The Criminalization Of Illicit Enrichment in Combating Corruption in Indonesia

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Abstract:
Despite Indonesia's ratification of the United Nations Convention against Corruption, 2003 (UNCAC, 2003), there are still some norms that have not been adequately accommodated by national anti-corruption laws, particularly concerning illicit enrichment. This legal study aims to examine the practical implementation of illicit enrichment as a corruption offense in Indonesia and propose the criminalization of illicit enrichment as a future corruption offense. The research methodology employed is normative juridical, which involves analyzing secondary data, with a focus on literature reviews and relevant legislation. The research findings and discussions indicate that the practice of illicit enrichment has been increasingly prevalent, as evidenced by cases involving defendants Bahasyim Assifie and Dhana Widyatmika, who were charged under different articles, namely Article 12 of the Anti-Corruption Law and Article 3 of the Anti-Money Laundering Law, which differ from the essence of illicit enrichment as outlined in UNCAC, 2003. Considering the enforcement practices, it is imperative to criminalize the act of unlawful enrichment or illicit enrichment through the revision of the Anti-Corruption Law or the Criminal Code.
Keywords: : Criminalization, Illicit Enrichment, Corruption Offense

INTRODUCTION

The social phenomenon known as corruption is a stark manifestation of deviant human behavior within social interactions that poses grave risks to society and the nation. Consequently, this behavior is universally condemned by society, even by the perpetrators themselves, as evident in the expression "corrupt individuals accusing other corrupt individuals".[1]

Corruption offenses are classified as white-collar crimes, representing deceitful acts perpetrated by individuals operating within both the public and private sectors. These individuals possess positions and authority that enable them to influence policies and decisions. Consequently, the eradication of corruption necessitates extraordinary efforts to be undertaken.

Corruption in Indonesia can be likened to a disease that has progressed through three stages: elitist, endemic, and systemic. According to Transparency International's Corruption Perceptions Index in 2018, Indonesia was ranked 89th out of 180 countries, receiving a score of 38, indicating a significant level of corruption. This score falls far behind Singapore, a neighboring country that ranked third out of 180 countries with a Corruption Perceptions Index score of 85, making it the least corrupt country in Asia.[2]

Based on the data regarding compliance with the obligation to submit Asset Reports (Laporan Harta Kekayaan Pejabat/LHKPN) as of December 31, 2018, in Indonesia, the number

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[1] Elwi Danil, Korupsi: Konsep, Tindak Pidana, dan Pemberantasannya, (Jakarta: PT RajaGrafindo Persada, 2012), halaman 1

[2] www.transparency.org, diakses pada 23 Agustus 2019, Pukul 09:21 WIB.

of officials who fulfilled this requirement was 193,933 out of a total of 304,183 obligated individuals.[3] This indicates an overall compliance rate of 63.78%. These figures highlight that there is still a significant proportion of public officials who do not report their assets. Non-compliance among these individuals is often associated with suspicions of acquiring wealth illicitly or surpassing what can be reasonably explained. Despite being public servants, some of them possess assets that are not included when considering their entire salary, allowances, and legitimate income.

The current legal framework for combating corruption in Indonesia is governed by Law Number 20 of 2001, which is an amendment to Law Number 31 of 1999 on the Eradication of Corruption. The implementation of this law aimed to address and eradicate the widespread issue of corruption. However, it has become apparent that certain loopholes and weaknesses still exist within the legislation. This is evident in cases where public officials and state administrators implicated in corruption have amassed wealth that cannot be justified and exceeds their regular salaries and legitimate income derived from the state. Prominent examples include the corruption cases involving Gayus Tambunan, Djoko Susilo, and Ratu Atut.

The weaknesses identified in the aforementioned Anti-Corruption Law are as follows: Firstly, with regard to asset confiscation, it is limited to assets that are directly linked to or acquired through corrupt activities, or assets that serve as substitutes. Secondly, the restitution of state losses is not maximized. According to Article 18, paragraph (1), letter b of the Anti-Corruption Law, the maximum amount of restitution payment is determined based on the total benefits derived from a specific corruption case. Thirdly, there are legal loopholes that allow individuals to evade restitution payments. In cases where the convict's assets are not found (whether hidden or no longer existent), the obligation to make restitution can be replaced with a prison sentence. Fourthly, there are challenges in meeting the burden of proof. Asset confiscation or restitution payments from the corrupt individual's assets can only be carried out after the corruption offense has been proven in a court of law.

