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Regulating Illicit Enrichment into Indonesia's Anti-Corruption Legal Reform Regime

Mengatur Pengayaan Tidak Sah ke dalam Reformasi Rezim Hukum Anti-Korupsi Indonesia

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ABSTRACT

The concept of illicit enrichment refers to a significant increase in a public official's assets that cannot be reasonably explained in relation to their lawful income. As a legal instrument, illicit enrichment has been adopted in various jurisdictions to complement traditional anti-corruption measures, especially when proving the predicate offenses is difficult due to the sophisticated methods used to conceal corrupt practices. In Indonesia, despite the country's commitment to combat corruption, the legal framework has yet to formally accommodate the concept of illicit enrichment as a standalone offense. This paper explores the potential of incorporating illicit enrichment into Indonesia's anti-corruption regime by examining international practices, legal principles, and potential human rights concerns, particularly the presumption of innocence and the burden of proof. The analysis indicates that with proper safeguards, illicit enrichment provisions can be aligned with due process and serve as an effective tool in curbing unexplained wealth accumulation among public officials. The study also highlights the challenges Indonesia may face, including legislative reform, institutional readiness, and the need for public acceptance. Nevertheless, the integration of illicit enrichment into national law is not only a legal necessity but also a moral imperative in strengthening public accountability and restoring public trust. This paper concludes that a balanced and rights-respecting approach to illicit enrichment could significantly enhance the effectiveness of Indonesia's anti-corruption framework.

Keyword: Illicit Enrichment, Anti-Corruption, Legal Reform

ABSTRAK

Konsep *illicit enrichment* merujuk pada peningkatan kekayaan yang signifikan dari seorang pejabat publik yang tidak dapat dijelaskan secara wajar berdasarkan penghasilan sah. Sebagai instrumen hukum, *illicit enrichment* telah diadopsi di berbagai yurisdiksi untuk melengkapi upaya pemberantasan korupsi konvensional, terutama ketika pembuktian tindak pidana asal sulit dilakukan karena kompleksitas modus operandi. Di Indonesia, meskipun terdapat komitmen kuat dalam memerangi korupsi, kerangka hukum nasional belum secara eksplisit mengakomodasi *illicit enrichment* sebagai tindak pidana yang berdiri sendiri. Tulisan ini membahas potensi penerapan konsep tersebut dalam sistem hukum Indonesia dengan meninjau praktik internasional, prinsip-prinsip hukum, serta isu hak asasi manusia, khususnya terkait asas praduga tak bersalah dan beban pembuktian. Hasil analisis menunjukkan bahwa dengan perlindungan hukum yang memadai, pengaturan mengenai *illicit enrichment* dapat sejalan dengan prinsip *due process* dan menjadi alat efektif dalam menekan akumulasi kekayaan yang tidak wajar. Studi ini juga mengidentifikasi tantangan yang akan dihadapi, seperti kebutuhan reformasi legislasi, kesiapan institusi, dan penerimaan publik. Namun demikian, integrasi konsep ini bukan hanya kebutuhan yuridis, melainkan juga keharusan moral dalam memperkuat akuntabilitas publik dan memulihkan



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kepercayaan masyarakat. Tulisan ini menyimpulkan bahwa pendekatan yang seimbang dan menghormati hak asasi dapat meningkatkan efektivitas pemberantasan korupsi di Indonesia.

Keyword: *Illicit Enrichment*, Antikorupsi, Reformasi Hukum

1. Introduction

Corruption is an *extraordinary crime* that has broad implications for a country's social, economic, and political life. In Indonesia, corruption has become a systemic threat that hinders development and undermines public trust in state institutions. Various efforts have been made to eradicate corruption, including the establishment of the Corruption Eradication Commission (KPK) and the strengthening of the legal framework through the Anti-Corruption Law. However, these efforts still face numerous challenges, particularly regarding the complexity of proving corruption offenses.

One of the key issues in proving corruption is the phenomenon of illicit enrichment, which refers to a significant increase in the wealth of a public official that cannot be reasonably explained based on their lawful income. In many countries, including those that have ratified the United Nations Convention against Corruption (UNCAC), illicit enrichment is recognized as a standalone offense that complements traditional anti-corruption mechanisms—especially when predicate offenses are difficult to prove due to the sophisticated concealment of criminal acts (Yusuf et al., 2024). In Indonesia, however, illicit enrichment has not been explicitly accommodated in the legal system. While Law No. 28 of 1999 mandates public officials to declare and disclose their assets, and grants KPK the authority to examine them, there is no provision that directly criminalizes unexplained wealth. This legal gap makes it difficult for law enforcement to prosecute corrupt officials who manage to hide their crimes effectively (Putra & Prahassacitta, 2021).

