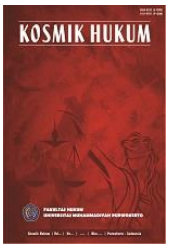

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Urgency and Challenges of Illicit Enrichment Regulation in the Draft Law on Asset Forfeiture in Indonesia

Putra Andika[1]✉, Suparji Ahmad[2], Anis Rifai[3]
[1,2,3] Faculty of Law, Universitas Al Azhar Indonesia

Corresponding: dikaputra410@gmail.com

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Abstract
The enforcement of laws regarding illicit enrichment, as part of the effort to combat corruption, presents a significant challenge in many countries. Commitment to preventing this crime involves the enactment of legislation that criminalizes illicit enrichment and prescribes criminal penalties. The importance of passing the Asset Forfeiture Bill and enhancing the AntiCorruption Law, including provisions addressing illicit enrichment, is paramount. The objective of this research is to underscore the significance of incorporating provisions on illicit enrichment in the Asset Forfeiture Bill as a solution to economic crimes, particularly those involving public officials unable to account for the origins of their wealth. The research methodology employed is normative legal research with three approaches: legislative analysis, conceptual analysis, and comparative analysis. The research findings indicate that regulations concerning illicit enrichment require improvement to consider the principle of equality before the law, particularly the rights of the accused in court. Without such considerations, the implementation of the Asset Forfeiture Bill can be susceptible to abuse and may not act as a deterrent for public officials to avoid economic crimes. Some officials have also exploited legal loopholes within these regulations. To enhance its effectiveness, amendments, and refinements to the Asset Forfeiture Bill are necessary to address these weaknesses. This will help establish a fair legal system, prevent the abuse of power by public officials, and improve the effectiveness of combating corruption and economic crimes that harm the state.

Keywords: *Illicit enrichment, Corruption Criminal Act, Asset Forfeiture.*

Abstrak
Penerapan hukum mengenai illicit enrichment sebagai bagian dari upaya melawan korupsi adalah tantangan besar di banyak negara. Upaya komitmen dalam pencegahan kejahatan ini melibatkan penetapan undang undang yang menjadikannya sebagai tindak pidana dengan sanksi pidana. Pentingnya mengesahkan RUU Perampasan Aset Hasil Tindak Pidana dan menyempurnakan UU Pemberantasan Tindak Pidana Korupsi, termasuk mengatur illicit enrichment, sangat mendasar. Penelitian ini bertujuan untuk mengungkap pentingnya mengatur illicit enrichment dalam RUU Perampasan Aset sebagai solusi terhadap kejahatan ekonomi, khususnya yang melibatkan pejabat publik yang tak dapat menjelaskan asalusul kekayaannya. Metode penelitian yang digunakan adalah hukum normatif dengan tiga pendekatan: peraturan perundangundangan, konseptual, dan perbandingan. Hasil penelitian menunjukkan bahwa regulasi illicit enrichment perlu perbaikan agar memperhatikan prinsip equality before the law, terutama hakhak terdakwa dalam pengadilan. Tanpa pertimbangan ini, penerapan RUU Perampasan Aset bisa disalahgunakan dan tidak mengintimidasi pejabat publik untuk menghindari kejahatan ekonomi. Celah hukum dalam regulasi ini juga dimanfaatkan oleh beberapa pejabat. Untuk meningkatkan efektivitasnya, perbaikan dan penyempurnaan RUU Perampasan Aset diperlukan untuk mengatasi kelemahankelemahan ini. Ini akan menciptakan sistem hukum yang lebih adil, mencegah penyalahgunaan kekuasaan oleh pejabat publik, dan meningkatkan efektivitas dalam memerangi korupsi serta kejahatan ekonomi yang merugikan negara.

Kata kunci: Illicit enrichment, Tindak Pidana Korupsi, Perampasan Aset.

I. Introduction

The phenomenon of economic crimes that harm the state is a never-ending problem in the life of the nation and state in Indonesia. Various criminal acts with economic motives have impacted the country's economy and business sector. These crimes are often related to

Kosmik Hukum Vol. 24 No. 1 (2024): 1-13
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individuals who have high social positions, including officials. These forms of economic crime include corruption, money laundering, gratuities, and other actions that can potentially cause losses to the state because officials are suspected to have obtained wealth illegally.

The revelation of several cases of unnatural increases in assets of state officials has further strengthened the demand for the importance of the Law on Criminal Asset Forfeiture. Although legal efforts to fight these crimes have been formulated and legalized since the beginning of the reformation, in reality, economic crimes have not decreased, and even seem to be growing with more sophisticated modes. This shows that public officials have created new ways to harm the state.