The aforementioned weaknesses shed light on the fact that the current legal framework has not sufficiently facilitated the restitution of state losses caused by corruption. One of the reasons for the limited effectiveness of the Anti-Corruption Law in recovering embezzled state funds is the absence of regulations pertaining to "illicit enrichment."

Despite Indonesia's ratification of the UNCAC, 2003, through the enactment of Law Number 7 of 2006, which ratified the United Nations Convention Against Corruption on April 18, 2006, the provision regarding illicit enrichment has not been established as an independent criminal offense in the national legal system and anti-corruption laws. Furthermore, it is important to note that the inclusion of a specific provision on "illicit enrichment" is not obligatory, and each country has the discretion to decide whether to incorporate it into their domestic legislation. Currently, Indonesia has not explicitly and clearly implemented the concept of "illicit enrichment." As a result, the recovery of embezzled Indonesian wealth or finances, which have been corrupted by state officials, faces significant challenges.

The provision of "illicit enrichment" is contained in Article 20 of the UNCAC, which stipulates that: "Taking into account its constitution and the fundamental principles of its legal system, each State Party should contemplate implementing appropriate legislative and other measures to establish illicit enrichment as a criminal offense when committed intentionally. Illicit enrichment refers to a substantial increase in the assets of a public official that cannot be reasonably explained in relation to their lawful income."

The formulation of "illicit enrichment" in Article 20 of the UNCAC is characterized by its broad scope. From this provision, certain characteristics can be inferred, including: (a) involvement of public officials, (b) a significant increase in wealth, (c) inability to provide a

[3] https://acch.kpk.go.id/id/statistik/statistik-lhkpn, Diakses pada tanggal 11 November 2019, pukul 09.20

reasonable explanation for the increase, and (d) a comparison with their lawful income.

Given these circumstances, the criminalization of illicit enrichment or unlawful enrichment emerges as a matter of significance. Based on the preceding discourse, the research questions that can be formulated are as follows:

1. What are the practical implications of implementing illicit enrichment as a corruption offense in Indonesia?
2. How can the future criminalization of illicit enrichment be effectively established as a corruption offense?

METHOD

The research methodology employed in this study is a juridical-normative approach. As described by Soejono Soekanto, the juridical-normative approach involves conducting legal research by examining relevant literature and secondary data to investigate the research problem comprehensively. This approach entails a systematic exploration of regulations and literature that are pertinent to the research topic.[4]

The author employs a juridical-normative approach in this legal study to examine the practical implementation of illicit enrichment as a corruption offense in Indonesia and the potential criminalization of illicit enrichment as a future corruption offense. The juridical-normative research approach emphasizes the analysis of legal documents and pertinent literature related to the central issues surrounding the criminalization of illicit enrichment in the fight against corruption in Indonesia.

ANALYSIS AND DISCUSSION

APPLICATION OF ILLICIT ENRICHMENT AS A CORRUPTION OFFENSE IN INDONESIA

Case Study: Tax Mark Bahasyim Assifie

In order to analyze the case, it is essential to first examine the classification of the actions committed by BA, as determined by the Supreme Court. It is noteworthy that the Supreme Court has nullified the verdict of the lower court at the appellate level and has taken over the case. The legal foundation relied upon by the Supreme Court judges in prosecuting BA is Article 12, letter e of Law Number 31 of 1999, as amended by Law Number 20 of 2001 on the Eradication of Corruption Offenses (Anti-Corruption Law), and Article 3, paragraph (1), letter a of Law Number 15 of 2002, as amended by Law Number 25 of 2003 on Money Laundering Offenses (Anti-Money Laundering Law).

