THE URGENCY OF ARRANGEMENT REGARDING ILLICIT ENRICHMENT IN INDONESIA IN ORDER TO ERADICATION OF CORRUPTION CRIMES BY CORPORATIONS

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Abstract

Along with the times, the motives or concept of corruption are increasingly complex and growing, as well as the increasing number of transnational crimes, it makes the world need regulations regarding illicit enrichment in legal products at the level of law to allow the imposition of legal sanctions for these crimes, including Indonesia. The purpose of this study is to provide an overview of the practice of illicit enrichment in Indonesia and its comparison with other countries, as well as an analysis of the urgency of regulating illicit enrichment in Indonesian law as one of the most important norms in efforts to eradicate corruption in Indonesia. In this study, the method used is normative juridical using a statutory, conceptual and case approach. From the results of the study, an idea that is presented in efforts to develop and reform law in Indonesia, namely in the context of eradicating corruption. This idea is discussed in more depth through a number of concrete cases that have been processed in Indonesia which shows that if we have illicit enrichment norms, the handling of these cases will be maximized. Through this regulation related to illicit enrichment, of course, it can prevent public officials (corporations) from committing corruption, minimizing initiatives to do business or other activities that are full of conflicts of interest (with their positions).

Keyword: *Illicit Enrichment; Corruption Eradication; Legal Reconstruction*

A. INTRODUCTION

Corruption is an extraordinary crime that is known as a crime that is difficult to find the perpetrators (crime without offends).[1] It is because corruption is an invinsible crime which is very difficult to obtain procedural

1 Fathul Hamdani, 2021, *Eksistensi Penerapan Hukuman Mati Bagi Koruptor dalam Konteks Hukum di Era Modern, dalam Achmad Hariri (ed.), Penegakan Korupsi & Pembaharuan Hukum di Indonesia,* Universitas Muhammadiyah Surabaya Publishing, Surabaya, page 60.

proof, where the modus operandi is a systematic and collaborative activity.[2] Even the development of criminal acts of corruption in the modern era is now becoming increasingly complex, because to cover up of the criminal acts of corruption committed, the perpetrators then commit money laundering.[3] The development of criminal acts with economic motives as mentioned, is increasingly difficult because it involves educated actors (white-collar crime) and transnational or transnational actors.[4]

In addition, corruption in the current era doesn't only involve individuals.[5] However, in practice, corporations have also been accused of corruption. It is due to the provisions in Article 1 point 3 of Act No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Act No. 20 of 2001 (hereinafter referred to as the PTPK Law), which stipulates that in addition to individuals, corporations are also as legal subjects who can be charged with corruption.

With regard to corporations, we cannot ignore the notion of corporations in the field of civil law.[6] It is because corporation is a term that is closely related to legal entities (*rechtspersoon*) and the legal entity itself is a terminology that is closely related to the field of civil law. Setiawan, explained that *rechtspersoon* are legal subjects who have their own rights and obligations, even though they are not personal humans. It manifests itself in the form of a body or organization consisting of a group of human persons who join for a certain purpose and have certain wealth.[7]

In the context of criminal acts or crimes by corporations, corporate crimes are often in the public spotlight in cases of forest fires and environmental pollution that harm the surrounding people. However, the fact is that corporate crime has begun to occur in other cases, such as cases of corruption, money laundering, tax evasion, which is alleged to have been carried out by corporate management while also benefiting the corporate entity concerned.[8] For cases of corruption by corporations, currently only a

2 Novalinda Nadya Putri & Herman Katimin, Urgensi Pengaturan Illicit Enrichment dalam Upaya Pemberantasan Tindak Pidana Korupsi & Tindak Pidana Pencucian Uang di Indonesia, *Jurnal Ilmiah Galuh Justisi,* Vol. 9, No. 1, 2021, page 38-61.

3 Ana Fauzia & Fathul Hamdani, Analysis of the Implementation of the Non-Conviction Based Concept in the Practice of Asset Recovery of Money Laundering Criminal Act in Indonesia from the Perspective of Presumption of Innocence, *Jurisprudence*, Vol. 11, No. 1, Juni 2021, page 58.

4 Halif, Model Perampasan Aset terhadap Harta Kekayaan Hasil Tindak Pidana Pencucian Uang. *Jurnal Rechtens*, Vol. 5, No. 2, 2016, page 1-14.