The absence of legal norms criminalizing illicit enrichment as a separate offense raises serious concerns. In practice, many corruption cases are difficult to prove due to the use of complex methods such as money laundering, transferring assets to third parties, or using bank accounts under other names (Iswara, 2020). In such situations, traditional methods of proving predicate offenses become ineffective. Therefore, a limited reverse burden of proof becomes a relevant approach, as reflected in several international legal instruments and practices from other jurisdictions (Muhtar, 2013).

Nonetheless, the adoption of illicit enrichment in Indonesia is not without legal and philosophical challenges. A primary criticism of criminalizing illicit enrichment is the potential violation of the presumption of innocence and the principle of *nullum crimen sine lege* (no crime without law). Some scholars argue that shifting the burden of proof contradicts human rights, as it could lead to criminal liability simply due to a person's inability to explain their wealth (Miantoro, 2020; Muhtar, 2013). However, this argument can be countered by emphasizing that the burden of proof in question is not absolute, but rather limited to matters that the suspect reasonably ought to know, such as the source of their personal assets (Muhtar, 2013).

From the perspective of substantive justice, applying illicit enrichment actually reflects the principles of public accountability and transparency. A public official, entrusted with public office, should be willing and able to explain the source of their wealth. In many cases, the inability to explain disproportionate wealth serves as a strong indication of corruption or abuse of power (Hutabarat, 2025). Therefore, it is essential for Indonesia to consider regulating illicit enrichment as part of strengthening the legal anti-corruption framework.

Furthermore, integrating the concept of illicit enrichment aligns with the principle of *strict liability*, already applied in Indonesian administrative and environmental law. This principle prioritizes the protection of public interest over individual interest, especially in crimes with wide-reaching effects. By adopting a similar approach in anti-corruption law, the state can close the legal loopholes exploited by corrupt actors (Akbar, 2021; Amrullah, 2016).

Globally, illicit enrichment is recognized and criminalized in several countries such as Germany, Colombia, Argentina, and Hong Kong. Their experiences demonstrate that such an approach can be

implemented without violating human rights, provided that proper legal protections are established. Indonesia should learn from these practices to develop an adaptive legal system that remains grounded in principles of justice (Andika et al., 2023).

Thus, the urgency of accommodating illicit enrichment in Indonesian law is not only a pragmatic necessity in combating corruption, but also a moral imperative in building a clean and accountable government. This study aims to examine the challenges and opportunities of implementing illicit enrichment within the Indonesian legal system, focusing on legal analysis, comparative practices, and human rights considerations.

2. Method

This study employs a normative juridical approach, also known as doctrinal legal research, which focuses on examining legal norms, principles, and doctrines relevant to the issue of illicit enrichment in the context of Indonesia's anti-corruption framework. The normative juridical method is appropriate when the research aims to analyze legal provisions, interpret existing regulations, and provide conceptual and prescriptive recommendations (Soekanto & Mamudji, 2001).

The primary legal materials used in this research consist of Indonesian legislation, including the 1945 Constitution of the Republic of Indonesia, Law No. 31 of 1999 as amended by Law No. 20 of 2001 on the Eradication of Corruption, Law No. 28 of 1999 on the State Administration that is Clean and Free from Corruption, Collusion, and Nepotism, as well as international instruments such as the UNCAC. These primary sources provide the foundation for evaluating the extent to which the current legal framework accommodates or resists the recognition of illicit enrichment as a criminal offense.

In addition to primary legal materials, the research also utilizes secondary legal materials, including academic writings, journal articles, commentaries on legal doctrines, and comparative studies on the implementation of illicit enrichment laws in other jurisdictions. These materials provide a theoretical foundation and comparative perspective, particularly in assessing the compatibility of illicit enrichment with fundamental legal principles such as *presumption of innocence* and *due process*.

The research also examines tertiary legal materials, including legal dictionaries and encyclopedias, to clarify terminology and concepts essential to the formulation and interpretation of legal norms. All sources are critically analyzed through legal reasoning, interpretive methods (grammatical, systematic, teleological, and comparative), and logical argumentation (Marzuki, 2017). The method of legal reasoning in this study is qualitative in nature, aiming to construct a comprehensive understanding of the existing normative framework and its potential development. The analysis identifies legal gaps (legal vacuums), inconsistencies, and the need for harmonization between national laws and international standards. Through this approach, the study seeks to offer normative arguments for reforming Indonesia's legal system so that provisions on illicit enrichment may be incorporated without infringing upon human rights or fundamental legal principles.

