

Characteristics of Illicit Enrichment as a Corruption Crime

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Abstract

The practice of corruption in Indonesia has occurred systematically and widely in the life of society so that corruption can be called an extraordinary crime. In addition, the absence of illicit enrichment as a criminal offense in the corruption eradication law is a serious matter. Considering that Indonesia has ratified the UNCAC, which shows that Indonesia agrees to the provisions contained therein, including illicit enrichment. The purpose of this study is to identify and elucidate the traits that distinguish the crime of illicit enrichment from other forms of corruption. This study uses conceptual, comparative, and legislative methods to examine normative legal issues. The study's findings indicate that there are traits comprising multiple components that identify this illegitimate enrichment as a corrupt act. The court also determines the suspect's assets or money concerning the illicit enrichment crime. The court will evaluate the information submitted and decide if the targeted individual has unlawfully or illegally enriched themselves to establish whether the elements of inappropriate wealth and income have been proven and illicit enrichment has happened. The notable increase in wealth among public officials raises questions about whether they are the owners of assets obtained illegally. In light of this, controlling illicit enrichment is essential to the battle against corruption.

1. Introduction

Corruption is an extraordinary kind of crime both in Indonesia and in other countries. This is because it jeopardizes the stability and security of society the growth of the country's economy, and damages the values of democracy and national morality because it will slowly become a culture. The most heinous extraordinary crime in the Rome Statute of 1998 is the model from which Indonesia's definition of extraordinary crime is derived. Based on Article 5 of the Rome Statute 1998 states that only acts of genocide, crimes against humanity, war crimes, and crimes of aggression are eligible to be categorized as severe crimes. In fact, in the context of corruption, there are no international conventions that Indonesia has ratified that categorize corruption as an extraordinary crime. Furthermore, according to Mark A. Drumbl, the concept of serious crime is a planned, systematic, and organized action that targets a large number of individuals or a specific group that has been selected as a target for discriminatory reasons. Seeing from this understanding, there are two aspects in the most serious crime, namely crime and victim.¹

In Indonesia, corruption is regarded as an unusual crime due to its widespread impact. is carried out systematically, and causes massive losses to the state. In addition, corruption has now penetrated the executive, legislative and judicial sectors. It can be seen from the number of officeholders or public officials convicted for committing corruption crimes that harm the state and make people victims.² In the context of law enforcement as an agenda of corruption eradication. Indonesia established Law Of The Republic of Indonesia Number 28

¹ Lee Public and Mark Drumbl, *Atrocity, Punishment and International Law*, 2007.

² Diky Anandya Kharystya Putra and Vidya Prahassacitta, "Tinjauan Atas Kriminalisasi Illicit Enrichment Dalam Tindak Pidana Korupsi Di Indonesia: Studi Perbandingan Dengan Australia," *Indonesia Criminal Law Review* 1, no. 1 (2021): 43-59, <https://scholarhub.ui.ac.id/iclr/>.

of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion, and Nepotism (hereinafter referred to as Law No.28/1999) as a form of the spirit of legal reform towards law enforcement on corruption, then to follow up on this spirit of legal reform, Law of the Republic of Indonesia Number 20 of 2001 on the Amendment to Law of the Republic of Indonesia Number 31 of 1999 on the Eradication of Corruption (hereinafter referred to as Law No.20/2001 jo Law No.31/1999) was established, which is one proof of the seriousness of the Indonesian government in eradicating corruption by establishing a state institution called the Corruption Eradication Commission (CEC), and ratifying the United Nations Convention Against Corruption (UNCAC) through Law of the Republic of Indonesia Number 7 of 2006 concerning Ratification of UNCAC (hereinafter referred to as Law No.7/2006) to harmonize national laws and regulations relating to the prevention and eradication of corruption with the standards set out in UNCAC and to enhance international cooperation. Indonesia, as a state party to UNCAC, has specific obligations regarding illicit enrichment, which is regulated in the UNCAC. Article 20 UNCAC state "Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income."

According to the provisions of Article 20 UNCAC, the regulation of unjustified wealth is a reflection of the reality of many public officials who have wealth that is beyond the logic of their legal income. Given that they are public officials who have assets that exceed the logic of monthly salaries and other income from the state. It cannot be equalized with all the results of calculating assets or wealth owned. In simple calculations, salaries, allowances, and legal income received by state administrators (state officials or civil servants) are minus when substituted for all assets or wealth owned. This raises speculation or allegations that the assets or wealth received were obtained illegally or unlawfully.³ However, the provisions on unlawful self-enrichment, also known as illicit enrichment, have yet to be criminalized in Law No.31/1999. Ratifying the UNCAC shows Indonesia agrees to its provisions, including illicit enrichment.⁴ This indeed cannot be said to be completely wrong, considering that of the things that are criminalized in UNCAC 2003, there are mandatory and non-mandatory offenses, and the Indonesian state has the right not to follow the rules in UNCAC 2003 fully.⁵ This concept of illicit enrichment emphasizes the wealth of public officials who, during their tenure, have increased wealth or property (assets) not following their income.⁶ Seeing the significant increase in assets owned by public officials, the significant increase raises suspicion of asset ownership from unauthorized income. Given this, regulating illicit enrichment is undoubtedly necessary to eradicate corruption. Especially in the context of the Indonesian legal system, especially if it is placed as a new approach in the eradication of corruption, which not only makes the person or perpetrator the target but also the return of

³ Indonesia Corruption Watch, "Implementasi Dan Pengaturan Illicit Enrichment (Peningkatan Kekayaan Secara Tidak Sah) Di Indonesia," 2014, 9.

⁴ Helda Herlambang, Zico, "Kejahatan Memperkaya Diri Sendiri Secara Melawan Hukum (Illicit Enrichment) Dan Aparatur Sipil Negara: Sebuah Kajian Kritis," *Jurnal RechtsVinding* 11 (2022): 247-64.

