

Illicit Enrichment in Corruption Eradication in Indonesia: A Future Strategy

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ABSTRACT

Corruption crimes in Indonesia are on the rise, particularly through illicit enrichment where individuals accumulate wealth outside of legitimate income. Although Indonesia has ratified the United Nations Convention Against Corruption (UNCAC), the specific issue of illicit enrichment outlined in Article 20 has yet to be implemented in national legislation. This article aims to investigate current and potential future strategies to combat such corruption. The research is a normative study using a comparative law approach and corpus-based critical analysis to assess Indonesia's anti-corruption efforts, explore the international standards set by illicit enrichment regulations, and draw lessons from the unexplained wealth laws in the United Kingdom and Australia. This research concludes that Indonesia has ratified UNCAC, but illicit enrichment in Article 20 of UNCAC has not been regulated in the law, so the practice of corruption is still so massive. To overcome this, strategic steps are needed in the future, such as revising the corruption law to include illicit enrichment regulations, optimizing institutions through bureaucratic reform, and activating community participation. Therefore, these three steps are very important in implementing the Illicit Enrichment regulation in advancing the corruption eradication agenda in Indonesia in the future.

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1. Introduction

Corruption is a criminal act categorized as a violation of the community's social and economic rights and threats to the nation because of its damaging impact on the system and people's lives¹ as well as affecting uncontrolled immigration that can cause severe damage to the social, moral, and economic order of a country. Corruption is an adverse social

¹ Kanti Pertiwi, "“We Care about Others”: Discursive Constructions of Corruption Vis-à-Vis National/Cultural Identity in Indonesia’s Business-Government Relations”, *Critical Perspectives on International Business*, 18.2 (2022), 157-77, <https://doi.org/10.1108/cpoib-03-2019-0025>

phenomenon that erodes the foundations of governance and becomes a significant barrier to effective governance and development. Thus, exacerbating income inequality, worsening market productivity, and inhibiting foreign investment in the country.² Countries with high levels of corruption will undoubtedly experience a decline in the ability to attract much-needed foreign investment from developing countries as it creates such a hostile environment for foreign investment by increasing operational costs and risks, creating legal and reputational hazards, and fostering economic and institutional instability.³ Developed countries and international donor organizations expressed significant concern about corruption rankings published by international survey groups such as Transparency International and The Political and Economic Risk Consultancy (PERC). In some countries, corruption is essential in predicting growth,⁴ assessing governance effectiveness, and sound policy governance systems.⁵ Corrupt practices with various modus operandi can be carried out by anyone from different social and economic strata. In addition, corrupt practices in terms of abuse of their power subvert the rules for personal gain. Hence, the criminal act of corruption is classified as an extraordinary crime, the eradication of which also requires an integrated and extraordinary system.⁶ The eradication of corruption cannot depend solely on law enforcement efforts carried out by law enforcement officials, primarily because it is a complex issue requires a multi-faceted approach that includes institutional reforms, public awareness, and international cooperation. Therefore, participation in establishing an anti-corruption culture in society is as meaningful as preventive measures to eradicate corruption.

To eradicate corruption in society, the government and all its institutions must actively promote an anti-corruption culture by providing early education about the dangers and negative impacts of corruption. Furthermore, understanding moral standards and principles of corruption can help individuals refrain from engaging in corrupt activity.⁷ Corruption as a proxy war method attempts to influence domestic policy by using legal or illegal approaches against legal entities or private entities that hold public authority or are related to the public interest. The Corruption Eradication Commission (KPK) and the police as one of the institutions responsible for eradicating corruption are expected to optimize their efforts in eradicating corruption through prevention and law enforcement functions. Therefore, there is a need for reformulation in the eradication of corruption, especially from the perspective

² Mallam Isgogo Mohammed, Abbsinejad Hossein, and Chukwudi C. Nwokolo, 'Organized Crime, Corruption and the Challenges of Economic Growth in the Economic Community of West African States', *Journal of Financial Crime*, 29.3 (2022), 1091-1101. <https://doi.org/10.1108/JFC-05-2021-0115>

³ Muhamad Rosyid Jazuli, Maimanah Mohammed Idris, and Penlope Yaguma, 'The Importance of Institutional Quality: Reviewing the Relevance of Indonesia's Omnibus Law on National Competitiveness', *Humanities and Social Sciences Communications*, 9.1 (2022), 334, <https://doi.org/10.1057/s41599-022-01343-w>

⁴ Sung-Hee Park and others, 'Predictive Growth Modeling of *Yersinia Enterocolitica* in Fresh Kimchi Cabbage *Brassica Pekinensis* as a Function of Storage Temperature', *Heliyon*, 9.7 (2023), e17978, <https://doi.org/10.1016/j.heliyon.2023.e17978>

⁵ Walid M. A. Ahmed, 'Corruption and Equity Market Performance: International Comparative Evidence', *Pacific-Basin Finance Journal*, 60 (2020), 101282, <https://doi.org/10.1016/j.pacfin.2020.101282>

⁶ Suramin Suramin, 'Indonesian Anti-Corruption Law Enforcement: Current Problems and Challenges', *Journal of Law and Legal Reform*, 2.2 (2021), 225-42, <https://doi.org/10.15294/jllr.v2i2.46612>

⁷ Firman Firman and others, 'Anti-Corruption Education Model in Islamic Universities', *AL-ISHLAH: Jurnal Pendidikan*, 13.3 (2021), 2146-58, <https://doi.org/10.35445/alishlah.v13i3.843>

of the KPK and the police in addressing corruption as a threat to the survival of the nation. In addition, corruption prevention can be done by improving governance and information disclosure.⁸ The 2023 Corruption Perceptions Index (CPI) highlights a global rise in perceived public sector corruption, utilizing a scale from 0 (most corrupt) to 100 (cleanest) across 180 countries. It emphasizes the role of strong legal institutions in reducing corruption; for instance, countries like the United Kingdom, despite a recent decline to its lowest score of 71 since 2012, still have lower levels of perceived corruption due to robust legal frameworks. Conversely, Indonesia, scoring 38, continues to face significant corruption challenges, underscoring the need for strengthened legal institutions.⁹ Strong institutions with better bureaucratic quality can mitigate the adverse effects of corruption and improve stock returns by reducing bureaucracy.¹⁰ In Indonesia, the difficulty in combating illicit enrichment corruption stems from several systemic issues. Weak institutional frameworks, limited resources, and deeply entrenched corruption practices hinder effective law enforcement and judicial actions. Additionally, political influence often protects corrupt individuals from prosecution, perpetuating a culture of impunity. To address these challenges, Indonesia needs to strengthen its legal and bureaucratic systems, increase transparency, and enforce accountability across all government levels.¹¹

