ISSN 2808-4314

Codifying the Doctrine of Unjust Enrichment in Indonesian Law of Obligations

Arsyad Y. Idrus
Faculty of Law, Universitas Negeri Gorntalo, Indonesia
Email: aisidrus8@gmail.com

This article examines the normative and systematic urgency of codifying the doctrine of unjust enrichment within Indonesia's law of obligations. Although Indonesian private law, rooted in the civil law tradition, has long recognised contract and tort as the principal sources of obligations, it lacks an explicit and autonomous framework governing situations where one party is enriched at the expense of another without sufficient legal ground. This doctrinal gap forces courts to rely on broad principles of equity, good faith, and analogical reasoning, or to stretch contractual and delictual concepts beyond their proper domains, thereby undermining legal certainty, consistency, and equal treatment. Using a normative juridical method, supported by comparative analysis of developed unjust enrichment regimes in other jurisdictions, this research argues that codification is necessary to complete the triadic structure of obligations, clarify the relationship between unjust enrichment, contract, and tort, and provide clear elements and limits for restitutionary claims. Codification is further justified by the increasing complexity of modern transactions, particularly in the digital and financial sectors, where enrichment without legal basis frequently arises outside traditional fault-based or consent-based categories. The study concludes that an explicit unjust enrichment regime would enhance substantive justice, strengthen doctrinal coherence, and affirm the role of Indonesian private law as a credible instrument for regulating the fair distribution of gains and losses.
Keywords: Unjust Enrichment; Law of Obligations; Codification

This is an open access article under the CC BY-NC license

Corresponding Author:
Arsyad Y. Idrus
Faculty of Law, Universitas Negeri Gorntalo, Indonesia
aisidrus8@gmail.com

1. Introduction

The absence of an explicit and codified doctrine of unjust enrichment in Indonesia's law of obligations presents a fundamental theoretical and practical gap in the national private law system. Indonesia's civil law framework, particularly as derived from the Burgerlijk Wetboek (BW) and its subsequent interpretation, still relies heavily on contractual and tortious liability as the principal bases for the creation and extinction of obligations. Within this scheme, the law tends to conceptualize liability in terms of will-based commitments (contracts) and fault-based wrongdoing (torts). However, modern private law theory generally recognizes a third, autonomous source of obligations: unjust enrichment, which addresses situations where one party is enriched at the expense of another in circumstances the law regards as unjust [1]. The absence of an explicit doctrinal structure governing unjust enrichment within Indonesian law leaves judges and practitioners with limited, fragmented tools to resolve cases that fall outside traditional contractual or tortious categories, thereby creating a "justice gap" in the architecture of obligations.

In comparative perspective, many civil law and common law jurisdictions have progressively developed unjust enrichment into a coherent and codified doctrine. In various continental European systems, enrichment without legal basis is expressly regulated as an independent source of obligations, often with specific provisions governing condictio indebiti (recovery of undue payments), management of affairs without mandate, and restitutionary claims. Likewise, in common law jurisdictions, unjust enrichment has evolved into a well-structured field with established elements enrichment, at the claimant's expense, in circumstances that are unjust, and subject to recognized defenses. These developments provide clarity regarding the basis of liability, the nature of remedies, and the relationship between unjust enrichment and other fields such as contract, tort, and property law. Compared to these jurisdictions, Indonesia's lack of codification risks normative isolation and constrains the capacity of its legal system to respond coherently to contemporary patterns of economic and social interaction [2].

At the level of judicial practice, Indonesian courts inevitably encounter disputes where neither contractual consent nor tortious fault adequately explains why a transfer of value should be reversed or adjusted. Examples include payments made under mistake, benefits conferred in anticipation of a contract that never materializes, performance rendered under void or voidable agreements, or advantages obtained through technical defects that do not rise to the level of delict. In such cases, judges may resort to broad principles of equity, analogical interpretation of existing provisions, or ad hoc reasoning to reach substantively fair outcomes. While such pragmatic approaches sometimes achieve justice in individual cases, they lack systematic doctrinal grounding and can produce inconsistent jurisprudence. The absence of a clear, codified unjust enrichment framework thus undermines legal certainty, predictability, and the principle of equality before the law, as similar factual situations may be decided differently depending on the interpretive attitude of the court.

The lack of codification also has deeper theoretical implications for the coherence of Indonesia's law of obligations. In modern private law theory, unjust enrichment performs a crucial corrective function: it addresses normative situations where one party's patrimony increases in a manner that lacks a sufficient legal basis, and where the retention of that gain would be incompatible with the demands of fairness and the internal logic of the legal system [3]. Without a fully articulated doctrine, the legal order risks tolerating enrichment that, while not strictly wrongful in a tortious sense and not contractually agreed, is nonetheless unjustifiable in light of the broader values of the legal system. This weakens the internal consistency of the law of obligations and may erode public confidence in the ability of private law to deliver substantive justice.