⁵ A N Marbun, "Suap Di Sektor Privat: Dapatkah Dijerat?," *Jurnal Anti Korupsi INTEGRITAS* 3, no. 1 (2017): 53-85.

⁶ Milda Istiqomah, "Kebijakan Formulasi Pengaturan 'Illicit Enrichment' Sebagai Upaya Pemberantasan Tindak Pidana Korupsi," *Jurnal Media Hukum* 23, no. 1 (2016): 76-86, <https://doi.org/10.18196/jmh.2015.0069.76-86>.

assets or asset recovery that has been deprived with the follow the money strategy or the flow of funds.⁷

Indonesia Corruption Watch (ICW) released the Corruption Case Prosecution Trend Report for the first semester of 2021. According to ICW data, the number of corruption prosecutions during the first six months 2021 reached 209 instances. This figure increased from 169 cases during the same period the prior year. According to ICW, the value of state losses due to corruption has also increased. The value of state losses from corruption cases was IDR 18.173 trillion in the first semester of 2020 and IDR 26.83 trillion in the first semester of 2021. In other words, the value of state losses due to corruption increased by 47.6 percent. The value of state losses has constantly increased during the last four years.⁸ When viewed based on corruption cases handled by the CEC most corruption targets the State Civil Apparatus (SCA) as the perpetrator, especially those who serve as public officials in institutions or agencies or agencies at both the central and regional levels. ICW noted that 343 people, or around 29.59 percent of 2021 of SCA, were caught in corruption cases. As many as 506 people, or 36 percent of 2022 of SCA, were caught in corruption.⁹ If we consider that public officials still dominate as perpetrators of corruption in Indonesia.¹⁰

Several corruption cases targeting public officials, namely the lobster seed corruption case that ensnared Edhy Prabowo, who previously served as Minister of Maritime Affairs and Fisheries for the 2019-2020 period, in the State Organizer Asset Report (LHKPN) December 31, 2019, it is written that the amount of assets owned is IDR 7,422,286,613 - this asset increased by around 2.8 billion.¹¹ From the previous report dated December 31, 2018, IDR 4,562,804,877 when Edhy Prabowo previously served as a member of the House of Representatives of the Republic of Indonesia (DPR RI) for the 2014-2019 period from the Great Indonesia Movement (Gerindra) party faction before finally serving as Minister of Maritime Affairs and Fisheries for one year.¹² And the corruption case of receiving gratuities related to the development of infrastructure projects in the Sidoarjo Regency Government, which ensnared Saiful Ilah, who previously served as Sidoarjo Regent for the 2016-2021 period, in the LHKPN December 31, 2019, was written that the amount of assets owned was IDR 60,465,050,509, - this asset increased by around 5.6 billion, from the previous report December 31, 2017, which was IDR 54,841,642,970, - this asset was obtained since the beginning of his tenure as Sidoarjo Regent in the second period.¹³ As quoted from the LHKPN page.

Some examples of corruption cases above show that a sharply increased assets ownership of public officials can be generated from unauthorized income, which opens the possibility of originating from corruption. Often, in corruption offenses, the only compelling

⁷ Ana Fauzia and Fathul Hamdani, "Pembaharuan Hukum Penanganan Tindak Pidana Korupsi Oleh Korporasi Melalui Pengaturan Illicit Enrichment Dalam Sistem Hukum Nasional," *Jurnal Hukum Lex Generalis* 3, no. 7 (2022): 497-519, <https://doi.org/10.56370/jhlg.v3i7.249>.

⁸ Indonesia Corruption Watch, "Implementasi Dan Pengaturan Illicit Enrichment (Peningkatan Kekayaan Secara Tidak Sah) Di Indonesia."

⁹ Putra and Prahassacitta, "Tinjauan Atas Kriminalisasi Illicit Enrichment Dalam Tindak Pidana Korupsi Di Indonesia: Studi Perbandingan Dengan Australia."

¹⁰ Herlambang, Zico, "Kejahatan Memperkaya Diri Sendiri Secara Melawan Hukum (Illicit Enrichment) Dan Aparatur Sipil Negara: Sebuah Kajian Kritis."

¹¹ Komisi Pemberantasan Korupsi, "Pengumuman Laporan Harta Kekayaan Penyelenggara Negara," 2019.

¹² Komisi Pemberantasan Korupsi, "Pengumuman Laporan Harta Kekayaan Penyelenggara Negara," 2018.

¹³ Komisi Pemberantasan Korupsi, "Pengumuman Laporan Harta Kekayaan Penyelenggara Negara," 2017.

evidence that criminal acts have occurred is the money that changes hands between the official committing the corruption offense and his or her co-conspirator, making self-enrichment the most obvious form of corruption offense. Offenses such as bribery, which require proof by the official who has committed the crime of corruption, are often encountered with difficulties in the prosecution stage. In addition, if the crime has been established in court, it will be associated with the proceeds of corruption crimes with the aim of asset recovery, which is a complicated effort, especially the flexibility of assets that can be moved, hidden, and transferred before confiscation and freezing. Looking at the concept of illicit enrichment through the UNCAC convention and the lack of maximum eradication of corruption in Indonesia, law enforcement against perpetrators of corruption must be emphasized in order to provide penalties that have a deterrent effect on corruptors and do not recur.¹⁴ Of course, the relevant mechanism for this is for the state to create legal instruments to ensure that the purpose of punishment can be carried out, one of which is the regulation of illicit enrichment as a criminal offense in the Indonesian legal system as a preventive effort or prevention of corruption.

