CRIMINAL LIABILITY OF PUBLIC OFFICIALS FOR ILLICIT ENRICHMENT: COMPARING APPROACHES OF THE USE OF INDIRECT METHODS OF PROOF IN INVESTIGATING ILLICIT ENRICHMENT IN INDONESIA AND THE U.S.[1]

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Abstract

In recent years, the international community has come to recognize the power of investigating illicit enrichment for uncovering corrupt offenses. The Inter-American Convention Against Corruption (IACAC) and the United Nation Convention Against Corruption (UNCAC) are two international conventions that address the issue of illicit enrichment. Indonesia, as a signatory of the UNCAC, does not criminalize illicit enrichment as the UNCAC recommends, but it does require public officials to submit financial disclosures, which may be used by the Indonesian Corruption Eradication Commission (KPK) to strengthen the evidence in corruption prosecutions. This system has not worked, however, because there is no criminal or civil prosecution for failing to file financial disclosures, or for giving false statements within those disclosures; further, there is no specific methods of proof to use in investigations. As a result, there has been significant debate over whether Indonesia should criminalize illicit enrichment, consistent with the recommendation of the UNCAC. Part of the debate centers on concerns about the rights of defendants and the threat of individual rights regarding presumption of innocence. Drawing from the U.S. approach to investigations in tax evasion and financial disclosure cases, this paper recommends that Indonesia avoid criminalizing illicit enrichment, and instead establish civil and criminal prosecution of financial disclosure system for fail to file and give false information, and incorporate indirect methods of proof for illicit enrichment investigation that may find evidence to strengthen corruption prosecutions.

***Keywords**: Illicit Enrichment, corruption eradication, prosecution,*

I. INTRODUCTION

Corruption, as a type of white collar crime, has been evolving into a sophisticated enterprise, making direct evidence hard to find by any legal apparatus. The international community has responded to this situa-

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tion by proposing that governments look to illicit enrichment of public officials as a "yellow flag" that a corrupt offense has happened. For instance, the Inter-American Convention against Corruption (IACAC) requires signatory parties to criminalize illicit enrichment;[2]

Meanwhile, the United Nations Convention against Corruption (UNCAC) provides a non-mandatory provision for signatory states to consider criminalizing illicit enrichment of public officials.[3]There have been varied responses from signatory parties. While a number of countries have enacted domestic laws to criminalize illicit enrichment, others have established alternative systems to address this issue. This article examines the latter. Consistent with these alternative approaches, Indonesia does not criminalize illicit enrichment of public officials. It has established a financial disclosure system under the corruption eradication regime, where public officials have to file financial disclosure statements to the Indonesian Corruption Eradication Commission (KPK).[4] This commission has authority to register and investigate disclosure statements;[5] findings from this investigation may be used to strengthen the prosecution of corruption. In fact, this system has not successfully performed for several reasons. The first reason is Indonesian laws do not provide criminal and civil prosecution for failing to file and to give false statements.[6] Further, there are no specific methods of proof that may be used by the KPK to investigate illicit enrichment evident in the

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[2] Organization of American States, Inter American Convention Against Corruption [IACAC] art. IX, Marc 29, 1996, *reprinted in* 35 I.L.M. 724 (1996), *available at* http://www.oas.org/juridico/english/treaties/b-58.html.

[3] United Nations Convention Against Corruption [UNCAC], Dec. 14, 2005, 2349 U.N.T.S 41, *available at* http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

[4] *See* Undang-Undang tentang Pemberantasan Tindak Pidana Korupsi [Combating Corruption Act], Act. No. 31, 1999 jo. Act. No 20, 2001, art. 37; Undang-Undang Undang-Undang tentang Penyelenggara Negara yang Bersih dan Bebas Korupsi [Clean-State Act], Act. No. 28, 1999, art. 71.

[5] *Ibid*

[6] *Ibid*

statements.[7]Consequently, many public officials have failed to file their financial disclosure statements, and for those who do register financial disclosure statements that reflect possible illicit enrichment, the KPK has not followed with investigations.[8] Further, the KPK has to rely on direct evidence to investigate and prosecute corruption—evidence that is difficult to come by.

Like Indonesia, the U.S. does not criminalize illicit enrichment of public officials, but it has been using an alternative method—establishing criminal and civil prosecution for financial disclosure statements and using tax evasion prosecution in conjunction with other charges like corruption.[9] Specifically, in investigating illicit enrichment under tax evasion prosecution, the U.S. investigators examine tax-payers' claims by comparing actual wealth with tax reports, using indirect methods of proof, such as net worth,[10] bank deposit,[11] expenditure,[12] and cash[13]methods, In light of the U.S. approach, this paper claims that the Indonesian government should consider to establishing criminal and civil prosecution for financial disclosure and implement indirect methods of proof, such as the net worth, bank deposit, expenditure, and cash methods.

First, this paper describes the problem of corruption in Indonesia,

[7] *Ibid*

[8] *See* KPK, *Wajib Lapor LHKPN* [Public Officials Who Are Obligated to File Financial Disclosure Statements], ACCH http://acch.kpk.go.id/wajib-lapor-lhkpn (last visited May 22, 2014).

[9] Department of International Law the Organization of American States, Signatories and Ratifications B 58: Inter- American Convention Against Corruption,[hereinafter Reservation to IACAC] http://www.oas.org/juridico/english/sigs/b-58.html (last visited May 22, 2014)

[10] *See* Internal Revenue Manual 9.5.9, .9.5.9.5 The Net Worth Method of Proof (hereinafter Internal Revenue Manual 1), *updated* March 19, 2012 *available* at http://www.irs.gov/irm/part9/irm_09-005-009.html.

[11] *See* Internal Ravenue Manual 9.5.9 Methods of Proof, 9.5.9.7 Bank Deposits Method of Proving Income (hereinafter Internal Revenue Manual 2), *Updated* November 5, 2004, *available at* http://www.irs.gov/irm/part9/irm_09-005-009-cont01.html.

[12] *See* Internal Revenue Manual 9.5.9 Methods of Proof, 9.5.9.6. Expenditures Method of Proving Income (Internal Revenue Manual 3), updated November 5, 2004, *available at* http://www.irs.gov/irm/part9/irm_09-005- 009.html#d0e1812.

[13] *See* Internal Revenue Manual 9.5.9 Methods of Proof, 9.5.9.8 Cash Method of Proving Income (Internal Revenue Manual 4), updated November 5, 2004, *available at* http://www.irs.gov/irm/part9/irm_09-005-009-cont01.html.

the Indonesian laws governing corruption along with Indonesian legal apparatus approach in investigating illicit enrichment. Next, it elaborates on the problem of corruption in the U.S. along with the explanation of U.S. laws governing corruption and investigating illicit enrichment. This paper then analyzes what Indonesia can learn from the U.S. approach, recommends how to establish an illicit enrichment investigation reform in Indonesia, and gives solutions to overcome some possible obstacles to reform.

II. THE INTERNATIONAL LEGAL FRAMEWORK OF ILLICIT ENRICHMENT

A. OBLIGATION TO CRIMINALIZE ILLICIT ENRICHMENT

In general, the international framework, including the Inter-American Convention on Corruption and the United Nations Convention against Corruption, require or recommend criminalization of illicit enrichment. These conventions define illicit enrichment as an increasing of wealth that cannot be traced to legal income.[14] These increases in wealth are sometimes particularly challenging to investigate because they result from corruption, which may involve public actors who transfer money overseas and outside the jurisdiction of their countries of origin. This corrupt activity is well illustrated by recent data showed in a meeting of the Second Committee of the General Assembly of the United Nations where a Nigerian representative stated that about $400 billion was transferred overseas from African countries. [15]Similarly, from the mid-1990s to 2008, a leak from the People's Bank of China revealed that corrupt officials sent $120 billion from China.[16] Within the Americas, The TI reported more than $2 million of Plan Columbia funds were stolen and reported taken by more than twenty corrupt Colombian Officers.[17] Notably, investigating the overseas accounts of public officials on those cases has never been easy because of the lack

[14] *See* Organization of American States, *supra* note 1; United Nations, *supra* note 2.
[15] Ndiva Kofele-Kale, *Presumed Guilty: Balancing Competing Rights and Interest in Combating Economic Crimes*, 40 INT'L LAW. 909, 935 (2006).
[16] Margaret K. Lewis, *Presuming Innocence, or Corruption in China*, 50 COLUM. J. TRANSNAT'L L. 287, 290 (2012).
[17] Luz Estella Nagle, *The Challenges of Fighting Global Organized Crime in Latin America*, 26 FORDHAM INT'L L.J. 1649, 1686 (2003).

of transparency in many worlds' financial systems.[18]