One example is the unnatural increase in assets of some public officials, and the source of the wealth cannot be clearly explained. This situation is known as illicit enrichment, Illicit enrichment is a legal concept that relates to the unexplained increase in wealth or property of a public official with a legitimate source of income. This concept has gained support and attention from various legal experts and international organizations to fight corruption and economic crimes that harm the state. This provision is already regulated in Article 20 of the United Nations Convention Against Corruption (UNCAC). The article refers to an increase in the assets of a public official that cannot be explained following his or her legal income.[1]

The emergence of the Rafael Alun case was the initial trigger in uncovering the irregularities of his assets,[2] which was revealed in the State Organizer's Wealth Report (LHKPN) and income as an official of the Ministry of Finance, and became an alleged gratification case worth Rp1.3 billion. However, the Rafael Alun case turned out to have a domino effect in revealing cases of economic crimes committed by other officials. From this case, suspicious transactions worth Rp349 Trillion within the Ministry of Finance were revealed. Although there are differences in the data submitted by the Coordinating Minister for Political, Legal and Security Affairs (Menko Polhukam) and the Minister of Finance, this difference is because the data from Menko Polhukam also includes findings from the Financial Transaction Reports and Analysis Center (PPATK). The value of suspicious transactions is also influenced by the sophisticated mode of money laundering, but the handling efforts have not changed significantly.

In relation to monitoring the wealth of officials, Indonesia has a LHKPN reporting system to control the wealth reports of public officials. However, this LHKPN system is still not perfect in preventing economic crimes committed by public officials.[3] In 2021, LHKPN reporting showed that the wealth of state officials reached IDR 609.356 Trillion, but this amount is considered not to reflect reality. This discrepancy is due to the full authority given to public officials to report their assets or wealth independently.[4] In fact, public officials have the freedom to list the value of assets and wealth based on market valuation or acquisition value. The problem is that the current LHKPN only functions as an administrative task and has no effect in ensuring the accuracy of wealth reports. As a result, there is no adequate answer in handling the unclear sources of wealth of public officials. Therefore, the LHKPN needs to be strengthened with regulations on illicit enrichment, which can provide more severe sanctions than administrative sanctions.

The impact of the Rafael Alun case and the huge amount of suspicious transactions amounting to Rp349 Trillion within the Ministry of Finance led to increasing disillusionment among the public. This prompted the public to expose the wealth holdings and lifestyles of several other public officials. As a result, there has been a push from the public and other government elements to regulate the issue of improper wealth in public officials. Some of the

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1 AlHamid, Mohamad Said. "Illicit Enrichment Dalam Upaya Pemberantasan Korupsi di Indonesia." *AlMizan (EJournal)* 18.2 (2022): 243268.

2 Lysandra, Maura, And Jeane Neltje. "Pencucian Uang Yang Dilakukan Rafael Alun Sesuai Dengan Uu Nomor 8 Tahun 2010 Tentang Tppu." *Innovative: Journal Of Social Science Research* 3.5 (2023): 382388.

3 Simanjuntak, Mangisi. "Mengungkap Tindak Pidana Korupsi Dari Pembuktian Terbalik Dan Laporan Harta Kekayaan Penyelenggara Negara (Lhkpn)." *Jurnal Ilmiah Hukum Dirgantara* 7.1 (2018).

4 Prayogi Dwi Sulistyo, Kekayaan Pejabat Negara Tercatat Rp 609,35 Triliun, Cited from: Https://Www.Kompas.Id/Baca/Polhuk/2023/03/13/KekayaanPejabatTercatatRp609356187899321; Diakses Pada 20 September 2023

planned instruments to be implemented include civil and criminal dimensions, such as the Draft Law on Asset Forfeiture Related to Crimes (Draft Law on Asset Forfeiture). The passing of the Bill on Assets Forfeiture from Criminal Acts and the improvement of the Corruption Eradication Law are very important, especially to include provisions on illicit enrichment. With this provision, law enforcement officials will be able to take action against cases of additional wealth by public officials whose sources cannot be explained.[5]

This research aims to investigate and explore the importance of including illicit enrichment provisions in the Asset Forfeiture Bill. The main objective of this research is to address the problem of economic crimes that harm the state, especially those committed by public officials who cannot properly explain the source of their wealth. By including illicit enrichment provisions in the Asset Forfeiture Bill, it is hoped that it will create a strong legal basis for dealing with cases of improper increase in wealth of public officials. The provision will provide a clear legal basis to prosecute officials proven to have unauthorized wealth and facilitate the process of seizing such unauthorized assets.

II. Research Problems

1. What is the Concept of Illicit Enrichment and its International Application?
2. What is the Legal Framework of Illicit Enrichment in Australia and Singapore in comparison to Indonesia?
3. What is the Urgency of Illicit Enrichment in the Draft Law on Asset Forfeiture in Indonesia?

III. Research Method

This research uses a normative legal research method with a statutory, conceptual, and comparative approach. In the statutory approach, researchers examine various regulations related to efforts to eradicate corruption, including the Draft Law on Asset Forfeiture, as well as other relevant regulations. Furthermore, in the conceptual framework, researchers examine various concepts and principles in law enforcement and corruption eradication. Meanwhile, in the comparative approach, researchers conduct a comparison by examining how regulations on illicit enrichment in other countries.

