



RESEARCH ARTICLE

Regulation of Illicit Enrichment and Unexplained Wealth in Indonesia: Challenges and Law Enforcement Strategies in the Context of Eradicating Corruption

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ARTICLE INFO	ABSTRACT
<p>Received: May 27, 2024 Accepted: Aug 14, 2024</p>	<p>Regulations regarding illegal enrichment and unexplained wealth in Indonesia are crucial issues in eradicating corruption. This phenomenon shows that there are loopholes in the legal system that are exploited by public officials to accumulate wealth illegally without having to prove the legitimate source of the acquisition. This article aims to analyze regulations and legal implementation related to illegal self-enrichment and ownership of property whose origins cannot be explained in Indonesia. Through normative juridical research methods with a statutory regulation approach and case studies, this article explores various regulations that have been implemented, as well as the challenges and obstacles in their enforcement. The results of the study show that although there are several regulations governing this issue, their implementation still faces many obstacles, including unclear legal definitions, weak law enforcement, and resistance from public officials. This article recommends the need for revision and harmonization of stricter regulations as well as strengthening law enforcement institutions to deal with this problem effectively.</p>
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INTRODUCTION

The issue of illegitimate enrichment and wealth whose origins cannot be explained (unexplained wealth) is a form of deviation that undermines public integrity and gives rise to social injustice. In Indonesia, this problem has become a serious concern, especially in the increasingly complex context of eradicating corruption. To overcome these practices, the Indonesian government has issued various laws and regulations which can be used as a legal basis.

The concept of *unexplained wealth* is similar to *illicit enrichment* in UNCAC, namely the pursuit of assets that are related to criminal acts and that are considered unreasonable. However, *illicit enrichment* in Article 20 of UNCAC only covers assets that are public assets. In Indonesia itself, UNCAC has been ratified through Law Number 7 of 2006, however, this Law is still general in nature and does not regulate *unexplained wealth* specifically (Husein, 2010).

Unexplained wealth in practice is different from *illicit enrichment*. Where the concept of *unexplained wealth* is a broader regulatory subject compared to *illicit enrichment*. *Illicit enrichment* only applies to public officials while *unexplained wealth* applies to everyone. The accountability process for *illicit*

enrichment only goes through a criminal mechanism, while for *unexplained wealth* a civil lawsuit can also be sought to confiscate assets that cannot be explained. Currently, the countries that practice *unexplained wealth* are Australia and the Philippines which regulate *unexplained wealth* but the essence is *illicit enrichment*. On the other hand, *illicit enrichment* and *unexplained wealth* have a different basis for thinking between them (Palma et al., 2014).

According to Yunus Husein, who at that time served as Head of the Center for Financial Transaction Reports and Analysis (PPATK), Australia generally defines *unexplained wealth* as a legal instrument that allows the confiscation of a person's assets or property in a very large amount but is considered unreasonable because it does not correspond to the source of income, and the person concerned is unable to prove (through the reverse proof method) that the assets were obtained legally or did not originate from a criminal act. If a person has *unexplained wealth*, the amount of assets that cannot be proven to have been obtained legally can be confiscated by the state through certain legal procedures. Meanwhile, the remaining assets that can be proven to have been obtained legally can be controlled and enjoyed again by the owner (Ramelan, 2012).

Legal policies regulating the illegal enrichment of assets whose origins cannot be explained in Indonesia have been implemented through several legal instruments, such as Law Number 31 of 1999 concerning Eradication of Corruption Crimes and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 (Nugraha et al., 2019). Based on this law, efforts to confiscate assets resulting from corruption can be carried out through civil or criminal mechanisms. Illicit enrichment generally refers to a situation where someone, especially a public official, has assets that are disproportionate to their legitimate income, while unexplained wealth refers to assets whose origins cannot be explained with clear and legal evidence. These two concepts are important in the framework of eradicating corruption because they enable the identification and prosecution of officials involved in corrupt practices without the need for direct proof of a predicate crime.