One of the law enforcement measures that Indonesia needs to take is to implement extradition agreements with other countries. Andi Rachmad in his research explains that Indonesia needs to make extradition agreements, given the number of corrupt individuals who use other countries as a sanctuary to escape from Indonesian legal slavery. This is certainly detrimental to Indonesia because contaminated state assets are also transferred to other countries. Therefore, the inadequacy of Indonesia's extradition regulations and agreements with other countries makes it difficult for law enforcement officials to eradicate corruption crimes, especially those related to illicit enrichment.¹² Illicit enrichment deals with the acquisition and use of assets, resources, and other benefits obtained through the exercise of public office. Corruption proceeds derived from bribery or embezzlement can also fall into this category.¹³ Illicit enrichment includes converting property and money and the profits they may make. It also relates to the transfer or merger of these assets.¹⁴ Nevertheless, the

⁸ Rosa Lombardi and others, 'Corporate Corruption Prevention, Sustainable Governance and Legislation: First Exploratory Evidence from the Italian Scenario', *Journal of Cleaner Production*, 217 (2019), 666-75, <https://doi.org/10.1016/j.jclepro.2019.01.214>

⁹ Shrabani Saha and Kunal Sen, 'Do Economic and Political Crises Lead to Corruption? The Role of Institutions', *Economic Modelling*, 124 (2023), 106307, <https://doi.org/10.1016/j.econmod.2023.106307>

¹⁰ Geeta Lakshmi, Shrabani Saha, and Keshab Bhattarai, 'Does Corruption Matter for Stock Markets? The Role of Heterogeneous Institutions', *Economic Modelling*, 94 (2021), 386-400, <https://doi.org/10.1016/j.econmod.2020.10.011>

¹¹ Mohamad Hidayat Muhtar, 'Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum', *Jambura Law Review*, 1.1 (2019), 68, <https://doi.org/10.33756/jalrev.v1i1.1988>.

¹² Andi Rachmad, Zaki Ulya, and Yusi Amdani, 'Urgency of Extradition Agreements in Eradicating Corruption Crime in Indonesia', *Jurnal IUS Kajian Hukum Dan Keadilan*, 10.3 (2022), 489-501, <https://doi.org/10.29303/ius.v10i3.732>.

¹³ Rebecca Meckelburg and Agung Wardana, 'The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia', *Land Use Policy*, 137 (2024), 107017, <https://doi.org/10.1016/j.landusepol.2023.107017>

¹⁴ Noratikah Binti Muhammad Azman Ng, Zainal Amin Bin Ayub, and Rohana Binti Abdul Rahman, 'The Legal Aspect of Illicit Enrichment in Malaysia: Is it a Crime to be Rich?', *UUM Journal of Legal Studies*, 13 (2022), <https://doi.org/10.32890/uujls2022.13.2.11>

main attribute of this crime is its stealthy nature. Therefore, this crime cannot be seen through conventional investigation, and only irrational changes or spikes in wealth can indicate dubious events. In addition, some academics also define unexplained wealth as a substantial increase in the assets of government officials that cannot be reasonably accounted for by their legitimate income. The term "unexplained wealth" relates to scenarios with justifiable reasons to suspect that a person maintains a lifestyle that exceeds what is expected based on known income or assets. If the person fails to explain his wealth satisfactorily, He is considered to have committed an offence.

Law enforcement of cases involving illicit enrichment corruption cannot be carried out because there are no specific regulations governing the criminal act of self-enrichment in Law Number 31 of 1999 jo Law Number 20 of 2001 on the Eradication of Criminal Acts of Corruption. The legal framework regarding illicit enrichment is regulated in Article 20 of the UNCAC, which has been promulgated officially through Law No. 7 of 2006 on the Ratification of UNCAC.¹⁵ Indonesia is committed to the provisions of the convention because it has consented to be bound by international agreements. This consent is officially expressed through actions like signing, ratifying, or accepting the treaty.¹⁶ The As a consequence from the international point of view, Indonesia should implement the actions contained in UNCAC in terms of efforts to prevent and eradicate criminal acts of corruption, one of which is by regulating the concept of illegitimate self-enrichment of illicit enrichment in national legislation. Indonesia's participation in this international agreement is a means to enhance cooperation that can benefit Indonesia.¹⁷

Nevertheless, in Indonesia, illegal enrichment has not been clearly prohibited in the rule of law since the country adopted the international agreement in 2006, leading to continued occurrences of corrupt activity. Based on the 2020 report of the KPK, 143 regional heads are suspected of corruption cases in local governments, which have become the most common.¹⁸ The action harms the country, society and the economy as it hampers economic growth, healthcare, education, and budget allocation, erodes public confidence and lowers investment.¹⁹

According to research from Indonesia Corruption Watch (ICW), the number of convictions for corruption cases from 2018 to 2022 continuously increased. In fact, in the report, the number of defendants is more than the number of verdicts each year. It indicates that

¹⁵ Eddy Omar Sharif Hiariej, 'United Nations Convention Against Corruption Dalam Sistem Hukum Indonesia', *Mimbar Hukum*, 31.1 (2019), 112, <https://doi.org/10.22146/jmh.43968>; Razananda Skandiva and Beniharmoni Harefa, 'Urgensi Penerapan Foreign Bribery Dalam Konvensi Antikorupsi Di Indonesia', *Integritas: Jurnal Antikorupsi*, 7.2 (2022), 245-62, <https://doi.org/10.32697/integritas.v7i2.826>

¹⁶ Mohammad Hazyar Arumbinang, Yordan Gunawan, and Andi Agus Salim, 'Prohibition of Child Recruitment as Soldiers: An International Regulatory Discourse', *Jurnal Media Hukum*, 30.1 (2023), 21-32. <https://doi.org/10.18196/jmh.v30i1.19322>.