Even though illicit, enrichment has been recognized as a serious problem, before the 1960s there was no significant law enforcement system to respond to it. Indeed, gaining suspicious wealth at that time was not a criminal offense, and without direct evidence of involvement in a corrupt scheme, a prosecution of a public official would be unlikely. Eventually, in 1960s, a Congressman in Argentina named Rodolfo Corominas Segura proposed a bill to prosecute public officials who could not reasonably explain their increasing wealth.[19] Although, the exact proposed bill has never been approved, the idea inspired several bill proposals with the same concern in 1964.[20]

Meanwhile, India established the Prevention of Corruption Act in 1988 that defines unknown sources of income as "income received from any lawful source, and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant." In addition, unlike Segura's proposal, India's new law included the illicit enrichment of public officials as an offense of criminal misconduct in which imprisonment not less than one year or may be extend to seven years shall be imposed to a public official who commit this crime.[21]

Afterwards, several regional and international anti-corruption conventions were established and setup specific requirements to respond illicit enrichment of public officials. The Inter-American Convention against Corruption (IACAC) is recognized as the first convention that defines and requires signatory parties to criminalize the illicit enrichment of public officials.[22] Since first introduced in 1996, this convention has been ratified by 34 countries.[23] The purpose of this Convention is

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[18] Kofele-Kale, *supra* note 14, at 937

[19] LINDY MUZILA ET ALL, ON THE TAKE: CRIMINALIZING ILLICIT ENRICHMENT TO FIGHT CORRUPTION 8 (2012).

[20] *Id*

[21] The India Prevention of Corruption Act No. 48 of 1988, Chapter III: Offences and Penalties, Point 13, September 9, 1988, *available at* http://www.persmin.gov.in/DOPT/EmployeesCorner/Acts_Rules/PCAct/pcact.pdf (last visited May 5, 2014).

[22] *Background*, ORGANIZATION OF AMERICAN STATES, SECRETARIAT OF LEGAL AFFAIRS, DEPARTMENT OF LEGAL COOPERATION, http://www.oas.org/juridico/english/corr_bg.htm (last visited May 22, 2014).

[23] *Ibid*

to prevent and prosecute transnational bribery and illicit enrichment of public officials.[24]

Specifically, Article IX defines illicit enrichment as "a significant increase in the assets of a public official in which he cannot reasonably explain in relation to his lawful earnings during the performance of his function."[25] Moreover, this Article requires a state party to establish laws that acknowledge illicit enrichment as a corrupt offense.[26] This convention includes the illicit enrichment requirement in its mandatory provisions for the signatory states, yet there is no further explanation how to develop any methods of proof and possible punishment for this type of offense.[27] Eight years after the establishment of the IACAC, the UN introduced of the United Nations Convention against Corruption (UNCAC) as a universal tool to combat corruption. Like the IACAC, this international legal framework provides comprehensive standards, measures, and rules to combat corruption.[28] The idea to criminalize the illicit enrichment of public officials was also introduced. The UNCAC defines illicit enrichment, in Article 20, as "a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income."[29] Unlike the IACAC which provides mandatory requirements to signatory states to criminalize the illicit enrichment of public officials, the UNCAC recommends the criminalization of public officials' illicit enrichment in non mandatory provisions which only require signatory states to consider regulating illicit enrichment as a corrupt offense.[30]

In addition, the United Nation on Drugs and Crime (UNODC) published legislative guide for the implementation of UNCAC. Particularly, this guidance paper mentions to implement Article 20, first, state parties have to incorporate article with Articles 26-30 and 42. In brief, those articles require the signatory parties to establish laws that include the liability of main actor or principal, accomplice, assistant, or investi-

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[24] *Ibid*
[25] IACAC *supra* note 1, art. IX.
[26] *Ibid*
[27] *Ibid*
[28] Foreword of UNCAC, *supra* note 2
[29] *Ibid*, Art 20
[30] *Ibid*

gator of an offense in criminal, civil, or administration jurisdiction that make them may be punished by criminal and monetary sanction; the element of an offence consists of knowledge, intent, and purpose; a long statute of limitation period of allegation may be evaded by administration of justice; the Commission of offense, immunities or jurisdictional privileges, judicial exercise of any discretionary legal powers related to corruption prosecution, gravity of the offences in relation with early release or parole, administrative procedures (suspension, reassign, removal) for a public official who is charged with an offense may respect the principle of the presumption of innocence and re-engagement of convicted person to society.[31]

Next, signatory states must establish investigation of illicit enrichment, creating a method of proof. Specifically, as this article mentioned earlier, illicit enrichment may be recognized as criminal offence under the Convention, but it is not a prima facie proof of corruption.[32] Therefore, methods of proof are needed in the investigation. Specifically, many signatory states have applied manifestation of presumption of innocence by giving the defendant the right to give a reasonable explanation of the increase of his or her wealth, but still the burden of proof remains on the prosecutor.[33] Regardless, the guidance explains what steps need to be established, and how some signatory states have criminalized illicit enrichment. Nevertheless, it offers no further explanation about what tools can be used in investigating illicit enrichment or to what extent prosecutors must prove the enrichment relates to corruption.[34]

B. CHALLENGES TO CRIMINALIZE ILLICIT ENRICHMENT

While the IACAC and the UNCAC recognize illicit enrichment by public officials as a universal critical issue, there are several further questions that are not covered by those conventions. Six years after the UNCAC was established, the UNODC and the World Bank released a

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[31] United Nations on Drugs and Crime (UNODC), Legislative Guide for the Implementation of the UNCAC 103 (2006), *available at* https://www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf.
[32] *Ibid*
[33] *Ibid*
[34] *Ibid*

research report that gives further guidance on illicit enrichment of public officials under the UNCAC.[35] This report explains to monitor public officials wealth, the government has to spend more energy to establish financial disclosure statement system.[36] That challenging task, however, may be supported by countries experience in prosecuting money laundering. While, in money laundering, the report explains there is no need to prove the underlying crimes, this proof is needed to prosecute illicit enrichment, but the government is not obligated to find the origin of money."[37] Using those approaches, the prosecution must prove that the enrichment in question did not come from legal income sources that establish "the presumption that the enrichment is the proceeds of corruption."[38] In turn, the defendant may defend against this presumption by presenting evidence that the enrichment came from illegal income sources; if the defendant fails to do so, then the presumption leads to a conviction, and the defendant is liable for penalties.[39]

In addition, the UNODC and the World Bank interpretations of the implementation of due process rights are more flexible, especially when it comes to public interest. Indeed, the report mentions several signatory parties' experiences in incorporating the need to protect due process rights with the public interest to combat corruption.[40] Since the 1960's, several countries have enacted laws to criminalize this offense such as Argentina, Hong Kong, Brunei Darussalam, Colombia, Ecuador, the Arab Republic of Egypt, the Dominican Republic, Pakistan, and Senegal have enacted laws governing the prosecution for the illicit enrichment of public officials.[41]

Again, there is no doubt, all of signatory states of the IACAC and the UNCAC support and show their commitments to combat corruption, but there has been a considerable debate within the State Parties related to the risk of violating civil rights by criminalizing illicit enrichment of

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[35] LINDY MUZILA, *supra* note 16 at 8
[36] *Ibid*, p 7-8
[37] *Ibid*
[38] *Ibid*
[39] *Ibid*
[40] *Ibid*, p. 32
[41] *Ibid*, p. 8

public officials. The U.S., as a pioneer in combating corruption,[42] has decided not to be bound by the mandatory requirement of the IACAC and non-mandatory provision of the UNCAC about illicit enrichment.

Specifically, in the U.S.'s reservations to the IACAC, it is stated that the U.S. has already regulated the obligation of senior-level public officials in federal institutions to submit financial disclosure statements as subject to criminal penalties, as well as the prosecution of public officials who evade taxes of their increasing income.[43] Moreover, the U.S. reservations maintain that putting the burden of proof on defendants, who cannot reasonably prove that their enrichment came from lawful sources, violates due process under the U.S. Constitution and fundamental principles of the U.S. legal system.[44] As to the UNCAC, the U.S. reserves under special circumstances, that the state and federal laws will not be enough to satisfy the obligations under Chapters II and III of the Convention—in which the illicit enrichment provision is stated.[45]

Indonesia is also a signatory state party for the UNCAC, but it only reserves Article 66 in which it is not bound by Article 66 paragraph 2.[46] Indonesia argues that parties to disputes over interpretation or application of the Convention must consent to the jurisdiction of the International Court of Justice.[47] Even though Indonesia is still open to implementing Article 20, until now like the U.S., Indonesia does not criminalize illicit enrichment. There has been a heated discussion

[42] The US is the first country that criminalized foreign bribery by the establishment the Foreign Corrupt Practices Act (FCPA) in 1977. *Foreign Corrupt Practices Act*, THE UNITED STATES DEPARTEMENT OF JUSTICE, http://www.justice.gov/criminal/fraud/fcpa/ (last visited May 5, 2014).

