private individuals. Indonesia's dual judiciary framework attempts to balance governmental authority and individual rights, though challenges remain in ensuring fair trial rights and judicial independence. Efforts to enhance judicial independence and procedural fairness reflect a move towards correcting injustices caused by governmental actions. In contrast, France's administrative law tradition, rooted in the *Conseil d'État*, emphasizes corrective justice principles by focusing on the accountability of governmental actions and ensuring adherence to legal standards like the rule of law, legality, proportionality, and protection of fundamental rights. France emphasizes separation of powers and judicial oversight over administrative actions, ensuring adherence to the rule of law and protecting fundamental rights. Corrective justice is evident in French administrative law through the comprehensive remedies provided to individuals affected by unlawful governmental acts, ensuring their rights are restored or compensated.

[65] Jafar Sidik, Oleg Orlov, Asep Rozali, and Dewi Sulistianingsih., Choice of Arbitrators Regarding Dispute Settlement (Comparing Indonesia and Russia), *Journal of Law and Legal Reform*, Vol.5, no.1, 2024, page.121.

[66] Ahmad Siboy, Sholahuddin Al-Fatih, Virga Dwi Efendi, and Nur Putri Hidayah., The Effectiveness of Administrative Efforts in Reducing State Administration Disputes, *Journal of Human Rights, Culture and Legal System*, Vol.2, no.1, 2022, page.23.

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