Article 12, letter e of the Anti-Corruption Law states that:

"Shall be subject to imprisonment for life or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years, as well as a fine ranging from a minimum of IDR 200,000,000.00 (two hundred million rupiahs) to a maximum of IDR 1,000,000,000.00 (one billion rupiahs): e. a civil servant or state official who, with the intent of unlawfully benefiting oneself or others, or by misusing their authority, coerces someone to provide something, make payments, receive payments with deductions, or perform tasks for personal gain."

Article 3, paragraph (1), letter a of the Anti-Money Laundering Law states that:

1. *Any individual who knowingly or reasonably suspects that certain wealth or assets are derived from criminal activities intentionally places them into financial service providers, whether in their own name or on behalf of others.*

The offense is punishable by a minimum imprisonment of 5 (five) years and a maximum imprisonment of 15 (fifteen) years, in addition to a minimum fine of Rp 100,000,000.00 (one hundred million rupiahs) and a maximum fine of Rp 15,000,000,000.00 (fifteen billion rupiahs).

[4] Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif (Suatu Tinjauan Singkat), (Jakarta: Rajawali Pers, 2001), halaman 13-14.

In relation to the phrases "illicit enrichment/unlawful enrichment" and "significant," the Corruption Crime Court based its verdict on the following deliberations:[5]

> *"Considering the deliberations made by the panel of judges, particularly with regard to the evidence presented by the defendant, specifically concerning the defendant's alibi regarding the source of funds placed in BNI and BCA. According to the defendant, these funds were derived from business ventures with LEOPOLDO P. NARRA, a Filipino entrepreneur, LU JIAHAN and ZHU YAOZONG, Chinese entrepreneurs, as well as with an Indonesian entrepreneur named AIDA TIRTAYASA, and other business endeavors. However, the panel of judges found that the defendant's alibi could not be substantiated, especially considering the defendant's status as a civil servant holding significant positions, as previously outlined, with a monthly salary ranging from approximately Rp. 20,000,000 to Rp. 30,000,000, which is disproportionate to the defendant's wealth held in BNI and BCA. Thus, it is deemed implausible for the defendant to possess such a substantial amount of wealth in the form of cash totaling Rp. 60,992,238,206 (sixty billion nine hundred ninety-two million two hundred thirty-eight thousand two hundred six rupiahs) and in USD amounting to 681,147.37."*
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> *"Based on the factual description and legal considerations provided above, the panel of judges concludes that the defendant's wealth, in the form of cash deposited in BNI and BCA with a total amount of Rp. 60,992,238,206 (sixty billion nine hundred ninety-two million two hundred thirty-eight thousand two hundred six rupiahs) and USD 681,147.37, is reasonably suspected to be derived from criminal activities and financial transactions conducted through BNI and BCA. These transactions are deemed suspicious based on significant and questionable transactions revealed in the bank statements issued by BNI and BCA, leading the Financial Transaction Reports and Analysis Centre (PPATK) to report the matter to law enforcement authorities."*

Drawing from the considerations of the panel of judges, the author refers to the provisions of Article 20 of UNCAC, 2003, which outline the essential elements that must be satisfied for an act to be classified as illicit enrichment or unlawful enrichment. These elements include: (1) The involvement of a subject or perpetrator, specifically "public officials or state administrators"; (2) The occurrence within a defined time frame, encompassing the periods "before, during, and after holding office"; (3) The act of self-enrichment, characterized by an "unlawful or unjustifiable increase in wealth/assets"; (4) The presence of intent or awareness, denoting "consciousness or knowledge"; and (5) The absence of valid reasons or justifications for the observed increase in wealth.

In light of the above, the conduct exhibited by BA can be more precisely categorized as illicit enrichment within the realm of corruption offenses, aligning with the provisions outlined in Article 20 of UNCAC. By referring to UNCAC, BA's actions can be classified as falling under the purview of illicit enrichment.

The Dhana Widyatmika Tax Evasion Case

Dhana Widyatmika was sentenced by the Supreme Court judges under the provisions of Article 12B paragraph (1) and Article 2 paragraph (1) in conjunction with Article 18 of Law No. 31 Year 1999, as amended by Law No. 20 Year 2001, and Article 55 paragraph (1) of the Indonesian Criminal Code (KUHP), as well as Article 3 of Law No. 8 Year 2010 in conjunction with Article 65 paragraph (1) of the Indonesian Criminal Code (KUHP).