IV. Results and Discussion

1. The Concept of Illicit Enrichment and its International Application

The United Nations (UN) agreement on anti-corruption through UNCAC in 2003 has been recognized and ratified by various countries including Indonesia through Law Number 7 of 2006 which took effect on March 20, 2006.[6] Article 20 of UNCAC emphasizes that illicit enrichment, which is a significant increase in the assets of a public official that cannot be reasonably explained in relation to his or her legitimate income, should be considered a crime if committed intentionally. The article states that each state party should consider adopting legislative and other measures necessary to make illicit enrichment a crime. This means that if a public official significantly increases his or her wealth, and the increase cannot be reasonably explained in terms of his or her legitimate income, then the official may be considered to have committed an illegal act.[7]

It is important to note that the significant increase in wealth includes salaries and other income already reported to the state. Therefore, before and during taking office, public officials

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[5] Husein, Yunus. Penjelasan Hukum Tentang Perampasan Aset Tanpa Pemidanaan Dalam Perkara Tindak Pidana Korupsi. Pusat Studi Hukum Dan Kebijakan Indonesia, 2019.

[6] Waluyo, Bambang. *Pemberantasan Tindak Pidana Korupsi: Strategi Dan Optimalisasi*. Sinar Grafika, 2022.

[7] Skandiva, Razananda, And Beniharmoni Harefa. "Urgensi Penerapan Foreign Bribery Dalam Konvensi Antikorupsi Di Indonesia." *Integritas: Jurnal Antikorupsi* 7.2 (2021): 245262.

Kosmik Hukum Vol. 24 No. 1 (2024): 1-13
EISSN: 26559242 | PISSN: 14119781
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are required to report their wealth to the state. It is important to compare the increase in reported wealth with the increase during and after taking office.[8] In addition to the UNCAC 2003, illicit enrichment is also regulated in the International American Convention Against Corruption (IACAC) which defines illicit enrichment in Article 9 as "the criminal act of a significant increase in the assets of a government official that cannot reasonably be explained by his legitimate income during the course of his duties." Both treaties aim to combat corruption by emphasizing the importance of accountability and transparency in public financial management, especially for public officials.

Based on the definitions contained in the United Nations Convention (UNCAC), the AUCPCC Convention, and the IACAC Convention, the offense of illicit enrichment involves five key elements. First, the interested person, i.e. the public official or state administrator involved. Second, the period of interest, which is the time during which the increase in wealth occurs. Third, the illicit enrichment itself, which refers to a significant increase in assets. Fourth, intent or awareness to increase wealth by unauthorized means or knowledge of the unauthorized source of the increase. And fifth, the absence of any legitimate justification for the increase in wealth.[9] If a public official or state administrator is unable to prove the origin of assets obtained legally and in accordance with applicable regulations in a country that criminalizes illicit enrichment, then the Court can impose criminal penalties on him. In this context, the confiscation of assets that occurs in cases of illicit enrichment supports efforts to eradicate corruption and money laundering (TPPU), because there is a reverse burden of proof on the defendant (alleged perpetrator of the crime) in cases of illicit enrichment. This means that if public officials cannot prove the origin of their legally obtained assets, then the assets can be confiscated by the state.

As is known, UNCAC regulates several things besides illicit enrichment, such as trade in influence, abuse of function, and bribery in the private sector, which have not been regulated in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which has been amended by Law Number 20 of 2001.[10] This is considered a setback because these crimes continue to grow and their impact is enormous because they are carried out in a systematic and structured manner, especially in relation to corruption. Illicit enrichment is indeed a special focus in UNCAC, targeting both public officials from ASN and non-ASN. This is because most of the corruption in Indonesia comes from this environment. There are two main reasons: first, public officials fall into the category of interested persons, and second, they have a great opportunity to abuse power. The application of illicit enrichment needs to be seen as a new approach in combating corruption in Indonesia, because this provision emphasizes the "follow the money" approach rather than the "follow the person" approach. The provisions of UNCAC should be implemented in the national law of a country, and the state parties to the convention should apply special sanctions if the UNCAC provisions are not implemented. This is a form of commitment in the fight against corruption, and the state parties to the convention are obliged to incorporate the agreed matters in their respective rules.

Governments around the world often face significant procedural obstacles in identifying and effectively prosecuting corrupt public servants, as these activities usually leave no concrete evidence. Corrupt dealings between public officials and private sector partners often take place in secret, without documents or third-party witnesses. A marked increase in wealth among public officials may be the only indication of their involvement in corrupt practices. These officials may purchase luxury homes, luxury cars, and luxury vacations. To address the problem of corrupt officials, governments around the world have adopted aggressive legal measures to combat corruption. Unlawful enrichment is a key measure, defined as "a significant increase in the wealth

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[8] Hanif Muzaki, Thesis: Illicit Enrichment Dalam Tindak Pidana Korupsi, (Surabaya: Universitas Airlangga, 2021).

[9] Herlambang, Herlambang, Zico Junius Fernando, And Helda Rahmasari. "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 (2022).

[10] Hiariej, Eddy Omar Sharif. "United Nations Convention Against Corruption Dalam Sistem Hukum Indonesia." *Mimbar HukumFakultas Hukum Universitas Gadjah Mada* 31.1 (2019): 112125.

of a public official that cannot be reasonably explained by their legal income while in office." The accumulation of significant wealth by a public official without a justifiable explanation is considered a form of corruption. The act consists of five main components: the public official has a significant increase in property and assets over a certain period, done intentionally and with knowledge without justifiable explanation.

