

# STRENGTHENING LHKPN: PREVENTION OF ILLICIT ENRICHMENT IN EFFORTS TO ERADICATE CORRUPTION

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**Abstract.** *This research aimed to discuss State Organizer's Asset Report or Laporan Harta Kekayaan Pejabat Negara (LHKPN) problems due to the eradication corruption process in Indonesia. This research is normative legal research with a conceptual, historical, and statutory approach. From the research it can be seen that as an effort to prevent illicit enrichment carried out by state officials, it is necessary to strengthen the wealth reports of state administrators, namely by making changes to Law Number 28 of 1999, from collusion, corruption, and nepotism. related to the form and mechanism of the application of sanctions. The recommendation is the law on the Free Implementation of Corruption should be strictly regulated regarding severe administrative sanctions in the form of types of penalties, that directly impact the position of state administrators, and criminal sanctions for state officials who are indicated to have falsified their reporting.*

*Keywords: Illicit Enrichment; LHKPN; Corruption*

## I. INTRODUCTION

Indonesia has ratified the United Nations Convention Against Corruption (UNCAC) Convention 2003 which was ratified in Merida Mexico through Law Number 7 of 2006 concerning UNCAC Ratification. UNCAC Article 20 regulates the illicit enrichment of assets of public officials, which allows confiscation of assets if officials cannot explain the cause of the increase in assets related to their official income. Indonesian law does not yet have regulations associated with the mandate of Article 20 of UNCAC, this is because Article 20 of UNCAC is non-mandatory in nature, which means that there is no agreement among the convention participants to declare the act a criminal. The importance of illicit enrichment arrangements in Indonesian legislation because currently Indonesia is fighting corruption, which is an extraordinary crime and the lack of state administrators to report their assets, while many state administrators have wealth beyond the logic of income they receive while serving as state administrators (Indonesia Corruption Watch, 2014).

In article 8 paragraph (5) UNCAC states, "Each state party shall endeavor, where appropriate

and in accordance with the fundamental principles of its domestic law, to establish measure and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials". In principle, every country is obliged to pursue a system that requires public officials to report assets, investments including gifts that have the potential to create conflicts of interest (Al-Fatih, 2018). Indonesia has normalized the mandate of the UNCAC in Law Number 28 of 1999 concerning the Implementation of a State that is Clean and Free from Collusion, Corruption and Nepotism (hereinafter referred to as the Law on the Implementation of a State Free of KKN), which obliges every state administrator to be willing to have his assets examined before, during, and after taking office, as well as reporting and announcing his wealth before and after taking office.

State Organizer's Asset Report (hereinafter referred to as LHKPN) is closely related to the measurement of assets owned by state administrators resulting from legitimate sources of income. The LHKPN can be used as an initial source of information on illicit enrichment indications carried out by state officials so that it could potentially become a criminal act of corruption.

Weak regulations on the compulsion of LHKPN reporting are a factor in state administrators' non-compliance in not reporting LHKPN. As of March 31, 2020, as many as 297,105 of the 363,370 state administrators are required to report those who have submitted their assets reports. There are still 66,265 state administrators who are obliged to report their assets ([www.kpk.go.id](http://www.kpk.go.id), 2020). Acting Spokesperson for the Corruption Eradication Commission (KPK) Ipi Maryati Kuding explained that until the deadline for the submission of the LHKPN on April 31, 2020, of the 575 mandatory reports to the DPR RI institutions as many as 406 have reported and there are still 169 people who have not reported ([www.mediaindonesia.com](http://www.mediaindonesia.com), 2020).

Moreover, as mentioned before, UNCAC and Corruption Crime Act regulations were stated about the importance of reporting LHKPN. However, as mentioned before, 169 people who have not reported their LHKPN were not investigated, enforced or called by the police. So, it is true that the issue of non-compliance is something that needs attention. How illicit enrichment can be known if state officials do not report LHKPN will certainly make it difficult to disclose initial information on corruption. The absence of clarity and mechanisms for imposing sanctions on state administrators who do not comply in providing wealth reports is the focus of this paper, namely by presenting a formula for sanctions that is relevant to violations of LHKPN.