[43] Department of International Law the Organization of American States, *supra* note 8.

[44] *Ibid*

[45] The US reservation also mentions this Convention will not influence in any respect the US cooperation with other State Parties. This country is not bound by Article 66 paragraph 2 with the same reason as this country mentions for the UNTOC's reservation. The US reservation to UNCAC is the same with its reservation to UNTAC, in sense that the UNCAC shall be applied under the federalism legal framework. Specifically, for corrupt offenses under this Convention, but within states jurisdiction then the state laws are applied. Moreover, state does regulate the laws that are compliance with the obligations on preventive measures in the Convention; however they may work in a different manner. UNCAC, *supra* note 2.

[46] *Ibid*

[47] *Ibid*

whether or not Indonesia criminalizes illicit enrichment. On the one hand, Indonesia needs to make an extraordinary effort to combat corruption by criminalizing illicit enrichment, suggesting approach like those already been taken in countries like Argentina and the U.K.; on the other hand, Indonesia has remained committed to protect defendant's right of presumption of innocence.

The U.S. reservations to both conventions have undermined several fundamental theories of human rights and criminal prosecution. First, criminalizing public officials who cannot reasonably prove their illicit enrichment came from legal sources would likely violate the due process rights guaranteed by the fifth amendment of U.S. Constitution in which an accused person be presumed innocent until proven guilty.[48] The presumption of innocence is shown by putting the burden of proof to prosecutors who present "material element of the offense beyond a reasonable doubt."[49] Although a defendant can defense, this application of burden of proof "cannot constitutionally be shifted to the defendant."[50]

Again, illicit of enrichment does not constitute a prima facie case of corruption, and it is difficult to say whether a government may prosecute a public official just because he or she gained and later could not explain it; thus, the U.S. prefers prosecute tax evasion as a way to investigate illicit enrichment. In tax evasion, showing that taxpayers who are being enriched are punished because they are avoiding taxation—not because they have been personally enriched. They violate the law by trying to hide their enriched wealth from the tax system along with public officials who failed or gave false information in their financial

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[48] Lucinda A. Low et. al., *The Inter-American Convention against Corruption: A Comparison with the United States Foreign Corrupt Practices Act*, 38 VA. J. INT'L L. 243, 281-82 (1998). See fifth amendment of the US constitution, as written:
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
U.S. CONST. amend. V.

[49] Lucinda A. Low et. al., *supra* note 54 at 281-82 (1998).

[50] *Ibid*

disclosure statement.[51] Evidence found in tax evasion crime and financial disclosure violation may be used to investigate possible predicate crimes, such as corruption, drug crime.

This sub-section shows that although it is critical to respond illicit enrichment of public officials, it has never been easy to figure out the best way to balance the public interest with protection of individual rights. Since Article 20 of the UNCAC is a non-mandatory provision, each signatory state has its own preference. Signatory states that prefer not to criminalize illicit enrichment, such as Indonesia and the U.S., use the illicit enrichment of public officials as a tool to investigate the corrupt offense itself.

III. INDONESIAN CRIMINAL JUSTICE SYSTEM IN INVESTIGATING ILLICIT ENRICHMENT

Since reformation 1998, Indonesia has been tremendously developed in many aspects. It has a new constitution that governs the more protection of human rights, the clearer separation of powers, along with the establishment of laws and new agencies to handle citizens' needs.[52] In addition, the Indonesian economy has been growing stronger and expanding its markets rapidly. Sadly, this improvement has not yet supported by bureaucracy reform—it seems whatever the "cover" there is still the same "body."[53]

Indeed, according to PUKAT Korupsi, corruption is pervasive almost in every sector from the highest to lowest level public offices. This corruption has worsened because judicial institutions have been affiliated with the mafia; therefore, although Indonesia established Undang-Undang Nomor 28 Tahun 1999 (Clean State Act), Undang-Undang Nomor 31 Tahun 1999 jo. Undang-Undang Nomor 20 Tahun 2001 (Corruption Act), the judicial institutions have performed poorly when

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[51] Reservation to IACAC, *supra* note 8.

[52] Adnan Buyung Nasution, *Reformasi Konstitusi di Indonesian* [Constitutional Reform in Indonesia], HUKUM ONLINE, http://www.hukumonline.com/berita/baca/hol4057/reformasi-konstitusi-di-indonesia (last posted November 1, 2001)

[53] Iqra Anugrah, *Indonesia Long Journey toward Democracy*, GLOBAL POLITICS, http://www.global- politics.co.uk/issue9/iqra/ (last visited May 22, 2014).

it comes to combatting corruption.[54]

In 2001, Indonesia passed Undang-Undang Nomor 30 Tahun 2001 (hereinafter KPK Act) to establish the Indonesian Corruption Eradication Comission (hereinafter KPK) and the Special Court of Corruption (hereinafter Pengadilan Tipikor). Interestingly, instead of taking over investigation and prosecution of corruption from Indonesian National Police (hereinafter Kepolisian) and Indonesian Attorney General (hereinafter Kejaksaan), under this act, the Kepolisian and the Kejaksaan still have authority to investigate and prosecute corruption.[55] In addition, the government took broader steps to combat corruption by enacting Undang-Undang Nomor 25 Tahun 2003 jo. Undang-Undang Nomor 8 Tahun 2010 (hereinafter Money Laundering Act) along with the establishment of Indonesian Financial Intelligent (hereinafter PPATK). The collaboration between the KPK and the PPATK has brought many "big fish" to court. In contrast, the Kepolisian and the Kejaksaan performance has not mached the success of the KPK and the PPATK.[56]

Notably, the performance of the KPK and the PPATK has depended on direct evidence, in which these institutions monitor suspicious persons and transactions;[57] however as this paper noticed in the first subsection, often in many corruption cases, legal apparatus could not find any

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[54] During July 2012-June 2013, ICW noted there were 753 cases which most of the defendants got low sentences: probations for four defendants, one-year imprisonment for 185 defendants, one-two years imprisonment for 167 defendants, two-five years for 217 defendants, five-ten years for 35 defendants, 10 years above for ten defendants. Upon stages in the trials, 143 defendants was freed to leave. See Indonesia Corruption Watch - Yayasan Lembaga Bantuan Hukum Indonesia- PUKAT UGM, *Implementasi dan Pengaturan Illicit Enrichment (Peningkatan Kekayaan Tidak Sah) di Indonesia* [Implementation and Regulation of Illicit Enrichment in Indonesia] 26 (published November 2013).

[55] *See* Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan [Prosecutor Act]; Penjelasan Umum [General Explanation]; Undang-Undang tentang Komisi Pemberantasan Korupsi [KPK Act], art. 6, Act. No. 30, 2002.

[56] Saldi Isra, *Seratus Hari Tanpa Kejutan [100 days Without Any Surprises]*, ANTI KORUPSI, http://www.antikorupsi.org/id/content/seratus-hari-tanpa-kejutan (published January 28, 2005).

[57] Bunga Manggiasih, Tuduh Ibas, *Anas Urbaningrum Diminta Tunjukan Bukti* [Accussed Ibas, Anas Urbaningrum Is Ask for Evidence TEMPO.CO (Jan. 30, 2014), http://www.tempo.co/read/news/2014/01/30/063549489/Tuduh-Ibas-Anas-Urbaningrum-Diminta-Tunjukkan-Bukti

direct evidence. For instance, we have been noticing many public officials are getting suspiciously enriched, but they might not be directly involved in a corrupt scheme.[58] To this situation, direct trapping would not be worked. Actually, Indonesia has established obligation to public officials to submit their financial disclosure statement in the Clean-State Act and the KPK Act.[59] As the consequences of failure to prove income enrichment came from legal sources, the government may be used the evidence to strengthen the evidence on corruption prosecution; [60] however there is no civil and criminal prosecution for a public official who fails or gives false information, along with the lack of method investigation.[61]

As a result, many public officials do not comply with the obligation to submit financial disclosure and there is no civil and criminal prosecution for public officials that have been indicated suspiciously enriched. For instance, in 2013, the mass media reported Edhie Baskoro Yudhoyono, a former lawmaker and the son of President of Indonesia, gained incredible enrichment during the Asian Games projects, activities that landed many of his colleagues in jail.[62]

People were persuaded that Edhie was involved in these activities because of the way the news exposed how his annual incomes and assets did not match; for example, his new house was valued at seven times his annual income per year (an unusual and untenable disparity).[63] Later, he claimed his bakery corporation had been successful enough to enable him to buy that house; however, his records suggested otherwise.[64] Despite his privilege as member of Presidency family, it has been noticed the KPK and the PPATK have lack of direct evidence to