In order to show the originality of this research, several previous studies are described, namely, First, Criminalization of Illicit Enrichment in the 2003 Anti-Corruption Convention (UNCAC) and its Implementation in Indonesia by Radita Adjie. The paper focuses on the study of the criminalization of illicit enrichment in UNCAC and its implementation in Indonesia. The topic studied has similarities with this research, namely related to Illicit Enrichment, but the focus of discussion and analysis of this research is related to the implementation of the principles of the concept of illicit enrichment in Indonesian law and the obstacles to the application of illicit enrichment in Indonesia.¹⁵ Second, Review of the Criminalization of Illicit Enrichment in the Crime of Corruption in Indonesia Comparative Study with Australia by Diky Anandya Kharystya Putra and Vidya Prahassacitta. The paper focuses on the study of the adoption of illicit enrichment norms, which can be one of the efforts to strengthen the agenda of eradicating corruption in Indonesia. The topic studied has similarities with this research, namely related to Illicit Enrichment, but the focus of discussion and analysis of this research is on how the implementation of illicit enrichment arrangements in Indonesia should be in accordance with the *ultimum remedium* principle.¹⁶ Third, The Urgency of Illicit Enrichment Regulation in Efforts to Eradicate Corruption and Money Laundering Crimes in Indonesia by Novalinda Nadya Putri and Herman Katimin. The paper focuses on the importance of regulating illicit enrichment in Indonesian law as one of the efforts to eradicate corruption and money laundering crimes. The topic studied is similar to this research, which is related to Illicit Enrichment, however, the focus of discussion and analysis of this research is related to the importance of illicit enrichment arrangements and the implementation of illicit enrichment arrangements in Indonesian law.¹⁷

Seeing the various explanations above, the problems in this study are criminalizing illicit enrichment as corruption in Indonesia is very important to be regulated in Indonesian

¹⁴ Indonesia Corruption Watch, "Implementasi Dan Pengaturan Illicit Enrichment (Peningkatan Kekayaan Secara Tidak Sah) Di Indonesia."

¹⁵ Radita Adjie, "Kriminalisasi Perbuatan Pengayaan Diri Pejabat Publik Secara Tidak Wajar (Illicit Enrichment) Dalam Konvensi PBB Anti Korupsi 2003 (UNCAC) Dan Implementasinya Di Indonesia," *Jurnal Legislasi Indonesia* 2003, no. 7 (2015): 1-23.

¹⁶ Putra and Prahassacitta, "Tinjauan Atas Kriminalisasi Illicit Enrichment Dalam Tindak Pidana Korupsi Di Indonesia: Studi Perbandingan Dengan Australia."

¹⁷ Novalinda Nadya Putri and R. Herman Katimin, "Urgensi Pengaturan Illicit Enrichment Dalam Upaya Pemberantasan Tindak Pidana Korupsi Dan Tindak Pidana Pencucian Uang Di Indonesia," *Jurnal Ilmiah Galuh Justisi* 9, no. 1 (2021): 38, <https://doi.org/10.25157/justisi.v9i1.4233>.

law. For this reason, this research examines the characteristics of illicit enrichment as a crime of corruption.

2. Methods

This research is normative legal research, which is a process to find rules, doctrines, and legal principles so that answers are found regarding the characteristics of illicit enrichment as a crime, namely corruption.¹⁸ The type of research used in this research is normative legal research. The approaches to the problem used are statutory, comparative law, and conceptual approaches. The sources of primary legal materials are the 1945 Constitution of the Republic of Indonesia, Law No.31/1999 jo Law No.20/2001, and the Law No.7/2006. Meanwhile, secondary legal materials are books and legal journals. After the legal materials are collected, they are analyzed normatively to find answers to the problems in this research.

3. Results and Discussion

3.1. Characteristics of Illicit Enrichment as a Corruption Crime

UNCAC or the anti-corruption convention, was ratified in Merida, Mexico, in 2003. Indonesia, also one of the state parties, signed and ratified UNCAC through Law No.7/2006. The convention regulates various types of corruption crimes, including illicit enrichment. The criminalization of illicit enrichment itself has been regulated in Article 20 of UNCAC, which states: "Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income."

In the phrase "shall consider" the above formulation, for member states, especially Indonesia, it must be understood that it is not only an obligation to consider seriously the general objectives of UNCAC but also to consider that in the constitution and legal principles in the national legal system to criminalize illicit enrichment or unnatural increase in wealth by public officials in Indonesian criminal law. The criminalization of "illicit enrichment," often called illegal enrichment, disproportionate wealth, unnatural or unexplained wealth, allows the state to prosecute public officials who illegally enrich themselves by confiscating due to unexplained wealth, the result is evidence of corruption. This definition of enrichment identifies and describes the characteristics of the offense, which are a set of essential elements that must be present for the accused to be found guilty. In addition, some provisions use illicit enrichment for unlawful acts or crimes in which public officials enrich themselves based solely on an unexplained increase in the public official's assets.¹⁹

Based on the definition of illicit enrichment contained in UNCAC, there are characteristics to determine that illicit enrichment is a type of criminal offense, especially corruption, as will be explained as follows :

a. Person of interest

In the UNCAC convention, illicit enrichment specifically targets public officials, as in Article 2 of UNCAC, which states that : "Public official shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a

¹⁸ Peter Marzuki, *Penelitian Hukum*, ed. Suwito (Kencana, 2022).

¹⁹ Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption (Stolen Asset Recovery (StAR) Series)*, 2012.

public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a public official in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, public official may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party." Some countries that also regulate illicit enrichment define public officials as civil servants, officials, or people who serve the public interest, regardless of whether they are civil servants or are nominated by the government. This approach focuses on the abuse of power concerning public officials who enrich themselves.

b. Period of interest

Period of interest refers to when a person can be held responsible for unlawfully enriching themselves. The explanation of the period of increase in wealth is intended to be a significant increase by public officials. The definition of the increase in wealth also serves a practical purpose in establishing a presumptive basis for investigators to determine that the public official has committed an act of corruption. Although UNCAC does not clearly define the period of interest, it can be inferred that it refers to a public person who receives large and unwarranted enrichment during his or her time of service. The public official has likely enriched himself/herself during his/her term of office. This unjustified increase in wealth starts from the date the official takes office until when the official leaves office. Based on these characteristics, prosecutors can use the date of taking office as a starting point to assess whether the increase in assets is significant concerning the public official's lawful income during their functions and term of office.