As the problem of unlawful enrichment has worsened, countries around the world have integrated this measure into three crucial international anti-corruption conventions, leading to increased prevention efforts. Illicit enrichment was initially incorporated into the Inter-American Convention against Corruption (IACAC), adopted by the Organization of American States (OAS) in 1996, followed by its inclusion in the African Union Convention on Preventing and Combating Corruption (AUCPCC) approved in 2003, and finally in the United Nations Convention against Corruption (UNCAC), which was approved in 2003 and entered into force in 2005. These conventions have played an important role in addressing unauthorized enrichment on a global scale. In fact, the UNCAC, IACAC, and AUCPCC all make unlawful enrichment a criminal offense. The main goal of these conventions is to eradicate corruption in the public domain, and they provide clear definitions and elements of unlawful enrichment to encourage international cooperation between countries. By categorizing unlawful enrichment as an "act of corruption," these conventions have broadened the definition of corruption (Inter-American Convention against Corruption, 2014). The International Anti-Corruption Convention (IACAC) was adopted on March 29, 1996 by member states of the Organization of American States (OAS) and entered into force on March 6, 1997. The Convention is a pioneering effort to address corruption and establish a global legal framework to combat bribery and corruption among government officials. Its main objective is to encourage, promote and strengthen mechanisms to detect, prevent, punish and eliminate corruption among participating countries. As of 2020, 34 participating countries, including Argentina, Canada, Colombia, Costa Rica, Brazil, Mexico, Peru and the United States, have ratified the IACAC.

One of the actions taken by IACAC was to treat unlawful enrichment as a mandatory criminal offense, forcing participating countries to comply with this requirement. As a result, some countries have incorporated unlawful enrichment as a criminal offense in their laws to enhance their ability to fight corruption (InterAmerican Convention against Corruption, 2014). Interestingly, the definition of unlawful enrichment in Article 20 of the United Nations Convention against Corruption (UNCAC) is very similar to the definition contained in the IACAC. However, in some countries such as the United States, this provision has raised constitutional concerns as it appears to shift the burden of proof in criminal proceedings to defendants to prove the legitimacy of their income. UNCAC recognizes the fundamental and constitutional principles of the host country, thus providing flexibility in its application.

If we look again, outside of the Americas, the African Union has also adopted the African Union Convention on Preventing and Combating Corruption (AUCPCC), which entered into force on July 11, 2003, with the aim of combating serious political corruption in Africa.[11] The AUCPCC goes further than similar conventions by demanding the elimination of corruption in both the private and public sectors. The Convention reflects a regional consensus on the necessary measures to be taken by African countries in terms of criminalization, asset recovery, prevention, and international cooperation in the fight against corruption. The Convention covers a wide range of crimes, including money laundering, domestic and foreign bribery, unlawful enrichment, trading in influence, diversion of assets by public officials, and misappropriation of assets, thus making these obligations mandatory for states parties. The Convention also demands that states initiate corruption investigations in a transparent and effective manner.

As of July 2020, 44 countries have ratified the treaty and become AUCPCC states parties, including Algeria, Egypt, Kenya, Libya, Liberia, South Africa, Sudan, Uganda, Zimbabwe,

[11] Palma, Alvon Kurnia, et al. "Implementasi Dan Pengaturan Illicit Enrichment (Peningkatan Kekayaan Secara Tidak Sah) Di Indonesia." (2014).

Kosmik Hukum Vol. 24 No. 1 (2024): 1-13
EISSN: 26559242 | PISSN: 14119781
DOI: 10.30595/kosmikhukum.v24i1.19577

Nigeria, and other African countries.[12] The AUCPCC classifies unlawful enrichment as a criminal offence, but leaves it to the discretion of individual states parties whether they have criminalized it. In such cases, the Convention encourages cooperation and assistance considering their constitutional provisions. Latin American countries were among the first to criminalize unlawful enrichment, followed by several African countries, and today at least forty-four countries have adopted laws against unlawful enrichment. Efforts continue in other countries, including Tunisia, Romania, and Russia, to introduce similar laws. Many common law and civil law jurisdictions around the world have adopted laws against unlawful enrichment, such as Bangladesh, Bhutan, Argentina, Bolivia, Chile, China, Botswana, Brunei, Hong Kong, India, Algeria, Angola, Colombia, Ecuador, Costa Rica, Cuba, and Egypt (Arab Republic).

In addition to the Americas and the African Union, the criminalization of unlawful enrichment is also present in several international and regional anti-corruption instruments, including the United Nations Convention against Corruption (UNCAC). The UNCAC is a significant international anti-corruption treaty adopted by the UN General Assembly in October 2003 and is considered the basis of a comprehensive global anti-corruption framework. As of February 6, 2020, 187 countries are bound by UNCAC, which emphasizes punitive and preventive measures against corruption. The convention obliges participating countries to assist each other in preventing corruption through practical support, but the enforcement of UNCAC provisions depends on each country as some are mandatory, while others are recommended or optional (Chr. Michelsen Institute, 2017). It should be noted that Japan, Barbados, and Syria have signed but not ratified UNCAC as of May 2017.