As suggested by (Ibrahim, 2007), normative legal research is non-empirical in nature; instead, it relies on the internal coherence of legal norms and their consistency within the broader legal system. Therefore, this research does not involve field data collection, interviews, or surveys. However, references to empirical findings from existing studies are included to support the urgency of legal reform. To strengthen the analytical framework, the study applies a comparative legal method, examining how countries such as Germany, Colombia, Argentina, and Hong Kong have incorporated illicit enrichment into their legal systems (Andika et al., 2023; Körtl & Chbib, 2024; Muhammad Azman Ng et al., 2022). This comparative element provides insight into how similar legal systems have balanced the tension between anti-corruption goals and the protection of individual rights.

In summary, this research adopts a normative juridical method grounded in legal literature, statutory interpretation, and comparative law analysis to evaluate the feasibility and desirability of recognizing illicit enrichment as a corruption offense in Indonesia. The goal is to provide a legal and theoretical basis for legislative reform that enhances Indonesia's anti-corruption efforts while remaining consistent with constitutional and international legal standards.

3. Results and Discussions

Indonesia's anti-corruption legal framework, although relatively comprehensive, has yet to accommodate the concept of illicit enrichment as a distinct criminal offense. This normative legal analysis reveals that

Indonesia continues to rely on a predicate offense model, where proving corruption hinges on evidence of a specific illegal act, such as bribery or embezzlement. Consequently, the legal system often struggles to address cases where public officials amass significant wealth without any lawful or clearly traceable sources. This loophole weakens the deterrent effect of existing laws and reduces the effectiveness of anti-corruption mechanisms in uncovering and punishing unexplainable wealth accumulation (Putri & Katimin, 2021).

While asset disclosure obligations for public officials are mandated under Law No. 28 of 1999, the absence of penal provisions for unexplained wealth renders these requirements largely symbolic. Financial reports thus become bureaucratic formalities rather than instruments of legal accountability. This shortfall is particularly concerning in light of various corruption cases uncovered by the KPK, where investigations revealed disproportionate assets that could not be substantiated by legal income (Putri & Katimin, 2021). However, in the absence of direct evidence linking those assets to a specific criminal act, prosecution remains infeasible.

A central challenge in proposing legislation on illicit enrichment lies in the concern over the principle of presumption of innocence and the potential shift of the burden of proof to the defendant. Critics argue that requiring public officials to justify the origin of their wealth infringes upon their constitutional rights and may be interpreted as inconsistent with Article 28 of the Indonesian Constitution. Nonetheless, such criticisms can be mitigated through the establishment of procedural safeguards. Jurisdictions that have adopted illicit enrichment provisions typically apply a rebuttable presumption standard, ensuring that any shift in the burden of explanation does not eliminate the prosecution's obligation to establish a *prima facie* case (Hasuri & Mukaromah, 2021).

From a legal theory perspective, the criminalization of illicit enrichment can still align with the principle of legal certainty, provide that legislative definitions are precise and the evidentiary threshold for invoking reversed burden procedures is clearly established. Reasonable and proportionate explanations by public officials, supported by legal counsel, can form part of a structured inquiry process. This model has been applied in jurisdictions such as Germany, Colombia, and Hong Kong (Andika et al., 2023; Körtl & Chbib, 2024; Muhammad Azman Ng et al., 2022), where anti-corruption agencies are authorized to pursue cases of disproportionate wealth, subject to judicial review and procedural fairness.

Introducing illicit enrichment laws in Indonesia would require a structured legislative amendment process. Rather than building an entirely new statutory regime, lawmakers could amend the existing anti-corruption laws by incorporating specific provisions that define illicit enrichment and outline conditions for its prosecution. These provisions should establish clear thresholds for unexplained wealth, guidelines for rebuttal by the accused, and procedural protections such as access to legal representation and the right to contest the allegations in court. Legislative reform should also be accompanied by interpretative guidelines to ensure consistency in application across different legal institutions (Fauzia & Hamdani, 2022; Mahdi et al., 2022). With the aim of confiscating more Proceeds of Crime, Germany reformed its asset recovery regime through the Law on Reforming Criminal Assets Recovery in 2017. However, there is still a weakness, namely that the confiscation of profits obtained through non-criminal unlawful acts cannot be confiscated under the reformed Asset Recovery regime, even if the amount is large and has a significant detrimental impact on society (Körtl & Chbib, 2024).