¹⁷ Ni'matul Huda, Dodik Setiawan Nur Heriyanto, and Allan Fatchan Gani Wardhana, 'The Urgency of the Constitutional Preview of Law on the Ratification of International Treaty by the Constitutional Court in Indonesia', *Heliyon*, 7.9 (2021), e07886, <https://doi.org/10.1016/j.heliyon.2021.e07886>

¹⁸ Ade Paranata, 'The Miracle of Anti-Corruption Efforts and Regional Fiscal Independence in Plugging Budget Leakage: Evidence from Western and Eastern Indonesia', *Heliyon*, 8.10 (2022), e11153, <https://doi.org/10.1016/j.heliyon.2022.e11153>

¹⁹ Satria Unggul Wicaksana Prakasa, Asis Asis, and Mualimin Mochammad Sahid, 'Reduce Corruption in Public Procurement: The Effort Towards Good Governance', *Bestuur*, 10.1 (2022), 33-42, <https://doi.org/10.20961/bestuur.v10i1.51339>.

corruption is organized crime. In 2018, the number of corruption convictions was 1,053 convictions and 1,162 defendants. Meanwhile, in 2022, the number of convictions was 2,056, and the number of defendants was 2,249. In addition, the State Administrator should submit the State Administrator's Property Report (LHKPN) to the KPK every year. In the study in 2021, the number who were required to report LHKPN in 2022 was 383,335 people, with the number who had submitted LHKPN as many as 375,311 people, so the national LHKPN reporting rate until that date was 97.91%. The data above shows the success in implementing LHKPN in 2021. However, cases of corruption crimes of enriching oneself, others, and corporations that harm state finances are inversely proportional to the percentage results of LHKPN above, where the Indonesia Corruption Watch (ICW) report explains that the highest number of defendants occurred in 2021, which was 1,404 people. Of this amount, the state suffered losses of IDR 62,931,124,623,511 (Sixty-two trillion more), while the amount returned through the payment of substitute money was only IDR 1,441,329,479,066 (One trillion more), so the percentage was only less than 3 per cent.²⁰

Therefore, collaboration between government and society is essential to address these issues by implementing institutional changes, ensuring strong law enforcement, allocating resources for education and training, and implementing policies that promote equitable economic development.²¹ The rise in corruption cases in Indonesia has raised awareness of the adverse effects of corruption on economic progress. Research in Indonesia has shown a strong relationship between the corruption perception index and key macroeconomic indicators, such as tax collection and government spending. A long-term and short-term correlation exists between tax revenue and the corruption perception index. The variable of tax revenue substantially positively impacts the corruption perception index.²² Thus, government spending also has a significant beneficial effect on corruption perception scores. A study investigating the impact of corruption on economic growth in Indonesia analysed a sample of several provinces. The study used a nonlinear methodology to identify thresholds for corruption.²³

The findings showed that corruption detrimentally impacted economic growth in provinces with corruption levels below the 1,765-point threshold.²⁴ In addition, the adverse effects of corruption seem to be more pronounced in provinces with corruption levels that exceed thresholds. Moreover, it has been observed that most provinces face challenges in dealing with corruption. However, they can consistently maintain corruption levels below the set thresholds. Provinces such as Riau and West Java have always been categorized as areas

²⁰ Vifi Swarianata Maria Silvya E. Wangga, Nadzriah Ahmad, Jufryanto Puluhalawa, 'Periscope of Ideas Selective Criteria for the Application of Restorative Justice in Corruption Crimes', *Journal of Indonesian Legal Studies*, 9.1 SE-Research Article (2024), 1-30, <https://doi.org/10.15294/jils.vol9i1.4530>.

²¹ Janiscus Pieter Tanesab, 'Institutional Effectiveness and Inclusions: Public Perceptions on Indonesia's Disaster Management Authorities', *International Journal of Disaster Management*, 3.2 (2020), 1-15, <https://doi.org/10.24815/ijdm.v3i2.17621>

²² Yordan Gunawan, Arif Budiman, and others, 'Journalist Protection on the Battlefield Under the International Humanitarian Law: Russia-Ukraine War', *Jurnal Hukum Unissula*, 39.1 (2023), 1-11. <https://doi.org/10.26532/jh.v39i1.24685>.

²³ Ridwan Arifin and others, 'A Discourse of Justice and Legal Certainty in Stolen Assets Recovery in Indonesia: Analysis of Radbruch's Formula and Friedman's Theory', *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 6.2 SE-Articles (2023), 159-81, <https://doi.org/10.24090/volkgeist.v6i2.9596>.

²⁴ Sanda Aditiya Arsandi, 'The Grease of the Wheel: The Correlation between Corruption, Regional Revenue and Expenditure in Indonesia', *Integritas: Jurnal Antikorupsi*, 8.2 (2023), 193-204, <https://doi.org/10.32697/integritas.v8i2.938>

with high levels of corruption over the past three years due to significant corruption problems. However, some provinces, such as Lampung and North Sulawesi, cut their corruption scores and fell into the low corruption group.

This short paper tries to review the discourse. To be systematic, the paper consists of several subheadings. First, corruption eradication in Indonesia. Second, the illicit enrichment framework in international conventions. Third, reviewing the regulation of unexplained wealth in the United Kingdom and Australia. Fourth, the importance of Indonesia having an illicit enrichment instrument. And fifth, the strategy to eradicate corruption in the future.