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[58] Legislative Guide for the Implementation of UNCAC at 103.
[59] KPK Act art. 13
[60] Combating Corruption Act, *supra* note 3, art. 37
[61] *Ibid*
[62] Kartika Chandra, *Ibas Bantah Terima Duit Wisma Atlet* [Ibas Urgued He Didn't Receive Money From Wisma Atlet Scandal], TEMPO.CO (Dec. 21, 2011), http://www.tempo.co/read/news/2011/12/08/063370596/Ibas-Bantah-Terima- Duit-Wisma-Atlet
[63] Rendi A. Witular & Hans David Tampubolon, *First Family Tax Returns Raises Flags*, THE JAKARTA POST (January 30, 2013), http://www.thejakartapost.com/news/2013/01/30/first-family-tax-returns-raises-flags.html.
[64] Oki Baren, *Bisnis Cantik Mas Ibas* [Ibas's Fancy Business], GRESNEWS (Dec. 5, 2011), http://gresnews.com/berita/somasi/1740512-bisnis-cantik-mas-ibas.

bring him to corruption prosecution.[65] In addition, the KPK does not have any indirect methods of proof to investigate his illicit enrichment or to tie the enrichment to possible corrupt offenses.[66]

Local public officials are also being tied up with illicit enrichment from corrupt offenses. For example, Ratu Atut Chosiyah, Former Governor of Banten, was recently prosecuted by the KPK bribery charge in Lebak Local Election.[67] The KPK has indicated Chosiyah was the mastermind of this case[68] because she gave instruction to her brother, Tubagus Chaery Wardana to bribe the Head of Indonesian Constitutional Court, Akhil Mochtar, in order to help her colleagues win the election.[69] Besides her involvement in this case, people have long suspected that she was tied up with corruption because of her extravagant lifestyle.[70] During 2011-2012, she traveled to many countries to purchase high end brands of women bags and shoes, such as, Hermes and Daikokuya.[71] These choices and purchases became more suspicious because she has not filed financial disclosure statement for seven years, though the KPK has sent her a couple of formal notices. [72]

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[65] Indra Akuntono, *KPK Akan Panggil Ibas Asalkan* [KPK Would Arrest Ibas With Special Circumtances], KOMPAS.COM (DEC. 12, 2013). http://nasional.kompas.com/read/2013/12/12/1346464/KPK.Akan.Panggil.Ibas.asalkan.

[66] Combating Corruption Act, *supra* note 3, art. 37

[67] Oki Baren, *supra* note 71; *See*, *KPK Arrests Banten Governor*, THE JAKARTA POST (Dec. 20, 2013), http://www.thejakartapost.com/news/2013/12/20/kpk-arrests-banten-governor.html.

[68] Gusti Sawabi, *Perintah Menyuap Akil Mochtar Diduga dari Ratu Atut Chosiyah* [Order to Bribe Akhil Mochtar Was Suspected Came From Ratu Atut], TRIBUN NEWS (Oct. 7, 2013), http://www.tribunnews.com/nasional/2013/10/07/perintah-menyuap-akil-mochtar-diduga-datang-dari-ratu-atut- chosiyah.

[69] *Ibid*

[70] Wayan Agus Purnomo & Angga Sukma Wijaya, *Soal Belanja Mewah Ratu Atut*, *Ini Kata Keluarga* [Related to Shopping Life Style, Here Is What The Atut's Family Thinks], TEMPO.CO (Nov. 4, 2013), http://www.tempo.co/read/news/2013/11/04/063526888/Soal-Belanja-Mewah-Ratu-Atut-Ini-Kata-Keluarga.

[71] *Terungkap, Ratu Atut Kerap Belanja Keliling Dunia* [Uncovered Ratu Atut Often Goes Shopping Overseas], Tempo.co (Nov. 4, 2013), http://www.tempo.co/read/news/2013/11/04/063526886/Terungkap-Ratu-Atut-Kerap- Belanja-Keliling-Dunia.

[72] Silvanus Alvin, *7 Tahun Tidak Lapor Kekayaan, Harta Ratu Atut Meningkat* [Seven Years Ignored to File Financial Disclosure Statement, Atut Has Gained Enrichment], LIPUTAN 6 (Oct. 12, 2013), http://news.liputan6.com/read/718485/7-tahun-tidak-

Like the executive and legislative branches, public officials in judicial institutions have also led extravagant lives. A few months ago, Nurhadi, Secretary of Supreme Court, has made public attention by his daughter exclusive wedding ceremony in which he gave 2500 iPods to the guests—an estimated cost of 700 million rupiahs ($70,000).[73] In the previous year, he bought an office table for about 1 billion rupiahs ($100,000) and a fancy house in Senayan City, Jakarta.[74]

Like Atut, Nuhadi has not complied with the financial disclosure statement obligation for the past three years.[75]

In light of these stories of excess and indulgence, scholars and the KPK have been discussing whether Indonesia needs to change its approach to criminalize illicit enrichment or to find a different way to respond illicit enrichment.[76] In fact, the PPATK proposed a new bill about asset forfeiture that would give prosecutors authority to take unexplained wealth from public officials, but not giving criminal sanction unlike the UNCAC's requirement.[77] The PPATK was inspired by the im-

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lapor-kekayaan-harta-ratu-atut- meningkat#sthash.n5ouE73t.dpuf.See Edwin Firdaus, *KPK Himbau Ratu Atut Segera Laporkan LHKPN* [KPK Recommends Ratu Atut to File Her Financial Disclosure], Tribun Sumsel (Oct. 6, 2013), http://sumsel.tribunnews.com/2013/10/06/kpk-himbau-ratu-atut-segera-laporkan-lhkpn.

[73] Rina Atriana, *Gelar Resepsi Mewah*, *Sekretaris MA Nurhadi Belum Lengkapi Laporan Kekayaan* [The Secretary of Supreme Court Ignored to File Financial Disclosure Statement for Three Years], DETIK.CO (March 18, 2014), http://news.detik.com/read/2014/03/18/065203/2528677/10/gelar-resepsi-mewah-sekretaris-ma-nurhadi-belum- lengkapi-laporan-kekayaan.

[74] Abdul Qodir, *Rumah Nurhadi Terbesar di Dekat Senayan City* [Nurhadi Has The Biggest House in Senayan City], Tribun News (March 18, 2014), http://www.tribunnews.com/nasional/2014/03/18/rumah-nurhadi-terbesar-di-dekat-senayan-city.

[75] Putri Artika R, *KPK Imbau Nurhadi Lengkapi Laporan Harta Kekayaan* [KPK Recommends Nurhadi to File His Financial Disclosure Statement], MERDEKA.COM (March 14, 2013), http://www.merdeka.com/peristiwa/kpk-imbau- nurhadi-segera-lengkapi-laporan-harta-kekayaan.html.

[76] KPK has held several discussion talking about illicit enrichment besides working on research paper with ICW. *See*Sukma Indah Permana, *ICW: Pendekatan Illicit Enrichment Bisa Maksimalkan Upaya Pemiskinan Koruptor* [ICW: Investigating Illicit Enrichment Would Support Fighting Against Corruption], Detik.co (Nov.1, 2011), http://news.detik.com/read/2013/11/01/173946/2401813/10/icw-pendekatan-illicit-enrichment-bisa-maksimalkan-upaya-pemiskinan-koruptor.

[77] Martha Thertina, *PPATK Usulkan Ada RUU Perampasan Aset Koruptor* [PPATK Proposes Asset Recovery Bill], TEMPO.CO (April 16, 2013), http://www.tempo.co/

plementation of unexplained wealth prosecution in Australia.[78]Scholars and the anti-corruption community have begun to consider which steps should be established when the government wants to forfeit assets.[79]

Instead of looking to countries that criminalize illicit enrichment, this paper focuses in learning from the US's approach. The next section will start by description of Indonesian governing laws of corruption. The purpose of that description is to figure out what is the element of corrupt offense and how does the investigation of illicit enrichment give benefits to prove the element of corruption and how to use information from the financial disclosure and tax system to investigate illicit enrichment.

A. INDONESIAN LAWS GOVERNING OF CORRUPTION

In tackling corruption issue, the main regulation used by legal apparatus is the Combating Corruption Act. This act mentions both material and specific procedural laws in investigating and prosecuting corruption; however it does still apply some general procedural laws under *Undang-Undang Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana* (Criminal Procedural Law). Generally speaking, there are seven types of corrupt offenses under the Corruption Act.[80] This law stipulates the elements of corruption are unlawful conduct of a person or law entity (corporation or organization), with personal or group intention to be enriched, that may cause state financial lost.[81] For bribery, particularly governed by Article 5, 12, 13 where a public official (recipient) may be punished for bribery if he or she promises, seeks, receives something value that may be influenced his or her official decisions.[82] Those articles also stipulate for a person who promises, and gives something value to a public official. All of corrupt offenses

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read/news/2013/04/16/092473857/PPATK-Usulkan-Ada-RUU-Perampasan-Aset-Koruptor.