However, UNCAC treats unlawful enrichment as a non-mandatory criminal offence, and only encourages countries to consider criminalizing it under their respective constitutions. States are encouraged, but not required, to criminalize a range of corrupt practices, including the acceptance of bribes by international and foreign public officials, trading in influence, abuse of office, bribery and embezzlement in the private sector, money laundering, and concealment of illegal assets. The adoption of the unlawful enrichment act has won the approval of many scholars, who regard it as essential for effective anti-corruption measures and as an important tool in the comprehensive fight against corruption. Criminalizing unlawful enrichment strengthens the government's ability to regularly monitor assets and increases transparency in the public sector. Courts in various countries have upheld these laws as a proportionate and appropriate response to effectively combat corruption.

By addressing the unexplained material increase of public officials, the criminalization of unlawful enrichment sends a clear message that engaging in corrupt practices will lead to loss of office, confiscation of illegally acquired assets, and potential imprisonment. The main objective of criminalizing unlawful enrichment is to prevent public officials from using their position for illegal gain. This criminalization also requires public officials to declare their assets, and any significant increase in a public official's wealth is assumed to be the result of a criminal act unless there is sufficient evidence to prove otherwise.

2. The Legal Framework for Illicit Enrichment in Australia and Singapore

a. Australia

Australia is a common law country, and in shaping its asset forfeiture legislation, it has relied on ancient common law principles such as deodand and attainder.[13] These principles allow for confiscation or forfeiture if a person is believed to have committed an offense that constitutes serious and organized crime, and the provision of unexplained wealth was incorporated into the asset forfeiture regime in Australia. This

[12] Herlambang, Herlambang, Zico Junius Fernando, And Helda Rahmasari. "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 (2022).

[13] Nasional, Badan Pembinaan Hukum. "Laporan Akhir Naskah Akademik Rancangan Undang undang Tentang Perampasan Aset Tindak Pidana." *Kementrian Hukum Dan Hak Asasi Manusia Republik Indonesia* (2012).

provision is considered a breakthrough in law enforcement in Australia as it focuses on deterrence, with the aim of prosecuting and forfeiting the property of a person suspected of being the proceeds of illegal activity.

The regulation of unexplained wealth is influenced by international trends in combating transnational and global crime, based on the UNCAC (United Nations Convention against Corruption) which has been ratified by Australia since 2005. As a state party to UNCAC, Australia amended the asset forfeiture provisions in each of its states and territories in 2010, so that unexplained wealth provisions are accommodated in Australian law.

The unexplained wealth provision contains the concept of PEP's (Politically Exposed Persons) entities,[14] which are the subject of this regulation. PEP's are state officials or public officials who have a high risk of abusing their power to commit serious and organized crimes. Another difference between illicit enrichment and unexplained wealth provisions is that illicit enrichment provisions fall under criminal law, specifically corruption offenses, while unexplained wealth is an asset forfeiture mechanism without criminalization, falling under the administrative law regime.

In Australia, unexplained wealth provisions were introduced in the enactment of the Proceeds of Crime Act (POCA) 2002 which was amended in 2010. This provision aims to deter people from engaging in crime by reducing the likelihood of obtaining or retaining profits from criminal activity, as well as to remedy the problem of unjust enrichment from criminals profiting at society's expense. In its application, law enforcers must show a discrepancy between a person's assets and his or her legitimate income. Thereafter, the onus of proof is shifted to the respondent to prove the legitimacy of their assets or property.

An example of the application of the unexplained wealth provision can be found in a case in Australia, where a person who has unreasonable wealth and is involved in criminal activities, is faced with asset forfeiture proceedings under the unexplained wealth provision. In this case, the unexplained wealth provision facilitates the work of law enforcement because it does not need to show the relationship between crime and property, it only needs to show discrepancies between a person's wealth and his financial statements. The application of this unexplained wealth mechanism can help prevent crime by breaking the chain of crime, so that criminals cannot benefit from the assets of their crimes.

b. Singapore

Singapore has a key legal framework to fight corruption, the Prevention of Corruption Act 1960, which establishes the Corrupt Practices Investigation Bureau (CPIB) as an independent body tasked with enforcing corruption-related laws.[15] While the definition of unlawful enrichment is not explicitly defined in Singapore, Section 21 of the Prevention of Corruption Act empowers the public prosecutor to obtain information, which fits within the conceptual notion of unlawful enrichment.

After independence in 1959, Singapore faced a pervasive corruption problem, despite the existence of the CPIB. However, the country's leaders, including the Prime Minister, set a positive example, and demonstrated zero tolerance for corruption. Singapore's comprehensive anti-corruption approach involves strong laws that apply equally to bribe-givers and bribe-takers. The CPIB has strong powers and reports directly to the Prime Minister. Strict disciplinary measures are in place, such as a ban

[14] Sultan, Nasir, And Norazida Mohamed. "Challenges Faced By Financial Institutes Before Onboarding Politically Exposed Persons In Undocumented Eastern Economies: A Case Study Of Pakistan." Journal Of Money Laundering Control 26.3 (2023): 488508.

[15] Kusuma, Rhendra. "Perbandingan Komisi Pemberantasan Tindak Pidana Korupsi Indonesia Dengan Lembaga Pemberantasan Tindak Pidana Korupsi Negara Singapura, Hong Kong, Dan Malaysia." *University Of Bengkulu Law Journal* 7.1 (2022): 7183.

Kosmik Hukum Vol. 24 No. 1 (2024): 1-13
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on awarding public contracts to individuals who have been convicted of bribery, and severe penalties are imposed on offending officials, regardless of their position.