Using the aforementioned computations, the court will normally be needed to define the temporal parameters for its investigation in order to evaluate whether illegal enrichment has occurred. The period of interest, examination period, or calculation period is the time between two precise dates that is required for the correct calculation and comparison of a person's full wealth and income. It is feasible, in the absence of such constraints, for:

- 1) Targeted individuals can claim that they paid for particular riches they enjoyed during the interest period with revenue acquired before or after the interest period that was unavailable to them at the time, or:
- 2) According to the state, a person accumulates extra wealth before or after the interest period that is disproportionate to the amount of money obtained during the interest period.

The period in question does not always refer to the entire period in which a person may be subject to unlawful enrichment laws (for example, the total period in which a person is a public official or the period that comes within the statute of limitations period). Rather, it refers to the time period in which the alleged illegal enrichment took place (for example, a year in which a public figure inexplicably gained a huge amount of wealth). While India's illicit enrichment laws require the person who committed the illicit enrichment to be a public official, this does not mean that the time period used by the court to calculate the alleged wealth versus income disparity must cover the entire time the person was a public official.²⁰

c. Significant increase in assets

It is essential to consider how these characteristics are defined if the aim is to prove that a public official has unreasonable wealth or a significant increase in their wealth. The first is finding wealth or an increase in wealth that is considered essential; the second is evidence, such as assets. International conventions consider "significant" is a relative rather than

²⁰ Muzila et al.

absolute term. For example, it uses words such as disproportionate wealth or wealth excessive to lawful income to compare the increase in wealth with the source of lawful income. If the threshold of unreasonable wealth is set in law, prosecution may be avoided. However, this may also lead to the misconception that corruption is accepted without a low threshold. In other situations, providing a precise definition of a particular asset that can be subject to a charge of illicit enrichment is also essential, as this can determine how easy or difficult it is for the prosecution to prove the case. Therefore, public officials are deemed to have enriched themselves with unlawfully acquired wealth if they do not answer questions about the origin of their wealth. Remembering the exact definition of assets, whether facilitation payments or disproportionate assets legitimate income, is also very important to consider. This definition will determine how easy or difficult so that the prosecution has the ability to prove the defendant's charges alleged corruption case as a whole, providing details that will go a long way in explaining the behavior deemed as illicit enrichment.

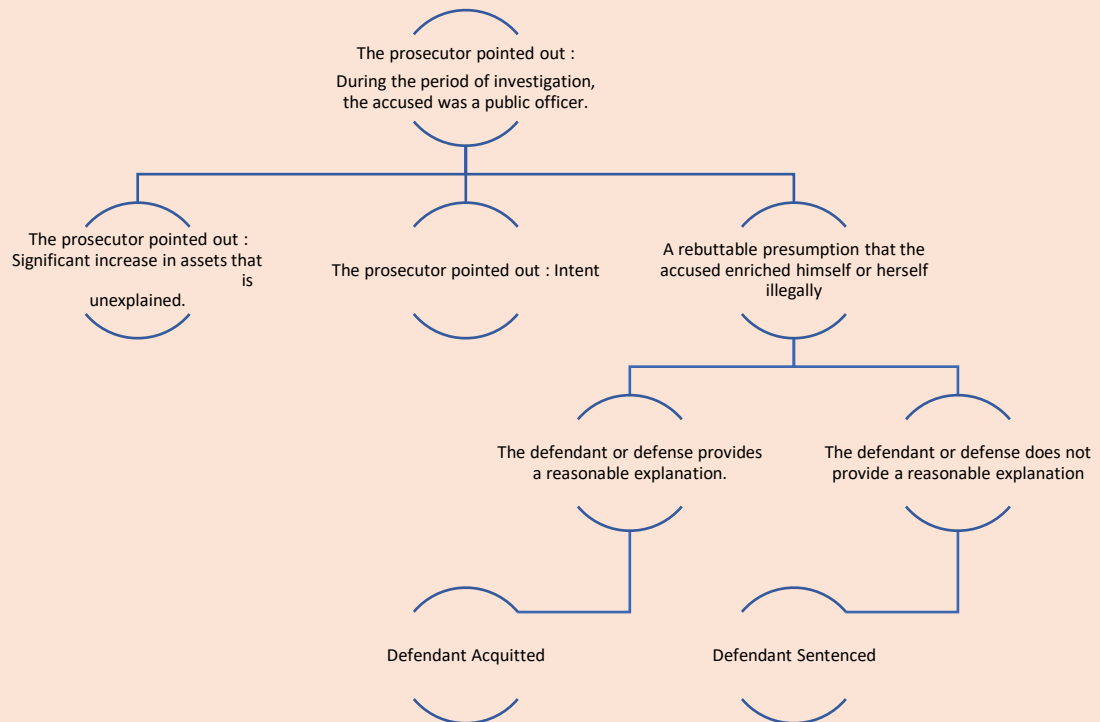
d. Intent

UNCAC explicitly requires that there is proof of *mens rea* or intention in committing the crime of enrichment by including the words "...when committed intentionally" or "when committed intentionally." this is following the contents of Article 20 UNCAC and if you follow the principles stated in Article 28 UNCAC that the defendant's state of mind does not need to be proven but rather based on the objective facts of the case. From this, it can indeed be concluded that the objective factual conditions in question include the transfer of large sums of money from one person or organization to another that do not have a legitimate business relationship with the public official, large cash payments made by the public official, or the use of luxury property obtained by unexplained means. However, in practice, it is essential to consider that the "intent" of the public official committing the act of self-enrichment is an essential factor that must be proven explicitly or at least implicitly by the prosecutor.

