

The Urgency of Implementing Illicit Enrichment Regulations in Eradicating Corruption in Indonesia

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ABSTRACT

Corruption cases in Indonesia are very widespread and even always increase every year. In Indonesia itself, there are regulations regarding corruption, namely the Corruption Law, the TPPK Law, the TPPU Law and other related regulations. However, these regulations are still not able to provide maximum handling. Because it places more emphasis on punishing the perpetrators and has not maximized the recovery of state financial losses. For this reason, a regulation is needed to be able to deal with corruption in Indonesia and optimize the recovery of state financial losses or the return of corrupted assets. Illicit Enrichment is a rule regarding the illegal or unfair wealth of public officials compared to their income. Illicit Enrichment is regulated in the UNCAC convention which was ratified by the United Nations in Mexico and Indonesia is a participating country in the convention as well as ratifying the UNCAC convention. However, until now in Indonesia in the regulations regarding criminal acts of corruption there are still no rules regarding Illicit Enrichment. The urgency of regulation regarding illegitimate assets must be established in Indonesia because the orientation of handling them is to optimize the return of corrupted assets. Illicit Enrichment does not only look at the assets of corruptors who are allegedly related to alleged corruption, but also looks at the entire wealth of public officials, whether this wealth can be accounted for or not.

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1. INTRODUCTION

Corruption is included in the extraordinary crime which is the biggest problem faced by every country in the world including Indonesia, because it not only results in material losses for the country but also has an impact on the social life of people who are not directly victims of corruption. The word corruption in Dutch is called *corruptie*, in Latin it is called *Corruptio-Corruptus* and in English it is called *Corruption*. *Corrupt* has the meaning of bad deeds, damaged, rotten, depraved and dishonesty in financial matters[1].

According to Chaerudin, Corruption is an act that is intended to provide illegal benefits by using the rights and authority of other parties who wrongly use their position to gain benefits for themselves and others. Corruption is called an extraordinary crime or extraordinary crime because it is difficult to find the perpetrators of corruption. This is because corruption is referred to as an invisible crime which is very difficult to prove in procedural evidence, because the *modus operandi* itself is a systematic and joint activity[2].

Corruption cases in Indonesia are very vulnerable and even very worrying. Indonesia itself in 2010 according to data from Pacific Economic and Risk Consultancy became the country with the highest level of corruption in Asia. The criminal act of corruption threatens the foundations of the nation's life, various regulations related to corruption have been issued but the practice of corruption continues to repeat itself and is increasingly complex. Apart from being detrimental to state finances, the criminal act of corruption has also violated the social and economic rights of the wider community.

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of corruption continues to repeat itself and is increasingly complex. Apart from being detrimental to state finances, the criminal act of corruption has also violated the social and economic rights of the wider community[3].

It is clear that there are rules governing corruption and its penalties, including serious crimes, but the practice of corruption in Indonesia is increasingly widespread. Corruption is a disease that is difficult to treat which must be treated immediately so that this disease does not spread further.

This is evident from the development of corruption which is increasing every year both in terms of the number of cases that occur and the amount of state finances as well as in terms of the quality of criminal acts of corruption that are carried out more systematically and the scope of which penetrates all aspects of people's lives as well as an increasingly sophisticated *modus operandi*.

To overcome state financial losses due to corruption, the Corruption Crime Eradication Law regulates state financial recovery due to corruption through asset recovery. However, in practice the return on assets has not run optimally. Based on the records of Indonesia Corruption Watch, in 2018 the state suffered a loss of 9.2 trillion from 1,053 court decisions against 1,162 defendants, but the return on assets from additional criminal compensation was only 847 billion. The money returned is only about 8% of all state losses[4].

For this reason, the handling of corruption cases through asset recovery is still not optimal, so other efforts are needed to eradicate corruption and prevent greater state losses. This effort is the arrangement regarding illicit enrichment. UNCAC, IACAC, and AUCPCC define what is meant by illicit enrichment is an act of illegally enriching yourself in the form of an increase in assets or wealth in a large enough amount from a public official where the increase in wealth cannot be explained as being obtained from lawful income[5].