5 Fathul Hamdani, "Urgensi Penerapan Konsep Non-Conviction Bassed dalam Praktik Asset Recovery TPPU di Indonesia" dalam Idul Rishan, Aroma Elmina Martha, & Dodik Setiawan (ed.), *Hukum Sebagai Penggerak Pembangunan Berkelanjutan di Indonesia*, FH UII Press, Yogyakarta, 2021, page 213.

6 Ana Fauzia, Deva Gama Rizky Octavia, & Fathul Hamdani, The Conflict of the Norms in the Execution of Secured Objects Which are Enforced by Liability Rights When the Debtor is Bankrupt, Progressive Law Review, Vol. 4, No. 1, April 2022, page 7.

7 Rony Saputra, Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi (Bentuk Tindak Pidana Korupsi yang Merugikan Keuangan Negara Terutama terkait dengan Pasal 2 Ayat (1) UU PTPK)*, Jurnal Cita Hukum*, Vol. 2, No. 2, 2015, page 269-288.

8 Hukum Online, UU Ini Kerap Dipakai Aparat dalam Menjerat Korporasi, https://www.hukumonline.com/berita/baca/lt588548020bfc0/uu-ini-kerap-dipakai-aparat-

few fingers count cases of corruption by corporations that have been ensnared by the Corruption Eradication Commission. Some of them are corruption committed by PT. Giri Jaladhi Wana for corruption in the construction of Pasar Sentra Antasari Banjarmasin in 2010, then corruption by PT. Duta Graha Indah (DGI) which has changed its name to PT. Nusa Konstruksi Engineering (NKE) in 2018 the Corruption Eradication Commission and was sentenced to a fine of IDR 700 million and an obligation to pay a replacement money of IDR 85.49 billion.[9]

The small number of corruption cases by corporations that have been successfully ensnared by the Corruption Eradication Commission is due to the difficulty of law enforcement in collecting evidence and complex characteristics of criminal acts by corporations.[10] Thus, it is necessary to formulate a preventive rule, through a regulation that can prevent the occurrence of criminal acts of corruption or prevent an actor from enjoying the benefits of their act of corruption and prevent the occurrence of money laundering crimes in order to cover the proceeds of corruption, especially for the corruption by corporations. The regulations referred to regulations which regulate provisions related to illicit or illicit enrichment.

In the context of criminal acts committed by corporations, through the provisions related to illicit enrichment, the state comes to limit the movement of the leaders and management of a corporation so they commit to not to do corruption. Because the perpetrators often take refuge in the name of the corporation to justify their actions, both for and on behalf of the corporation as well as for their personal interests. Thus, the regulation on illicit enrichment is a real need in eradicating corruption.[11] Especially in the Indonesian context, especially if it is placed as a new approach in eradicating corruption not only for people or perpetrators, but also returns assets that have been confiscated with a follow the money strategy.[12]

The research on Illicit Enrichment's regulation in the context of eradicating corruption that is specifically carried out by corporations can be concluded that it's still lack. Several previous studies such as those conducted by: 1) Milda Istiqomah (2016) entitled "*Kebijakan Formulasi Pengaturan "Illicit Enrichment" Sebagai Upaya Pemberantasan Tindak Pidana Korupsi*"; 2) Junior Willem John Latumeten (2017) entitled "*Kekayaan yang Tidak dapat Dipertanggungjawabkan (Illicit Enrichment) sebagai Salah Satu Cara dalam Memberantas Korupsi*"; 3) Olivia Oktari Erwin (2017) entitled *"Kebijakan Formulasi Mengenai Illicit Enrichment dalam*

dalam-menjerat-korporasi, accessed on 9 July 2021.

9 Komisi Pemberantasan Korupsi, Berhasil Jerat Korporasi, KPK Terima Apresiasi, https://www.kpk.go.id/id/berita/berita-kpk/742-berhasil-jerat-koorporasi-kpk-terima-apresiasi accessed on 10 July 2021.

10 Herlina Manullang & Riki Yanto Pasaribu, *Pertanggungjawaban Pidana Korporasi*, LPPM UHN Press, Medan, 2020, page 11.

11 Bayu Miantoro, Pengaturan Illicit Enrichment di Indonesia, *Jurnal Veritas et Justitia*, Vol. 6, No. 1, 2020, page 150-171.

12 Ana Fauzia & Fathul Hamdani, Legal Development Through the Implementation of Non-Conviction Based Concepts in Money Laundering Asset Recovery Practices in Indonesia, *Proceedings of the 2nd International Conference on Law and Human Rights (ICLHR 2021)*, Atlantis Press, Vol. 592, November 2021, page 508.