e. Absence of justification

The UNCAC identifies that the absence of a plausible explanation for the act of illicit enrichment by a public official is certainly an important element of illicit enrichment by defining it as "a significant increase in the assets of a public official that cannot be explained." This element's formulation places the burden of proof on the public official. In practice, when a public prosecutor builds a case against a defendant who was a public official during his or her term of office, the prosecutor will make allegations of illegal enrichment or holding of assets above a public official's actual income. This further suggests that the public official had the intention to enrich themselves, once this has been established, there is a rebuttable presumption that the enrichment was unlawful. This rebuttable presumption is an assumption made by the court that is presumed to be true unless there is evidence to the contrary. If the defendant can show that there is a reasonable explanation then he or she will be acquitted but if the defendant fails to do so, then he or she will be convicted.

The following chart shows the general sequence of events of unlawful illicit enrichment:
Diagram 1. The Chronology of Events in the Illicit Enrichment Case



Source: Illicit Enrichment: A Guide to Laws Targeting Unexplained Wealth, 2022.

Illicit enrichment prosecution takes a slightly different method one of them uses the burden of proof reversal system method. The reversal of the burden of proof system is a very effective option in an effort to accelerate the rescue of state financial losses from the hands of perpetrators of corruption, because the state can impoverish corruptors by seizing back state-owned assets obtained from the proceeds of corruption through reverse proof. The reversal of the burden of proof system is also in line with international conventions, namely the United Nations Convention Against Corruption 2003. The provision of reversal of the burden of proof has been regulated in Article 31 paragraph (8) which reads "State parties may consider the possibility of requiring that a perpetrator show the legitimate origin of the proceeds of the alleged crime or wealth proceeds of a suspected crime or other property subject to liability to forfeiture, provided that the requirement responsibility for forfeiture, to the extent that such a requirement is consistent with the principles of fundamental principles of their national law with the nature of judicial and other other proceedings."

The defendant is expected to provide a reasonable explanation for the considerable rise in assets. A major aspect is the nature of the accused's burden of proof, which requires the accused to show evidence that brings the reality of the facts asserted by the prosecution into question. Through a defense of need or self-defense in the context of another crime, a defendant can give evidence of the legitimate origin of his or her assets. The burden of proof remains with the prosecutor in this instance, who must prove facts beyond a reasonable doubt or reasonable belief and refute the evidence presented by the accused. However, when the burden of proof is on the defendant, an adverse inference can be drawn from the defendant's failure to provide evidence of his defense.²¹

In addition to the various elements that characterize illicit enrichment as a criminal offense, especially the crime of corruption above. There is some information required in the

²¹ Muzila et al.

investigation of a case to determine whether the case relates to illicit enrichment as a criminal offense, especially corruption. These include the following :

a. Income and Asset Disclosures

Income and Asset Disclosures (IAD) of a public official are disclosed in their income and asset reports. The value of public officials' assets must be declared and liabilities in certain nations; these disclosures show the official's net worth when filing. Spouses and immediate family members are subject to disclosure laws in many nations, and officials must often report at least twice while in office. Disparities between an official's declared wealth and the wealth found through disclosure analysis, if confirmed, could provide a solid foundation for additional research into illicit enrichment.²² Case studies emphasized that financial disclosures by public officials are among the most essential instruments for investigators and prosecutors in cases of unlawful enrichment. Countries that have financial disclosure laws have regulations that prohibit unlawful enrichment. Income and asset data can be utilized to detect unlawful enrichment in two stages. The first stage is looking for examples of illegal enrichment, whereas the second stage entails accumulating evidence indicating the existence of illegal enrichment. It is obvious that disclosure mechanisms play an important role in beginning and helping investigations into illegal enrichment. 77% of the 43 jurisdictions examined have criminalized unlawful enrichment, and 34 of them have some type of asset declaration mechanism. However, an investigation can only begin after a disclosure is made and filed. Compliance is inconsistent if there are no legal or administrative repercussions for failing to file a disclosure form, as Paraguay illustrates. Public officials have to deliver accurate and comprehensive information. Ensuring public officials adhere to this requirement can be achieved by verifying disclosures made throughout the filing process. The majority of jurisdictions have disclosure requirements for a large number of public officials. Therefore, verification techniques are probably going to be selective. In nations where non-disclosure, incomplete filing, and incorrect information carry administrative or criminal penalties, public authorities are motivated to provide accurate and complete information. It is authorized to undertake preliminary verification. If a disclosure is not evaluated, it will not be the source of a potential lawsuit. In some nations, such as Jordan, authorized agencies can only investigate if a complaint is submitted against a specific public figure. However, a brief inspection of many releases will unlikely generate valuable leads. A more targeted and risk-based approach, focusing on a few high-risk red flags, is likely necessary. Disclosures should be available to prosecutors and investigators at the start of their investigations. Financial information is published in annexes in some nations, such as Argentina, yet asset declarations are considered public records. Interested parties can submit written requests to anti-corruption agencies, depending on what information they need to read or obtain a copy of the statement. The National Commission of Public Ethics, the Judicial Authority, and the Fiscal de Control Administrativo can still access this data. The Ministry of Law and Human Rights can only use this information after the decision of the Ministry of Law and Human Rights and notification to the subject under investigation. The National Public Ethics Commission (and, indirectly, the anti-corruption office) are authorized by Argentine law to launch investigations into cases of unlawful enrichment as well as asset declaration and conflict of interest violations. However, fewer than 4% of the time, income and asset disclosure forms are analyzed case in Argentina. During its investigations of illicit enrichment in Honduras, The Superior Court of Accounts (Tribunal Supremo and de

²² UNDOC World Bank, "Public Office, Private Interests Accountability through Income and Asset Disclosure" (International Bank for Reconstruction and Development / International Development Association or The World Bank, 2012), <https://doi.org/10.1596/978-0-8213-9452-6>.