Illicit enrichment was first regulated in Argentina and India in 1964 and was the

first country to regulate the rules regarding illegal or unfair wealth increase and possession. This is because a member of the Argentine Parliament, Rodolfo Corominas Segura, in 1936 met with public officials who flaunted their wealth. From there, Segura proposed a draft regarding rules that could ensnare officials with unfair and irresponsible wealth[6]. Along with the times and the increasingly sophisticated modus operandi of corruption, the world needs regulations on illicit enrichment as regulations in dealing with corruption cases, including Indonesia. Illicit enrichment can be used as a new approach in eradicating corruption which not only targets perpetrators but also targets asset recovery and state finances.

Based on this, regulation regarding illicit enrichment is urgently needed as an effort to eradicate corruption in preventing and dealing with losses to state finances. For this reason, the author is interested in writing an article entitled "The Urgency of Illicit Enrichment Regulations in Corruption Crime Laws in Indonesia".

As for the formulation of the problem in this paper are: 1) What is the general description of illicit enrichment arrangements and opportunities for its application in Indonesia? 2) How urgent is the implementation of illicit enrichment regulations in Indonesia?

2. DISCUSSION

2.1 *Overview of Illicit Enrichment Regulations and Opportunities for Its Implementation in Indonesia*

In 2003 the UN convention UNCAC was ratified in Merida Mexico. And Indonesia is one of the countries that signed and ratified the convention. Article 20 of the UNCAC (United Convention Against Corruption) regulates illicit enrichment arrangements. This convention aims to promote and prevent and act on corruption more effectively and efficiently. With this convention it is hoped that it will encourage and increase international cooperation and technical assistance for

the prevention and prosecution of corruption and improve integrity, accountability and government management[5].

Article 20 of the UNCAC regarding illicit enrichment with the following translation: Subject to the constitution and the basic principles of its legal system, each state party is obliged to consider adopting legislative measures and other measures deemed necessary to determine as a crime when an act is committed intentionally illegally enriching oneself, that is, there is a significant increase in the assets of public officials that cannot be explained fairly and reasonably in relation to their lawful income.

As a participating country, Indonesia has obligations in the UNCAC convention in article 20 which can be seen in the phrase: "... Each party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offense,..." which translates to "... punishment,..." .The meaning of the word "each party shall consider" has the meaning of an order. Which means Indonesia has an obligation to prepare legislative steps as an obligation at the level of an order.

Based on article 20 of the UNCAC Convention requires all participating countries to consider the formulation of illicit enrichment in the national law of each country. According to data by Indonesian Corruption Watch, there are 44 countries that have regulated illicit enrichment in their legal system, including India, Guyana, Sierra Leone and China. Indonesia is also a participating country in the UNCAC convention and also a country that ratified the convention through Law No. 7 of 2016 concerning Ratification of the UNCAC, but Indonesia still has not formulated illicit enrichment offenses to become criminal offenses in the Indonesian legal system[6].

An overview of Illicit Enrichment Arrangements in India, Guyana, Sierra Leone and China is as follows[6]:

- a. India, illicit enrichment is addressed to every public official (whether in his capacity as an official or for his position) while in office cannot explain accounts, sources related to money/income, wealth tax that is not commensurate with income (excluding tax).
- b. Guyana, illicit enrichment is aimed at loyal public services or on behalf of public office having wealth or which can be calculated in money that is not reasonable from their income, and to prove ownership of assets and resources that can be calculated in the form of money through legal mechanisms (Court and Tax).
- c. Sierra Leon, illicit enrichment is aimed at everyone who serves as a public employee and has wealth that cannot be explained through the courts.
- d. China, illicit enrichment is aimed at every state administrator who has wealth and expenses exceeding his income and cannot explain his source of income from legal gain.

From this general description, we can see that basically the meaning of illicit enrichment according to the four countries is the same, namely illegal wealth. The difference is in terms of the elaboration of significantly different forms of assets to measure income. However, none of the four countries include significant words in their provisions as in the UNCAC. Even though the word significant is important to emphasize the size of the limit for increasing income that must be explained by officials or public employees. Significant words must detail the intent and size so as not to create loopholes and provide legal certainty[6].