2. Research Method

This article's research type is normative.²⁵ The approach method used in this study is the legal comparison approach, where the comparative approach is carried out by comparing legal regulations or court decisions in one country with legal regulations in other countries, one or more countries, but with a note, the things that are compared must be about the same stuff. In addition, this study uses a corpus-based critical analysis approach to achieve research objectives.²⁶ The objective is to explore the concept of illicit enrichment regulation in international conventions and its application in Indonesia, contrasting it with how unexplained wealth laws are used in the United Kingdom and Australia to combat corruption. Additionally, this analysis relies on secondary data sources, including legal writings interpreted as primary sources, data, scientific papers, working papers, and journals available online.²⁷

In principle, contemporary comparisons compare anything that can be compared for benchmarking. The author argues that Indonesia, the United Kingdom and Australia have ratified UNCAC, and have regulations related to illicit enrichment, although the United Kingdom and Australia use the term Unexplained Wealth. In addition, the results of the UNCAC review from the United Kingdom and Australia are very good in the field of Criminalization and Law Enforcement, especially related to unexplained wealth and the United Kingdom and Australia ranking in the CPI is far above Indonesia.²⁸

3. Result and Discussion

3.1. Eradication of Corruption in Indonesia

Among Asian countries, Indonesia became the first country to have a special regulation on Corruption Eradication. The military rulers established the Corruption Eradication

²⁵ Birkah Latif and others, 'Health and Law: Euthanasia in Indonesian Legal Perspective', *Enfermería Clínica*, 30 (2020), 492-95, <https://doi.org/10.1016/j.enfcli.2019.10.128>

²⁶ Moon QMN-Nguyen, 'Media Presentations of Vietnam's Cybersecurity Law: A Comparative Approach with Corpus-Based Critical Discourse Analysis', *Computer Law & Security Review*, 50 (2023), 105835, <https://doi.org/10.1016/j.clsr.2023.105835>

²⁷ Muhammad Mutawalli and others, 'The Conference of Parties - 27 (COP-27) Agreement As an Instrument of State Policy in Handling Deforestation: A Comparative Study of Sweden and Indonesian Governments', *Law Reform*, 19.1 (2023), 1-24, <https://doi.org/10.14710/lr.v19i1.52926>

²⁸ Muhammad Chairul Huda and Budi Ispriyoso, 'Contribution of Islamic Law in the Discretionary Scheme That Has Implications for Corruption', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 19.2 (2019), 147-67, <https://doi.org/10.18326/ijtihad.v19i2.147-167>.

Regulation until it was first promulgated in 1960. Among the three regulations made, two of them use preventive efforts (prevention) to eradicate corruption, namely by registering their wealth with the Property Oversight Agency and will get penalties if there is a discrepancy with their income.²⁹

In several periods of its implementation, namely during the Old Order and New Order periods, these preventive measures were eliminated, thus making the law ineffective in combating corruption. As a result, there have been several demands to revise the regulation. It is the background of the birth of Law Number 3 of 1971 on Corruption.³⁰ However, instead of declining, perceptions of corruption have increased. Finally, the government replaced the law with Law Number 31 of 1999, as amended by Law Number 20 of 2001, on the Eradication of Criminal Acts of Corruption. These various changes show that laws regulating corruption are strict and designed to improve the dynamics of efforts to eradicate corruption.³¹

3.2. Indonesian Corruption Watch (ICW)

Since establishing the KPK in its report, it has handled 1,351 corruption cases from 2004 to 2022. If traced carefully over the past 18 years, the KPK has observed a trend in the number of corruption cases it handles fugitives. In 2018, the KPK carried out strict law enforcement against the most significant corruption crimes, including 200 cases. In contrast, the lowest number of cases ever recorded was 2 cases in 2004. Not only is the number increasing, but the impact is also expanding on the finances of the aggrieved country. In recent years, eradicating corruption in Indonesia has not shown positive results. As in the 2023 Indonesian Corruption Watch (ICW) report, corruption cases are increasing yearly. It aligns with Indonesia's corruption perception index decline based on the Transparency International (TI) report in 2023. As for the number of corruption cases, suspects, and potential state losses reported by the Indonesian Corruption Watch (ICW), the author summarizes the last five years in the table below.

Table 1: Indonesian Corruption Watch (ICW) Report 2022

| Type/Year | Score 2018 | Score 2019 | Score 2020 | Score 2021 | Score 2022 |
|-----------------------------------|------------|------------|------------|------------|------------|
| Corruption Cases | 454 | 271 | 444 | 533 | 579 |
| Suspect | 1.087 | 580 | 875 | 1.173 | 1.396 |
| Potential State Losses (Trillion) | 5.645 | 8.405 | 18.615 | 29.438 | 42.747 |

²⁹ Stuart S. Yeh, 'New Financial Action Task Force Recommendations to Fight Corruption and Money Laundering', *Laws*, 11.1 (2022), 8, <https://doi.org/10.3390/laws11010008>.

³⁰ Retno Dewi Pulung Sari and others, 'State Financial Losses as a Result of Environmental Damage', *Journal of Human Rights, Culture and Legal System*, 4.1 (2024), 121-48, <https://doi.org/10.53955/jhcls.v4i1.136>.

³¹ Chul Hyun Park and Koomin Kim, 'E-Government as an Anti-Corruption Tool: Panel Data Analysis across Countries', *International Review of Administrative Sciences*, 86.4 (2020), 691-707, <https://doi.org/10.1177/0020852318822055>

Table 1 shows how corruption in Indonesia occurs in various sectors. It is illustrated by how cases of corruption, suspects, and potential state losses increase every year. When judging from the three variables above, there is a significant increase, which is also simultaneous. In 2019, the decline decreased, whereas previously, the number of cases in 2018 was 454 cases, and the suspects were 1,087 people. Meanwhile, there was a decline in 2019, where the number of corruption cases was 271 cases and 580 suspects. However, although the number of cases and suspects has decreased, the potential state losses have increased, whereas in 2018, they were IDR 5,645 trillion, while in 2019, it was IDR 8,405. As for the following year, namely 2019, to its peak in 2022, it continues to increase from the number of cases as many as 579 cases, suspects of as many as 1,396 people and potential state losses of IDR 42,747 trillion. This view is very on because, in this context, the state is the victim. State losses always increase even though the number of corruption cases decreases.

