

# CRIMINALIZATION OF ILLICIT ENRICHMENT AS A CRIME OF CORRUPTION FROM THE PERSPECTIVE OF INDONESIAN CRIMINAL LAW

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DOI: [10.5281/zenodo.11195148](https://doi.org/10.5281/zenodo.11195148)

## Abstract

The existing law on eradicating corruption has yet to eradicate corruption due to the increasing number of corruption crimes in Indonesia. Indonesia has ratified UNCAC since 2006; based on this, Indonesia recognizes that there is such a thing as the crime of obtaining unnatural wealth of public officials is a crime of corruption, but until now, Indonesia does not have these rules, while the crime is actual. The method used is normative legal research (literature study and document study) with the nature of prescriptive research, which is analyzed qualitatively, using conceptual, comparative, and statutory approaches; the data sources used are secondary data sources. The formulation of the problem: First, How is the regulation of the wealth of public officials in the Indonesian positive legal system? Second, what are the criteria or variables that determine the occurrence of the crime of obtaining unnatural wealth from public officials? Third, what are the methods and construction of criminal law to criminalize obtaining unnatural wealth of public officials in Indonesia? In this study, First, in regulating the wealth of public officials in the positive legal system in Indonesia, four arrangements are found: the acquisition that can be received and the work that public officials can do, the obligation to report LHKAN and LHKPN, and tax reporting Second, the criteria for determining the unnatural wealth of public officials: 1) excess of assets of public officials from legal income by more than 10% 2) Sudden increase in assets, 3) The lifestyle of public officials that exceeds their ability from their legal income. 4) Ownership of assets by public officials, 5) Lifestyles of public officials' families that exceed their ability from their legal income. 6) Ownership of assets by the family of public officials. Third, the criminalization of the crime of obtaining an illicit wealth of public officials does not violate the principle of presumption of guilt, the principle of nonself-incrimination, or the principle of nonretroactivity, so that criminalization can be carried out in accordance with the construction offered by the researcher.

**Keywords:** Criminalization, Illicit Enrichment, Corruption.

## 1. INTRODUCTION

In consideration and general explanation of Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Criminal Acts, which Law of the Republic of Indonesia has amended Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Criminal Acts, the law on the eradication of corruption is expected to be able to meet and anticipate the development of the legal needs of the community in order to prevent and eradicate more effectively all forms of corruption. However, in reality, the existing corruption eradication law cannot overcome corruption cases, even though corruption cases are increasing. (Faisal Javier, 2021). Indonesia Corruption Watch (ICW) said state losses due to corruption in 2021 were 26.83 trillion, an increase of 47.6%.

The existing legal means of eradicating corruption have not been able to stop the growth rate of corruption crimes, especially the enforcement stage, namely law enforcement and asset recovery (Corruption Eradication Commission of the Republic of Indonesia, 2020), where Indonesia should be corruption-free but in fact, in

Indonesia, corruption is increasing. This can be seen while Indonesia's HDI trend has tended to fall since 2017-2019, and Indonesia's GPA in the 2016-2019 range is 37-40 (Corruption Eradication Commission of the Republic of Indonesia, 2020), with a rank of 110 out of 180 countries. (Transparency International, 2022).

Of the eleven acts criminalized in UNCAC, it was found that there were unregulated corruption crimes in Indonesia, including trading of influence, illicit enrichment (the crime of obtaining unnatural wealth for public officials), and bribery in the private sector.

Especially for the crime of obtaining unnatural wealth for public officials in Indonesia who do not have the rules, criminal cases of obtaining unnatural wealth of public officials already exist and are very troubling to the Indonesian people. An example of a criminal case of obtaining unnatural wealth from public officials that occurred in Indonesia that first received national attention was the case of Gayus Tambunan who was an ordinary employee (not a high-ranking official) of the director general of taxes and had been sentenced to confiscation of property of IDR 74,000,000,000 (Seventy Four) Billion Rupiah, (Mad, 2022), The seized property is the unnatural property of the convict, which is very unreasonable when looking at the position of Gaius Tambunan.

Then, the case of Malinda Dee broke into the accounts of 37 (Thirty-Seven) customers, but only three customers were reported. (Muhammad Ali, 2023). Even though other customers are active officials, TNI and law enforcement have yet to report (Novi Kartika, 2023). This indicates that the official accounts broken into by Malinda Dee are storing problematic or unnatural assets from these public officials.

The latest case is currently the case of Rafael Alun Trisambodo, who allegedly received gratuities for 12 (Twelve) years with property ownership of 56 (Fifty-Six) billion rupiah, which is suspected of unnatural wealth, and in this case, Rafael Alun has been named a suspect by the KPK for now. (Muhammad Sabki, 2023).