Because Indonesia is a participating country and has ratified the UNCAC Convention, the opportunity for illicit

enrichment arrangements is very large and even these arrangements should have been established. However, this illicit enrichment arrangement can intersect with human rights because illicit enrichment uses the assumption aimed at public officials that public officials have assets that are not legally valid, this assumption violates the presumption of innocence. In addition, illicit enrichment uses the method of reversing the burden of proof which conflicts with the right not to harm oneself [7].

Even so, when viewed from the point of view of corruption itself, it is an extraordinary crime which in its handling also requires extraordinary measures according to the author, the principle of the presumption of innocence and the right not to harm oneself can be ruled out first seeing that corruption is a crime that is very detrimental to state finances and is a serious problem.

Regarding the view that reversing the burden of proof intersects with the principle of the presumption of innocence, there have been several international decisions such as the decision of the English House of Lords in the R.V Lambert case and the Hongkong Court appeal decision in the attorney general v Hui Kin Hong case which stated that corruption is a cancerous activity so that it can be carried out exceptions to the principle of the presumption of innocence and the right not to harm oneself as long as its implementation is in accordance with the principles of rationality and proportionality[6].

Based on this, the opportunity for Indonesia to implement regulations regarding illicit enrichment in the Indonesian legal system as an effort to eradicate corruption is very large. Because in addition to Indonesia being a country that ratified the UNCAC convention, Indonesia has the responsibility to provide legislative steps in dealing with criminal acts of corruption through illicit enrichment as stated in article 20 of the UNCAC Convention, arrangements

regarding illicit enrichment also do not conflict with legal principles and principles. in Indonesia.

2.2 *The Urgency of Implementing Illicit Enrichment Regulations in Indonesia*

The rise of corruption cases in Indonesia has caused losses to state finances and has violated the social and economic rights of the wider community, thus requiring efforts to eradicate corruption. On the one hand, Indonesia itself already has regulations regarding the eradication of criminal acts of corruption, namely Law No. 28 of 1999 concerning the Administration of a Clean and Free State from Corruption, Collusion and Nepotism, Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning Eradication of Corruption Crimes, Law No. 19 of 2019 jo. Law No. 30 of 2002 concerning the Corruption Eradication Commission, Law No. 8 of 2010 concerning the Crime of Money Laundering and other related regulations. However, despite all the existing regulations, the level of corruption cases in Indonesia is still rife and always increasing every year, coupled with the increasingly sophisticated model of corruption and its modus operandi, which makes handling criminal acts of corruption even more difficult. In other words, the current laws and regulations are not enough to deter corruptors.

Therefore, a new progressive approach is needed in overcoming the problem of corruption. For this reason, the urgency of regulating illicit enrichment in Indonesia is very important as an effort to eradicate corruption in Indonesia through illicit enrichment. Because the regulations regarding the eradication of criminal acts of corruption currently place more emphasis on the perpetrators, not on returning state financial losses. Corruptors are not afraid of prison but are afraid of poverty. Moreover, there are many rumors that have been widely discussed at this time that even in prison power and money can

buy comfort in a prison cell, there is a lot of discrimination between inmates who are ordinary citizens and inmates with money and positions.

For this reason, we need laws that pursue corruption assets so that they not only punish corruptors with criminal penalties but can also restore state finances. Even though the current law has regulated the return of state assets, so far it has not been effective and efficient, even in 2018 only 8% returned state assets from thousands of corruption cases in Indonesia. This is of course the reason for the urgency of regulating illicit enrichment in Indonesia in efforts to eradicate corruption.

As one of the countries that ratified the UNCAC convention, Indonesia should formulate illicit enrichment offenses in regulations regarding the prevention and prosecution of criminal acts of corruption in Indonesia. This illicit enrichment arrangement is a mandate in UNCAC so that countries that ratify this convention must provide legislative means or steps in eradicating criminal acts of corruption so that state assets that have been confiscated can be returned.