Rangka Penanggulangan Tindak Pidana Korupsi"; 4) Bayu Miantoro (2020) entitled "*Pengaturan Illicit Enrichment di Indonesia"*; 5. Alya Syarifa Tsany (2022) entitled "*Formulasi Kriminalisasi Illicit Enrichment dalam Tindak Pidana Korupsi Sebagai Upaya Menyelamatkan Aset Negara".*

Towards the several studies above, all of them discuss the general arrangement of Illicit Enrichment. Meanwhile, in this study, the regulation regarding Illicit Enrichment is focused on corruption committed by corporations. It's because the corporations have become institutions that are difficult to hold accountable for corruption. In addition, corporations having very different characteristics from other corruption crimes. Thus, based on that, the idea of regulating Illicit Enrichment against corruption whose subject is corporations is very important to be studied more deeply.

B. RESEARCH METHODS

In this study, the method used is normative legal research using a statutory, conceptual and comparative approach. In the legislation approach, the author examines that the legislation used is the legislation that is related to the eradication of criminal acts of corruption or other related regulations. Then in the conceptual framework, the author examines the concepts and principles in law enforcement and eradicating corruption. While in the comparative approach, the author provides a comparison by examining how the regulation of illicit enrichment is in other countries.

C. RESULT AND DISCUSSION

1. Overview and Urgency of Regulation on Illicit Enrichment in Indonesia for The Eradication of Corruption by Corporations

a. Overview of Illicit Enrichment Arrangements in other Countries

The regulation regarding illicit enrichment can be found in Article 20 of the United Convention Against Corruption (UNCAC). This convention aims to improve and strengthen the prevention and suppression of corruption to be more effective and efficient; enhance and encourage international cooperation and technical assistance for the prevention and suppression of corruption; and improve the integrity, accountability and management of government.[13] The effectiveness and impact of UNCAC depend on its implementation and enforcement at the national level in each country.[14]

From the 193 countries in the world, there are at least 44 countries that have legal instruments at the level of the law on illicit enrichment. A total of 39 of the 44 countries imposed confinement or imprisonment, such as China, India, Malaysia, Brunei, Macau, Bangladesh, and Egypt. Sentences range from 14 days to 20 years in prison. The average setting is 2-5 years and some impose minimum

13 Junior Willem John Latumeten, Kekayaan yang Tidak Dapat Dipertanggungjawabkan (Illicit Enrichment) sebagai Salah Satu Cara dalam Memberantas Korupsi, *Jurnal Lex Privatum*, Vol. 5, No. 2, 2017, page 105-112.

14 Noratikah Muhammad Azman Ng & Zainal Amin Ayub, The Illicit Enrichment Law and Financial Disclosure System in Malaysia, *International Journal of Law, Government and Communication*, Vol. 3, No. 13, 2018, page 331-341.

sanctions. Then there is also a country who combine between the amount of the sanction and the amount of unnatural wealth owned by the perpetrator. In addition, there are 26 of the 39 countries that apply various fines, for example 50-100% or twice the value of illicit enrichment, USD 500,000-1,000,000. In addition there are nine countries that impose administrative sanctions, for example the Philippines, Argentina, Chile, Colombia, El Salvador, and Uganda.[15]

To see how the illicit enrichment regulation is described in other countries, it is necessary to review several countries that have regulated illicit enrichment in legal products at the level of law, such as India, Guyana, Sierra Leon, and China. The illicit enrichment elements of the four countries are:[16]

1) India is intended for any public official (based on capacity of office or position) during their tenure cannot explain accounts, sources related to money/income, disproportionate wealth tax of income (excluding taxes).
2) Guyana is addressed to any person whose public service or on behalf of a public office has wealth or which can be calculated with money that is not reasonable from income, and fails to prove ownership of assets and sources that can be calculated in the form of money through legal mechanisms (courts, and taxes).
3) Sierra Leone is addressed to everyone who is a public employee and has unexplained wealth through the courts.
4) China is addressed to every state administrator whose wealth and expenses exceed his income and cannot explain the source of his income from legal acquisitions.