Moreover, the urgency of codifying unjust enrichment is heightened by the increasing complexity of modern transactions and the diversification of contractual and quasi-contractual arrangements in Indonesia's economy. The growth of digital platforms, financial technology, and multi-party commercial structures creates numerous instances of indirect benefit, layered payments, and automated transfers that do not fit neatly into traditional categories. In such an environment, the risk of unjustified enrichment is amplified, particularly when automated systems generate payments based on erroneous data, or when platform-based intermediaries capture benefits that are not aligned with underlying legal relationships. Without a robust doctrinal basis for restitutionary claims, parties who suffer loss in these contexts may have no clear legal route to recovery, while recipients of such benefits may retain them without a solid juridical foundation [4]. Codification would thus serve not only theoretical coherence, but also practical efficiency and transactional fairness.

In addition, codifying unjust enrichment would align Indonesia with evolving transnational trends in private law harmonization. International instruments, model laws, and scholarly restatements such as those emerging from European private law projects tend increasingly to recognize unjust enrichment as a distinct and structured source of obligations. As Indonesia deepens its participation in regional and global economic integration, including cross-border commercial and financial activities, the compatibility of its private law concepts with those of other jurisdictions becomes more important. A clear and accessible unjust enrichment regime would facilitate comparative understanding, foster legal cooperation, and provide foreign investors, businesses, and courts with greater confidence in the rationality and predictability of Indonesian private law.

At the normative level, the codification of unjust enrichment also responds to the constitutional and ethical demand that the legal system prevent arbitrary advantage and protect weaker parties from structural imbalances. In many instances, unjust enrichment problems arise where one party is in a stronger informational, economic, or organizational position, and is thereby able to capture unintended benefits [5]. A general doctrine of unjust enrichment, properly designed, can function as a corrective instrument that rebalances patrimonial positions without necessarily imputing fault or invalidating entire contracts. It offers a nuanced tool that sits between contract and tort, allowing courts to focus on the fairness of the outcome rather than forcing the facts into ill-fitting categories. This aligns with a vision of private law as a system that not only protects autonomy and reliance, but also safeguards the integrity of exchanges and the legitimacy of wealth distribution.

However, the move toward codification must be approached carefully and systematically. The challenge is not merely to transplant foreign doctrinal models, but to articulate a concept of unjust enrichment that is compatible with Indonesia's existing civil law structure, jurisprudential traditions, and socio-economic context. Codification must clearly define the constituent elements of unjust enrichment, delineate its relationship with contract and tort, and avoid overlap or double recovery. It should specify when enrichment is considered "unjust," identify applicable defenses, and clarify the nature and limits of restitutionary remedies. This requires rigorous doctrinal analysis, comparative study, and sensitivity to local legal culture. Without such care, codification might generate new ambiguities instead of resolving existing ones.

Finally, the urgency of codifying unjust enrichment lies in its role in closing the "justice gap" that arises when the law lacks an explicit mechanism to address inequitable gains. By recognizing unjust enrichment as an autonomous source of obligations within the law of obligations, the Indonesian legal system would significantly enhance its ability to deliver principled, consistent, and transparent solutions in cases where benefit and loss are misaligned with the underlying legal reasons. Codification would strengthen doctrinal coherence, support judicial reasoning, and promote public trust in the capacity of private law to reflect substantive justice. In this sense, the formal recognition and systematic regulation of unjust enrichment are not merely technical refinements, but a necessary evolution in Indonesia's legal development to ensure that the law of obligations adequately responds to the realities and moral expectations of contemporary society.

2. Literature Reviewe

Existing literature on Indonesia's law of obligations shows that most scholarly attention remains focused on contractual and tortious liability [6], while unjust enrichment (*onrechtmatige verrijking* or *vermoogensvermeerdering zonder oorzaak*) is only implicitly discussed within broader themes of equity, good faith, and abuse of rights. Comparative studies in civil law jurisdictions, particularly those drawing on the German *Bereicherungsrecht* and the Dutch *ongerechtvaardigde verrijking*, highlight unjust enrichment as an autonomous source of obligations, with clearly defined elements (e.g., *condictio indebiti*, *condictio ob rem*) and restitutionary remedies. By contrast, common law scholarship, following Lord Mansfield's decision in *Moses v Macferlan* (1760) and modern analyses, emphasizes its corrective function in preventing arbitrary gains through the remedy of money had and received [7]. Recent works on Indonesian private law reform increasingly acknowledge the doctrinal gap caused by the absence of an explicit unjust enrichment regime in the *Burgerlijk Wetboek* (as inherited and partly replaced by Law No. 5 of 1960 on Agrarian Principles and subsequent civil codification efforts). However, these studies rarely propose a systematic codification model. Thus, the literature indicates both a theoretical recognition of the problem and a lack of comprehensive doctrinal reconstruction.