Cuentas) has full access to bank accounts and financial statements of civil servants and their families.

In the IAD system, declarations are intended to collect information that will allow monitoring of officials' wealth to discover assets or unexpected income that is not related to salaries or other legitimate sources. The focus of the IAD system is to discover and prevent illegal enrichment. In countries where corruption and impunity are widespread, adopting a primary or exclusive focus on uncovering illicit enrichment may be particularly important. Efforts to reduce the corrupt behavior of public officials can be aided by an IAD system that provides realistic threats of discovery and real penalties for violations. Bribery and embezzlement-type charges are the fundamental acts of corruption with which unlawful gain is often connected. Because both types of crime are difficult to identify and prosecute, many jurisdictions use an IAD system to detect illicit enrichment by monitoring and highlighting substantial changes in public officials' wealth that cannot be explained by legitimate revenue. When differences between an official's disclosure and his or her genuine income are discovered, the IAD framework includes punishments for filing incorrect information. A separate criminal prosecution may follow from the underlying (predicate) corruption of senses concealed by the deception. In such circumstances, the IAD violation and declaration forms may be used to initiate an investigation, help in an investigation, or serve as evidence a prosecution. An illicit enrichment system must present a genuine danger of detection in order to be effective. The system's ability to verify disclosures is consequently critical in detecting any "red flags" for unlawful enrichment or if an official has filed inaccurate information in his or her declaration. There are numerous techniques to this that, when combined, may produce a more convincing danger of detection:

1. If statements are made public, IAD agencies or civil society agents can monitor them to discover large changes in income and assets over time, which could be a red flag for illicit income.
2. IAD agencies can cross-reference the content of declarations with other sources of information about an official's income and assets (tax and bank records, automobile and real estate registrations, and so on) to determine whether the official provided misleading information on their declaration.
3. If statements are made public, IAD agencies and civil society agents can look for disparities between an official's perceived level of life and his or her official pay. Such inconsistencies can be detected through "lifestyle checks," which agencies sometimes conduct independently but more often rely on public access to declarations by investigative journalists or concerned civil society organizations.

In certain systems, IAD agencies rely only on public claims to trigger the verification of an official's assertions, rather than using any systematic review procedure to discover any errors.²³

b. Lifestyle Checks and Complaints

Lifestyle checks look to see if the lifestyle of public officials is out of proportion to their recognized salary. They are carried out by investigating a public official's assets, actions, and expenditures. These may include the valuation of real estate and automobiles, income verification, stocks, the type of schools attended by children, loan and tax payments, travel, expensive parties, and other expenses. Lifestyle checks may also include checks on reputation and family history, which are a good starting point but must be confirmed. To avoid abuse, standard operating procedures for conducting lifestyle inspections may be devised. Complaints or allegations from members of civil society, anticorruption nongovernmental organizations (NGOs), the media, and whistleblowers are useful sources

²³ World Bank.

of lifestyle checks and an aid in detecting illicit enrichment prior to investigations. Article 33 of UNCAC directs state parties to consider "Appropriate measures to provide protection against any unjustified treatment for any person who reports to the competent authorities in good faith and on reasonable grounds any facts concerning offenses established in accordance with this convention." The goal is to foster an atmosphere in which individuals can contribute information that creates or supports inquiries. The majority of countries have complaint systems in place. Few, however, have measures in place to protect the anonymity of a whistleblower whose name has been discovered. In several nations, anonymous and pseudonymous complaints are often ignored unless they contain precise claims and give essential information that can aid in the investigation of the alleged wrongdoing. A conducive atmosphere for NGO and media participation enables for free press participation and information flow. To safeguard officials from possibly spurious claims, some countries have taken a careful approach. The possibility of sanctions in some systems discourages spurious charges. In Romania, for example, false assertions or "deceitful evidence" in complaints are punishable. In some nations, filing a complaint requires a cash guarantee. This strategy may protect the privacy of public officials, but it can stifle many legitimate complaints that are the basis for prosecution. For these reasons, Lebanon is currently considering requiring anyone filing a complaint to deposit a sizable bank guarantee, such as \$18,000. Although this issue is more related to whistleblower protection laws and is not discussed in detail in this study, it should be considered when legislating illegal enrichment as it may affect the discovery of illicit enrichment.²⁴

c. Suspicious Transaction Reports

First, UNCAC considers illegal enrichment to be a predicate money laundering offense. However, The Financial Action Task Force (FATF), which establishes international anti-money laundering (AML) standards, does not take this into account. Because one of the most common predicate violations in AML systems is corruption, some believe that unlawful enrichment makes intuitive sense. AML tools are designed to stop and discover the proceeds of crime. FATF standards require financial institutions, businesses and designated non-financial professions to implement "customer due diligence" as a fundamental requirement of AML, so the financial sector can play an important role in discovering cases of illegal enrichment using banking assets. Financial institutions should report suspicious transactions (STRs) to the country's financial intelligence unit (FIU) when customer account activity is not as expected. If a violation is identified by the jurisdiction, it will be notified to the financial institution. Assume a money laundering or other related investigation is launched. The FIU will investigate the STR in this instance and may refer the case to prosecutors or other law enforcement organizations. If the prosecutor's evidence does not establish all facets of corruption or economic crime, STRs may be used in the prosecution of self-enrichment violations. Suspicious transaction reports, as established by the FATF, can also aid in the investigation of financial transactions involving politically exposed individuals or individuals entrusted with critical public obligations in other country.²⁵

d. Other Investigations

During an investigation or when looking into other instances, detectives may come across evidence indicating that illicit enrichment has occurred. While this is true for most types of financial investigations, it is especially true in the situation of unlawful enrichment, which can be punished in some nations whereas other crimes cannot. In Venezuela, for example,

²⁴ Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption (Stolen Asset Recovery (StAR) Series)*.