However, the implementation of these two concepts in Indonesia still faces several challenges. One of them is the complexity of the process of proving the accumulation of unexplained wealth, which requires adequate investigation and data analysis skills (Widayati, 2018). Apart from that, weak coordination and synchronization between law enforcement agencies is also one of the obstacles to optimizing the return of assets resulting from corruption (Sigalingging, 2021). What is essential in criminal acts of corruption is that what has been taken by the perpetrator of a criminal act of corruption must be returned to the state. It is not limited to punishing (imprisoning) perpetrators of criminal acts of corruption as a form of deterrent effect. Marwan Effendy calls it "returning state assets" (Karianga & Rahman, 2023).

To face these challenges, a comprehensive and sustainable law enforcement strategy is needed. This includes strengthening the capacity of law enforcement officers, increasing international cooperation to save assets held abroad, as well as developing a system for reporting and monitoring the assets of public officials (Hutahaean & Indarti, 2020). Globally, the concepts of illicit enrichment and unexplained wealth have been adopted in various international legal instruments as part of efforts to strengthen anti-corruption mechanisms. One of the most prominent is the United Nations Convention against Corruption (UNCAC), which encourages member countries to criminalize the acquisition of assets of unexplained origin by public officials. In the Indonesian context, even though this country has ratified UNCAC through Law Number 7 of 2006, the implementation of the norms mandated in the convention still experiences various obstacles, especially in terms of adapting domestic regulations by international standards.

Legal issues related to the regulation of illicit enrichment and unexplained wealth in Indonesia cover several important aspects. First, there is a debate regarding the principle of reversal of the burden of proof which is applied in cases involving public officials with suspicious wealth. On the one hand, reversing the burden of proof is considered necessary as an extraordinary step to deal with increasingly complex corruption crimes (Syahroni et al., 2019). This principle, which allows shifting the burden of proof to the defendant to prove that his assets were obtained legally, is often considered to be contrary to the principle of presumption of innocence. On the other hand, the application of this principle is considered important as an instrument to end impunity among officials involved in corruption.

Second, regulations regarding unexplained wealth in Indonesia need to be aligned with international standards as regulated in UNCAC (Sigalingging, 2021). In various countries, the concept of unexplained wealth has been applied in the form of non-conviction-based asset confiscation, where the confiscation process can be carried out through civil mechanisms without the need for proof of a predicate criminal act. In the Indonesian context, the existing asset confiscation policy needs to be strengthened both in terms of its legal basis and the effectiveness of its implementation.

The results of research by Indonesia *Corruption Watch* (ICW) on the Implementation and Regulation of *Illicit Enrichment* (Illegal Increase of Wealth) in Indonesia states that currently, of the 193 countries in the world, there are at least 44 countries that have legal instruments at the level of laws regarding *illicit enrichment*, several countries that have regulated it in law, namely India, Guyana, Sierra Leon and China. The meaning of *illicit enrichment* in these 4 countries is more or less the same, namely about illegal wealth. The difference between these countries is only in the form of a different explanation of the forms of assets that have increased significantly to measure their income (*income*).

Therefore, this legal issue not only requires strengthening domestic regulations but also requires a more coherent and consistent legal framework to ensure effectiveness in law enforcement. Firmer regulations and more consistent implementation are needed to overcome the problem of illicit enrichment and unexplained wealth which has long undermined government credibility and harmed the public interest in Indonesia.

RESEARCH METHODS

In this writing, the legal research method used is a normative legal research method which aims to search for data through library sources to gain knowledge about the idea in question. As normative legal research, this research refers to the analysis of legal norms. These legal norms are obtained from statutory regulations, judge's decisions, expert doctrine, international conventions and the envisioned legal concept (Draft Law).

DISCUSSION

Law enforcement is an effort to create order, security and tranquillity in society, especially taking action after a law violation occurs (Warman et al., 2021).