The application of illicit enrichment itself can be started from article 7 letter a of Law No. 19 of 2019 concerning KPK. Where in this article regulates the authority of the KPK to carry out registration and examination of the State Administration Asset Report (LHKPN). This report can be used as an initial step in implementing illicit enrichment arrangements for public officials. This is because the LHKPN at least has information about the assets owned by public officials and the expenses and receipts of public officials. LHKPN can be a prerequisite for illicit enrichment provisions to be effective in Indonesia[8]. From the current KPK data, statistics obtained LHKPN from the executive, legislative and judicial institutions.

Law No. 28 of 1999 concerning State Organizers who are Clean and Free of Corruption, Collusion and Nepotism is

the basis for orders from the LHKPN for public officials. LHKPN as a first step in implementing illicit enrichment, every public official is required to report LHKPN. All public officials are required to report LHKPN and in order for all public officials to comply with LHKPN reporting, there must be administrative sanctions for public officials who do not report LHKPN such as salary delays, delays in promotion and warning letters. Apart from LHKPN, another effort in the initial step of implementing illicit enrichment is with a tax report. If the LHKPN only applies to public officials, the tax report can apply to both officials and non-public officials.

This illicit enrichment arrangement is urgently needed in Indonesia, for example the case of Gaius Tambunan, a public employee who had approximately 25 billion in his account and was found guilty of committing a crime of corruption. In the Gaius case, he did not provide information about his assets which had increased unreasonably compared to his income as a public official at the Directorate General of Taxes. Because in the existing regulations confiscated assets are assets that are known and suspected to have a relationship with the criminal act of corruption associated with the suspect so that the court cannot confiscate other assets obtained illegally that are not in balance with his income while in office.

For this reason, regulations regarding illicit enrichment can strengthen existing laws on corruption. Because with illicit enrichment the state has the authority to prosecute officials and confiscate their assets which are unreasonable compared to their income as proof that the official has committed a criminal act of corruption.

3. CONCLUSION

Illicit Enrichment arrangements are regulated in the UNCAC convention, namely in Article 20 of the UNCAC. This convention

was ratified at the 2003 United Nations UNCAC convention in Merida Mexico. Indonesia is a participating country in the Convention and ratified the UNCAC convention through Law No. 7 of 2016. For this reason, Indonesia should apply illicit enrichment rules as mandated by article 20 of the UNCAC. Illicit enrichment is a regulation regarding unnatural wealth belonging to public officials that is disproportionate to their income. Because Indonesia is a country that has ratified the UNCAC convention, the opportunity to apply illicit enrichment in Indonesia has great opportunities. Although in illicit enrichment it can intersect with human rights in the principle of the presumption of innocence and the right does not harm oneself because illicit enrichment uses the method of reversing the burden of proof. However, seeing that corruption is an extraordinary crime, which means that it requires handling of extraordinary measures, the possibility of intersecting with the principle of the presumption of innocence and the right to harm oneself can be ruled out first.

The urgency of implementing illicit enrichment arrangements is very important because corruption cases are increasingly rampant coupled with increasingly sophisticated corruption models and modus operandi that require proper handling. At present, Indonesia itself already has regulations regarding corruption, namely in Law No. 28 of 1999 concerning the Administration of a State that is Clean and Free from Corruption, Collusion and Nepotism, Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning Eradication of Corruption Crimes, Law No. 19 of 2019 jo. Law No. 30 of 2002 concerning the Corruption Eradication Commission, Law No. 8 of 2010 concerning the Crime of Money Laundering and other related regulations. However, these regulations are still not enough to handle corruption cases in Indonesia, the evidence is that corruption cases are still rife and the modus operandi is increasingly sophisticated. These regulations place too much emphasis on punishing perpetrators and have not

maximized returns on state finances. For this reason, it is time for Indonesia to implement regulations regarding illicit enrichment. The first step to implementing illicit enrichment can be

started from the State Administration Wealth Report and Tax Report to see wealth that is not reasonable compared to the income of State Employees.

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