In addition, the Singapore government recognizes the importance of providing decent, performance-based salaries for civil service employees. Salaries in the civil service are on par with the private sector and are regularly evaluated. Other practices include improved work procedures and methods to reduce delays, improved management and administration, rotation of civil servants, unannounced inspections, and restrictions on the use of information for personal gain. In addition, there is an obligation for civil servants to declare assets, limits on financial obligations, and strong measures to regulate conflicts of interest and acceptance of gifts. In the fight against corruption, Singapore is recognized as a leading country in Southeast Asia. According to Transparency International's latest Corruption Perceptions Index, Singapore achieved a score of 85 out of 100, placing it as the third least corrupt country in the world. The success of Singapore's legal system in fighting corruption is crucial, as corruption can lead to political, economic, and social instability.[16]

3. The Urgency of Illicit Enrichment in the Draft Law on Asset Forfeiture in Indonesia

The rise of corruption and money laundering committed by public officials indicates that Indonesia needs rules on illicit enrichment or criminalization of illicitly obtained wealth. Creating Illicit Enrichment rules in the form of laws aims not only to prevent state officials or state administrators from enjoying the benefits of increasing wealth illegally, especially those derived from corruption or money laundering, but also to optimize international cooperation and asset recovery. The perpetrators of illicit enrichment include all public officials, especially state officials or former state officials.

The object of illicit enrichment is a significant increase in the assets of a public official or former public official that is inconsistent with their official source of income. Confiscation in the Illicit enrichment setting is carried out when the public official concerned cannot reasonably explain the cause of the significant increase in their assets compared to their official income. Possible sanctions include criminal penalties and additional asset forfeiture.

The mechanism for the application of illicit enrichment begins with indications of improper wealth in public officials.[17] These indications can come from several aspects such as wealth reports, public reports, suspicious lifestyles, suspicious financial transaction reports, as well as investigations or development of corruption or money laundering cases. Furthermore, an examination is carried out by law enforcement officials or related agencies, and if the official cannot clearly account for the source of his wealth, the next process is prosecution and confiscation of assets. The judicial process plays an important role in proving the origin of the assets, and if the public official concerned cannot satisfactorily prove the origin of the assets, the court may decide to confiscate the assets without conviction through the reverse proof mechanism. The application of Illicit Enrichment supports the follow the money approach to seize assets from criminal offenses and recover state losses. This arrangement helps overcome the difficulty in obtaining evidence related to cases that are difficult to prosecute due to lack of sufficient information.

The urgency of regulating illicit enrichment can be understood from the experience of countries that have implemented it and is expected to have a positive impact in Indonesia. By regulating illicit enrichment, the main objective is to recover state losses incurred due to corruption and money laundering committed by public officials, as well as to reduce the

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[16] Ningsih, Kristia, Whinarko Juliprijanto, And Dinar Melani Hutajulu. "Analisis Pengaruh Inflasi, Investasi, Indeks Persepsi Korupsi Terhadap Pertumbuhan Ekonomi Indonesia Tahun 19992019." *Dinamic: Directory Journal Of Economic* 3.2 (2021): 444462.

[17] Sholihah, Siti Hidayatus. *Kriteria Penetapan Illicit Enrichment Oleh Kpk Dalam Hubungannya Dengan Tindak Pidana Korupsi: Analisis Pasal 7 Huruf (A) Undang undang Nomor 19 Tahun 2019*. Diss. Universitas Islam Negeri Maulana Malik Ibrahim, 2022.

incentives for public officials to engage in such criminal acts and prevent them from financially benefiting from illegal acts. It also aims to punish public officials who commit corruption and money laundering, reduce potential conflicts of interest that may encourage criminal behavior, and deprive perpetrators of the ability to hide the proceeds of crime and encourage them to pay taxes faithfully.

The application of illicit enrichment arrangements with a reversal burden of proof can strengthen efforts to eradicate corruption.[18] In this way, if the defendant cannot prove the origin of his suspicious assets or wealth, they can be confiscated by the state. This approach also includes a follow the money strategy to return assets that have been confiscated, making corruption eradication efforts more effective. The goal of combating corruption and money laundering not only includes preventive measures and repressive measures, but also includes efforts to recover state losses caused by these crimes. By regulating illicit enrichment, the state has the tools to confiscate assets suspected of being illegally obtained, and thus can reduce state losses due to corruption crimes.

Regulating illicit enrichment can also address weaknesses in existing corruption eradication laws. While there are challenges in recovering all state losses, efforts to impoverish the corrupt can provide a deterrent effect to perpetrators, thereby hopefully reducing the level of corruption in the future. Illicit enrichment arrangements also provide additional tools for law enforcement officials to prevent further losses by confiscating suspiciously acquired assets. However, to do this, illicit enrichment must be implemented in Indonesian national law.

Under Article 20 of the UNCAC, countries that have ratified this treaty are obliged to consider illicit enrichment as a crime in their criminal law. Therefore, to successfully tackle corruption and money laundering, illicit enrichment must be regulated in Indonesian national law as a new step in the effort to eradicate corruption and money laundering in the country. In the context of monitoring official wealth, the Rafael Alun case with suspicious transactions worth Rp349 Trillion within the Ministry of Finance has led to increased public disappointment. This has prompted the public and government elements to expose the wealth holdings and lifestyles of several other public officials. As a result, there is a push to regulate the wealth of public officials who are considered unnatural.