Moreover, if both variables increase, this shows how weak the eradication of corruption in Indonesia is,³² not only in law enforcement but also in regulation.³³ Where The amount of money lost from the state because of corruption crimes is not proportional to the amount of money returned to the state because of corruption.

3.3. Corruption Perception Index (CPI)

Transparency International (TI) is a global non-governmental organization headquartered in Berlin, Germany, founded in 1993. The main objective of this organization is to actively tackle corruption worldwide through implementing anti-corruption measures in civil society to prevent criminal crimes resulting from corrupt practices. Transparency International (TI) is at the forefront of fighting corruption, primarily driving the transformation towards a corruption-free global society. In Indonesia, corruption is increasing with the emergence of various modus operandi, in line with the decline in the corruption perception index (CPI). The Corruption Perceptions Index (CPI) was introduced by Transparency International (TI) in 1995 as a comprehensive metric to assess the level of perceived corruption in the public sector in different countries of the world. The significant decline in Indonesia's corruption perception index (CPI) in 2023 is a solid warning to law enforcement officials and the public to eradicate corruption jointly, as the table below illustrates Indonesia's ranking under the 2023 corruption perception index.

Table 2 illustrates perceptions of corruption across the public sector in Indonesia. The level of corruption perception rating of a country is assessed on a score scale ranging from 0 (Zero), which indicates a high level of corruption, to a score of 100 (One Hundred), indicating cleanliness from corruption. Transparency International's 2023 report shows that Indonesia ranks 115 out of 180 countries. A decrease from the previous year was ranked 110 out of 180. This indicates that the spirit of eradication in every country continues to increase. Indonesia's corruption perception score has been at 34 in the last two years. This score is the lowest in the previous five years. If you pay attention to 2019, Indonesia's corruption perception reached a score of 40. However, the score did not last long but dropped significantly,

³² Sofie Arjon Schütte, 'Against the Odds: Anti-Corruption Reform in Indonesia', *Public Administration and Development*, 32.1 (2012), 38–48, <https://doi.org/10.1002/pad.623>

³³ Leo Agustino and others, 'Corruption Eradication in Indonesia: The Experience of The Corruption Eradication Commission (KPK)', *Journal of Governance*, 6.2 (2021), <https://doi.org/10.31506/jog.v6i2.12126>

resulting in Indonesia's ranking declining, which was previously ranked 85 out of 180 countries in 2019 and 115 out of 180 countries in 2023.

Table 2: Corruption Perceptions Index 2023 Country Ranking

| 2023 Rank | Country | Score 2019 | Score 2020 | Score 2021 | Score 2022 | Score 2023 | Continent |
|-----------|-------------|------------|------------|------------|------------|------------|-------------------------|
| 1 | Denmark | 87 | 88 | 88 | 90 | 90 | Asia Pacific |
| 2 | Finland | 86 | 85 | 88 | 87 | 87 | Europe and Central Asia |
| 3 | New Zealand | 87 | 88 | 88 | 87 | 85 | Europe and Central Asia |
| 5 | Singapore | 85 | 85 | 85 | 83 | 83 | Asia Pacific |
| 55 | Malaysia | 53 | 51 | 48 | 47 | 50 | Asia Pacific |
| 115 | Indonesia | 40 | 37 | 38 | 34 | 34 | Asia Pacific |

In addition, compared to neighboring countries, in 2023, Indonesia is far behind Malaysia, ranked 55, and Singapore is rated 5. Not only that, but other ASEAN countries such as Brunei Darussalam, Thailand, and Democratic Republic of Timur-Leste are still better than Indonesia regarding perceptions of corruption. This situation is detrimental to Indonesia's reputation, as it puts a negative spotlight on the country. Other than that, not a single country has achieved a near-perfect score. Denmark, Finland, and New Zealand scored highest, while Somalia, Venezuela, and Syria ranked lowest in the 2023 CPI rankings. More than two-thirds of countries scored below 50 out of 100, indicating that the country has a severe corruption problem. The global average is just 43, while most countries have not progressed or declined in the past decade. What's more, 23 countries saw their lowest score drops this year.

3.4. Legal Framework of Illicit Enrichment in International Conventions

Seeing the corruption problem is increasingly widespread and systemic, illicit enrichments was later adopted into three international conventions against corruption to accelerate corruption prevention through international cooperation. Unlawful enrichment (Illicit Enrichment) was first entered in the Inter-American Convention Against Corruption (IACAC), Article IX and was adopted by the Organization of American States in 1996. Then, the African Union Convention on Preventing and Combating Corruption (AUCPCC, Article 1) was approved in 2003. Last is the UNCAC Article 20, which was approved in 2003 and entered into force in 2005, basically regulates the prohibition of bribery against foreign parties and public officials. In Article 20, UNCAC advises States that are signatories to the convention to take legislative or other measures per the principles of their respective legal systems, to establish unlawful enrichment or illicit enrichment as a criminal offence. Where acts that public officials enrich themselves that are done intentionally so that there is a significant increase in wealth or in large amounts in relation to legitimate income can be

referred to as acts of corruption. It also goes hand in hand with the agreement that corruption is the reality of public power being misused for private gain in illegal ways.³⁴

Illicit enrichment is explicitly regulated in Article 20 of UNCAC, which reads:

"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 on his or her lawful income."

There are 5 (five) essential elements, including:

- a. Person of Interest, i.e. the subject is a public official/civil servant/state administrator;
- b. Period of Interest or Conduct of Enrichment, which is the term of office of a public official;
- c. Significant Increase in Assets, namely enriching yourself or having wealth that increases significantly;
- d. Intent, that is, the increase in wealth occurs because of his actions and is done deliberately; and
- e. Absence of Justification: He who cannot reasonably explain the increase in wealth.

Therefore, if an indication of an illicit enrichment crime has been found after an investigation, then law enforcement officials can prove first that a person who is alleged to have fulfilled the elements as above, then the judge in court can order the suspect to explain or prove that the assets that are the object of the crime belong to the suspect obtained from a legitimate income. However, if the suspect cannot prove that his assets were obtained legally according to the law, the suspect can be found guilty.