There are still many other cases that are suspected of being acts of obtaining unnatural wealth of public officials as a criminal act of corruption that evaporates without clarity, such as alleged financial irregularities in the finance ministry amounting to 300 trillion rupiah (Lida Puspaningtyas, 2023) which until now have disappeared without any clarity.

Indonesia lost momentum when the state included corruption in the new Criminal Code (Rahmawati et al., 2023). However, legislators forgot to include the crime of obtaining unnatural wealth of public officials as one of the types of corruption crimes (Tobo, 2023). However, the Indonesian state still has a chance that when the new Criminal Code comes into force, the current special law will likely undergo revision.

To support the criminalization of obtaining an unnatural wealth of public officials, it is necessary to understand what evidence can be used to declare that someone has committed a criminal act of obtaining an unnatural wealth of public officials.

The comparison that can be made is with countries that have applied criminal rules to obtain unnatural wealth of public officials, namely Argentina as a representative of the American continent, Hong Kong as a representative of Asia, Jordan as a representative of the Islamic world, and Rwanda as a representative of the African continent..

## 2. METHOD

The method used in this study is normative legal research, that is, research conducted or aimed only at written laws and regulations or other legal materials. (Bambang Waluyo, 2008) With data collection methods are literature studies and document studies) the nature of prescriptive research is a study that aims to get suggestions on what should be done to overcome specific problems, which is analyzed qualitatively using sentence descriptions to assess the truth of coherence (Peter et al., 2014). The truth of coherence is the compatibility between something to be examined with values, provisions, rules, or principles used as references. Against laws and regulations, theories or expert opinions, and deductive logic so that logical conclusions can be drawn and are answers to problems. (Peter Mahmud Marzuki, 2014), Using conceptual, comparative, and statutory approaches, the data sources used are secondary data sources, consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

## 3. RESULTS AND DISCUSSION

The evidence used by Argentina, Hong Kong, Jordan and Rwanda in exposing the criminal act of acquiring the unnatural wealth of public officials is:

### 1. Argentina

In the international world, the asset reporting instrument of public officials is known as the Asset Disclosure Instrument (IAD) or asset disclosure instrument. In Argentina there is also an asset disclosure instrument, where with the Argentine asset disclosure instrument is very serious and makes serious efforts to detect illicit enrichment or criminal acts of obtaining unnatural wealth of public officials by monitoring irregularities or changes in income statements and assets of public officials from time to time. (The World Bank, n.d.).

Asset disclosure documents can be evidence in the disclosure of criminal acts of obtaining unnatural wealth of public officials as well as evidence in court, because in Argentina there are criminal sanctions if a public official does not submit asset disclosure documents and or provides incorrect reporting in the asset disclosure report. (The World Bank, n.d.) This shows how important and valuable asset disclosure documents are, and asset disclosure documents have been equivalent to authentic deeds.

In Argentina, asset disclosure reports are regulated in the Law on Public Ethics, which is to prevent conflicts of interest and the criminal act of obtaining unfair wealth of public officials, which is the reason for the existence of the asset disclosure system in Argentina. ((The World Bank, n.d.). Asset disclosure arrangements at the statutory level, show how strong the regulations governing asset disclosure are and how much risk there is if it violates the provisions of the law.

Article 6 of Argentina's Public Ethics Law stipulates detailed requirements regarding the content of public officials' asset reports. The estate report shall include information about the property of a public official in Argentina or abroad owned by such official, in his own name or in the name of his spouse, or minors belonging to the public official concerned. Regarding the property listed in the statement of the asset report, public officials must also include the value and date of acquisition of the property and the origin of the funds used for each acquisition (The World Bank, n.d.).

Article 268 paragraph (3) of the Argentine Penal Code, stipulates a prison sentence of 15 (Fifteen) days to two years for deliberately not making a statement. (Honorary Congress of the Argentine Nation, 1999). The severity of the sanctions given for not submitting documents on the assets of public officials, this of course forces the seriousness of public officials towards reporting their assets. And the same sanctions will be imposed on anyone who deliberately falsifies or neglects to enter the data that must be contained in the sworn statement mentioned above in accordance with applicable laws and regulations. (Honorary Congress of the Argentine Nation, 1999).

For the purpose of detecting criminal acts of acquiring the unnatural wealth of public officials in Argentina, the mechanism used is to track changes in the content of reports over time and identify discrepancies between reported income and assets and data (if available) from other sources, such as car and property registries. (The World Bank, n.d.).