## **II. RESEARCH METHOD**

This research uses a normative research methodology (Irwansyah, 2020). The data is in the form of primary legal materials, namely materials that have legal force; secondary legal material in the form of books related to restorative justice; tertiary legal material in the form of a legal research journal that reviews the obligation of state administrators to report wealth. To get the right conclusions, the legal materials are analyzed using statutory analysis techniques with the behavior of state officials.

The approach used in this research is the statute approach by examining laws and regulations related to the obligation of state administrators to report wealth and the conceptual approach departs from the doctrines and views in legal science (Marzuki, 2017).

### **III. RESULTS AND DISCUSSION**

#### **LHKPN**

Asset Report of State Administrators or LHKPN is a report in printed form and / or other forms concerning the description and details of information regarding assets, personal data, including income, expenditure, and other data on assets of state administration. If further elaborated, assets are assets in the form of movable or immovable, tangible or intangible objects, including other rights and obligations that can be valued in money owned by state administrators and their wives / husbands and children who are still under the responsibility of state officials, either on behalf of a state official or other person, obtained before and while the state administrator holds his position (Peraturan Komisi Pemberantasan Korupsi Nomor 07 Tahun 2016 Tentang Tata Cara Pendaftaran, Pengumuman, Dan Pemeriksaan Harta Kekayaan Penyelenggara Negara, n.d.).

LHKPN is one of the KPK's legal products which is a means for the public to monitor how much assets a State administrator has from before taking office until finishing office so that it functions as a prevention of corruption in Indonesia. In principle, LHKPN has a dual role in terms of preventing and prosecuting corruption crimes. LHKPN as a social instrument to ensure the integrity of state administrators, instill honesty and cause fear to commit acts of corruption.

#### **Illicit Enrichment**

Illicit enrichment provisions are contained in article 20 UNCAC which expressly states that "subject to its constitution and the basic principles of its legal system, each State party may consider adopting legislative measures and other measures that may be necessary to establish a criminal offense. , if done intentionally, enriches illegally, that is, a significant increase in the assets of a public official that cannot be explained reasonably in relation to his legal income" (Hiariej, 2019). Another definition of illicit enrichment is the illegal act of self-enrichment carried out by public officials, in this case state officials, in the form of an increase in assets or wealth in a sufficiently large amount, where the acquisition of such wealth cannot be explained that it originates from legal income. (Yenti, 2012). In general, illicit enrichment is a concept of increasing wealth that is not appropriate (not in accordance with the source of its income) without being able to prove that the asset was obtained legally (Istiqomah, 2016).

The concept of illicit enrichment has not been implemented in Indonesia, this is considering that as already explained illicit enrichment as in UNCAC is non-mandatory offenses, which means that there is no agreement among the convention participants to declare the act a criminal, but the concept of proof is reversed and the confiscation of assets resulting from the action. corruption in Indonesia has been regulated in various laws. Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Corruption (hereinafter referred to as the PTPK Law) is not sufficient to become a legal umbrella in terms of seizing assets of state administrators who commit

acts of corruption. Therefore, an alternative illicit enrichment instrument in the form of impoverishing corruptors is a necessity that can be applied (Istiqomah, 2016).

To be able to apply illicit enrichment, several prerequisites are needed, namely improvement in LHKPN administration, because without strengthening it will be difficult to detect the presence of illicit enrichment (Indonesia Corruption Watch, 2014). The application of the illicit enrichment concept can be related to the obligation of State administrators to report LHKPN because compliance and honesty in LHKPN is one way of assessing the integrity and accountability of state administrators.