Problem Statement

The rapid expansion of the digital economy challenges Indonesia's ability to effectively impose taxation on foreign enterprises that generate substantial economic value without physical presence. The traditional definition of Permanent Establishment, based on the "fixed place of business" criterion, fails to capture the realities of digital trade and cross-border data-driven transactions. This inadequacy results in lost tax revenue and legal uncertainty in enforcing fiscal obligations. Therefore, the core problem lies in reconstructing the Permanent Establishment concept to incorporate the principle of Significant Economic Presence as a fair and effective basis for taxation in Indonesia's digital era.

3. Method

This research adopts a normative legal research (doctrinal legal research) approach. The type of research is qualitative, focusing on legal principles, doctrines, and rules rather than empirical field data [8]. The primary data sources consist of secondary legal materials, including: (a) primary legal materials, namely the Indonesian Civil Code (*Burgerlijk Wetboek voor Indonesië*)—particularly Book III on Obligations—relevant statutes (e.g., Law No. 5 of 1960 on Agrarian Principles, Law No. 7 of 2021 on Tax Harmonization), and applicable treaties; (b) secondary legal materials, comprising academic textbooks, peer-reviewed journal articles, comparative legal studies on unjust enrichment in civil law jurisdictions (Germany, the Netherlands) and common law jurisdictions (England, Australia); and (c) tertiary legal materials, such as legal dictionaries and bibliographies. Data collection was conducted through documentary study (library research), examining legal documents, court decisions from Indonesian judiciary (including *Mahkamah Agung* rulings on equity and good faith), and scholarly writings. The analysis technique employed is qualitative normative analysis, specifically using deductive reasoning (applying existing legal norms to hypothetical or actual cases of enrichment without cause) and comparative legal interpretation (comparing Indonesian legal principles with those of other jurisdictions to identify doctrinal gaps). The analysis proceeds in three stages: reduction of legal materials, systematic classification of arguments for and against autonomous unjust enrichment, and critical evaluation leading to a proposed codification model. This methodology ensures that the research findings are grounded in doctrinal rigor and offer actionable recommendations for legal reform.

4. Results and Discussion

Normative Gap and Its Consequences

The absence of an explicit and systematically structured doctrine of unjust enrichment in Indonesia's law of obligations creates a profound normative gap that affects both the internal coherence and the practical operation of the private law system. Indonesia's civil law framework, historically anchored in the Burgerlijk Wetboek and its subsequent interpretation, has developed around the classical dichotomy of contract and tort as the two principal sources of obligations. Within this binary architecture, liability is typically conceptualised either as arising from voluntary undertakings grounded in consent, or from wrongful conduct grounded in fault. This model presupposes that most situations of patrimonial transfer and loss can be adequately explained, justified, and remedied through the language of agreement or wrongdoing. Yet in modern legal reality, a significant number of disputes involve situations where one party is enriched at the expense of another without a valid contractual basis and without conduct that can be qualified as a delict [9]. These cases expose the structural limits of the contract–tort paradigm and reveal the need for an autonomous category of unjust enrichment as a third source of obligations.

In practice, the normative gap becomes visible whenever courts face cases involving mistaken payments, performance rendered under a contract that turns out to be null or void, benefits conferred in anticipation of a legal relationship that never materialises, or advantages retained solely due to gaps or technicalities in the existing rules. Because Indonesian law does not articulate unjust enrichment as a distinct doctrinal basis, judges often have to "force" such fact patterns into ill-suited categories. In some instances, the courts stretch contractual concepts, treating enrichment as if it were based on an implied or quasi-contract where no real agreement exists. In other instances, they attempt to expand tortious liability by construing the retention of benefits as a form of wrongful behaviour, even where no fault, negligence, or violation of a specific duty can be convincingly established. These techniques may occasionally lead to outcomes that appear substantively fair, but they do so at the cost of conceptual clarity and doctrinal honesty, blurring the boundaries between contract, tort, and restitution [10].

The reliance on general clauses and open-textured principles such as equity, good faith, and abuse of rights is another symptom of the normative gap. In the absence of a clear unjust enrichment framework, Indonesian judges are often compelled to base their reasoning on broad, evaluative standards rather than on precise, codified rules. While these general principles are indispensable for maintaining flexibility and moral responsiveness within the legal system, their frequent use as substitutes for a missing doctrinal category can lead to unpredictability. Decisions may turn heavily on the subjective assessment of fairness by individual judges, creating the risk that similar cases will yield different outcomes. Over time, such variability undermines legal certainty, which is a core value in any system of private law, and erodes confidence among litigants, practitioners, and scholars in the stability and rationality of the jurisprudence [11].