The definition of illicit enrichment in the 4 countries is closely similar, especially about illegal wealth. The difference between these countries is only in the translation of the different forms of assets that increase significantly in order to measure their income. Interestingly, the 4 countries don't mention the phrase of "significant" in the provisions of their country's laws and regulations as stated in UNCAC. The phrase "significant" becomes very important in order to emphasize the size of the limitation of increasing income that must be explained by state officials and in the context of legal entities such as corporations. Although very important, the phrase "significant" must be explained in detail what its meaning and size are so as not to cause debate and create legal certainty.[17]

b. The Urgency of Arrangement Regarding Illicit Enrichment In Indonesia In The Context Of Eradicating Corruption By Corporations

One of the causes of the inhibitation in law enforcement is

15 Satuan Tugas Pemberantasan Mafia Hukum, Illicit Enrichment: Kriminalisasi Peningkatan Kekayaan yang Tidak Wajar, Desember 2011, page 54.

16 Alvon Kurnia Palma, et al., Implementasi & Pengaturan Illicit Enrichment (Peningkatan Kekayaan Secara Tidak Sah) di Indonesia, *PolicyPaper: Indonesia Corruption Watch*, Maret 2014, page 25-27.

17 *Ibid*, page 27-29.

because it still filled by a single paradigm of positivism that is already non-functional.[18] So that it still needs progressive paradigm, because by progressive paradigm, there is always an effort to find the ideal concept to overcoming legal problems.[19] Therefore, in an effort to overcome legal issues in the field of corruption, especially corruption committed by corporations, so the arrangement of the Illicit Enrichment must be regulated in the Indonesian legal system.

As one of the countries that has ratified UNCAC, it becomes a necessity for Indonesia to regulate the Illicit Enrichment as an instrument of prevention and acting criminal acts of corruption. Regulate the illicit enrichment is one of the mandate in UNCAC due to the influence of the Jus Cogen principle. This principle requires participated countries to improve the national legal system in order to eradicate corruption so that the assets that have been taken can strongly sure to be returned.

The arrangement of Illicit Enrichment has to consider the following money strategy. The consequence is the burden of proof when someone is suspected of having unnatural and legitimate wealth. In the Indonesian legal system, the arrangement of proof expenses is still very conventional with a legic approach that still out of sync to eradicate corruption. In the criminal event regulation in Indonesia, there is a dualism of arrangements about proof between Article 66 of the Criminal Procedure and Code in Article 31 paragraph (1) of the PTPK Law. The PTPK Law must be a basic formal in order to optimize the reverse proof in Indonesia based on the *Lex Specialis Derogate Lex Generalist* (more specific laws cripple the general law) and also the *Lex Priory Derogate Postoriory* principle (the new law cripples the old law).

Regarding to the criminal acts of corruption by corporations, this illicit enrichment arrangement is very necessary because its impact on human rights violations is much greater because it is related to the policies issued.[20] In addition, the characteristics of corporate crime are also very different from other conventional crimes. In general, the characteristics of corporate crime are:[21]

1) The crime is low visibility, because it is usually covered by normal and routine work activities, involves professional skills and complex organizational systems;
2) The crime is very complex because it is always related to lies, fraud and theft, and is often related to something scientific,

18 Ana Fauzia, Fathul Hamdani, & Deva Gama Rizky Octavia, The Revitalization of the Indonesian Legal System in the Order of Realizing the Ideal State Law, *Progressive Law Review*, Vol. 3, No. 1, April 2021, page15

19 Mukhidin, Hukum Progresif sebagai Solusi Hukum yang Mensejahterakan Rakyat, *Jurnal Pembaharuan Hukum*, Vol. 1, No. 3, 2014, page 267-286.

20 Paramita Ersan & Anna Erliyana, Public Corruption and Human Rights for Good Governance in Indonesia, *International Journal of Arts and Commerce*, Vol. 7, No. 5, 2018, page 26-38.

21 Padil, Karakteristik Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi, *Jurnal Kajian Hukum & Keadilan IUS*, Vol. 4, No. 1, 2016, page 44-59.

technological, financial, legal, organized, and involves many people and goes on for years;
3) The diffusion of responsibility is getting wider due to the complexity of the organization;
4) Diffusion of victimization such as corruption and fraud;
5) Obstacles in detection and prosecution as a result of unbalanced professionalism between law enforcement officers and criminals;
6) Ambiguity law that often cause losses in law enforcement; and
7) Dual attitude of the status of the perpetrator of a crime. It must be admitted that the perpetrators of criminal acts generally do not violate the laws and regulations, but these acts are illegal.

The regulation related to the illicit enrichment can be a strong instrument for prosecuting corruption committed by corporations, because it does not require evidence that a corrupt transaction actually occurred, but can be inferred from the fact that ownership of assets cannot be explained.[22] In addition, the urgency to regulate the illicit enrichment in positive law in Indonesia is due to the PTPK Law has not fully regulate the provisions of illicit enrichment as an independent crime.[23] In the PTPK Law, illicit enrichment is applied to the "defendant", not from the start of the investigation/investigation process (the "suspect"), but only as a reinforcement of the evidence that already exists for the corruption crime committed.