3.5. Reviewing Unexplained Wealth Arrangements in the United Kingdom and Australia

Before discussing further, the author reviews the regulations, criminalization and law enforcement regarding Unexplained Wealth in the United Kingdom and Australia, considering that both countries are quite successful in eradicating corruption, as evidenced by the United Kingdom and Australia's excellent corruption perception index. In addition, the unexplained wealth provisions applied in the United Kingdom and Australia have fundamental similarities with illicit enrichment but, on the other hand, there are differences related to the approach used, where the unexplained wealth provisions use an administrative approach.

3.5.1. United Kingdom

Globally, more than 100 laws govern the conduct of Unexplained Wealth or inexplicable wealth. In its implementation of a definition regulation of Unexplained Wealth, there are still inconsistencies regarding the definitions of Unexplained Wealth or unaccountable wealth.

³⁴ Vania Sena and others, 'Board Independence, Corruption and Innovation. Some Evidence on United Kingdom Subsidiaries', *Journal of Corporate Finance*, 50 (2018), 22-43, <https://doi.org/10.1016/j.jcorpfin.2017.12.028>

The worldwide scope of definitions applies to various forms of tangible and intangible wealth and multiple categories of people. But from a broad perspective, Unexplained Wealth refers to the income, receipt or use of something of monetary value by a person that is not justified by reference to legitimate income.

Unexplained wealth became part of the United Kingdom legal system in January 2018 by the enactment of the Criminal Finance Act 2017. If an Offender fails to adequately explain how an asset was acquired or provides poor proof, it will be deemed "recoverable property" for a civil recovery order under the Proceeds of Crime Act 2002 as required by this UWO. In general, Unexplained Wealth Orders (UWOs) give attribution powers to United Kingdom law enforcement agencies to help identify, freeze and confiscate property suspected of having committed or been involved in the proceeds of its activities. This UWO places the burden of proof on individuals, not law enforcement agencies, to prove how they collected their wealth and to gather evidence to verify the source of that wealth.

Moreover, an Unexplained Wealth Order may be applied to any person or legal entity in the United Kingdom if some conditions are met, including the Respondent or person is or has been involved in a serious crime or the person is a politically exposed person (PEP), has a property value exceeding £50,000 and there are reasonable grounds to suspect that the Respondent's source of income is illegally obtained.

If these conditions are met, only bodies designated as enforcement agencies or authorities may apply to the High Court to issue a warrant to deal with Unexplained Wealth. In the United Kingdom, these institutions are the National Crime Agency, HM Revenue and Customs, Financial Conduct Authority, Serious Fraud Office, and Crown Prosecution Service (Public Prosecutor). Law enforcement authorities applying UWO may simultaneously file a temporary freezing order or Interim Freezing Order (IFO) to prevent the sale, transfer or disposal of such property and avoid possible failure of subsequent asset recovery orders. After that, the respondent is obliged to provide information as specified in the UWO, which contains the property's nature and level of interest. Then, explain how they acquired the property, particularly the source of funds used to purchase the property and other information on the property as it may be determined.

If the respondent does not comply with the provisions of the UWO, then the property mentioned in the UWO can be recovered for civil recovery by law enforcement officials from the proceeds of the unlawful act. The court will consider the property to be recoverable unless the respondent can provide evidence showing that the property is not recoverable. In addition, the respondent who knowingly gives materially false or misleading statements in response to the UWO may be found guilty of a criminal offence punishable by imprisonment for not more than two years. Human rights protect a person from self-blame, but that statement cannot be used as evidence in criminal prosecution. This protection does not apply to documents produced by the respondent during the settlement process of UWO.

3.5.2. Australia

Australia has been a party to the UNCAC since 2005. In 2010, the Australian parliament amended the forfeiture provisions in each state and territory to expand the scope of the law and include the Unexplained Wealth provision. The amended Explanatory Memorandum justifies the expansion of the law by referring to the requirements of Article 20 of UNCAC,

which explicitly addresses illicit enrichment. Australia and Indonesia have distinct legal systems, with Australia adhering to a legal system that is independent from the Indonesian civil law system. Both countries have ratified the United Nations Convention Against Corruption (UNCAC).³⁵

From a regulatory perspective, the concept of Unexplained Wealth is like Illicit Enrichment, which refers to assets that do not have a clear explanation of their origins. The defining traits of a person with Unexplained Wealth include disproportionate ownership of assets on their legitimate income, consistent acquisition of luxury commodities, engaging in large cash transactions, such as frequently depositing or withdrawing money from bank accounts, Keeping large sums of money in one's residence. There are subtle differences in the subject matter and setting of illicit enrichment and unexplained wealth. Specifically, the subject of unexplained wealth is, politically exposed individuals (PEIs), along with family members or relatives or individuals suspected of reasonably participating in organized criminal activities, such as fraud, money laundering, tax evasion, or bribery and corruption. The designation of PEP entities as recipients of unexplained wealth arises because, as state administrators or public officials, PEPs are highly vulnerable to exploiting their position and influence to engage in severe and organized criminal activities.

If evidence or reports show that a person has assets that cannot be reasonably accounted for during an investigation, law enforcement authorities may initiate legal proceedings by filing an application with the court on the unexplained wealth provision. In all Australian jurisdictions, there are two applications relating to the use of unexplained wealth:

- a. PEPs, including family members or relatives of PEPs; and
- b. People are reasonably suspected of involvement in organized crimes, such as fraud, money laundering, tax evasion, bribery, and corruption.

Nevertheless, the unexplained wealth regime established by the Commonwealth Proceeds of Crime Act 2002 has introduced a new stage in the legal process called the initial unexplained wealth order. This procedure requires a person to appear in court to convince the court to determine whether to issue an injunction regarding an unexplained property application. In more detail, the author summarizes in the table below the fundamental differences between the United Kingdom and Australia, starting from the requirements of the application, evidence, and approach to the court's authority.

The table 3 shows that the two countries, the United Kingdom and Australia, have similarities in applying unexplained wealth, but when law enforcement officials use unexplained wealth orders in court, the United Kingdom requires a UWO application to be made if the person concerned has a property value of more than £50,000. Meanwhile, the UWO provisions exist in Australia, where there is no requirement to show a relationship or nexus between the breach and property. The next stage has the exact mechanism until the judge gives a ruling on the ownership of the respondent's property.