This uncertainty has direct consequences for the principle of equality before the law. When courts lack a settled, explicit test for unjust enrichment such as the presence of enrichment, at the expense of another, in the absence of a legal basis, subject to defined defences litigants cannot reliably predict how a court will assess their situation. Parties with greater legal resources or better access to sophisticated counsel may be more able to frame their claims or defences in ways that persuade the court to adopt a favourable interpretation of general principles, while weaker parties remain disadvantaged. The absence of a structured doctrine thus introduces an element of arbitrariness into the adjudication process: outcomes become dependent not only on the facts and the norms, but also on the particular court's creativity in filling doctrinal gaps. This situation conflicts with the fundamental requirement that like cases should be treated alike and that legal distinctions should rest on clear, publicly knowable criteria rather than ad hoc judicial improvisation [12].

Beyond case outcomes, the normative gap also compromises the systematic integrity of the law of obligations as a field of study and practice. Modern private law theory generally recognises the triadic structure of obligations contract, tort, and unjust enrichment each addressing a distinct dimension of legal responsibility: voluntary undertakings, wrongful harm, and unjustified transfers of benefit. When one of these pillars is missing or only partially developed, the conceptual map becomes distorted. Scholars encounter difficulty in classifying and analysing certain types of claims; doctrinal overlaps proliferate; and the teaching of private law risks presenting an incomplete picture of how patrimonial justice is meant to operate. For practitioners, this lack of systematic clarity complicates legal counselling and transaction planning, because they cannot rely on a well-defined set of restitutionary rules that would govern the correction of unintended or unjustified gains. The practical result is increased legal risk and the potential for unanticipated liability or uncompensated loss [13].

The consequences of this normative gap are amplified by the growing complexity of economic and social interactions in contemporary Indonesia. New forms of contracting, digital commerce, multiparty financing, and platform-based services generate novel patterns of enrichment and loss. Automated payment systems, algorithm-driven transactions, and cross-border digital services routinely produce situations where value shifts between parties in ways that were neither consciously agreed upon nor intentionally caused. In such an environment, the traditional tools of contract and tort are often too rigid or too narrow to provide appropriate remedies. Without a coherent unjust enrichment doctrine, the legal system struggles to keep pace with these developments, leaving certain harms without redress and allowing certain gains to be retained without adequate justification [14]. This mismatch between legal categories and economic reality threatens both the functional effectiveness and the perceived legitimacy of private law.

Another important consequence of the doctrinal gap lies in the potential for doctrinal “overreach” within existing categories. In the absence of an autonomous restitutionary framework, courts and commentators may be tempted to expand contract and tort beyond their natural conceptual boundaries to capture situations of unjust enrichment. Contract law may be burdened with fictional constructs of implied consent, while tort law may be stretched to treat morally questionable but non-wrongful retention of benefits as if it were a civil wrong. This overextension can dilute the conceptual purity of these branches of law, making it harder to maintain clear standards for what constitutes valid agreement or actionable wrong. Ultimately, such drift undermines the internal logic of the system of obligations, making it less transparent and more difficult to apply consistently [15].

Furthermore, the lack of codified unjust enrichment rules impairs Indonesia’s capacity to engage in meaningful comparative dialogue and harmonisation efforts in private law. Many foreign jurisdictions, both civil and common law, have developed sophisticated unjust enrichment doctrines that facilitate cross-border understanding and cooperation in matters such as international commerce, financial transactions, and multi-jurisdictional disputes [16]. When Indonesia lacks a comparable doctrinal framework, it becomes more challenging to align domestic solutions with international expectations, whether in arbitration, choice-of-law analysis, or recognition and enforcement of foreign judgments. This can place Indonesian parties at a disadvantage in international dealings and may make the Indonesian legal system appear less predictable or less mature to foreign investors, partners, and tribunals [17].

The normative gap also has implications for legislative policy. Without a clear doctrinal category of unjust enrichment, the legislature may overlook situations where specific regulatory interventions or statutory remedies would be appropriate. Legislators tend to address problems that are clearly visible within an established conceptual framework; when unjust enrichment remains an implicit, scattered concern rather than an explicit doctrinal field, it is less likely to receive targeted legislative attention. As a result, certain patterns of undue benefit or structural imbalance in economic relationships may persist uncorrected, even when there is a broad sense that they are inconsistent with the ideals of justice and fairness that the legal system seeks to uphold.