Article 12B, paragraph (1) of the Corruption Law stipulates the following:

Any gratification provided to a public official or state administrator shall be deemed as a bribe if it is associated with their official duties and contravenes their obligations. The provisions are as follows:

a. *If the value of the gratification is Rp 10,000,000 or more, the burden of proof that the gratification is not a bribe lies with the recipient of the gratification.*
b. *If the value of the gratification is less than Rp 10,000,000, the burden of proof that the gratification is not a bribe lies with the public prosecutor.*

Article 2(1) of the Corruption Law states the following:

Any individual who unlawfully engages in self-enrichment or enrichment of others, either personally or on behalf of a corporation, resulting in financial or economic harm to the state, shall be subject to imprisonment for life or a minimum of 4 (four) years and a maximum of 20 (twenty) years, as well as a fine ranging from a minimum of Rp

[5] Cermati Putusan Nomor 1454 K/Pid.sus/2011

200,000,000.00 (two hundred million rupiahs) to a maximum of Rp 1,000,000,000 (one billion rupiahs).

Article 3 of Law No. 8 of 2010 states:

Any person who knowingly or reasonably suspects that they are dealing with wealth derived from offenses as referred to in Article 2(1), and engages in activities such as placement, transfer, diversion, expenditure, payment, donation, entrustment, taking out of the country, alteration, currency or securities exchange, or other acts with the intention of concealing or disguising the origin of the wealth, shall be subject to the offense of money laundering. The punishment for this offense includes a maximum imprisonment of 20 (twenty) years and a fine of up to Rp 10,000,000,000.00 (ten billion rupiahs).

The considerations made by the panel of judges in interpreting the aforementioned article are as follows:

- *The judex facti did not sufficiently take into account the first and second elements of compelling someone to provide or pay a reward amounting to Rp 1,000,000,000.00 (one billion rupiahs).*
- *The defendant's actions were found to be in violation of the applicable regulations, specifically constituting an unlawful act and the failure to fulfill the request made to PT. Kornet Trans Utama due to the company's unwillingness to comply. However, according to Article 15 of the Corruption Eradication Law, the defendant was deemed to have attempted the offense as stipulated in Article 2(1) of the Corruption Eradication Law, thus subjecting them to the same penalty as the completed offense.*
- *The judex facti's legal reasoning was deemed insufficiently motivated by the panel of judges. This was due to the defendant, who held a position as a Civil Servant at the Tax Office, receiving a gratuity of Rp 2,000,000,000.00 (two billion rupiahs), which was transferred to their Bank Mandiri account at Jakarta Nindya Karya Branch with the account number 070-0004493545 under the name Dhana Widyatmika. The total amount transferred was Rp 3,400,000,000.00 (three billion four hundred million rupiahs). The transfer was facilitated by Liana Apriani and Veemy Solichin, acting on behalf of Hendro Tirtan Jaya, and the funds originated from PT. Mutiara Virgo, as confirmed by Johnny Basuki. These actions were related to the negotiation and assistance in reducing the tax bill of PT. Mutiara Virgo, which involved Herly Isdiharsono, who is also a Tax Officer and a colleague of the defendant.*
- *In addition, the defendant also received four traveler's checks worth Rp 750,000,000.00 (seven hundred and fifty million rupiahs), which were cashed at Bank Mandiri. These traveler's checks were purchased from Bank Mandiri by Ardiansyah upon the instructions of Erwinta Marius and Raja Muchsin. The defendant's conduct met the elements stipulated in Article 12 B paragraph (1) of the Corruption Eradication Law.*
- *Furthermore, the defendant's acts of placing, spending, and disbursing money derived from Herly Isdiharsono to acquire... totaling Rp 1,400,000,000.00 (one billion four hundred million rupiahs), and spending Rp 2,000,000,000.00 (two billion rupiahs) for personal purposes, are in violation of Article 3 of Law No. 8 of 2010.*