³⁵ Marie J. Dela Rama, Michael E. Lester, and Warren Staples, 'The Challenges of Political Corruption in Australia, the Proposed Commonwealth Integrity Commission Bill (2020) and the Application of the APUNCAC', *Laws*, 11.1 (2022), 7, <https://doi.org/10.3390/laws11010007>.

Table 3: Application of Unexplained Wealth in the United Kingdom and Australia

| Country | Application Requirements | Evidentiary Mechanism | Approach | Authority of the Court |
|-----------------------|--|--|--|--|
| United Kingdom | The respondent owns the property (either wholly or partially), and the value of the property exceeds £50,000 | The burden of proof shifts to the accused as the owner of the property | <i>in rem</i> – action taken against suspicious assets | The court has no discretion, thus requiring him to make orders or rulings. |
| Australia | There is no requirement to show a relationship (nexus) between the offence and the property. | The burden of proof shifts to the accused as the owner of the property | <i>in rem</i> – action taken against suspicious assets | The court has no discretion, thus requiring him to make orders or rulings. |

3.6. The Importance of Indonesia Having an Illicit Enrichment Instrument

Each country's issues highlight varying levels of corruption, typically more prevalent in underdeveloped nations with lower revenues. Indonesia signed the UNCAC at Merida, Mexico, from December 9 to 11, 2003. Indonesia joined the UNCAC on April 18, 2006, under Law number 7 of 2006. By ratifying UNCAC, Indonesia as a state party can trigger the convention to become legally effective, leading to mandatory requirements for Indonesia to implement UNCAC's contents. Indonesia's ratification of the UNCAC by Law Number 7 of 2006 requires the adoption of significant legal norms in Indonesia.

Instrument Illicit Enrichment is a real need in the eradication of corruption. In Indonesia, if it is placed as a new approach in combating corruption, it targets people or perpetrators and returns assets that have been seized the "follow the money" strategy. Given this, it will hamper the development of the financial sector in countries if it is transferred to foreign investment channels. But, although ratified in 2006 until now, there has been no specific regulation regarding Illicit Enrichment at the level of law. In fact, by regulating illicit enrichment, the eradication of corruption in Indonesia can be strengthened. The legal basis for stating the need for a special law on illicit enrichment in Indonesia can be done using philosophical foundations, as the reality of corruption crimes in Indonesia today. As a philosophical foundation, the importance of Illicit Enrichment in Indonesian laws and regulations includes:

- a. Indonesia is currently fighting an extraordinary crime called corruption; and
- b. The obstacle to eradicating corruption is the lack of public officials as state organizers reporting their assets. In comparison, many public officials have wealth that exceeds the logic of income received during their time as public officials.

As a juridical reason, UNCAC, ratified by Law Number 7 of 2006 on Ratification of the UN Convention Against Corruption of 2003 (United Nations Anti-Corruption Convention, 2003), regulated the punishment of illicit enrichment. UNCAC believes that making arrangements

for illicit enrichment is not only to prevent and eradicate corruption but also for international cooperation and optimal asset recovery.³⁶ This instrument is essential to be implemented in Indonesia, considering that the current situation of corruption is not only an exceptional and extraordinary crime but an obstacle to social and economic welfare of economic and social rights³⁷ as affirmed in the Corruption Eradication Law, the functions of criminal law must be carried out in such a way that preventive, repressive and educative functions can simultaneously run side by side.

3.7. Future Corruption Eradication Strategy

3.7.1. Revision of the Corruption Eradication Law

The spirit oriented towards improving the material legal system can be seen from the legislation on corruption, which has undergone several changes. I was starting with the issuance of regulation No. PRT/PM 06/1957 on the Eradication of Corruption and PRT/Perpu/013/1958 on the Prosecution, Prosecution, and Examination of Corruption and Property Ownership from the Chief of Army Staff, then successively changed 4 (four) times. First, Perpu No. 24 of 1960 on the Prosecution, Prosecution, and Examination of Criminal Acts of Corruption was issued, which became Law No. 1 of 1961. Second, Law No. 3 of 1971 on the Eradication of Corruption; Fourth, Law No. 31 of 1999 on the Eradication of Corruption; and Fourth, Law No. 20 of 2001 on Amendments to Law No. 31 of 1999.

In applying this concept, Indonesia also needs to learn from the United Kingdom, which has involved a concept like illicit enrichment, namely unexplained wealth. This concept departs when a person is indicated to have property exceeding £50,000, and then law enforcement authorities apply to the court to summon and freeze the perpetrator's property. If, before the court judge, the perpetrator cannot reasonably explain the source of his property, the judge, through law enforcement authorities, will confiscate the perpetrator's property. In addition to regulatory changes, corruption prevention can be done by implementing bureaucratic reforms. Bureaucratic reform is needed because one of the factors considered as a source of corrupt practices in Indonesia is a closed, centralized, ineffective, inefficient, and straightforward bureaucracy. One of the bureaucratic reform acceleration programs that is very important to carry out is reporting public officials' wealth.³⁸

3.7.2 Optimization of LHKPN as the entrance to Illicit Enrichment

The Administrator's Property Report, now referred to as LHKPN, is a list of all State Administrator's Assets as stated in the LHKPN form determined by the KPK as stipulated in KPK Decree Number: KEP07/PK/02/2005. LHKPN submission This is also required for Bank offices in BUMN and BUMD. The state organizers are burdened with the obligation to

³⁶ Ridwan Arifin, Sigit Riyanto, and Akbar Kurnia Putra, 'Collaborative Efforts in ASEAN for Global Asset Recovery Frameworks to Combat Corruption in the Digital Era', *Legality: Jurnal Ilmiah Hukum*, 31.2 (2023), 329-43, <https://doi.org/10.22219/ljih.v31i2.29381>.