The advantages of illicit enrichment arrangements to eradicate corruption by corporations in Indonesia are:[24]

1) Be able to strengthen the PTPK Law and Act No. 8 of 2010 concerning the Crime of Money Laundering (Law on Money Laundering). This is because the PTPK Law and the Anti-Money Laundering Law have limitations in pursuing assets suspected of originating from corruption. In addition, the use of the Anti-Money Laundering Law and the PTPK Law still has the complexity of proving it, such as the "efforts to hide the origin of wealth" as regulated in the Money Laundering Law. This is usually evidenced by several things, namely: 1) Unreported money or certain assets in LHKPN; 2) purchase of assets on behalf of others and

22 Zhanat A. Mamitova, et al., On Certain Aspects of Acts of Corruption Countermeasures, *International Journal of Environmental & Science Education,* Vol. 11, No. 3, 2016, page 5857-5871.

23 Dalam Pasal 37A (1) UU PTPK ditentukan bahwa: *Terdakwa wajib memberikan keterangan tentang seluruh harta bendanya & harta benda istri atau suami, anak, & harta benda setiap orang atau korporasi yang diduga mempunyai hubungan dengan perkara yang didakwakan,* Selanjutnya dalam ayat (2) ditentukan bahwa: *Dalam hal terdakwa tidak dapat membuktikan tentang kekayaan yang tidak seimbang dengan penghasilannya atau sumber penambahan kekayaannya, maka keterangan sebagaimana dimaksud dalam ayat (1) digunakan untuk memperkuat alat bukti yang sudah ada bahwa terdakwa telah melakukan tindak pidana korupsi*

24 Ana Fauzia & Fathul Hamdani, Pembaharuan Hukum Penanganan Tindak Pidana Korupsi oleh Korporasi melalui Pengaturan Illicit Enrichment dalam Sistem Hukum Nasional, *Rewang Rencang: Jurnal Hukum Lex Generalis*, Vol. 3, No. 7, 2022, page 507.

cooperation with notaries; or 3) transactions through corporations by disguising the source of funds.

2) Expanding the subject of wealth reporting, which is not only limited to state officials, but also applies to legal entities such as corporations.
3) The impoverishment of corruptors by implementing a reversal of the burden of proof in which the defendant must be able to prove the origin of his wealth can be applied to the fullest.
4) Easier to prove when compared to the Money Laundering Law, the gratification article, and even reverse proof in the PTPK Law.
5) Focused on the motivation to commit corruption (accumulation of wealth).
6) The assets of a person registered in the name of a third party (such as a family member) can still be considered as assets / property of the person as long as it can be proven that there has been a transfer of assets to the third party.
7) Distributing the confiscated wealth to the state for wider justice, such as for the education, health or other basic services sector. Ease of proof when compared to the Money Laundering Law, the gratification article, and even the reverse proof in the PTPK Law.

From the advantages that have been mentioned above, the regulation related to the illicit enrichment can certainly be a solution to the problems or obstacles experienced by law enforcement officers in an effort to eradicate corruption committed by corporations. Several individual corruption cases have been attempted by the KPK and also the Prosecutor's Office to attract corporate accountability by demanding payment of replacement money or the confiscation of assets resulting from crimes enjoyed by corporations but facing obstacles, namely:[25]

1) Chevron Case

The Attorney General's Office (AGO) was in the spotlight when investigating the bioremediation corruption case of PT. Chevron Pacific Indonesia (PT. CPI). Apart from dragging the name of a company from the United States, the amount of state losses caused by this corruption act is fantastic, whis is US$9.9 million. The Jakarta Corruption Court also stated that a number of employees of PT. CPI, Ricksy, and Herland were found guilty. In fact, even though the defendant was a director of a corporation, the panel of judges in the district court granted the prosecutor's demand to punish PT. Green Planet Indonesia (PT. GPI) and PT. SJ are obliged to pay the compensation of US$3.089 million and US$6.9 million, respectively. However, the decision in the disctrict court was corrected by the DKI Jakarta Provincial Court. The

25 Hukum Online, Lika-Liku Menarik Pertanggungjawaban Korporasi dalam Kasus Korupsi, https://m.hukumonline.com/berita/baca/lt5885f5667b8a1/lika-liku-menarik-pertanggungjawaban-korporasi-dalam-kasus-korupsi/, accessed on 12 July 2021.