[78] Ibid

[79] *Perlunya Aturan Illicit Enrichment Untuk Cegah Korupsi* [The Urgency to Regulate Illicit Enrichment to Combat Corruption], HUKUM ONLINE (Nov. 1, 2013). http://www.hukumonline.com/berita/baca/lt5273ab9aace4d/perlunya- aturan-illicit-enrichment-untuk-cegah-korupsi.

[80] *See* Combating Corruption Act, *supra* note 3, art. 5-12, 13, 18, 23, and 30.

[81] *Ibid*, Art 2 and 3

[82] *Ibid*, Art 5, 12 and 13

governed by the Act may be criminally prosecuted with imprisonment and fines sanctions.

The Act does not have clear explanation whether a public official or a person who committed a corrupt offense indirectly may be prosecuted under the Act. To this issue, Indonesian special judges for court of corruption have ruled in many cases that indirect involvement may be also punished under the Act if legal apparatus finds evidence linked to the corrupt offenses.[83]Again, often prosecutors have to face the lack of direct evidence, thus the idea to use illicit enrichment as a means to prosecute corruption is crucial showing that the prosecutor can indirectly prove that the illicit enrichment related to corrupt offense. Before Indonesia signed the UNCAC, it implicitly established provisions on the Corruption Act that addressed illicit enrichment, Article 37 and 37 (A). Article 37 states a defendant has a right to prove that he or she is innocence that may be used by the court to decide the indictment cannot be proved.[84] Further, under Article 37 (A) (1), the right under Article 37 may be used to explain about his or her wealth, along with spouse, children and corporation that may have the connection with him or her.[85] If he or she cannot prove his or her wealth is equal with his or her legal income, Article 37 (A) (2) stipulates the findings may be used by the court to strengthen other evidence.[86] Although the defendant has right to explain, pursuant to Article 37 (A) (3), the prosecutor still has the burden of proof as mentioned in Article 66 Criminal Procedural Act.

B. INDONESIAN FINANCIAL DISCLOSURE SYSTEM

This section concerns how the Indonesian legal apparatus conducts its investigation of illicit enrichment. Indonesia has established a financial disclosure system under Law No 28 of 1999 concerning Clean-State Act. Article 5 of the Act requires that every public official have several main responsibilities, including submitting their financial disclosure statements before, during, and after their periods in office. Public officials governed by this law are employed under the highest state

[83] A lot of public officials have been prosecuted because legal apparatus has found evidence, such as witness testimony or recorded communication.
[84] Combating Corruption Act, *supra* note 3, art. 37
[85] *Ibid*. art 37 A(1).
[86] *Ibid*. art 37 A(2).

bodies, the high state bodies, ministers, governors, judges, other public officials governed by other laws, other public officials that have strategic positions.[87]Further, Article 12 mentions the financial disclosure statements have to be submitted to Indonesian Public Official Income Investigator (hereinafter *Komisi Pemeriksa Kekayaan Penyelenggara Negara* (KPKPN)).[88] Moreover, under Article 20, if a public official violates his or her duty, such as does not file financial disclosure statement, he or she may be punished by administrative sanction that governed by laws.[89]

Later, in 2001, there was a significant change in corruption prosecution by the establishment of KPK. In 2006, the KPKPN merged its resources to the KPK; so based on Indonesian Administration Minister Memorandum, the KPKPN was dissolved.[90] The KPK, particularly, takes over the KPKPN authority on financial disclosure system.[91] In summary, the KPK has the authority to prosecute and supervise cases and prevent corruption.[92] For the prevention, under Article 13 (a) KPK Act, it includes registering and examining financial disclosure statement of public officials and establishes a special subdivision under prevention division to handle it.[93] As governed by the Clean-State Act, financial disclosure statement must be submitted before, during, and after office period.[94] Specifically, under Article 48, this independent institution may require a defendant to give an explanation about his or her wealth along with spouse, children, and anyone or corporate that could be related to

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[87] Public officials in strategic positions including director, commissioner, and other senior public official of state and local enterprises, head of Indonesia National Bank, head of public universities, senior public officials within civil, military and police institutions, prosecutors, investigators, clerks, head and treasurer of public projects. Clean-State Act, *supra* note 3, art. 2

[88] *Ibid*. art. 12

[89] Ibid, art 20

[90] Astrid Felicia Lim, *KPKPN Resmi Bubar [KPKPN officially Shut Down]*, DETIK. CO (June 29, 2006), http://news.detik.com/read/2004/06/29/113149/169807/10/kpk-pn-resmi-bubar.

[91] Clean-State Act, *supra* note 3, art. 71 (2) stipulates KPK has duty and authority of KPKPN mandated by Article 70 Clean-State Act. As a result, Article 70 is no longer applicable.

[92] KPK Act, *supra* note 61, art. 7.

[93] *Ibid.* art. 26 (3).

[94] *Ibid*

corrupt offenses in which the defendant is being prosecuted. [95]

Unlike the Clean-State Act, the KPK Act gives does more to improve the financial disclosure system with the establishment of financial disclosure subdivision. Unfortunately, like the Clean-State law, it does not give what kind of financial information must be submitted, what kind of sanction may be imposed and what kind of method may be used if the KPK wants to use it to strengthen the evidence. As a result, only a few public officials file their financial disclosure statements and for registered financial disclosure statements there is no further investigation.[96]

Eventually, the lack of Clean-State Act and KPK Act have a bit recovered by the establishment of *Surat Edaran Menteri Negara Pendayagunaan Aparatur Negara Nomor: SE/03/M.PAN/01/2005 tentang Laporan Harta Kekayaan Penyelenggara Negara* (The Administration Minister Memorandum about Financial Disclosure Statement) and Keputusan *Komisi Pemberantasan Korupsi Nomor: KEP. 07/KPK/02/2005 tentang Tata Cara Pendaftaran, Pemeriksaan dan Pengumuman Laporan Harta Kekayaan Penyelenggara Negara* (The KPK Memorandum about Financial Disclosure Statement). The first memorandum gives a broader definition of public official governed by financial disclosure obligation. It includes second upper level of public officials in governmental institutions or agencies, head of office divisions in the Finance Ministry, public officials in export and import bureau, tax investigators, auditors, signatory representatives in public projects, head of public service institutions, and signatory representatives in law-making process.[97]

Meanwhile, the KPK's memorandum states that the KPK must take several steps in handling financial disclosures.[98] First, after public officials registered, the KPK collects their financial disclosure statements

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[95] *Ibid*

[96] Combating Corruption Act, *supra* note 3, art. 37.

[97] Surat Edaran Menteri Negara Pendayagunaan Aparatur Negara Nomor: SE/03/M.PAN/01/2005 tentang Laporan Harta Kekayaan Penyelenggara Negara [Administration Minister Memorandum about Financial Disclosure Statement], 2005.

[98] Keputusan Komisi Pemberantasan Korupsi Nomor: KEP. 07/KPK/02/2005 tentang Tata Cara Pendaftaran, Pemeriksaan dan Pengumuman Laporan Harta Kekayaan Penyelenggara Negara [KPK Memorandum about Financial Disclosure Statement], 2005, art. 4, 5, 6, 7.

public officials through its sub-division.[99] Next, this institution examination and add the information to its information system.[100] Hence, the KPK pulls out these financial disclosure statements to its website, and its billboard, government institutions billboards where the public officials work for, national or local newspapers depend on the public officials' residences.[101] For the examination, the KPK takes three steps: administration, substance, and specific examination.[102] While in administration checking step, the KPK looks through the validity of information written in the statement, and documents related to it.[104][103] after that, in checking the substance, the KPK compares and analyzes a public official's wealth before, during, and after office period, along with his or her historical position and increasing of wealth.[104]

In the specific examination, the KPK works based on public reports showing that a public official is suspiciously enriched and his or her enrichment may be related to corruption—in this step, the KPK may be supported by other institutions—before conducting this examination, the KPK must give notice to the public official.[105] To gathering information, the KPK has the authority to use any information based on a public official's claims or possible unreported income, interviewing his or her colleagues, employees in related corporation, officer on his or her institution, and neighborhood residences, taking pictures and/or making visual material of the examination objects.[106]

To support the implementation of financial disclosure, Article 11 of the Memorandum recommends heads of governmental institutions both national and local may file names of public officials that are obligated to file financial disclosure statements.[107] Those Memoranda give many steps ahead in addressing illicit enrichment which are giving broader definition of public officials; providing forms explain what kind of in-

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[99] *Ibid.* art. 4 and 5
[100] *Ibid.* art. 6 and 7.
[101] *Ibid.* art. 5.
[102] *Id.* art. 6
[103] *Ibid*, 6 (4)
[104] *Ibid*
[105] *Ibid.* art. 6 (8) and (9).
[106] *Ibid.* art. 7 (3).
[107] *Id.* art. 11.