Asset recovery is an action that can be carried out by the state in the form of confiscating the proceeds of criminal acts that have harmed the state in order to recover the state's own losses. In carrying out asset recovery efforts, it must be understood that these efforts are carried out on the basis of the principles of social justice, namely "Give the state what is its right" and "Give the people what is their right" (Mahmud et al., 2021). The term "*the rule of law*" contains the meaning of government by law,

but not in a formal sense, but also includes the values of justice contained therein (Hidayat et al., 2021).

Although current legal norms only regulate asset confiscation through criminal prosecution, in practice asset confiscation is not only carried out through criminal prosecution. For example, confiscation of assets in corruption cases can also be carried out through civil procedures (Tommy, 2016) (Tommy, 2016). In this mechanism, the prosecutor will act as a State Attorney (JPN) who will file a civil lawsuit against assets that are thought to be the proceeds of a criminal act. The lawsuit is addressed to the suspect, convict, and/or the heirs of the suspect/convict (Jati, 2021). The Prosecutor's Office carries out its functions in the field of civil and state administration, namely by observing developments that occur in society (Bachri, 2020).

Indonesia has made significant strides in combating corruption, but the challenges persist (Vyatra & Payamta, 2020). Corruption is still a significant issue, particularly at the regional government level, where the prevalence of corrupt practices is high (Periansya et al., 2023)

The limitations in the legal system and law enforcement have been identified as key factors contributing to the ongoing corruption problem in Indonesia (Diniyanto, 2019). Judges have the authority to impose additional sanctions, including the return of financial losses to the state, as part of the corruption judicial process (Setiabudhi, 2014). However, the effectiveness of these measures in reducing corruption levels remains a concern.

The recovery of state financial losses through civil law instruments, as outlined in Law Number 31 Year 1999 and Law Number 20 Year 2001, is one of the strategies employed by the Indonesian government to address the issue of corruption (Mahmud et al., 2020). Nonetheless, the effectiveness of these legal instruments in recovering the stolen assets and determining future corrupt activities is an area that requires further examination.

The regulation of illicit enrichment and unexplained wealth is a critical component in the broader anti-corruption efforts in Indonesia. Strengthening the legal framework and enhancing the capacity of law enforcement agencies to effectively investigate and prosecute cases of illicit enrichment and unexplained wealth will be crucial in addressing the corruption problem. Addressing the challenges related to the enforcement of regulations on illicit enrichment and unexplained wealth is essential for Indonesia's success in its anti-corruption efforts.

Regulations on Illicit Enrichment and Unexplained Wealth in Indonesia face several challenges in law enforcement. One of the main challenges is the limitations in the legal system and law enforcement (Diniyanto, 2019). Apart from that, there are still problems related to the corruption justice process, such as ineffectiveness in recovering state financial losses and a lack of deterrence in the sanctions imposed on corruptors (Setiabudhi, 2014).

In facing these challenges, the Indonesian government has adopted various strategies to strengthen law enforcement in cases of illicit enrichment and unexplained wealth. These efforts include strengthening the legal framework, increasing the capacity of law enforcement, as well as optimizing the use of personal and civil law instruments in efforts to return assets obtained illegally (Mahmud et al., 2020).

However, the implementation of these strategies still requires further improvement to have a more significant impact on eradicating corruption in Indonesia.

The issue of unexplained wealth and illicit enrichment has been a growing concern in recent years, as governments and international organizations seek to combat the flow of illicit funds across borders. Illicit financial flows, which include various forms of criminal activity such as money laundering, tax evasion, and corruption, have been estimated to cost developing countries trillions of dollars annually (Kar & Cartwright-Smith, 2009)

Researchers have employed a variety of methodologies to measure and quantify the extent of this problem, ranging from economic models that analyze trade misinvoicing and capital flight (Kar & Cartwright-Smith, 2009) to more forensic approaches that aim to uncover specific instances of illicit flows (Collin, 2019). However, these efforts have been hampered by the hidden and complex nature of the subject matter (Collin, 2019).