appeals panel argued that Ricksy was not proven that he enjoyed the money from corruption, so that the replacement money which was originally charged to PT. GPI is considered unreasonable because PT. GPI is a corporation and was not charged in this case. On the other hand, the cassation panel argued that Ricksy and Herland's actions were carried out for and on behalf of the corporation, and were intended to provide benefits to PT. GPI and PT. SJ. In addition, Ricksy and Herland also act for their corporation's benefit, so the cassation panel argued that, PT. GPI and PT. SJ must also take the responsibility.

However, in the end, these two decisions could not be executed by the Attorney General's Office. Because, Ricksy and Herland filed a case review (PK). Both were acquitted by the assembly of case review. Ricksy and Herland's decision was also used as a reason for the other defendants to file a case review attempt.

2) IM2 Case

Apart from Chevron, the corruption case of misuse of the 2.1 Ghz/3G (third generation) frequency network belonging to PT. Indosat Tbk by PT. Indosat Mega Media (IM2) was also in the spotlight. At that time, the Attorney General's Office indicted the former President Director of PT IM2 Indar Atmanto for acts of corruption that cost the state IDR 1.358 trillion. The journey of this case is quite winding. At first, the Jakarta Corruption Court granted the prosecutor's request which asked the panel of judges to also convict PT. IM2 to pay compensation amounting to IDR 1.358 trillion. However, the decision of the first instance court was overturned by the DKI Jakarta High Court.

3) Century Case

In this corruption case that the state losses up to IDR 7.4 trillion, the Corruption Eradication Commission has just brought a defendant to trial. The defendant is former Deputy Governor of Bank Indonesia (BI) Division IV Foreign Exchange and Monetary Management Budi Mulya whose decision is now legally binding. Budi Mulya was charged with committing a criminal act of corruption related to the provision of the Short Term Funding Facility (FPJP) and the determination of PT. Bank Century Tbk as a failed bank has a systemic impact. In the letter of demand addressed to Budi Mulya, the Corruption Eradication Commission tried to include the accountability of other parties, including the Century Bank corporation. The Corruption Eradication Commission asked the judges of the Jakarta Corruption Court to grant additional criminal charges for Century Bank, which has now changed its name to PT Bank Mutiara Tbk, to pay compensation of IDR. 1.581 trillion. However, the tribunal did not grant this claim.

The Assembly considered that the demand for replacement money of IDR 1.581 trillion to Bank Mutiara was irrelevant

because the replacement money could not be charged to parties who were not named as defendants. Not satisfied with the decision, the Corruption Eradication Commission filed an appeal. However, the Corruption Eradication Commission's efforts failed at the DKI Jakarta High Court. Furthermore, the Corruption Eradication Commission also submitted an appeal to the Supreme Court. Although the Corruption Eradication Commission's appeal was accepted, the cassation panel, in its decision, did not include replacement money for Bank Mutiara and the three former controlling shareholders of Bank Century. The cassation panel only corrected the severity of the prison sentence and the fine imposed on Budi Mulya.

By looking at the cases above, it becomes a necessity for Indonesia to regulate illicit enrichment in its positive law. Considering that illicit enrichment can be used as a preventive measure to detect assets of the management of the corporation or the corporation itself that are outside the norm. So that through this illicit enrichment arrangement, the legal loophole for not paying compensation that has been happening so far can be overcome. Because in the legal system in Indonesia, if the wealth of the convict is not found, the obligation to pay replacement money can be replaced with imprisonment. Of course this is a weakness in eradicating corruption if from the beginning the investigation is not carried out by tracing assets and confiscation. The reason is, if you wait for a big verdict, it is possible that the results of corruption have been transferred, concealed or sold assets.

In addition, through this illicit enrichment arrangement, compensation for state losses as contained in Article 18 letter (b) of the PTPK Law can be maximized. The reason is, in a number of cases, asset recovery is often not optimal because the amount of large losses caused by the perpetrators cannot be returned. The additional penalty in the form of compensation is only as much as the maximum enjoyed by the corruption convict.