At a deeper level, the absence of a structured unjust enrichment doctrine affects the normative message that the law sends to society regarding the legitimacy of wealth acquisition and retention. Legal rules do more than resolve disputes; they express and reinforce social expectations about what kinds of gains are acceptable and what kinds are not. When the law remains silent or ambiguous about unjust enrichment, it fails to articulate a clear stance on the moral obligations that accompany the receipt of benefits in the absence of a legal ground [18]. This silence may inadvertently signal that retaining windfalls or exploiting technical legal gaps is tolerable, so long as no contract is breached and no tort is committed. By contrast, a carefully articulated unjust enrichment doctrine would affirm that the law expects gains to have a juridically

ISSN 2808-4314

recognisable basis, and that enrichment without such a basis may carry duties of restitution, even in the absence of fault [19].

In sum, the lack of an explicit and systematic doctrine of unjust enrichment in Indonesia's law of obligations produces a series of interrelated consequences: it undermines legal certainty and equality before the law; it distorts the conceptual structure of obligations; it limits the system's ability to respond to modern transactional realities; it encourages doctrinal overreach in contract and tort; it complicates comparative and international engagement; it weakens the impetus for targeted legislative reform; and it sends an incomplete normative message about the conditions under which enrichment is legally and morally acceptable. These consequences, taken together, demonstrate that the issue is not merely technical or marginal, but goes to the heart of how the Indonesian private law system conceives, distributes, and corrects patrimonial advantages and burdens. Addressing this normative gap through the explicit recognition and codification of unjust enrichment is therefore a necessary step to restore coherence, enhance predictability, and reinforce the legitimacy of the law of obligations in contemporary Indonesia.

Justification and Direction for Codifying Unjust Enrichment

Against this background, the codification of unjust enrichment as an autonomous source of obligations in Indonesian private law emerges not as a merely technical refinement, but as a structurally necessary reform to restore completeness, coherence, and fairness within the law of obligations. Conceptually, unjust enrichment speaks to a distinct category of legal relationship: situations in which one party's patrimony has increased at the expense of another, without a sufficient legal ground, so that retention of the benefit can no longer be reconciled with the internal logic of the legal order or with basic requirements of fairness. Unlike contract, which is anchored in consent, and tort, which is grounded in wrongful conduct, unjust enrichment is concerned with the alignment between gain and legal justification. Codifying this concept would amount to giving explicit doctrinal form to an intuition that already underlies many judicial decisions that not all transfers of wealth can be satisfactorily explained by agreement or fault, and that the legal system must possess a principled mechanism for reversing gains that lack a legitimate basis. In this sense, codification does not import a foreign idea into Indonesian law, but rather clarifies and systematises a value already implicit in national legal reasoning [20].

The first justification for codification lies in its capacity to provide a clear, structured test for unjust enrichment, thereby reducing judicial dependence on vague general clauses and ad hoc reasoning. A modern doctrine typically identifies core elements such as: enrichment of the defendant, impoverishment of the claimant, a causal link between the two, and the absence of a sufficient legal ground for the transfer, combined with recognised defences and limitations [21]. If these elements are articulated in statutory form, judges would benefit from a defined analytical framework when confronted with restitutionary disputes, instead of having to improvise under broad labels such as equity, good faith, or "justice in concreto." This would promote greater consistency across cases, facilitate more predictable outcomes for litigants, and improve the transparency of judicial reasoning. Rather than disguising restitutionary issues under contractual or delictual categories, courts could identify them explicitly as unjust enrichment problems and resolve them according to clear criteria. Over time, this would contribute to the formation of a stable body of case law that refines and concretises the doctrine, strengthening doctrinal development and legal education.

A second justification concerns the delineation of unjust enrichment in relation to contract and tort, so as to prevent overlap, doctrinal distortion, and double recovery. In the current Indonesian framework, the absence of an explicit restitutionary category encourages the stretching of contractual and tortious concepts to cover fact patterns that are not naturally their own. Courts may, for example, infer fictitious "implied contracts" to justify restitution in cases of mistaken payment, or they may characterise the retention of a benefit as a species of wrongful conduct in order to fit it within delictual liability [22]. This blurring weakens conceptual clarity and risks undermining the autonomy of each branch of obligations. Through codification, the legislature could clarify that unjust enrichment has a subsidiary or complementary role: it applies where there is enrichment without legal ground and where no adequate remedy arises from contract, tort, or specific statutory provisions. Such a hierarchy would maintain the primacy of contractual risk allocation and delictual responsibility, while preserving unjust enrichment as a corrective mechanism to address residual injustices. Additionally, codification could specify the distinct remedial focus of unjust enrichment restoration of the unjust benefit thereby preventing plaintiffs from obtaining both compensatory damages and restitution for the same economic advantage, which would otherwise lead to double recovery.