³⁷ Fredj Fhima, Ridha Noura, and Khalid Sekkat, 'How Does Corruption Affect Sustainable Development? A Threshold Non-Linear Analysis', *Economic Analysis and Policy*, 78 (2023), 505-23, <https://doi.org/10.1016/j.eap.2023.03.020>

³⁸ Selamat Widodo and others, 'State Officials Asset Disclosure: Evidence from China', *Journal of Human Rights, Culture and Legal System*, 4.1 (2024), 54-74, <https://doi.org/10.53955/jhcls.v4i1.187>.

implement LHKPN as referred to in Article 2 of Law Number 28 of 1999 on Clean and Free State Administrators from Corruption, Collusion and Nepotism means a National Office in the National Supreme Council, a National Office in the National High Council, Ministers, Governors, Judges, other national officials following applicable legal provisions and, other officials who have strategic functions on state administrators following the requirements of applicable laws and regulations. The obligation of state administrators to report their assets is mandated by Article 5 of Law Number 28 of 1999 on Clean and Free State Administrators from Corruption, Collusion and Nepotism. In summary, the Organizer is obliged to:³⁹

- a. Willing to check his wealth before, during and after taking office.
- b. Report his wealth at first taking office, mutation, promotion and retirement.
- c. He announced his wealth.

Therefore, given that Indonesia ratified UNCAC in 2006, but until now, there has been no implementation of a specific regulation related to some acts that are considered corruption. In addition, corrupt practices in Indonesia are increasingly difficult to prevent because of the many modus operandi in corruption crimes. Thus, the application of Illicit Enrichment is essential in a special law so that the eradication of corruption can be carried out by taking preventive measures, as has been carried out in several countries that have implemented UNCAC.⁴⁰

3.7.3. Encourage Community Participation in Corruption Prevention.

The eradication of corruption must involve at least 11 institutional pillars of the national integrity system. The pillars include legislative, executive, judicial system, state auditor, ombudsman, public service, local government, media, private sector and international mechanisms. In addition to the above elements, the institutional pillars of the national integrity system also include independent anti-corruption bodies and civil society. Civil society can cover every lifeline and have the necessary networks to combat corruption. This is because civil society is usually the primary victim of corruption.⁴¹

However, civil society has an essential role in efforts to prevent and eradicate corruption, as expressly stipulated in Article 41 of Law No. 31 of 1999 on the Eradication of Corruption, which has been amended by Law No. 20 of 2001.⁴² In its implementation, the community has rights and responsibilities by adhering to the principles and norms of laws and regulations. In terms of community participation in preventing and eradicating corruption, it can be:

- a. Search, obtain, and provide information on suspected criminal acts of corruption;

³⁹ Yordan Gunawan, 'Arbitration Award of Icsid on the Investment Disputes of Churchill Mining Plc v. Republic of Indonesia', *Hasanuddin Law Review*, 3.1 (2017), 14–26. <https://doi.org/10.20956/halrev.v3i1.948>.

⁴⁰ Josef Mario Monteiro, 'Amendment of the Corruption Eradication Commission Act and Its Impact on the Constitution', *Jurnal Media Hukum*, 28.2 (2021), 184–93, <https://doi.org/10.18196/jmh.v28i2.10941>.

⁴¹ Rizal Fharuddin and Jefferson Hakim, 'Restorative Justice for Corruption Cases the Settlement of Corruption Cases: Is It Possible?', *Yuridika*, 38.1 (2023), 73–94, <https://doi.org/10.20473/ydk.v38i1.42511>.

⁴² Muhamad Haris Aulawi and others, 'Governing Indonesia's Plan to Halt Bauxite Ore Exports: Is Indonesia Ready to Fight Lawsuit at the WTO?', *Bestuur*, 11.1 (2023), 26–42. <https://doi.org/10.20961/bestuur.v11i1.69178>.

- b. Obtain services in finding and providing information on suspected criminal acts of corruption to law enforcement;
- c. Convey suggestions and opinions to law enforcement;
- d. Obtain answers to questions about the progress of reports that have been submitted to law enforcement; and
- e. Obtain legal protection for involvement in the case-handling process.

The 2003 UNCAC states that countries need to increase the active participation of individuals and/or community groups. Such participation is strengthened by actions to encourage:

- a. Transparency and public contribution to the decision-making process;
- b. Effective public access to information;
- c. Public information activities that give rise to non-tolerance towards corruption, as well as public education programs, including school and university curricula;
- d. Protection of the freedom to seek, receive, publish, and disseminate information about corruption; and
- e. Restrictions on freedom are only to the extent provided for in law and to the extent necessary, i.e., respect for the rights or good name of others, protecting national security or public order or public health or morals.

The role of civil society in encouraging governance in the natural resources sector occurs through four mechanisms: enabling access to information, the presence of civil society as moral legitimation, civil society participation to trigger democratization in managing natural resources, and as a supervisor to increase accountability.⁴³

4. Conclusion

Based on the explanation above, it is concluded that basically the existing law in Indonesia is still unable to overcome the problem of corruption, especially in terms of unlawful self-enrichment. Seeing that corruption cases of unlawful self-enrichment are increasingly difficult to overcome, Indonesia took steps by ratifying the International Convention or in this case the United Nations Convention Against Corruption (UNCAC) in 2006 as an effort to prevent corruption. Despite the intention to strengthen anti-corruption efforts in Indonesia, there are still inconsistencies in its implementation considering that the problem of corruption is included in extraordinary and serious crimes, so it can be overcome by cooperating internationally against corruption through UNCAC. To overcome this, strategic steps are needed in the future, such as making changes to corruption laws by including illicit enrichment provisions contained in Article 20 of UNCAC, institutional optimization, namely LHKPN through bureaucratic reform to increase accountability, and encouraging public participation. Therefore, these three steps are very important in implementing the illicit enrichment regulation in advancing the corruption eradication agenda in Indonesia in the future.

⁴³ Yordan Gunawan, Muhamad Haris Aulawi, and others, 'Command Responsibility of Autonomous Weapons under International Humanitarian Law', *Cogent Social Sciences*, 8.1 (2022), 2139906. <https://doi.org/10.1080/23311886.2022.2139906>.

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