²⁵ Muzila et al.

the unlawful enrichment provision stipulates that the violation may be prosecuted "provided it does not constitute another crime." Anti-corruption and other officers may also launch these investigations, which may be based on information obtained from sources who wish to remain anonymous. Furthermore, prosecution will be carried out based on part of the facts obtained throughout the inquiry in order to determine illegal gain as a crime of corruption. This is the activity taken by the public prosecutor to refer a criminal case to the appropriate district court for examination and decision by a judge during a court session. The courts will frequently do a mathematical exercise to determine whether the wealth factor and the insufficient income condition have been demonstrated and whether unlawful enrichment has happened. They will evaluate the evidence supplied in this manner. They will attempt to determine two specific values that may be entered into a simple calculation to determine whether or not the targeted individual has unlawfully enriched themselves.²⁶ The following two figures are drawn directly from the evidence offered to establish the two common elements:

Diagram 2. Formula two common elements

$$\begin{array}{c}
 \text{Total value of wealth} \\
 \text{(enjoyed by the individual throughout a specific time period)} \\
 \\
 \text{Minus} \\
 \text{Total value of lawful income} \\
 \text{(received by/available to the individual at the same period of time)} \\
 \\
 \text{Equals} \\
 \text{Total Illicit Enrichment}
 \end{array}$$

Figure 1: The entire amount of money that the person has accumulated during a specific time period (as determined by the state's proof regarding the money element); and

Figure 2: The entire amount of lawful income obtained by the individual over the same time period (as determined by the state's and/or the person's evidence of income for the Inadequate Income Element).

Source: *Illicit Enrichment: A Guide to Laws Targeting Unexplained Wealth*, 2022

After determining these two figures, the court can perform a simple mathematical exercise to assess if the elements have been effectively established and that:

- 1) A person possessed a certain quantity of wealth; and
- 2) The legal origin of this quantity of money has not been justified or explained in terms of the same person's legal income.

When looking at the basic formula above, keep in mind that total wealth is the total amount of wealth that the individual has enjoyed over a specific period, and total legitimate income is the total amount of legitimate money that the person has gotten over the same period. Assume the overall quantity of wealth exceeds the total amount of valid revenue. In that instance, the resulting number will be positive, indicating that the conditions were met and that illegal or unauthorized enrichment happened, assuming that the other elements required by specific laws were also met. If the person's status as a public official is also established, the court will impose sanctions.

The final positive figure will not only indicate that illicit enrichment has happened, but it will also show the exact value of this illicit enrichment. If the calculation produces zero or a negative value, illegal enrichment has not been demonstrated. This concept of mathematically processing evidence has been emphasized in jurisprudence all across the

²⁶ Andrew Dornbierer, *Illicit Enrichment*, *Illicit Enrichment*, 2022, <https://doi.org/10.2307/j.ctv2c74pzx>.

world. The court will normally be obliged to select a time parameter for its investigation in order to calculate whether there has been unlawful or unauthorized enrichment based on the simple calculation above. The interval between the given dates is known as the examination period or calculation period. It is required for an accurate computation and comparison of an individual's overall wealth and income. The inspection period does not always apply to when a person can be the object of illicit enrichment legislation (for example, a single year in which a public official accumulates a huge amount of wealth for no apparent reason).

There are clearly various categories of wealth that are evaluated by the law in the court's attempt to ascertain the whole amount of a person's wealth, particularly in the legislation on illicit enrichment, which targets a public official who enjoys unjustified wealth from legitimate revenue. However, these rules range greatly in terms of the categories of "wealth" that can be considered in determining whether a person has committed an act of illegal self-enrichment. Some laws adopt a restrictive approach, focusing primarily on traditional assets that may be "bought" or "controlled" whereas others take a far broader view, including all money-based goods, including all services obtained or that contribute to a person's standard of living.

Other methods of calculating wealth make use of property, assets, and money resources that may be obtained or managed. Some criminal rules on unlawful enrichment limit the types of commodities or benefits that can be examined for deciding whether a person has illegally enriched himself. These rules solely take into account a person's actual assets, property, or financial resources. For example, under Bangladesh's Anti-Corruption Commission Act, someone is only judged to have unjustly enriched themselves if they have "obtained ownership of moveable or immovable property" that is incongruous with their known sources of income. Similarly, the Togolese Criminal Code defines illicit gain as the unjustifiable acquisition of "moveable or immovable property".²⁷

3.2. Criminalization of Illicit Enrichment in Several Countries as a Crime of Corruption Currently, 44 of the world's 193 countries have laws governing illicit enrichment. 39 of these countries, including Egypt, China, and several others, issue penalties of arrest or imprisonment²⁸. While the punishment can range from 14 days to 12 years in prison, there are some countries where the severity of the punishment correlates with the amount of ill-gotten wealth a person has. Around 26 countries also offer a wide range of fines; some calculate them using a range of 50% to 100%, while others do so by multiplying the value of the ill-gotten wealth by two. Administrative penalties can also include dismissal, prohibition from holding particular offices, and loss of voting rights, as is the case in Chile, Uganda, and many other countries, in addition to imprisonment and fines.²⁹

There are 44 countries have regulated illicit enrichment in law. Here are 4 examples of countries that have regulated illicit enrichment in law:

a. India

According to recent data, India has the highest bribery rate in the Asian area, at 39 percent. According to Transparency International, a German non-profit organization and worldwide civil society organization, India ranked 36th in 2012 and 40th in 2020 on its corruption perception index. In 2020, it is again ranked 86th out of 180 countries.