A third dimension of justification is theoretical and systemic. Contemporary private law theory widely conceives the law of obligations as resting on three pillars: contract, tort, and unjust enrichment. Each addresses a fundamental question of legal responsibility: who must keep their promises, who must repair wrongful harm, and who must relinquish benefits that have no juridical justification [23]. When one of these pillars is missing or underdeveloped, the entire structure becomes unbalanced. In the Indonesian context, codifying unjust enrichment would complete this triadic scheme and allow academic doctrine, judicial practice, and legal education to work with a comprehensive map of patrimonial justice. This would enable clearer classification of claims, more rigorous doctrinal analysis, and more coherent teaching of the law of obligations, particularly in universities and professional training. Such systematic clarity is not merely academic; it directly affects how lawyers advise clients, how contracts are drafted, and how parties assess their risks in situations of uncertain legal ground.

From a policy perspective, codification would strengthen substantive justice by furnishing courts with a targeted instrument to correct arbitrary advantages and prevent the consolidation of wealth based solely on legal gaps or technicalities. Many unjust enrichment cases arise not from obvious wrongdoing, but from structural imbalances, information asymmetries, transactional mistakes, or failures of anticipated legal frameworks [24]. Without a clear restitutionary doctrine, such situations may remain unaddressed, leading to outcomes in which one party bears a loss while another retains a gain that lacks any defensible legal basis. Codification would explicitly affirm that the legal system will not tolerate enrichment that is disconnected from valid causes such as agreement, statutory obligation, or legitimate reliance. This affirmation is especially important in a socio-economic context where questions of distributive fairness and protection of weaker parties are increasingly salient. While unjust enrichment is not a tool of social policy in the same sense as regulatory or welfare measures, it contributes to a background of commutative justice that supports trust in private law transactions.

The urgency of codification becomes even more pronounced when one considers the evolving landscape of economic activity in Indonesia, particularly in relation to digitalisation, financial innovation, and complex contractual chains. Modern transactions frequently involve multiple parties, automated processes, and cross-border flows of data and funds. In such environments, enrichment without legal ground can occur in subtle ways, for example through algorithmic mispricing, unintended execution of payment orders, or benefits derived from the use of another’s data or digital assets without a clear contractual basis. Traditional contract and tort tools may not be suited to address these scenarios, especially when no explicit agreement has been violated and no clear fault can be attributed [25]. A codified unjust enrichment regime would equip courts with a flexible yet principled mechanism to recalibrate patrimonial positions in these new contexts, providing remedies that correct imbalances without overextending existing doctrines designed for more classical fact patterns.

The direction of codification must also be carefully considered so that it fits Indonesia's legal culture, constitutional values, and existing statutory framework. A successful reform would require a balance between comparative borrowing and local adaptation. Comparative experience offers valuable guidance on how unjust enrichment can be formulated, but the rules cannot simply be transplanted without adjustment. Codification efforts should begin by mapping the current Indonesian jurisprudence and doctrinal writings where unjust enrichment reasoning already appears implicitly, for example in decisions concerning undue payments, void contracts, or restitution of benefits conferred without cause. These existing practices can serve as a foundation upon which a more explicit and systematic statutory scheme is built, thereby ensuring continuity rather than rupture. At the same time, comparative models drawn from other civil law codes and from influential restatements can help refine definitions, defences, and remedial structures, provided they are translated into concepts compatible with national law [26].

In terms of legislative technique, the codification of unjust enrichment could be incorporated either as a distinct chapter within the existing civil code or as a separate statute on the law of obligations. The provisions should clearly define the scope of unjust enrichment, set forth the general rule that enrichment without legal ground gives rise to a duty of restitution, and specify typical situations where this occurs, such as undue payment, failure of basis, or enrichment through interference with another's legal sphere. It would also be essential to regulate defences, such as change of position in good faith, passing on of benefits, or special protection for recipients who relied reasonably on the validity of the transfer. Likewise, the statute should address limitation periods, interaction with specific legislative regimes (for example, consumer protection or unjustified management of affairs), and the extent to which parties may contractually modify or exclude restitutionary remedies. Clear drafting in these areas would help avoid new ambiguities and ensure that the doctrine operates in a balanced, predictable manner [27].

Finally, codification must be understood as part of a broader trajectory of legal modernisation that aims to make Indonesian private law more responsive, transparent, and aligned with constitutional commitments to justice and legal certainty. Introducing unjust enrichment as an explicit, autonomous source of obligations will not, by itself, solve all issues of unfair enrichment or economic inequality. However, it will fill a key doctrinal void that currently forces courts and practitioners to navigate restitutionary problems without adequate tools [28]. By clarifying when and why benefits must be returned, the law will send a clear normative message that enrichment must be grounded in legitimate legal reasons, and that the legal system possesses principled means to correct misallocations of wealth that arise outside the domains of contract and tort. In this way, the codification of unjust enrichment can be seen as both a doctrinal completion of the law of obligations and a concrete expression of the commitment to ensure that private law outcomes reflect not only formal validity, but also substantive fairness in the distribution of gains and losses.