### **LHKPN in Indonesian Legislations**

LHKPN was enforced in Indonesia after the enactment of the Law on the Implementation of a KKN-Free State in 1999. Article 5 states that every State administrator is obliged to be prepared to be examined, report and announce his assets before, during and after taking office. In more detail, the LHKPN registration, announcement, and examination mechanisms are regulated in the Corruption Eradication Commission Regulation Number 7 of 2016 concerning Procedures for Registration, Announcement and Examination of Assets of State Administrators (hereinafter referred to as the KPK Regulation) (Peraturan Komisi Pemberantasan Korupsi Nomor 07 Tahun 2016 Tentang Tata Cara Pendaftaran, Pengumuman, Dan Pemeriksaan Harta Kekayaan Penyelenggara Negara, n.d.).

State administrators referred to in the Law on the Implementation of a KKN-Free State include state officials at the highest state institutions, state officials at high state institutions, Ministers, Governors, Judges, other state officials according to the provisions of the applicable laws, other officials who have strategic functions in relation to them (Haris & Al-Fatih, 2020). with state administration including Directors, Commissioners and other structural officers at State-Owned and Regional-Owned Enterprises, Management of Bank Indonesia, Heads of State Universities, Echelon I Officials, Prosecutors, Investigators, Court Clerks and Project Leaders and Treasurers.

LHKPN submission period is once a year for assets acquired from January 1 to December 31 and submitted no later than March 31 of the following year. For the management of LHKPN, the KPK Regulation stipulates that the KPK has the authority to carry out administrative verification of LHKPN, which includes the completeness of supporting evidence according to the filling in the form. Within two months of being declared complete, the KPK is obliged to announce it through electronic and non-electronic media (Cahyani & Al-Fatih, 2020).

In the framework of the support function for prosecution related to the need for confiscation of state financial loss recovery, the KPK has the authority to conduct LHKPN examinations that indicate illicit enrichment is an effort to enforce law, internal control and prevent corruption (Waluyo, 2014). Article 20 of the Law on Organizing a State Free of KKN states that every State administrator who violates the provisions of the obligation to report assets will be subject to administrative sanctions in accordance with the provisions of the applicable laws. However, in other implementing regulations related to violations of LHKPN there are no clear and real

sanctions. So that this becomes one of the factors causing state officials who neglect to report their assets. If we re-examine the importance of LHKPN in knowing the fairness of the acquisition of assets of state administrators, then the sanctions against violators should be strictly regulated.

Unfortunately, while the author search data for the potential development of unreported LHKPN comes to be money laundering crimes committed by corruptors, the data is empty. Any document can be accessed. How much is the state's financial loss, how much is the potential for corruption, the data is none and empty. It is necessary to regulate sanctions against LHKPN violations as an effort to strengthen the function of the LHKPN in the context of examining illicit enrichment which has the potential to become a criminal act of corruption. So that LHKPN does not tend to be a formality and without strict sanctions for state officials who do not report or are even dishonest in filling out LHKPN.

### **Alternative Formulation of Sanctions for LHKPN Violations by State Administrators**

In the criminal law system, criminal acts are divided into 2 groups, namely crimes and offenses. The two terms are in principle the same, that is, both are acts that can be punished (Samidjo, 1985). Violation is *overtredingen*, namely an act of violating something and related to the law, so that it can be said to be an act against the law (Prodjodikoro, 2003). Legal compliance is not only described about the presence of legal regulations but also human awareness which is governed by these legal regulations (Rahardjo, 2010).

The imposition of administrative sanctions in law enforcement against violations of the LHKPN as stated in article 20 of the KKN Free State Administration is the right and effective choice, considering that the substance of the Law on the Implementation of a KKN Free State is the scope of administrative law. However, the KPK as an institution that is responsible for managing LHKPN is not given the authority to take direct action against the perpetrators of violations, but instead submits / provides recommendations to the direct supervisor of each agency to impose sanctions in accordance with applicable regulations. This results in the absence of uniformity in imposing sanctions between one agency and another.