Referring to the aforementioned considerations of the panel of judges, it is deemed inappropriate to apply Article 12B paragraph (1) and Article 2 paragraph (1) in conjunction with Article 18 of the Corruption Eradication Law, Article 55 paragraph (1) of the Criminal Code, and Article 3 of Law No. 8/2010 in conjunction with Article 65 paragraph (1) of the Criminal Code to Dhana Widyatmika in the tax evasion case. Similarly, similar to BA's case, MN's actions are more accurately classified as illicit enrichment. However, it is unfortunate that the panel of judges did not explicitly refer to MN's actions as illicit enrichment.

Considering the categorization of an act in this case as illicit enrichment, the author relies on the provisions of Article 20 of UNCAC, 2003, which outline the elements of illicit enrichment. Therefore, the author's analysis of this case is limited to the following elements: (1) the presence of a subject or perpetrator, such as "public officials or state officials"; (2) a defined time period, namely "before, during, and after holding office"; (3) the act of self-enrichment, involving an "unlawful or unjustified increase in wealth/assets"; (4) intentionality,

indicating "awareness or knowledge"; and (5) the absence of valid reasons or justifications for the increase in wealth. Based on these elements, Dhana Widyatmika's actions can be classified as illicit enrichment.

Among the two cases discussed above, there is a similarity in terms of the application of Article 12 of the Anti-Corruption Law (UU Tipikor) and Article 3 of the Anti-Money Laundering Law (UU TPPU) to both BA and DW. However, there is a distinction in the specific articles invoked in each case. BA is charged under Article 12, letter e, of UU Tipikor and Article 3, paragraph (1), letter a, of UU TPPU, while DW is charged under Article 12B, paragraph (1), and Article 2, paragraph (1), in conjunction with Article 18 of UU Tipikor, Article 55, paragraph (1), of the Criminal Code (KUHP), and Article 3 of UU No. 8/2010, in conjunction with Article 65, paragraph (1), of the Criminal Code (KUHP).

While the application of the Anti-Money Laundering Law (UU Pencucian Uang) and the Anti-Corruption Law (UU Tipikor) in the cases of Bahasyim Assifie and Dhana Widyatmika can be considered somewhat successful in depriving the perpetrators, there are still complexities in proving certain elements, such as the requirement to establish the "effort to conceal the origin of wealth" as mandated by the Anti-Money Laundering Law. Money laundering offenses involve the conversion of proceeds from an underlying criminal activity, known as a predicate offense or core crime, into legitimate assets. Evidence for such offenses is typically based on non-disclosure of specific funds or assets in wealth reports (LHKPN), purchases of assets under others' names, or transactions designed to obfuscate the source of funds. Challenges arise when the substantial increase in wealth of public officials or state administrators cannot be accounted for as lawful income, but the concealment efforts are not clearly demonstrated. In such cases, there is a need for specific provisions that allow for the confiscation of wealth acquired through significant increases without a legitimate explanation. However, current Indonesian legislation lacks the necessary regulations, as outlined in Article 20 of the UNCAC, to address this issue.

THE PROSPECTIVE CRIMINALIZATION OF ILLICIT ENRICHMENT AS A CORRUPTION OFFENSE

Comparative Analysis

Comparative Analysis of Illicit Enrichment Regulations in the United Nations Convention Against Corruption (UNCAC) and Regional Anti-Corruption Conventions.

- United Nations Convention Against Corruption (UNCAC), Article 20
  UNCAC, 2003 provides a comprehensive and detailed framework for addressing illicit enrichment. The concept of illicit enrichment in this Convention extends beyond traditional public officials to encompass a wider range of public employees, ensuring that any substantial increase in their assets, regardless of the source of income (whether salary-related or otherwise), is duly reported to the State. Therefore, the provision covers all public officials, including public employees, who experience a significant growth in their wealth based on their disclosed income to the State.
- Inter-American Convention Against Corruption (IACAC), Article IX
  The IACAC provides more specific provisions for government officials, excluding other employees, to address the increase in assets solely from their reported salaries during their term in office. It emphasizes the obligation of government officials to disclose and justify any significant wealth accumulation while in public service. The focus is on legitimate sources of wealth, such as reported salaries, which must be declared to the tax authorities. These provisions aim to promote transparency, accountability, and the prevention of illicit enrichment within the public sector.
- African Union Convention on Preventing and Combating Corruption (AUCPCC), Article 8

The provisions of AUCPCC are applicable to both Public Officials, including government employees, and individuals, aiming to elucidate substantial growth in their overall assets derived from their income (prior to reporting to the State).