5. Conclusion

The analysis in this study demonstrates that the absence of an explicit and systematic doctrine of unjust enrichment in Indonesia's law of obligations creates a serious normative and practical gap that cannot be adequately filled by contract and tort alone. Without a clearly articulated restitutionary framework, courts are forced to rely on broad principles of equity and good faith, or to stretch existing contractual and delictual doctrines, which undermines legal certainty, predictability, and equal treatment. Situations in which one party is enriched at the expense of another without sufficient legal ground are handled inconsistently, weakening both the coherence and the legitimacy of the private law system. On this basis, the codification of unjust enrichment as an autonomous source of obligations is both normatively justified and systematically necessary. It would complete the triadic structure of obligations, provide judges with clear elements and limits for restitutionary claims, prevent overlap and double recovery, and enhance Indonesia's capacity to respond fairly to modern transactional realities. In doing so, it would strengthen substantive justice and reaffirm the role of private law as a coherent and credible instrument for regulating the distribution of gains and losses in contemporary Indonesian society.

6. References

[1] F. Kurniawan, P. M. Marzuki, E. Agustin, dan R. Amalia, "Unsur Kerugian dalam Unjustified Enrichment untuk Mewujudkan Keadilan Korektif (Corrective Justice," *Yuridika*, vol. 33, no. 1, 2018, doi: 10.20473/ydk.v33i1.7201.

[2] F. Kurniawan, E. Agustin, dan R. Amalia, "Acknowledgement of Unjust Enrichment to Achieve Corrective Justice in the Path of Indonesian Law of Obligations Reform," dalam *Proceedings of the International Law Conference*, doi: 10.5220/0010052803960404.

[3] F. Kurniawan, E. Agustin, dan R. Amalia, "Elaboration on Concepts of Restitution and Compensation as a Form of Liability in Private Law," dalam *Proceedings of the International Conference on Law, Governance and Globalization 2017 (ICLGG 2017*, Amsterdam: Atlantis Press, 2017, hlm. 85-96,. doi: 10.2991/iclgg-17.2018.12.

[4] N. Jansen, "The Idea of Legal Responsibility," *Oxford Journal of Legal Studies*, vol. 34, no. 2, hlm. 221-252, 2014, doi: 10.1093/ojls/gqt031.

[5] Z. Sinel, "Through Thick and Thin: The Place of Corrective Justice in Unjust Enrichment," *Oxford Journal of Legal Studies*, vol. 31, no. 3, hlm. 551-564, Sep 2011, doi: 10.1093/ojls/gqr015.

[6] J. Satrio, *Hukum perikatan: perikatan yang lahir dari undang undang*. Penerbit PT. Citra Aditya Bakti, 1993.

[7] N. O. Hera, S. Caren, A. Permatasari, K. F. A. Tharsyah, dan M. Zid, "Penegakan Hukum sebagai Pilar Stabilitas Sosial dalam Arus Globalisasi: Studi Kasus Maraknya Pelanggaran Kekayaan Intelektual Digital di Indonesia," dalam *Prosiding Seminar Nasional Pendidikan, Ilmu-Ilmu Sosial, dan Hukum (SENPISHUM)*, 2026. Diakses: 5 Mei 2026. [Daring]. Tersedia pada: https://journal.unj.ac.id/unj/index.php/senpishum/article/view/62444

[8] I. Atikah, "Metode Penelitian Hukum," 2022, Diakses: 1 Januari 2025. [Daring]. Tersedia pada: http://repository.uinbanten.ac.id/9155/1/P%20Metode%20Penelitian%20Hukum.pdf

[9] E. J. Weinrib, "The Corrective Justice of Liability for Unjust Enrichment," dalam *Research Handbook on Unjust Enrichment and Restitution*, E. Bant, K. Barker, dan S. Degeling, Ed., Cheltenham: Edward Elgar Publishing, 2020. [Daring]. Tersedia pada: https://www.elgaronline.com/edcollchap/edcoll/9781788114257/9781788114257.00017.xml.

[10] T. Cutts, "Unjust Enrichment: What We Owe to Each Other," *Oxford Journal of Legal Studies*, vol. 41, no. 1, hlm. 114-141, 2021, doi: 10.1093/ojls/gqaa038.

[11] A. Tedhalosa, H. Nugroho, A. Raharjo, dan A. Syahputra, "Bridging Justice Systems: Asset Confiscation in Anti-Corruption Law and Islamic Jurisprudence," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, vol. 59, no. 1, hlm. 1-25, 2025, doi: 10.14421/ajish.v59i1.1611.