According to The Anti-corruption Office's (AO) 2008 Annual Report, the Department of Investigations has conducted more than 7,000 investigations since 2000. While no investigation into non-compliance with the asset disclosure regime resulted in convictions, a number of corruption cases in which asset declarations served as evidence are currently awaiting trial. (The World Bank, n.d.).

Although it has not yet produced a law, but an investigation carried out by an authorized official against a person, of course, has an impact, at least a psychological impact. This is an effective use of law as law as social tool engineering, that is, law is a tool to control society. (Mohammad Hasan Bisyr, 2020).

## **2. Hong Kong**

That in Hong Kong there is also a system of reporting wealth by public officials in the country like Argentina. even in Hong Kong it is explicitly stated, that if the income and asset statements of a public servant, reveal the existence of unexplained wealth, then the report can be used as a tool to prosecute the individual for the crime of unlawful enrichment. (The World Bank, n.d.).

It can be seen that the asset report by public officials is a very important document, so public officials are forced to consciously consecute all the contents of their wealth report documents. Because it will be evidence later in the trial used against him by the public prosecution.

## **3. Jordan**

The Income and Assets Disclosure Act aims to detect and prevent the unlawful enrichment of public officials through abuse of public office or property. (The World Bank, n.d.). For such purposes, the law establishes the offence of the criminal offence of acquiring unnatural wealth of a public official, defined as a significant increase in the assets of a public official or his spouse or underage children, which cannot be reasonably explained as a result of his lawful income. (Income and Asset Disclosure: Case Study Illustrations, The World Bank, Washington DC, p. 136).

## **4. Rwanda**

Rwanda's crackdown on corruption was carried out by a powerful ombudsman in 2003, which is authorized with a broad anti-corruption mandate, including a system of income and asset disclosure. (The World Bank, n.d.).

The asset income reporting system in Rwanda is a purposeful and strong system that emphasizes the detection of the prevention of criminal acts of obtaining unnatural wealth. (The World Bank, n.d.).

The ombudsman's office implemented the system gradually since it was first established, and quickly improved wealth reporting compliance and facilitated corruption prosecution using data from one's wealth reports. (The World Bank, n.d.).

That evidence that can be used by a law enforcer to reveal the occurrence of a criminal act of obtaining unnatural wealth of public officials, namely:

### **1. LHKPN and LHKAN as Evidence to Prove the Impropriety of Public Official Property.**

That in Indonesia already has provisions on reporting ownership of assets by public officials (LHKPN and LHKAN). Therefore, if property is found other than what is reported, it is reasonably suspected that the official concerned has committed incorrect reporting, obscuring the ownership of property, and can be used as an indication that the person concerned has committed a criminal act of obtaining unnatural wealth other than his legitimate income justified by the state.

The reason LHKPN and LHKAN can be used as letter evidence in disclosing the criminal act of obtaining unnatural wealth for public officials is that countries that already have criminal rules for obtaining unnatural wealth of public officials using the same instrument. And based on criteria or variables determine the occurrence of criminal acts of obtaining unnatural wealth of public officials, because LHKPN and LHKAN contain data on the assets of public officials, which they report when they first take office, are in office or at the end of their term of office.

So if a comparison is made with the contents of the LHKPN and LHKAN reports, of course an increase in the assets of public officials will be found, if it is too extraordinary, then law enforcement based on LHKPN and LHKAN documents should be able to conduct investigations or investigations into the assets of the officials concerned.

### **2. Tax Reporting as Evidence to Prove Impropriety of Public Officials' Assets.**

A taxpayer is required to fill out the tax reporting form correctly. With this obligation, the premise is obtained that everything reported is the truth of the property he owns which has an impact on the amount of tax he must pay.

If there is an unreported asset, then there is a strong suspicion that the property is not sourced from legitimate income. Then tax reporting data can be used as a document as evidence that the official concerned is trying to hide his property. As a comparison of the assets he has, is it feasible with the reported legitimate income.

That the tax return also has sufficient data to monitor the assets of public officials. Where the tax return contains:

#### **a) Cash and Cash Equivalents**

**Such as:** Cash, Savings, Current Accounts, Time Deposits, Other cash equivalents.

#### **b) Assets in the Form of Receivables**

Such as Receivables, Affiliate receivables or receivables to agencies that have special relationships, other Receivables.

### c) Investments

Such as **Assets** purchased for resale, stocks, corporate bonds, Indonesian Government bonds or Government Securities, other bonds, mutual funds, derivative instruments, such as warrants, *rights*, futures contracts, options, etc., capital participation of other companies, such as participation in CVs, Firms, and so on, other investments.

### d) Transportation Tools

Such as bicycles, motorcycles, cars and other transportation.