2. Regulatory Design on Illicit Enrichment Regarding Legal Development and Reform in Indonesia

In the previous discussion, the general description of illegal enrichment arrangements in other countries and the urgency of regulations related to illicit enrichment in Indonesia has been discussed. From the previous explanations, it can be concluded that the regulation related to illegal enrichment is synergistic with the existence of the State of Indonesia as a participated country of UNCAC. In addition, UNCAC itself has mandated participated countries to formulate the arrangements of illegal enrichment as stated in Article 20 of UNCAC. Then also in Article 8 of the African Union on the Prevention and Combating Corruption (AUCPCC) which defines illegal enrichment, namely: *"A significant*

increase in the assets of a public official or other person that cannot be explained fairly in relation to his income."[26]

Although Indonesia is one of the country that has ratified UNCAC through the Act No. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, the provisions regarding illegal enrichment have not become a criminal offense in the system. Indonesian law.[27] It was also conveyed by a UNCAC reviewer in Indonesia in 2012 that Indonesia still needs regulatory improvement regarding illegal enrichment to strengthen the eradication of corruption in Indonesia,[28] especially corruption committed by corporations.

As a preventive measure to prevent the occurrence of criminal acts of corruption by corporations, the application of illicit enrichment is needed to encourage any corporation to report its assets so that they aren't suspected of committing illicit enrichment. In other countries such as Ethiopia, in order to implement the illicit enrichment, Ethiopia applies a model called the Assets Disclosure and Registration Law (abbreviated as ADR). ADR itself is a periodic reporting of assets owned by officials regarding their income, assets, liabilities or interests.[29] However, in the context of implementing illicit enrichment in Indonesia, of course, this wealth reporting will not only be limited to officials, but also to corporations.

a. Subject Formulation

There are several things related to the design or mechanism for the formation of regulations related to illicit enrichment, namely by establishing the initial basic foundation from a philosophical perspective with various problems regarding corruption in Indonesia which are increasing and the difficulty of guaranteeing corporations or their management to report their assets which are not fair and cannot be proven. with the rationality of income logic as long as the corporation and its management are running. When it is classified as normative juridical form, there are several things that must be limited. Where the limitation is in the form of a public official in a corporation or the corporation itself is considered to have carried out an illicit enrichment act. If during their tenure as a board member in a corporation then he/she intentionally enrichest theirself illegally and also for the benefit of the company by not being able to explain a rational relationship between income in the corporation and legal expenses (salary or non-salary) with an increase in its wealth which is not balanced with income as long as the corporation was established,

26 African Union, *African Union Convention on Preventing and Combating Corruption*, 11 Juli 2003, Article 8, page 13.

27 Alvon Kurnia Palma, et al., *Op.cit*, page 12.

28 United Nation, Review of implementation of the United Nations Convention against Corruption, CAC/COSP/IRG/I/1/1/Add 4, 16 Januari 2012, page 13.

29 Diriba Adugna Tulu, The Practical Significances and Challenges of Assets Disclosure and Registration Law in Combating Illicit Enrichment Crime in Ethiopia, *International Journal of Education, Culture and Society,* Vol. 5, No. 3, 2020, page 34-44.

then the corporation can be asked that the corporation have carried out illicit enrichment.[30]

Thus, it can be concluded that this element of self-enrichment can also be interpreted as enriching their own corporation or the property of their own family, whether related by blood, marriage or even family to the third degree. So, the important element of illicit enrichment that must be included is that public officials, while still serving as public officials, enrich themselves (including enriching their own corporations or those of their families or enriching their families by blood or by marriage to the third degree), unable to explain the rational relationship between its income (salary or non-salary) is legal with an increase in its wealth that is not balanced with his/her legal income (salary or non-salary) during their tenure; and there is a deliberate intention in doing so.[31] In addition, subjects related to illicit enrichment can also be added to public officials who sit in the executive, legislative, and judicial institutions. In a sense, the official carries out the activities of a public company.[32]

b. Delicate Formulation

This spesific arrangement regarding illicit enrichment in its application would be better if using a formal offense. Considering that if you use a material offense, then it is tantamount to delaying the investigation process and taking a long time, because it must be proven the consequences arising from illicit enrichment, for example whether there is state loss or not. In addition, it is related to the elements of a criminal act, namely the existence of intentions and actions. In fact, Article 3 of UNCAC has added that UNCAC uses the term when committed intentionally. Thus, it can be concluded that the regulation related to illicit enrichment must be regulated based on a deliberate intention, namely dolus and not culpa.

c. Sanctions and Asset Confiscation

The PTPK Law has actually formulated sanctions against criminal acts of corruption committed by corporations. This provision can be seen in Article 20, which stipulates that:

1) *In the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and penalties may be made against the corporation and or its management.*
2) *A criminal act of corruption is committed by a corporation if the crime is committed by people, either based on a work relationship or based on other relationships, acting within the corporate environment, either alone or together.*
3) *In the event that a criminal charge is made against a corporation, the corporation is represented by the management.*

30 Milda Istiqomah, Kebijakan Formulasi Pengaturan, Illicit Enrichment, Sebagai Upaya Pemberantasan Tindak Pidana Korupsi*, Jurnal Media Hukum*, Vol. 23, No. 1, 2016, page 76-86.