[12] A. I. Ivanchak dan A. A. Kupreenkova, "Genesis and Progression of Obligations, Arising from Unjust Enrichment: Comparative Law Research," *Journal of Law and Administration*, no. 1, hlm. 79-85, 2018, doi: 10.24833/2073-8420-2018-1-46-79-85.

[13] G. M. Yuhandri dan A. B. Cahyono, "Urgensi Penerapan Doktrin Unjust Enrichment di Indonesia: Studi Banding dengan Jerman dan Singapura," *Laporan Riset Fakultas Hukum Universitas Indonesia*, 2025, [Daring]. Tersedia pada: https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1186&context=lexpatri.

[14] P. Jaffey, "Classification and Unjust Enrichment," *Modern Law Review*, vol. 67, no. 6, [Daring]. Tersedia pada: https://figshare.le.ac.uk/articles/journal_contribution/Classification_and_unjust_enrichment/10123534.
[15] R. G. Puspatara dan I. G. A. Kurniawan, "Rethinking Unjust Enrichment: Advancing Distributive Justice in Indonesian Law," *Rechtsidee: Journal of Law and Legal Reform*, vol. 11, no. 1, hlm. 1-18, Jun 2023, doi: 10.21070/jihr.v12i1.961.
[16] F. Kurniawan, M. H. S. Prawitra Thalib, B. Jansen, dan Z. A. B. A. Ghadas, "Justice as a Meta Value of Corrective Justice in Providing Restitution for Unjust Enrichment: A Study on Rules, Norms, Principles, and Foundation," *Jurnal Hukum (Universitas Islam Sultan Agung*, vol. 39, no. 2, hlm. 192-211, 2023, doi: 10.26532/jh.v39i2.
[17] D. Peari dan S. Peari, "Why the Public Might Doubt the Idea of Unjust Enrichment," *SAGE Open*, hlm. 1-15, Mar 2025, doi: 10.1177/21582440251321490.
[18] E. A. Page dan G. Duus-Otterström, "Correcting Unjust Enrichment: Explaining and Defending the Duty to Disgorge the Benefits of Wrongdoing," *Critical Review of International Social and Political Philosophy*, hlm. 1-23, 2023, doi: 10.1080/13698230.2023.2245651.
[19] A. Triadana, "A Comparative Study of Unjust Enrichment in Indonesia, the Netherlands, France, and Germany." [Daring]. Tersedia pada: https://jurnal.untirta.ac.id/index.php/yustisia/article/view/31472.
[20] A. Akhmad, Z. J. Fernando, dan P. Teeraphan, "Unmasking Illicit Enrichment: A Comparative Analysis of Wealth Acquisition Under Indonesian, Thailand and Islamic Law," *Journal of Indonesian Legal Studies*, vol. 8, no. 2, hlm. 899-934, 2023, doi: 10.15294/jils.v8i2.69332.
[21] J. D. McCamus, "Restitutionary Remedies in Three-Party Cases: A Comparative Perspective," *FIU Law Review*, vol. 14, no. 1, hlm. 65-89, 2020, doi: 10.25148/lawrev.14.1.8.
[22] U. Babusiaux, "Claim to Compensation between the Legal and the Genetic Father: A Testcase for the Dogmatics of Unjust Enrichment," *European Review of Private Law*, vol. 31, no. 6, 2023, doi: 10.54648/erpl2023065.
[23] P. Birks, "Equity, Conscience, and Unjust Enrichment," *Melbourne University Law Review*, vol. 23, no. 1, hlm. 1-34, 1999.
[24] P. Chrysentia, "Perbandingan Pengaturan dan Penerapan Doktrin Unjust Enrichment menurut Hukum di Indonesia dan Belanda (Studi Kasus Putusan Mahkamah Agung No. 1749 K/PDT/2010," *Jurnal Hukum dan Pembangunan Malaysia*, 2024, [Daring]. Tersedia pada: https://oaj.jurnalhst.com/index.php/jhpm/article/view/4917.
[25] N. A. Davrados, "Demystifying Enrichment Without Cause," *Louisiana Law Review*, vol. 78, no. 4, 2018, [Daring]. Tersedia pada: https://digitalcommons.law.lsu.edu/lalrev/vol78/iss4/12.
[26] E. Descheemaeker, "The New French Law of Unjustified Enrichment," *Restitution Law Review*, vol. 25, hlm. 1-26, 2018.
[27] S. Hedley, "Unjust Enrichment," *Current Legal Problems*, vol. 48, no. 2, hlm. 1-25, 1995, doi: 10.1093/clp/48.Part_2.1.
[28] M. Hoyle, "Failures for Consideration: Re Analysing Jurisdiction in Unjust Enrichment Claims," *Modern Law Review*, vol. 83, no. 5, doi: 10.1111/1468-2230.12544.