### e) Mobile Property

Such as precious metals, such as gold bars, gold jewelry, silver bars, and silver jewelry, precious stones, such as diamonds, gems, diamonds, etc., Art and antique goods, Yachts, airplanes, jet skis, helicopters, and special sports equipment, Electronic equipment and furniture, Other movable treasures.

### f) Immovable Property

Such as land and/or residential buildings, land and/or business buildings, such as shop houses, warehouses, and factories, business land, such as agricultural land, fishery land, and plantation land, other immovable property. The data contained in the tax return can be used as preliminary data to analyze the assets of a public official, because if his assets are not reported in the tax return, it has automatically violated tax provisions.

## 3. Financial Documents

Financial disclosure is an effective tool to combat corruption. Because of the expected benefits, namely as an instrument of prevention and eradication of corruption. (Mohammad Ahmad Abu-Morad., et al., 2016). Financial documents that can be used in the disclosure of the crime of acquiring unnatural wealth are the financial records of a public official, such as data from bank accounts, property transaction records, and investments, can provide insight into the financial assets and activities of a public official. Transaction records of an official's account can be seen from bank statements, or suspicious financial statements (Max Weilandt, 2017) from the Center for Financial Transaction Reporting and Analysis (PPATK), because of the philosophy of follow the money owned by PPATK. (Ahmad Suryono, n.d) Regarding financial documents, Indonesia has a PPATK institution. Where PPATK has the task of preventing and eradicating Money Laundering. Basically, the criminal act of obtaining unnatural wealth of public officials is an effort to accumulate unauthorized assets as if they came from legitimate income, so the power of PPATK in eradicating money laundering goes hand in hand with the disclosure of the crime of obtaining unnatural wealth for public officials.

In the performance of its duties, PPATK has the following functions:

1. Prevention and eradication of Money Laundering;
2. Management of data and information obtained by PPATK;
3. Supervision of the Reporting Party's compliance; and
4. Analysis or examination of reports and information on Financial Transactions indicating Money Laundering and/or other crimes

In carrying out the function of prevention and eradication of Money Laundering, PPATK is authorized to:

1. Request and obtain data and information from government agencies and/or private institutions that have the authority to manage data and information, including from government agencies and/or private institutions that receive reports from certain professions;
2. Establish guidelines for identifying Suspicious Financial Transactions;
3. Coordinate efforts to prevent Money Laundering with relevant agencies;
4. provide recommendations to the government regarding efforts to prevent Money Laundering;
5. Represent the government of the Republic of Indonesia in international organizations and forums related to the prevention and eradication of Money Laundering;
6. Organizing anti-money laundering education and training programs; and
7. Organizing socialization on the prevention and eradication of Money Laundering.

Submission of data and information by government agencies and/or private institutions to PPATK is exempt from confidentiality provisions. In carrying out the function of managing data and information, PPATK is authorized to organize an information system.

In order to carry out the supervisory function of the Reporting Party's compliance, PPATK is authorized to:

1. Establish provisions and guidelines for reporting procedures for the Reporting Party;
2. Determine the categories of Service Users who have the potential to commit Money Laundering crimes;
3. Conduct compliance audits or custom audits;
4. Submit information from the audit results to the institution authorized to supervise the Reporting Party;
5. Provide a warning to the Reporting Party that violates reporting obligations;
6. Recommend to the institution authorized to revoke the business license of the Reporting Party; and
7. Establish provisions for the implementation of the principle of recognizing Service Users for Reporting Parties that do not have a Supervisory and Regulatory Institution.

In order to carry out the function of analysis or examination of reports and information, PPATK may:

1. Request and receive reports and information from the Reporting Party;
2. Request information from relevant agencies or parties;
3. Request information from the Reporting Party based on the development of PPATK analysis results;

4. Request information from the Reporting Party upon request from law enforcement agencies or overseas partners;
5. Forward information and/or analysis results to requesting agencies, both at home and abroad;
6. Receive reports and/or information from the public regarding suspected Money Laundering crimes;
7. Request information from the Reporting Party and other parties related to the alleged criminal act of Money Laundering;
8. Recommend to law enforcement agencies the importance of intercepting or intercepting electronic information and/or electronic documents in accordance with the provisions of laws and regulations;
9. Request financial service providers to suspend all or part of a Transaction known or suspected to be the proceeds of a criminal offence;
10. Request information on the progress of investigations and investigations carried out by investigators of the original crime and the criminal act of Money Laundering;
11. Conduct other administrative activities within the scope of duties and responsibilities in accordance with the provisions of this Law; and
12. Forwarding the results of the analysis or examination to the investigator.