formation that must be filled, further it sort of explaining what steps of specific examination when it comes to suspicious enrichment. These steps look like what the U.S. has which is called as the indirect methods of proof.[108]In fact, this Memorandum is just beautifully written words because it is not supported by strong obligation for public officials to file financial disclosure statement—for instance, in the middle of Ratu Atut investigation, the KPK recommends her to file her late seven years financial disclosure statement, she does not care at all.[109]

C. INDONESIAN PROSECUTION FOR TAX EVASION

While there are other tools for examining the increasing wealth of public officials, those tools are contained in other laws and managed by other government institutions; furthermore, they are not very effective. For example, a taxpayer[110] is obligated to file a tax report every year to Indonesian Department of Tax under the Ministry of Finance (*Direktorat Jendral Pajak*).[111] The tax report is a confidential document unless Courts, the Minister of Justice, and the Minister of Finance ask the report for investigation purposes.[112] Besides the authority to register tax report and collect tax, the Directorate General of Tax (*Direktorat Jendral Pajak)* has special agents who investigate tax evasion called the Civil Tax Investigator (*PPNS Pajak)*, after that the Attorney will continue to indict the defendant.[113] If a taxpayer fails to file or gives false information on this tax report, he or she may be charged by civil and criminal charges.[114]

Despite its strong authority, the Department of Tax has not yet performed effectively to register and collect taxes. Approximately, only

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[108] Internal Revenue Manual, *supra* note 9, 10, 11, and 12.
[109] Alvin, *supra* note 78
[110] *See* Undang-Undang Nomor 28 Tahun 2007 jo. Undang-Undang Nomor 16 Tahun 2000 jo. Undang-Undang 6 Tahun 1983 tentang Ketentuan Umum dan Tata Cara Perpajakan [Indonesian Tax Act], 2007, art. 1 Point 2.
[111] *Ibid.* art. 2
[112] *Ibid.* art. 34
[113] *Ibid.* art. 1 Point 31
[114] Criminal penalty for tax evasion is minimum six months and maximum six years and fine minimum two times or maximum four times of the actual tax actual payable. *Id.* art. 39.

8.8 million taxpayers file tax reports and pay their taxes every year.[115] In fact, the Department of Tax estimated there are more than 67 million taxpayers who have sufficient incomes to pay taxes.[116] It has been recognized Indonesian citizens still have lack awareness to pay taxes,[117] but the fact that this institution has been tied up with corruption cases also contributes in reducing people trust to the institution.[118] A number of tax investigators have been charged with corruption.[119] It is also has been noticed that the Attorney does have the lack of indirect methods of proof to convict tax evasion and connect it with other crimes, such as corruption.[120]

Based on the explanation above, it can be concluded, illicit enrichment cases do not provide an opportunity to the legal apparatus to uncover corruption because the financial disclosure system does not work—nor does the tax system. The financial disclosure system is not supported by civil and criminal sanction that may be imposed if a public official fails to file or gives false information and specific method of proof for conducting an investigation ties to corruption charges.[121] Meanwhile, the Civil Tax Investigator has poorly performed to impose

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[115] *Potensi Wajib Pajak di Indonesia Baru 67 Juta Orang* [67 Million People: Small Possibility of Indonesian New Taxpayers], INFOBANKNEWS.COM (August 15, 2012), http://www.infobanknews.com/2012/08/potensi-wajib-pajak- di-indonesia-baru-67-juta-orang/.

[116] *Ibid*

[117] Herry Susanto, *Membangun Kesadaran dan Kepedulian Sukarela Wajib Pajak* [Enhancing Awarness to Pay Taxes], PAJAK (Jan. 9, 2012), http://www.pajak.go.id/content/membangun-kesadaran-dan-kepedulian-sukarela- wajib-pajak.

[118] Zaki Al Hamzah, *SBY: Cermati Korupsi Pajak* [SBY: Monitors Corruption in Tax System], REPUBLIKA ONLINE (ROL) (Dec. 10, 2013), http://www.republika.co.id/berita/koran/news-update/13/12/09/mxjq7f-sby-cermati-korupsi- pajak. Hendrizal, *Pajak dan Masalah Transparansi* [Tax and Problem of Transparency], PELITA (April 11, 2014), http://www.pelita.or.id/baca.php?id=92915.

[119] PPATK published 83 tax officials have tied up with suspicious transactions. Adyan Mohamad, *Kemenkeu Sanksi 83 Pegawai Karena Transaksi Mencurigakan* [Ministry of Finance Gives Sanctions to 83 Officials Who Have Been Tied Up with Suspicious Transaction], MERDEKA.COM (Nov. 5, 2013), http://www.merdeka.com/uang/kemenkeu- hukum-83-pegawai-karena-transaksi-mencurigakan.html

[120] Pusdiklat Kejaksaan Republik Indonesia, Penelurusan Aset [Asset Tracing] 10-14, *available at*
http://www.kejaksaan.go.id/pusdiklat/uplimg/File/PENELUSURAN%20ASET.pdf.

[121] Clean-State Act, *supra* note 3, art. 20.

tax return and enforce civil and criminal prosecution for tax evasion.[122] In addition, there is no indirect method of proof taken place to investigate illicit enrichment and reach the goal to strengthen the evidence in prosecuting corruption.[123]

IV. ILLICIT ENRICHMENT AS A TOOL IN INVESTIGATING CORRUPTION IN THE US

Unlike Indonesia, according to the TI, the U.S. is categorized as a country with a low- corruption perception. For example, in 2012, this reputable NGO put the U.S. in 19th from 176 countries based on corruption perception index in the public sector.[124] This country has succeeded to boost its position, since the year before, the U.S. fell into 24th due to the economic crisis which was decreasing the public trust.[125] Furthermore, the TI also categorized the U.S. as a country who has been performing actively for combating bribery to foreign government by its Foreign Corrupt Practice Act (FCPA);[126] however, those perceptions, which only give a general description, do not confirm that corruption does not exist in the U.S.

For example, in 2013, the TI held special survey for bribery, within a year more than 7% of Americans told that they paid bribe to eight major services such as judiciary, registry and permit services, and education services.[127] Although bribery is not pervasive from highest to low-

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[122] infobanknews.com, *supra* note 123.

[123] Pusdiklat Kejaksaan Republik Indonesia, *supra* note 127.

[124] TI, *Corruption Perception Index 2012*, TRANSPARENCY, http://www.transparency.org/cpi2012/results (last visited Dec. 14, 2013).

[125] The 2011 Corruption Perceptions Index ranks 182 countries and territories based on how corrupt their public sector is perceived to be in which the more clean their public sector than the higher their ranks. TI, *Corruption Perceprtion Index 20*11, TRANSPARENCY, http://www.transparency.org/cpi2011/results/ (last visited Dec. 14, 2013).

[126] TI, EXPORTING CORRUPTION PROGRESS REPORT 2013: ASSESSING ENFORCEMENT OF THE OECD CONVENTION ON COMBATING FOREIGN BRIBERY 84, 2013, *available at* http://www.transparency.org/whatwedo/pub/exporting_corruption_progress_report_2013_assessing_enforcement_of_the_oecd (last visited May 22, 2014).

[127] Allie Bidwel, *Majority of Americans Say Corruption Has Increased*, US NEWS (June 10, 2013), http://www.usnews.com/news/newsgram/articles/2013/07/10/majority-of-americans-say-corruption-has-increased,

est level, at least every year the US legal apparatus prosecutes high and low-level public officials in bribery cases. Recently, the former governor of Virginia, Bob Mc.Donell and his wife were indicted by federal jury trial with fourteen counts of illegally accepting gifts and loans from a political supporter, Jonnie Williams.[128] In brief, Williams gave about $50,000 loan to cover Mc.Donell's mortgage, and he also paid Donell's daughter wedding reception expenses.[129] While he claimed that what he gained was a legal gratuity, the government alleges that he received this money in exchange for his support of scientifically-unproven dietary supplements made by William's company.[130] Prior to the trial, the investigation was begun by the IRS's suspicion over Mc.Donell's tax report, which did not show the expensive wedding reception of his daughter or the mortgage payment. [131]

Another example of public officials who were getting suspiciously enriched is Randall Cunningham. He was a former Republican congressman from San Diego who was charged by several counts: bribery, mail fraud, and wire fraud.[132] Later, he was convicted of accepting $2.4 million including cash, home payments, furnishings, cars and posh holiday expenses from several contractors and sentenced for seven years imprisonment.[133] It has been reported that Cunningham's unusual house sales to contractor Mitchell Wade was a lead fact in investigating this case. Wade bought the house for about $1.6 million from Cunningham,

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[128] David Sherfinski, *Democratic Governors in VA also Took Expensive Gifts under Lax State Law,* WASHINGTON TIMES (Jan. 27, 2014), http://www.washingtontimes.com/news/2014/jan/27/virginia-governors-before-bob-mcdonnell accepted- l/?utm_source=RSS_Feed&utm_medium=RSS.