When reviewing the types of penalties in the form of administrative sanctions that can be imposed on State administrators, of course we are referring to Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as PP Government Administration) and Government Regulation Number 53 of 2010 concerning civil servant discipline (hereinafter referred to as PP Civil Servant Discipline). Article 81 of the Government Administration Law states that administrative sanctions are light, namely verbal warning, written warning, and postponement of promotion, class and other promotions. Administrative sanctions are in the form of forced payment and / or compensation, temporary dismissal by obtaining office rights, or temporary dismissal without obtaining the right to office. As well as heavy administrative sanctions in the form of dismissal but still obtaining financial rights and other facilities, permanent dismissal without obtaining financial rights and other facilities plus publication in the mass media, and obtaining permanent dismissal without financial rights and other facilities and being published in the mass media (Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan, n.d.).

Violation of the LHKPN reporting provisions can also refer to the PP Discipline for Civil Servants which stipulates that a State Civil Apparatus (ASN) is obliged to comply with all provisions of laws and regulations (Peraturan Pemerintah Nomor 53 Tahun 2010 Tentang Disiplin PNS, n.d.). The level of disciplinary punishment for this type of offense if it has a negative impact on the work unit is moderate discipline in the form of a) verbal warning; b) written warning; c) a written statement of dissatisfaction. Meanwhile, if it has a negative impact on the institution, a moderate level of punishment can be sentenced in the form of a) delaying periodic salary increases for one year; b) postponement of promotion for one year; c) demotion one year lower. The levels of harsher penalties include a) one-degree lower demotion for three years; b) transfer in the context of a lower level demotion; c) release from office; d) honorific dismissal not at his own request as a civil servant; and e) dishonorable discharge as a civil servant, if the violation has a negative impact on the government and / or state (Peraturan Pemerintah Nomor 53 Tahun 2010 Tentang Disiplin PNS, n.d.).

The imposition of such disciplinary penalties cannot necessarily be imposed on perpetrators of violations, not only because state administrators are required to not all report LHKPN as civil servants but also because there are no clear and explicit provisions in the Law on the Implementation of a KKN Free State and the KPK Regulations regarding the mechanism for implementing sanctions (Thalib, Rahman, & Semendawai, 2017). The lack of regulations regarding sanctions for LHKPN violations makes it difficult for direct superiors to enforce the law.

Given the importance of LHKPN to eradicate corruption, there are still state administrators who are negligent of the LHKPN obligations. Alternative administrative sanctions as in the Government Administration Law and PP on Civil Servant Discipline do not seem to have a strong impetus in increasing compliance with state administrators.

Sanctions should have a deterrent effect on the perpetrators, therefore sanctions against administrators who neglect to convey LHKPN should be formulated more firmly in the Law on the Implementation of the KKN-Free State (Ulum, 2013), for example sanctions in the form of withdrawal of favorable decisions related to their position as state administrator, temporary exemption from office , or a reduction in the performance allowance for a specified period. In addition to administrative sanctions, criminal sanctions need to be applied if a State administrator is not honest in providing information regarding acquiring his wealth, which means that there are indications of document falsification by state administrators. Regulations regarding who is authorized to impose sanctions also need to be adjusted according to the position occupied by the perpetrator of the violation, for example the minister by the president, the chancellor of higher education by the minister. Thus, the legal vacuum in terms of the form of sanctions and the mechanism for imposing sanctions in violations of the LHKPN can be resolved.

#### **IV. CONCLUSION**

Based on the discussion that has been described, it can be formulated that basically the state through the KPK has made various efforts in a national strategy to accelerate the eradication of

corruption, one of which requires every state administrator to report his assets. However, because it is not supported by clear and clear sanctions, the state administrators have the potential for neglect or neglect. Provisions in laws and regulations that contain prohibitions and orders or necessities will experience difficulties in enforcing the law if they are not accompanied by sanctions. The mechanism for administering administrative sanctions is believed to have a deterrent effect, but because it is not clearly regulated in the Law on the Free Implementation of KKN, it causes the difference between one agency and another. Given the importance of LHKPN in efforts to prevent corruption, the Law on the Free Implementation of KKN should be strictly regulated regarding severe administrative sanctions in the form of types of penalties that have a direct impact on the position of state administrators, and criminal sanctions for state officials who are indicated to have falsified their reporting.

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