There are two proposed instruments in the civil and criminal dimensions, namely the Draft Law on Asset Forfeiture Related to Crimes (Asset Forfeiture Bill) and the criminalization of illicit enrichment. The Asset Forfeiture Bill is considered necessary because it can overcome corruption and money laundering practices involving state officials and harm the state as a victim. In addition, this bill can also handle assets resulting from criminal acts owned by public and private officials, with the possibility of reclaiming them by the legal owner. Assets resulting from criminal offenses that are suspected of originating from the impropriety of public officials' assets can be returned to the state. Another effort is the criminalization of illicit enrichment, which is a regulatory instrument to increase the effectiveness of the State Officials' Wealth Report (LHKPN). This is based on Article 20 of UNCAC which regulates illicit enrichment as an illegal act. Although the LHKPN has been a major source in uncovering cases of official corruption and money laundering, without illicit enrichment regulation, the LHKPN has not had any legal effect on the increase or mismatch of officials' assets with their income.

Although these two instruments have been planned to address many cases of economic crimes involving public officials, there is no sign that these arrangements have been finalized. The imperfection of these arrangements suggests that there are complicating factors in the drafting or application of these rules that may not be compatible with the country's legal system. However, sociologically, and normatively, the regulation of illicit enrichment is considered important as a response to the growing mode of economic crime by public officials. The Asset

[18] Ajie, Radita. "Kriminalisasi Perbuatan Pengayaan Diri Pejabat Publik Secara Tidak Wajar (Illicit Enrichment) Dalam Konvensi Pbb Anti Korupsi 2003 (Uncac) Dan Implementasinya Di Indonesia (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 (2018).

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Forfeiture Bill and the criminalization of illicit enrichment are the closest steps to passage, but both have their advantages and disadvantages. If they are close to completion, but still have shortcomings, it is necessary to recognize the problem of incompatibility in the Indonesian legal system. The Fourth Amendment to the 1945 Constitution of the Republic of Indonesia sets out the fundamentals and fundamental rights associated with Indonesia's legal justice system. The principles of equality before the law, legal certainty, protection by law, and legal justice must be respected and adhered to in the application of law in Indonesia. The regulation of illicit enrichment is also expected to fulfill the general principles of the Indonesian legal system.

In the criminal law dimension, sanctioning the perpetrators of illicit enrichment may conflict with the general principles of the Indonesian legal system. To criminalize illicit enrichment, from a dualistic point of view, it is necessary to formulate the mens rea and actus rea elements of the criminal act to be considered a criminal crime.

According to Jeffrey R. Boles quoting Professor Guillermo Jorge, the mens rea of illicit enrichment involves the elements of knowing and intending the source of income obscurity and ownership of the obscurity.[19] Mens rea in this case is an element of fault that must be proven by will and knowledge. Meanwhile, actus rea includes the element of action or consequence of the criminal offense. This formulation is based on a dualistic view that separates criminal responsibility from criminal offense, in accordance with the common law system. However, Indonesia adheres to the civil law system and takes the middle path by requiring the formulation of fault and act in the law and must be written in the indictment by the public prosecutor. Thus, if the fault or unlawful act is not formulated in the law, then the element is considered to have been fulfilled and the proof will be the responsibility of the court. In the opinion of Jeffrey R. Boles, the formulation of the crime of illicit enrichment has different consequences from ordinary criminal cases. In this case, the initial or preliminary proof lies with the public prosecutor who must prove that a person is a public official, made an unreasonable increase in assets, and did so willfully. Once the initial proof is achieved, the full burden of proof shifts to the defendant who must prove that the assets he or she owns are not the proceeds of a criminal offense. If the defendant fails to do so, he or she will be deemed guilty in accordance with the judge's judgment and verdict.

In criminal procedure law, shifting the burden of proof of a crime to the defendant is referred to as the "reverse burden of proof". This system requires the prosecution to provide evidence and witnesses to the defendant. It should be noted that this reversal of the burden of proof can be absolute or limited. In the illicit enrichment criminalization scheme, the reversal of the burden of proof is absolute, which means that the defendant must prove to determine whether he is guilty or innocent in the eyes of the court. However, the concept of an illicit enrichment criminalization scheme that imposes the burden of proof on the defendant is considered to violate the rights of the suspect. In particular, the presumption of innocence, the right to remain silent and the right to self-incrimination are rights that are violated.[20] The regulation of these rights is stated in the Criminal Procedure Code (KUHAP) in the General Elucidation of KUHAP point 3 point (c), which states that everyone who has not been decided by the court must always be presumed innocent, which is referred to as the principle of presumption of innocence.

The protection of the defendant's right to remain silent and the right not to self-incriminate can be found in Article 66 of the Criminal Procedure Code and Article 137 of the Criminal Procedure Code because in evidence, the burden of proof is fully placed on the public prosecutor. This arrangement aims to maintain equality between the defendant and the state represented by the public prosecutor. It is considered unfair if a defendant accused by the state must also prove his innocence. Therefore, Jeffrey R. Boles suggests not to regulate illicit enrichment as a criminal

[19] Garimella, Sai Ramani, And Ashfaquzzaman Chowdhury. "United Nations Convention Against Corruption, 2005 And India–Mapping India's Compliance." *International Journal Of Legal Studies And Research* 2018 (2018): 158181.