[129] *Ibid*

[130] *Ibid*

[131] Arlette Saenz, *Ferraris, Rolexes And A Shopping Spree: Inside The Extravagant Life Of Bob McDonnell And His Wife*, ABCNEWS.COM (Jan. 21, 2014), http://abcnews.go.com/blogs/politics/2014/01/ferraris-rolexes-and-a-shopping-spree-inside-the-extravagant-life-of-bob-mcdonnell-and-his-wife/ (posted Jan 21, 2014).

[132] Ed Henry & Mark Preston, *Congressman Resigns After Bribery Plea: California Republican admits selling influence for $2.4 million,*CNN.COM (nov. 28, 2005), http://www.cnn.com/2005/POLITICS/11/28/cunningham/.

[133] *Randy "Duke" Cunningham Completes Prison Sentence,* ABC7 (June 4, 2013), http://www.wjla.com/articles/2013/06/randy-duke-cunningham-completes-prison-sentence-89652.html.

but Wade then sold the house for about $700,000 less.[134] Another lead is Cunningham's increase of valuable assets including a suburban Washington condominium, a yacht and a Rolls Royce car.[135] The prosecutor said Cunningham used his influence to help the contractors to get some government projects.[136] The U.S. did not prosecute McDonell or Cunningham, for their illicit enrichment, but it used tax evasion in looking through their illicit enrichment and corroborated the evidence to convict tax evasion charge. Further, the evidence could be lead to the underlying crime such as bribery, mail fraud, wire fraud, along with conspiracy and RICO. Those cases confirm the U.S. reservation to the UNCAC which the U.S. does not criminalize illicit enrichment, but it does use illicit enrichment as a tool to investigation further crimes like corruption.

As a guidance, first this sub-section describes law governing corruption—find out what is the element of corrupt offense especially bribery and illegal gratuity—and then showing how the U.S. use illicit enrichment of public official as a tool to investigate corruption. General explanation of the U.S.'s law governing corruption can be seen by looking to its reservation to the UNCAC. It is stated that this convention governing corruption has to be implemented in consideration with federal and state criminal laws. While the U.S. law governing corruption is rooted in state law, the federal government may exercise its jurisdiction when it comes to conduct that affects "interstate or foreign commerce, or another federal interest."[137] In other words, this encompass jurisdiction authorized federal laws to prosecute federal officials and state officials for bribery and illegal gratuity, and also establish offenses that relate to corruption, such as, tax evasion, mail fraud, wire fraud, Racketeer Influenced and Corrupt Organization (RICO), conspiracy, mail and wire fraud, and money laundering.

In Cunningham's case, federal jurisdiction was taken place because he was a former federal official. He was charged and convicted for sev-

[134] Hendry, *supra* note 140
[135] *Ibid*
[136] Richard Marosi, *Contractor Gets 12 Years for Bribing Congressman*, LOS ANGELES TIMES (Feb. 20, 2005), http://articles.latimes.com/2008/feb/20/local/me-duke20.
[137] *See* UNCAC, *supra* note 2.

eral federal charges: bribery, mail, and wire fraud. While Mc.Donell was a former state official, he is being indicted for fourteen federal charges of illegally gratuity showing that his conducts relate to interstate commerce by using his power to support the dietary-supplement company. Like Mc. Donell, in *United States v. Coyne*, the Supreme Court held that the federal bribery charges must stand showing the fact the defendant, James J. Coyne was a former county executive in Albany was conspired with Crozier Associates, a company doing business in interstate commerce, to help this company be selected in a project in Albany.[138]

Looking to those cases, it can be concluded it does not matter whether petty or high profile corruptions since the nature of corruption as a white collar crime it has to be supported by many other offenses; thus to this point, federal laws may exercise it jurisdiction. This paper does not focus to analyze this downside or upside this encompass jurisdiction, but in order to get into the research questions of this paper, this subsection uses the encompass feature to specify analysis to federal laws governing corruption: bribery and illegal gratuity and some offenses related of corruption.

A. THE LAWS GOVERNING BRIBERY AND ILLEGAL GRATUITY

First, for bribery, the U.S. Constitution as the Supreme Law of the Land mentions in Article II, Section 4, all public officials "shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." This provision is further governed by federal and state laws. For federal officials, they are bound by 18 U.S.C. §201 (a), (b), and (c) about bribery of public officials and witnesses. Specifically, the §201 (a) gives definition of some statutory words. Continued by the §201 (b) which governs prohibition giving and accepting bribery, and §201 (c) regulates prohibition giving and accepting illegal gratuity.[139] In summary, under 18 U.S.C. §201 (b), a public official is liable for bribery if he or she "directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity,"[140] as a payback for: "being influenced in the performance of any official

[138] United States v. Coyne, 4 F.3d 100, 111 (2d Cir. 1993).
[139] The next explanation only focuses in provisions for public official.
[140] 18 U.S.C. §201 (b) (2) West, Westlaw through P.L. 113-93 (excluding P.L.113-79))

act,"[141] "being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States;"[142] or "being induced to do or omit to do any act in violation of the official duty of such official or person;"[143] or "being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom."[144]

Further, §201 (c) (1) (B) governs illegal gratuity where any public official or a person selected to be a public official who "directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person,"[145] or "because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or other proceeding, or for or because of such person's absence therefrom."[146] The differentiation between bribery and illegal gratuity is governed by the U.S. Supreme Court in *United States* v. *Sun-Diamond Growers*. The Court distinguished section b and c of §201 as two separate crimes with different the set of punishments. The section b of §201 is bribery because it requires corrupt intention of the giver,[147] along with the public official or selected public official's intention to be influenced in performing any official act as a pay back.[148] Meanwhile, illegal gratuity governed by §201 (c) only requires "something of value was given, offered, or promised to a public official"[149] by any individual, or "demanded, sought, received, accepted, or agreed to be received or accepted by a public official,"[150] "for or because of any official act performed or to be

[141] *Ibid.* (b) (2) (A).
[142] *Ibid*. (b) (2) (B).
[143] *Ibid.* (b) (2) (C).
[144] *Ibid.* (b) (4).
[145] *Ibid.* (c) (1) (B)
[146] *Ibid.* (c) (1) (B)
[147] United States v. Sun-Diamond Growers of California, 526 U.S. 398, 404, 119 S. Ct. 1402, 1406, 143 L. Ed. 2d, p. 576 (1999)
[148] *Ibid*
[149] *Ibid.* at 404-05
[150] *Ibid*

performed by such public official."[151] There is no need for prosecutors to figure out corrupt intention for illegal gratuity.

For bribery, an individual and a public official should be punished by fine "under this title or not more than three times the monetary equivalent of the thing of value, or imprisonment for not more than fifteen years and/or be [expelled] from holding any office of honor, trust, or profit under the United States."[152] This punishment consists of monetary, criminal, and administrative sanctions that are harsher than illegal gratuity where provides monetary sanction under this title or imprisonment for not more than two years, or both.[153] Pursuant to those Articles, to prove a public official committed bribery or illegal gratuity, there must be something value was given, offered, or promised. In fact, it is difficult to legal apparatus to detect the transaction that requires "enormous costs and complexities" in investigating it, often it ends up "fruitless."[154] Knowing the difficulties to detect corrupt transaction, as this paper mentioned in previous subsection, the illicit enrichment of public officials is recognized as a "yellow flag" that corruption may happen. To this point, as the U.S. mentions in its reservation to the IACAC and the UNCAC, this country established financial disclosure and tax evasion prosecution that may be joined with corruption charges.

B. FINANCIAL DISCLOSURE AND TAX EVASION PROSECUTION AS TOOL TO COMBAT ILLICIT ENRICHMENT

1. The U.S. Financial Disclosure System and Prosecution

The U.S. financial disclosure system is rooted in Ethics in Government, § 101, 5 U.S.C.A. App. 4. Under this statute, within thirty days after being selected as a public official, an individual is obligated to file a financial report. The term public official includes senior level of public officials under three branches of power.[155] Moreover, §101 refers

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[151] *Ibid*

[152] 18 U.S.C. §201 (b), *supra* note 148, (4).

[153] 18 U.S.C. §201 (c) (3) West, Westlaw through P.L. 113-93 (excluding P.L. 113-79)).

[154] Steven M. Levin, *Illegal Gratuities in American Politics: Learning Lessons from the Sun-Diamond Case*, 33 LOY. L.A. L. REV. 1813, 1817(2000).