Illicit enrichment provisions have been incorporated into the legislation of several countries, including India, Guyana, Sierra Leone, and China.

- India (Prevention of Corruption Act of 1998, Article 13)
  In India, the legislation pertaining to illicit enrichment targets all public officials, both in their official capacity and outside their official duties. It requires them to explain any discrepancies between their reported income and their assets, income sources, or wealth that cannot be reasonably accounted for (excluding tax-related matters). Violations of this provision may lead to imprisonment for a minimum of one year, which can be extended up to seven years, along with potential fines.
- Guyana (Integrity Commission Act 1998)
  In the context of Guyana, the regulations are directed towards individuals involved in public service or acting on behalf of a public position. These individuals are required to account for any wealth or monetary assets that cannot be reasonably justified based on their income. Failure to provide evidence of the ownership and legitimate sources of such assets through legal mechanisms, including the court system and taxation, can lead to penalties, including fines and imprisonment. The prescribed punishment for non-compliance ranges from a minimum of six months to a maximum of three years of imprisonment.
- Sierra Leon (Anti-Corruption Act 2008, Part IV)
  In the context of Sierra Leone, the regulations are directed towards individuals in public positions who possess unexplained wealth that cannot be substantiated through judicial processes.
- China (Criminal Law 1997, Article 395)
  In China, the provisions are directed towards public officials who possess wealth and incur expenses that surpass their lawful income, without being able to account for the legitimate sources of their earnings. Such acquisitions are deemed illicit. Offenders may face a variable term of imprisonment up to five years or criminal detention, and any excess assets beyond their lawful income must be returned.

The definition of illicit enrichment in these four countries shares a common aspect, which pertains to the possession of unlawful wealth. However, there are variations in terms of how significantly increased assets are categorized and measured in relation to income. These countries have distinct frameworks that outline specific types of assets and criteria used to assess income levels.

However, in comparison to the formulation of Article 20 of UNCAC, 2003, the legislation of these four countries does not explicitly include the term "significant" in defining illicit enrichment. Unlike UNCAC, 2003, IACAC, and AUCPCC, the absence of the term "significant" in their legal provisions may overlook the importance of setting a specific threshold for explaining the substantial increase in income by public officials.

The scope of regulation in these four countries encompasses a range of subjects, including public officials as well as individuals at large. The focus of the regulation pertains to the accumulation of wealth in the form of assets, both among public officials and individuals. Penalties imposed on public officials consist of fines and imprisonment. The duration of the imposed sentences varies, with the minimum being 6 months (in Guyana) and the maximum being 5 years (in China). Notably, Sierra Leone specifically addresses Unexplained Wealth, which is presumed to be synonymous with illicit enrichment. The potential punishments for such offenses range from 6 months to 5 years.

Formulating the Criminalization of Illicit Enrichment in National Criminal Law

The formulation of laws to criminalize illicit enrichment can be achieved through the revision of several national criminal statutes, including:

- The Draft Law on the Criminal Code (RUU KUHP)
- The Anti-Corruption Law (UU Tipikor)
- The Draft Law on Asset Forfeiture in Criminal Offenses

According to Indra Gunawan, the representative of the task force, and Naila Fauzana Nasution from the Corruption Eradication Commission (KPK), the most rational approach to addressing illicit enrichment is through revising the Anti-Corruption Law (UU Tipikor). When formulating the proposed provision on illicit enrichment, it is important to provide clear definitions of the subjects, objects, evidentiary mechanisms, and sanctions to be incorporated.[6]