²⁷ Dornbierer.

²⁸ United Nations, "UNITED NATIONS CONVENTION AGAINST CORRUPTION," vol. 68, 2005.

²⁹ Indonesia Corruption Watch, "Implementasi Dan Pengaturan Illicit Enrichment (Peningkatan Kekayaan Secara Tidak Sah) Di Indonesia."

Countries such as New Zealand, Denmark, Finland, Norway, Switzerland, Singapore, Sweden, and the United Kingdom are among the least corrupt, whereas China, Kuwait, and the Maldives are just above India. Morocco, Turkey, and Brazil are also included in the list, which is below India. From all the above information, India ranks among the most corrupt countries globally. India has, therefore, made specific laws regarding the act of self-enrichment by public officials to reduce crime in the country and to be free from corruption³⁰. This is set out in Article 13 of the Prevention of Corruption Act of 1988, which states "A public servant is said to commit the offense of criminal misconduct, ... if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income..." Further review of the illicit enrichment clause reveals that India is addressing any public person in his or her competence to hold office who fails to account for accounts, sources of money, disproportionate wealth tax from non-taxable income.

b. Guyana

In Guyana, there is a specific law on self-enrichment, which is set out in the Integrity Commission Act 1998 that states "Where a person who is or was a person in public life, or any other person on his behalf, is found to be in possession of property or pecuniary resource disproportionate to the known sources of income of the first mentioned person, and that person fails to produce satisfactory evidence to prove that the possession of the property or pecuniary resource was acquired by lawful means he shall be guilty of an offense and shall be liable, on summary conviction, to a fine and to imprisonment for a term of not less than six months nor more than three years." Maybe you pay more attention to this article. In this case, what the state of Guyana is referring to is any person working in the public service or on behalf of a public office who has wealth that is not reasonable from their income and cannot prove that they own the property or the source of the wealth in the form of money received through legal mechanisms, such as courts and taxes.

c. Sierra Leone

In Sierra Leone, there is a specific law on self-enrichment, which is set out in the Anti-Corruption Act 2008, Part IV, which states that "Any person who, being or having been a public officer having unexplained wealth, (a) maintains a standard of living above that which is commensurate with his present or past official emoluments or (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, commits an offense." A closer look at this article reveals that Sierra Leone refers to any person who is a public servant who has unexplained wealth that cannot be explained through the courts as an act of illicit enrichment.

d. China

In China, there are specific legal rules regarding the act of enriching oneself, and it is regulated in the Criminal Law 1997, Article 395, which states "Any state functionary whose property or expenditure obviously exceeds his lawful income, if the difference is enormous, may be ordered to explain the sources of his property. If he cannot prove that the sources are legitimate, the part that exceeds his lawful income shall be regarded as illegal gains, and he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and the part of property that exceeds his lawful income shall

³⁰ R. Jai Surya B. Oviya, "Analysis Of Importance Of The Prevention Of Corruption Act 1988" 1, no. 3 (2019): 135-43.

be recovered.” Looking further into the article, the Chinese state refers to any State Organizer with riches and spending that exceed his salary and who cannot justify the source of his income from legitimate sources. It is classified as an illegal purchase or self-enrichment act.

The four countries prohibition of illicit enrichment is essentially the same, namely illegal riches. The sole difference between these countries is in characterizing the kind of assets that have expanded significantly and are used to calculate income. The subject of regulation varies from governmental officials to ordinary citizens in the four countries. The rule's target is wealth, namely assets possessed by public authorities and individuals. Fines and prison sentences are two sorts of laws imposed on public authorities. The length of a sentence varies greatly, ranging from 6 months in Guyana to 5 years in China. Penalties in Sierra Leone range from 6 months to 5 years.³¹

4. Conclusions

It can be seen that the characteristics of illicit enrichment consist of person of interest, period of interest, significant increase in assets, intent, and absence of justification. This refers to the contents of Article 20 UNCAC. In addition, there is some information required in the investigation of a case to determine whether the case relates to illicit enrichment as a criminal offense, especially corruption. As a determination by the court of the assets or wealth of the suspect of illegal enrichment. In assessing whether the wealth element and the unjustified income element have been proven, and whether there has been unlawful enrichment. The court will perform a calculation of the evidence presented and determine whether the targeted person has enriched themselves illegally or unlawfully or unlawfully. The significant increase in asset holdings of public officials could potentially be the result of unauthorized income, leaving open the possibility of corruption. The prohibition of illegal enrichment in some of these countries is basically the same, namely illegal wealth. The subjects of the regulations vary from government officials to ordinary citizens in the four countries. The target of these regulations is wealth, that is, assets owned by public authorities and individuals. Fines and imprisonment are the two types of laws imposed on public authorities. The length of the sentence varies widely, ranging from 6 months to 5 years. In Indonesia, the regulation on illicit enrichment has not been regulated in the Law on the Eradication of Corruption. By looking at the concept of illicit enrichment through its characteristics in the UNCAC convention and the unregulated illicit enrichment into the Indonesian legal system, of course the concept of illicit enrichment is very relevant to be established as one type of corruption crime, which if used as one of the basis for judges' considerations will certainly affect the results of judges' decisions in deciding corruption cases, therefore a legal device is needed to ensure that the purpose of punishment can be carried out, one of which is by regulating illicit enrichment as an offense that can be punished in the Indonesian legal system as a preventive effort or prevention of corruption crimes.

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³¹ Rasamala Aritonang, “Menggagas Perubahan UU Tipikor : Kajian Akademik Dan Draf Usulan Perubahan” 26 Cm (2019): 336.

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