Some researchers have argued that the definition of illicit flows should be expanded to include legal tax avoidance or optimization by multinational companies, as this can have significant social and economic consequences (Forstater, 2016). Others have pushed back on this idea, arguing that such activities should be distinguished from outright fraud and illegal transactions (Forstater, 2016). Regardless of the specific approaches used, it is clear that the issue of unexplained wealth and illicit enrichment has significant implications for both rich and poor countries (Collin et al., 2015). Governments and international organizations have taken steps to address this problem, but the policies implemented may also have unintended consequences, particularly for people in developing countries (Collin et al., 2015)

As the research and policy landscape continues to evolve, policymakers and researchers must work together to develop a more comprehensive understanding of the drivers and impacts of unexplained wealth and illicit enrichment, and to identify effective strategies for addressing this complex and multifaceted challenge.

In Indonesia, the issue of unexplained wealth and illicit enrichment has become a significant concern, with reports of high-level government officials and political elites amassing vast fortunes through corrupt practices (Abeyagoonasekera, 2020). The prevailing political will in achieving goals to fight economic crime is questionable, and the entire society has a role to play in combating cases of unexplained wealth, including the private sector and individual voices (Abeyagoonasekera, 2020). In Sri Lanka, the issue of unexplained wealth has also been a pressing concern, with political corruption and lobbying playing a significant role in the accumulation of illicit funds (Abeyagoonasekera, 2020). To strengthen law enforcement against cases of illicit enrichment and unexplained wealth in Indonesia, the Indonesian government needs to make several efforts to strengthen regulations and law enforcement.

First, there is a need to improve a comprehensive and effective legal framework to regulate illicit enrichment and unexplained wealth. This can be done through the formulation of special laws or amendments to existing regulations.

Second, the capacity of law enforcement, especially investigators and public prosecutors, must be increased through training, strengthening resources, and better coordination between related institutions. This effort can improve law enforcement's ability to uncover and process cases of illicit enrichment and unexplained wealth (Hutahaeen & Indarti, 2020)

Third, optimizing the use of civil and administrative legal instruments in efforts to return assets obtained illegally. Third, optimizing the use of civil and criminal legal instruments in the process of confiscating, blocking and returning assets obtained illegally (Sigalingging, 2021). Apart from that,

international collaboration in the form of mutual legal assistance is also important to strengthen efforts to return assets located abroad.

To effectively address the challenge of unexplained wealth and illicit enrichment, a multifaceted approach is required. First and foremost, strengthening the legal and regulatory framework to combat financial crimes and enhance transparency is crucial (Collin et al., 2015). This includes measures such as implementing robust anti-money laundering and anti-corruption laws, improving beneficial ownership disclosure requirements, and enhancing cross-border cooperation and information sharing among law enforcement agencies.

In addition, improving the capacity and independence of financial intelligence units, auditing and tax authorities, and other relevant institutions is essential (Rose-Ackerman & Truex, 2013). Ensuring that these entities have the necessary resources, expertise, and political support to effectively investigate and prosecute cases of illicit enrichment is a key priority.

With these efforts, it is hoped that law enforcement in cases of illicit enrichment and unexplained wealth in Indonesia can become more effective and provide a stronger deterrent effect for perpetrators of corruption.

CONCLUSION

Regulations regarding illegal enrichment and unexplained wealth in Indonesia still face many challenges, especially in terms of legal implementation. Even though there are regulations in place, weaknesses in legal definitions, evidence, and resistance from political and economic forces have hampered the effectiveness of law enforcement. To overcome this problem, it is necessary to revise regulations, strengthen law enforcement capacity, and increase transparency and accountability in government governance. With these steps, it is hoped that Indonesia can be more effective in eradicating corruption and protecting public integrity

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