The provision on illicit enrichment as a form of corruption in Indonesia should encompass the following essential elements:[7]

a. Person of Interest

The subject of illicit enrichment, as stipulated in UNCAC, 2003, is limited to "public officials" or "pejabat publik" in Indonesian. This implies that the provisions pertaining to illicit enrichment in UNCAC specifically target individuals holding public office, rather than encompassing every individual. The term "public officials" as defined in Article 2 of UNCAC encompasses:[8]

1) individuals occupying positions within the legislative, executive, administrative, or judicial institutions of a nation, whether appointed or elected, whether in a permanent or temporary capacity, regardless of their level of remuneration or rank.
2) any other individual engaged in public service, including those working for state-owned enterprises or involved in delivering public services, as defined by the domestic legislation of the respective state party.
3) any individual who is deemed to be a public official according to the national law of the participating state.

Within the framework of Indonesian law, the term "public official" encompasses individuals who carry out public functions or are engaged in the provision of public services.

b. Periode of Interest

The explicit formulation of illicit enrichment is not explicitly stated in UNCAC. However, by considering the element of the person involved, it can be inferred that the notion of wealth increase in this provision pertains to the accumulation of wealth that transpires during an individual's tenure as a public official or while holding a public position.

c. The significant increase in assets

The concept of a "significant increase" entails the notion of an unjustifiable accumulation of wealth that surpasses reasonable limits. The determination of what is considered reasonable or unreasonable is based on comparing the expected wealth of a public official, considering their income profile, with the actual wealth they possess or control. It is crucial to use the criterion of a "significant increase" as a threshold to ensure that minor increments in wealth (non-significant) do not become the basis for prosecuting individuals on the grounds of illicit enrichment.

d. Awareness or knowlwdge

The element of intent or mens rea that must be established in relation to the aforementioned illicit enrichment does not refer to a mere willingness to engage in the act, but rather

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[6] Indra Gunawan dan Naila Fauziana Nasution, Wawancara, Komisi Pemberantasan Korupsi, (Jakarta, 20 Februari 2020)

[7] Lindy Muzila, dkk. On the Take Criminalizing Illicit Enrichment to Fight Corruption, (Washington DC: World Bank & UNODC, 2012)

[8] Article 2 United Nations Convention against Corruption, 2003.

signifies the conscious awareness or knowledge of the suspect regarding the disproportionate increase in their wealth compared to their lawful income.

e. Absent of justification
   In the UNCAC, this element is articulated as "...that he or she cannot reasonably explain in relation to his or her lawful income." The essence of this element lies in the fact that the perpetrator is unable to provide a plausible justification or rational explanation for the increase in wealth, which must be consistently linked to their legitimate income. This particular element plays a crucial role in establishing the offense of illicit enrichment. It signifies that an individual cannot be deemed guilty of illicit enrichment if they are able to substantiate that the accumulation of wealth, which surpasses their legitimate income as a public official, is obtained through lawful means.

Based on the foregoing discussions, the optimal formulation for the offense of illicit enrichment, as a prospective corruption offense, can be outlined as follows:
Paragraph (1): Public officials whose wealth grow beyond bounds reasonableness with to his knowledge and not can be held accountable plausibly in relation with legal income.
Paragraph (2): Wealth that cannot be earned accounted for makes sense as referred to in paragraph (1) is confiscated for country.

CONCLUSION

Based on research and discussion that is carried out, can be taken conclusion as follows the practice of implementing illicit acts enrichment as a crime corruption in Indonesia can be found through tax markus cases or money laundering with the accused Bahasyim Assifie (BA) and cases tax evasion with the accused Dhana Widyatmika (DW). Deeds that BA and DW did on basically fall into the classification illicit enrichment actions. Will however, such cases cannot charged with illicit acts enrichment because it doesn't exist yet any national penal arrangements (national implementing legislation) that regulates this. This is the urgency for government to act immediately revision of the national criminal legislation, in particular in the field of combating crime corruption to formulate illicit enrichment acts as offense of corruption in Indonesia, so can accommodate norms contained in the UNCAC.