31 *Ibid.*

32 *Ibid*, Page 82.

4) The management representing the corporation as referred to in paragraph 3 is represented by another person.
5) The judge may order the management of the corporation to appear in court himself and may also order that the management be brought to court.
6) In the event that criminal charges are made against the corporation, the summons to appear and the submission of the summons shall be submitted to the management at the management's residence or at the management's office.
7) The main punishment that can be imposed on corporations is only a fine, with the maximum penalty being added by 1/3.

From the provisions of Article 20 paragraph 7 of the PTPK Law above, that the sanctions that can be given to corporations are only limited to fines. However, in relation to illicit enrichment by corporations, it is easier for the state to confiscate its assets. Regarding asset confiscation itself, the Indonesian government is currently drafting for the seizure of assets without punishment or known as non conviction based (NCB) asset forfeiture in the Bill of Assets Confiscation.

This mechanism allows the seizure of assets without having to wait for a criminal decision which contains a statement of guilt and punishment for the perpetrators of criminal acts.[33] . One of the clauses in the bill is unexplained wealth. Unexplained wealth is a legal instrument that allows the confiscation of assets/wealth of a person who has an unreasonable amount of property (which is not in accordance with the source of income) and difficult to prove that the property was obtained legally (not from a criminal act). In addition, the process of proving unexplained wealth is easier because:[34]

1) Using reverse proof procedures (although the Public Prosecutor still has to prove the existence of an amount of wealth that is considered unreasonable; and
2) Using the standard of civil evidence, namely the balance of probability, which is light/low compared to the standard of criminal proof (beyond reasonable doubt).

The use of this standard of civil evidence is due to the process of confiscation of unexplained wealth assets, as what has been carried out from non-criminal confiscation processes (NCB asset forfeiture) where it is done through civil processes, not criminal because the object is the goods *(in rem)* that you want to confiscate,

33 July Wiarti, Non-Conviction Based Asset Forfeiture sebagai Langkah untuk Mengembalikan Kerugian Negara (Perspektif Analisis Ekonomi terhadap Hukum), *Jurnal UIR Law Review*, Vol. 1, No. 1, 2017, page 101-109.

34 Muhammad Yusuf, Implementasi & Pengaturan Illicit Enrichment dalam Delik Korupsi, *Makalah*, disampaikan dalam National Workshop *Kajian Penerapan UNCAC di Indonesia-Implementasi & Pengaturan Illicit Enrichment dalam Delik Korupsi*, Jakarta, 18 Februari 2014.

not the punishment of the person *(in persona).* By using this mechanism, of course, it will not violate human rights, because the corporation that is suspected of doing corruption is still given the right to explain the source of the assets. However, if the source of the property cannot be explained, the judge declares that the property is polluted. After the judge's statement is issued, the process of confiscation of assets without punishment or NCB asset forfeiture will be carried out. The court will announce in the media about the property that will be confiscated by a notification at a certain time and if there is a third party who feels he/she owns the property, the third party can propose an advisory.[35]

D. CONCLUSION

The regulation regarding illicit enrichment is one of law that is made to eradicate corruption, especially the corruption cases committed by corporations. Because corruption by corporations in Indonesia are still very difficult to disclose. Through this prohibited enrichment arrangement, asset pursuit/tracing can be further maximized. In addition, criminal provisions, particularly those relating to prohibited enrichment/unexplained wealth, are urgently needed and felt urgent because the PTPK Law has not fully implemented/regulated provisions for enrichment as an independent crime. Illegal enrichment is enforced to be carried out, not from the beginning of the investigation/investigation process (suspects), but only as a reinforcement of the existing evidence for the corruption crimes committed.

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35 David Fredriek Albert Porajow, Non-Conviction Based Asset Forfeiture Sebagai Alternatif Memperoleh Kembali Kekayaan Negara yang Hilang karena Tindak Pidana yang Berkaitan dengan Perekonomian Negara, *Tesis*, Universitas Indonesia, Jakarta, 2013, page 140-141.

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