[20] Arfiani, Arfiani Arfiani, Et Al. "Penegakan Hukum Sesuai Prinsip Peradilan Yang Berkepastian, Adil Dan Manusiawi: Studi Pemantauan Proses Penegakan Hukum Tahun 2020." *Riau Law Journal* 6.1 (2022): 4874.

offense because it violates human rights, especially the rights of the accused in court. He strongly recommends that the state not implement the criminalization of illicit enrichment. However, the application of reversal of the burden of proof has been applied in Indonesia in corruption and money laundering crimes. For example, Article 37 of Law No. 31/1999 on the Eradication of Corruption (Anti-Corruption Law) gives the defendant the right to prove that his assets are not the proceeds of corruption. However, this burden of proof is only a consideration for the judge, not a determinant of the judge's decision to release the defendant and the burden of proof remains with the public prosecutor. The same applies in Articles 77 and 78 of Law No. 8/2010 on the Prevention and Eradication of the Crime of Money Laundering (Anti-Money Laundering Law), where the defendant's obligation to prove that his assets are not the proceeds of the crime of money laundering is also stipulated, but the burden of proof of guilt remains with the public prosecutor in accordance with the Criminal Procedure Code. It should be noted that the reversal of the burden of proof applied in the Asset Forfeiture Bill is also limited. The Bill utilizes the concept of "NonConviction Based Asset Forfeiture" (NCB Asset Forfeiture)[21] which seizes assets by civil mechanism without going through criminal charges. Although there are several coercive measures in this bill that are subject to the principles of criminal procedure law, the proof of NCB Asset Forfeiture is still carried out by a civil mechanism that is not as strict as criminal proof. However, this bill still faces a major problem due to the limited reversal of the burden of proof which may result in unfairness.

In enforcing the law, the regulation of illicit enrichment still needs to be considered by looking at examples from various perspectives. Some countries, such as Canada and South Africa, apply the doctrine of presumption of corruption, which helps to prove an unreasonable increase in assets without violating human rights. Regulations on environmental protection also use three-dimensional legal instruments that apply criminal, civil and administrative sanctions. For the effectiveness of illicit enrichment prevention, the use of more than one legal instrument needs to be considered but must be in accordance with the principles of the Indonesian legal system. It should be noted that the draft illicit enrichment regulation still needs much improvement to consider the principle of equality before the law, especially the rights of the accused in court. Otherwise, the implementation of the Asset Forfeiture Bill may result in government arbitrariness and does not provide a threat to public officials not to commit economic crimes. Moreover, many officials take advantage of the legal loopholes that exist in the illicit enrichment regulation.

V. Conclusion

The rise of corruption and money laundering by public officials indicates that Indonesia needs a regulation on illicit enrichment or criminalization of unlawfully acquired wealth. The regulation of illicit enrichment aims to prevent state officials from benefiting from unlawful increases in wealth, particularly from corruption and money laundering. The object of illicit enrichment is a significant increase in the assets of public officials that do not correspond to their official sources of income.

Illicit enrichment mechanisms involve indications of unreasonable wealth, examination by legal authorities, and if it cannot be reasonably explained, prosecution and confiscation of assets. The regulation of illicit enrichment can help optimize international cooperation and the recovery of assets from criminal acts. The implementation of illicit enrichment arrangements with a reverse burden of proof can strengthen efforts to eradicate corruption. Although the regulation of illicit enrichment can have a positive impact in combating corruption and money laundering, it is necessary to pay attention to the rights of the defendant in court so as not to violate the principle of presumption of innocence and the right to silence.

[21] Saputro, Heri Joko, And Tofik Yanuar Chandra. "Urgensi Pemulihan Kerugian Keuangan Negara Melalui Tindakan Pemblokiran Dan Perampasan Asset Sebagai Strategi Penegakan Hukum Korupsi." *Mizan: Journal Of Islamic Law* 5.2 (2021): 273290.

In drafting illicit enrichment rules, it is necessary to consider the principle of the Indonesian legal system which adopts dualism and requires the formulation of fault and actions in the law. The regulation of illicit enrichment should not implement an absolute reversal of the burden of proof that can violate the rights of the defendant but can be applied in the NCB Asset Forfeiture proof that uses a civil mechanism without going through criminal charges. It is necessary to consider the use of more than one legal instrument to prevent illicit enrichment, but it must be by the principles of the legal system in Indonesia. Illicit enrichment regulations must be carefully understood and implemented, involving various parties including legal experts, academics, and civil society to ensure that the rules made are effective and to the needs of the country. In addition, there needs to be strict supervision and evaluation of the implementation of illicit enrichment rules to ensure there is no abuse of power by authorized parties. The government must ensure awareness and education to public officials and the public about the importance of transparency and accountability in wealth ownership. In the implementation of illicit enrichment rules, a high commitment is needed from the government and law enforcement agencies to uphold justice and truth for the benefit of the public and the state.

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