In exercising its authority as referred to in Law No. 8 of 2010, PPATK does not apply to the provisions of laws and codes of ethics governing confidentiality.

#### **4. Personal and Family Investigations**

Because in committing a criminal act of corruption, the purpose of which is wealth, the family of the perpetrator of the crime of corruption certainly knows what public officials do. Information related to family members and business associations of public officials can be helpful in identifying potential hidden ownership or corrupt practices. Because it is strongly suspected that public officials will hide their property to those closest to them such as family.

The investigation carried out must of course contain sufficient reasons first, so it can be considered an investigation carried out against the private public official or his family or closest people after the initial allegations are found through LHKPN or LHKAN, or tax documents, or financial transaction reports issued by PPATK.

#### **5. Community Reporting**

Information from community reports or public complaints can be a valuable source of information for investigations. Although this data is only useful for revealing the public official's unnatural acquisition of wealth for officials who like to show off in their lives, so that their neighbors will be able to suspect that an official has committed an act of unreasonably acquiring wealth and becoming a whistleblower. However, this data must be further confirmed by investigators.

This is a follow-up to community involvement in the eradication of corruption. As Article 41 of Law number 31 of 1999, namely:

- (1) The community can participate in helping efforts to prevent and eradicate criminal acts of corruption.



- (2) Community participation as referred to in paragraph (1) is manifested in the form of:
  - a) The right to seek, obtain, and provide information on allegations of corruption;
  - b) The right to obtain services in searching, obtaining and providing information on allegations of corruption to law enforcement handling corruption cases;
  - c) The right to submit suggestions and opinions responsibly to law enforcers handling cases of criminal acts of corruption;
  - d) The right to obtain answers to questions about his report provided to law enforcement within a maximum of 30 (thirty) days;
  - e) The right to obtain legal protection in the event of:
- 2) Exercise its rights as referred to in letters a, b, and c;
- 3) Requested to be present in the process of investigation, investigation, and at court hearings as a whistleblower witness, witness, or expert witness, in accordance with the provisions of applicable laws and regulations;
- 4) The community as referred to in paragraph (1) has rights and responsibilities in efforts to prevent and eradicate criminal acts of corruption.
- 5) Rights and responsibilities as referred to in paragraph (2) and paragraph (3) are carried out by adhering to the principles or provisions stipulated in the applicable laws and regulations and by complying with religious and other social norms.
- 6) Provisions regarding procedures for implementing community participation in the prevention and eradication of criminal acts of corruption as referred to in this Article are further regulated by Government Regulations.

Even people who help eradicate corruption must be rewarded according to Article 42 of Law number 31 of 1999 concerning the eradication of corruption.

- (1) The government gives awards to community members who have contributed to efforts to prevent, eradicate, or disclose criminal acts of corruption.
- (2) The provisions regarding awards as referred to in paragraph (1) are further regulated by Government Regulations.

Not only corruption crimes are difficult to disclose, but even general crimes, if they do not involve the public, it is certainly very difficult to expose crimes.

The evidence above will later be related to the authority to search the assets of public officials. This authority can basically imitate the authority in the criminal asset seizure bill (in rem) given to investigators or public prosecutors. In carrying out such searches, investigators or public prosecutors are authorized to request Documents from any person, Corporation, or government agency. Further regulated as well: (Ramelan, 2012).

- a. Obligation for any person, Corporation, or government agency to provide information by submitting Documents to investigators or public prosecutors.
- b. Prohibition for any person, corporation, or government agency to notify other parties, either directly or indirectly in any way regarding the request and provision of information and documents. Document submission is exempt from the provisions of laws and regulations regarding confidentiality

- c. The obligation for every person, corporation, or government agency to keep records and documents regarding the request and provision of information and documents in accordance with the provisions of applicable laws and regulations. However, there are exceptions, namely if there is an element of abuse of authority from people, corporations, or government agencies that provide information in good faith, they cannot be prosecuted civilly or criminally.
- d. Alternative formulation of search authority is given to the public prosecutor/prosecutor and if necessary can ask for assistance to the investigator. This alternative consideration is for the efficiency and effectiveness of enforcement.

The asset tracking authority in the asset seizure bill can be adapted later, both used for initial data collection in the form of investigations, as well as evidence at trial during prosecution.

#### 4. CONCLUSION

Evidence is something related to evidence; there is no point in evidence, if it is not accommodated by the law of evidence. Five pieces of evidence that can be used by law enforcement in revealing the criminal act of obtaining unnatural wealth of public officials, namely: LHKPN and LHKAN reporting documents, Tax Reporting documents, Financial Documents, Community Reporting, Personal and Family Investigations

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