REFERENCES

Abu-Morad, M.A., Mohd Noor, F. and Ayub, Z.A., 2016. The shortcomings of the income and asset declaration system in Jordan illicit enrichment law. *Journal of Global Business and Social Entrepreneurship (GBSE)*, *2*(1), pp.98-110.

Ajie, R., 2018. Criminalisation Of The Unexplained Wealth By Public Officials (Illicit Enrichment) In The United Nations Convention Against Corruption 2003 (Uncac) And Its Implementation In Indonesia. *Jurnal Legislasi Indonesia*, *12*(3).

Al-Hamid, M.S., 2022. Illicit Enrichment in Efforts to Eradicate Corruption in Indonesia. Al-Mizan (e-Journal),18(2), pp.243-268.

Boles, J.R., 2014. Criminalizing the problem of unexplained wealth: illicit enrichment offenses and human rights violations. *NYUJ Legis. & Pub. Pol'y*, *17*, p.835.

Chudal, K., 2007. Developing Jurisprudence on Illicit Enrichment: A Bird's Eye View. *NJA LJ*, *1*, p.179.

Danil, Elwi, Corruption: Concepts, Crime, and Eradication, (Jakarta: PT RajaGrafindo Persada, 2012).

Dirwan, A., 2019. The effect of education against corruption in Indonesia. *OIDA International Journal of Sustainable Development*, *12*(01), pp.53-64.

Fernando, Z.J., Pujiyono, P., Susetyo, H., Candra, S. and Putra, P.S., 2022. Preventing bribery in the private sector through legal reform based on Pancasila. *Cogent Social Sciences*, *8*(1), p.2138906.

Herlambang, H., Fernando, Z.J. and Rahmasari, H., 2022. Kejahatan Memperkaya Diri Sendiri Secara Melawan Hukum (Illicit Enrichment) Dan Aparatur Sipil Negara: Sebuah Kajian Kritis. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, *11*(2).

Indra Gunawan dan Naila Fauziana Nasution, Wawancara, Komisi Pemberantasan Korupsi, (Jakarta, 20 Februari 2020)

Kurniawan, I., 2020. Prevention Of Bribery In The Private Sector In Indonesia According To The United Nations Convention Against Corruption. *NOMOI Law Review*, *2*(2), pp.145-153.

Lindy Muzila, dkk. On the Take Criminalizing Illicit Enrichment to Fight Corruption, (Washington DC: World Bank & UNODC, 2012)

Michael, T., 2019. Humanity in the enforcement of anti-corruption laws. *Jurnal Hukum Bisnis Bonum Commune*, pp.211-215.

Ng, N.B.M.A., Ayub, Z.A.B. and Rahman, R.B.A., 2022. The Legal Aspect Of Illicit Enrichment In Malaysia: Is It A Crime To Be Rich?. *UUM Journal of Legal Studies*, *13*(2), pp.267-293.

Putusan Mahkamah Agung Nomor: 1454 K/Pid.sus/2011

Putusan Mahkamah Agung Nomor: 1540 K/PID.SUS/2013

Schütte, S.A., 2008. Government policies and civil society initiatives against corruption. In *Democratization in Post-Suharto Indonesia* (pp. 101-121). Routledge.

Soekanto, Soerjono and Sri Mamudji, Normative Legal Research (A Brief Overview), (Jakarta: Rajawali Pers, 2001).

Susanti, L., 2015. Criminal Liability of Public Officials for Illicit Enrichment: Comparing Approaches of the Use of Indirect Methods of Proof in Investigating Illicit Enrichment in Indonesia and the US. *Indonesian J. Int'l L.*, *13*, p.63.

United Nations Convention against Corruption, 2003.

Weda, M.D., 2016. Confiscation of Corrupted Assets by Means of in Rem Approach against Illicit Enrichment. *JL Pol'y & Globalization*, *55*, p.38.

Werdhiyani, I.G.A. and Setiabudhi, I.K.R., 2023. Policy formulation against bribery in the private sector in indonesian criminal law reform. *Sibatik journal: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, dan Pendidikan*, *2*(3), pp.781-792.