The normative benefit of recognizing illicit enrichment as a criminal offense lies in its capacity to bridge evidentiary gaps in corruption cases. By enabling prosecution based on the disproportion between lawful income and actual assets, the law would become more adaptable in addressing modern corruption schemes, which often involve third parties, shell companies, and international transfers that complicate evidence collection. This adaptability is crucial in contexts where corruption is deeply embedded in governance structures and systemic collusion shields perpetrators from traditional legal scrutiny (Muzaki, 2021). However, the concept of criminalizing illicit wealth has proven less promising than civil confiscation mechanisms. First, this concept is controversial in the context of proportionality and *ultima ratio*. Second, this concept may violate the prohibition of self-evidence. Third, gathering sufficient evidence of illicit wealth under criminal standards of proof appears to be a very difficult task for prosecutors (Bikelis, 2017).

Institutional readiness is another crucial factor in implementing illicit enrichment laws. The KPK already possesses robust investigative tools, including access to bank records and public officials' asset declarations.

However, successful enforcement would depend on the availability of clear procedural frameworks, ongoing training for investigators and prosecutors, and collaboration with the judiciary. Ensuring consistency in application is essential to prevent the misuse or politicization of the new legal instrument (Asmoro et al., 2025). Whereas in Singapore, success in minimizing corruption is the result of strong political will from its government and adequate budget, personnel and operational autonomy given to the Corrupt Practices Investigation Bureau to enable it to enforce anti-corruption laws impartially (Quah, 2017). Ukraine has also been quite successful in combating corruption due to the strong political will of its leadership and decisive legislative action based on international experience (Omelchuk et al., 2022).

Furthermore, legal reform in this area would signify Indonesia's commitment to international anti-corruption standards, particularly those outlined in the UNCAC. While Indonesia has ratified the UNCAC, its current legal instruments fall short of fully complying with the convention's recommendation on illicit enrichment. Aligning domestic law with this framework would not only improve international perceptions of Indonesia's legal system but also enhance cooperation with other countries in the investigation and prosecution of transnational corruption cases (Effendi et al., 2023; Situmorang, 2014).

Balancing anti-corruption goals with constitutional protection requires a nuanced approach. The incorporation of procedural safeguards, such as the right to a fair trial and the opportunity to provide an explanation, will be essential in upholding human rights. Additionally, applying the principle of proportionality in determining the level of evidence required to trigger investigations ensures that the law is not arbitrarily applied. The legislature must carefully craft the language of any new provisions to avoid ambiguity and minimize risks of misapplication (Setiawan et al., 2024). However, in eradicating corruption itself there are weaknesses, namely weak laws and regulations, law enforcement that is not independent, and weak law enforcement (Nur, 2025). In Qatar and the UAE, efforts to combat corruption are carried out by strengthening ethics and strengthening whistleblowing reports (Issa & Alleyne, 2018). In China, the fight against corruption is being carried out through anti-corruption campaigns, legal reforms, the establishment of special procedures for the confiscation of illegal assets in the amendments to the Criminal Procedure Code, and the implementation of "trial in absentia" procedures in the 2018 amendments to the law. Another ongoing reform is the corporate compliance non-prosecution pilot to ensure corporate compliance and minimize state losses (Guo, 2023).

In conclusion, the normative analysis underscores the urgent need for Indonesia to recognize illicit enrichment as part of its anti-corruption legal framework. While challenges remain, they are not insurmountable. With appropriate legal design, institutional preparation, and adherence to constitutional principles, illicit enrichment can serve as a powerful tool in combating corruption and promoting integrity in public service. This reform is both a legal necessity and a moral imperative to ensure accountability and restore public trust in government institutions (Jawa et al., 2024; Kusuma, 2024).

4. Conclusion

Illicit enrichment represents a critical legal gap in Indonesia's anti-corruption framework. Despite existing regulations on asset declarations and predicate offenses, the inability to prosecute wealth without identifiable sources undermines accountability. The persistence of unexplained wealth among public officials signals systemic weaknesses in enforcement. Recognizing illicit enrichment as a criminal offense would close this gap and empower investigators with the necessary tools. As corruption evolves in complexity, legal innovation must follow suit.

Implementing this reform requires careful legal drafting to balance effectiveness with constitutional safeguards. A rebuttable presumption model can ensure that public officials retain their right to a fair trial while still being accountable for their financial transparency. Procedural protections and evidentiary thresholds must be clearly defined to avoid misuse of the law. Comparative experience from other jurisdictions shows that such reforms are feasible and impactful. Indonesia can adapt these frameworks to suit its legal traditions and institutional capabilities.

Beyond the legal imperative, criminalizing illicit enrichment holds symbolic importance for public integrity. It signals a shift in national priorities toward proactive and preventive anti-corruption measures. Restoring public trust requires not only punishing wrongdoing but also addressing the structural enablers of corruption. In doing so, Indonesia will strengthen its democratic institutions and reaffirm its commitment to

good governance. This reform is not only necessary but long overdue.

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