[155] For example, President, Vice President, executive branch employees along with special government employees (5 U.S.C.A. App. 4. § 202 of title 18 West, Westlaw through P.L. 113-93 (excluding P.L. 113-79)).

to §102 (b) about what information do these public officials have to submit. Public officials and candidate of public officials should include a full and complete statement with respect to the information required by this statute: source, type, and amount or value of income during the preceding year.[156]

The source of income consist of dividends, rents, interest, and capital gains which exceeds $200 in amount or value; gifts aggregating more than the minimal value as 5 U.S.C. § 7342(a)(5), or $250, whichever is greater, received from any source other than a relative of the reporting individual; liabilities owed to any creditor other than a spouse, or a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse which exceed $10,000; sale or exchange which exceeds $1,000; previous and outside positions income on business and organization, agreements for future employment, or a leave of absence during the period of the reporting individual's Government service; continuation of payments by a former employer other than the U.S. Government, or continuing participation in an employee welfare or benefit plan maintained by a former employer; blind trust.[157]

Based on the explanation above, financial disclosure requirement is not only governed public officials but also their spouses and children. All information has to be submitted annually by May 15 of each year to a special ethics agency under the institution where the public officials are employed. For instance, the President and the Vice President have to file the report with the Office of Government Ethics (OGE).[158] Meanwhile, other executive branch employees must submit their report to specific ethic agency under their institution.[159] Members and staffs of the House of Representatives should file their report to the Clerk of the House while Senators and its staffs file copies of their reports to

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[156] *See* 5 U.S.C. § 102(a)(1)-(8) West, Westlaw through P.L. 113-93 (excluding P.L. 113-79)).

[157] Unless the trust instrument was executed prior to July 24, 1995 and precludes the beneficiary from receiving information on the total cash value of any interest in a qualified blind trust. *Id.*

[158] Jack Maskell, *Financial Disclosure by Federal Officials and Publication of Disclosure Reports Legislative Attorney*, Congressional Research Service at 7, available at http://www.fas.org/sgp/crs/misc/R43186.pdf(2012).

[159] *Ibid*

the Secretary of the Senate.[160]Moreover, public officials under judicial branch have to submit their reports to the Judicial Conference.[161] Article §101 also bound federal campaign candidates in which they have to file reports within thirty days of becoming candidates, or before May 15 of that calendar year but no later than 30 days before the election. For continuing candidate—incumbent who are running again in the election, they must report their financial information governed by §102 (b).

As the U.S. mentions in its reservation to the IACAC, financial disclosure provides sanction if a public official knowingly and willfully gives any false information or fails to report within period time governed by the statute. First, the U.S. Attorney General may bring civil action to court in which the court may impose a civil penalty a civil penalty in any amount, not to exceed $50,000. For criminal sanction, a public official who knowingly and willfully gave false information shall be fined under title 18 the United States Code, imprisoned for not more than 1 year, or both; meanwhile for who knowingly and willfully failed to file, he or she may be fined under title 18 the United States Code.

Although §101 seems clear to establish the obligation of public officials to file financial disclosure report, this statute has been challenged, for example, in *United States v. Jefferson* where the court granted the Ethics in Government Act ("EIGA")'s motion for entry of default judgment and assessed a civil penalty in the amount of $11,000 against the defendant,[162] showing the fact that he did not file report within thirty days after his employment termination to the Ethics in Government Act ("EIGA").[163] In the reasoning the court cited to *United States* v. *Tarver* in which an individual is liable for knowingly and willfully fails to comply with the EIGA's filing requirements when that individual "intentionally disregards the statute or is indifferent to its requirements."[164] Additionally, the court cited to *United States* v. *Bank of New England*, N.A. in defining "willfulness for purposes of federal regulatory statutes as a disregard for the governing statute and an indifference to its requirements."[165]

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[160] *Ibid*
[161] *Ibid*, p. 9
[162] United States v. Gant, 268 F. Supp. 2d 29, 34 (D.D.C. 2003).
[163] Ibid at 30
[164] *Ibid.* at 33
[165] Ibid

The court reasoned the fact that the defendant understood his position as an employee of executive branch subject to §101, received a reminder memoranda and called from the agency is sufficient to show he was knowingly and willfully failed to file his financial report.[166]

2. The U.S. Prosecution for Tax Evasion

The US mentions its reservation to the IACAC that it does not criminalize illicit enrichment, but it establishes civil and criminal prosecution for tax evasion. This investigation is used illicit enrichment of a taxpayer as a means to be investigated. In addition, this investigation may lead legal apparatus to other committed crimes—why did taxpayers hide their enrichment; there are many possibilities of motives: they may be greed[167] or they cannot resist it may be related to crimes.[168] Henceforth, the investigation of tax evasion is joined with other crimes for example drug crime, and corrupt offenses: fraud, mail fraud, wire fraud, and bribery;[169] however all of these crimes are categorized as white collar crimes in which it is challenging for legal apparatus to find "direct evidence"[170] of the crimes. Responding this problem, the US legal apparatus has been using the indirect methods of proof. Before explaining, the use of indirect methods of proof in tax evasion prosecution, this paper will describe what the tax evasion prosecution is and how does this crime relate to corruption.

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[166] ibid

[167] *See* Allan G. Burrow, *Effective Cross-Examination: A Practical Approach for Prosecutors Part II*, 44 ADVOCATE 8, 9 (2001).

[168] *See* Teresa E. Adams, *Tacking on Money Laundering Charges to White Collar Crimes: What Did Congress Intend, and What Are the Courts Doing?* 17 GA. ST. U. L. REV. 531, 551 (2000).

[169] For instance, the net worth method of proof is applicable to fraud, waste, and abuse cases. See Richard A. *Nossen, "One-on-One" ' Uncorroborated Testimony: The Dilemma of Prosecutors, Defense Attorneys, and the Courts in Fraud, Waste, and Abuse Cases*, 58 NOTRE DAME L. REV. 1019, 1023 (1983).

[170] Evidence" is a much narrower term. It includes only such proof as is admissible at trial by the act of the parties or through such concrete facts as witnesses, records, or other documents. Proof is the end result or effect of evidence, while evidence is the medium or means by which a fact is proved or disproved.
Direct evidence proves a fact, without an inference or presumption, and conclusively establishes that fact without reference to any supporting evidence. Direct evidence is evidence of the precise fact in issue and is distinguished from circumstantial i.e., "indirect, " evidence.

Tax evasion is governed by 26 U.S.C.A. § 7201, attempt to evade or defeat tax. An individual commits tax evasion if he or she "willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment," in which under this law he or she may be guilty of a felony and "shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution." Likewise, violation financial disclosure statement, in tax evasion, the government must prove the defendant's willfulness to avoid tax. In many cases, the jury has been convinced by the government's evidence showing that defendants tried to hide their increasing wealth by destroying their books and records, purchasing property under their fake names or their spouses or family's member names (like in Mc.Donell's case). There are several cases that give a better understanding what are the elements of tax evasion. For instance, in general, courts ruled that in tax evasion, the government must present: (i) "the existence of a tax deficiency; (ii) an affirmative act constituting an evasion or attempted evasion of the tax; and (iii) willfulness."[171] Importantly, the government has the burden of proving each element of tax evasion beyond a reasonable doubt.[172]

3. Joinder Counts of Tax Evasion and Corruption

In many cases, conviction of corruption was joined by other charges related, such as tax evasion. In general, courts held that joinder counts may be used for bribery and tax evasion. For instance, in *United States v. Anderson*, the Seven Circuit affirmed that the trial court judgment because the jury instruction was not error. The court reasoned the government showed adequate evidence to convict the defendants for bribery and RICO. Further, the government was permissible to exercise mail fraud, joinder counts with tax evasion were not error, and final application of probation officer sentencing council is not retroactively.[173]

The case began with an undercover investigation to the defendants' corrupt business. In summary, there were two defendants in this case: John Marine, an official at the Lake Country County Court in Crown

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[171] Ethan Bercot, John Thompson, *Tax Violations*, 50 AM. CRIM. L. REV. 1559, 1567 (2013).
[172] *Ibid*
[173] United States v. Anderson, 809 F.2d 1281, 1290 (7th Cir. 1987)

Point, Indiana, has worked to process bailiff of defendants from their probation officers to the case coordinator and then to the office manager and Kenneth Anderson, a barber in Crown Point.[174] One day Anderson was contacted by an undercover FBI agent named "Dan Mingo" to help him get rid his DIU charge with $1600 as a payment, Anderson agreed and told Mingo, there would be someone took care of it.[175]Apparently, Marine was the guy who had access to court computer and would be able to erase Mingo's file.[176] This mission was failed because, as Marine told Anderson, the computer was error.[177] Later, Mingo asked Anderson to handle "Richard Ryan" (another FBI agent) case; again Anderson agreed to do so. Both Anderson and Marine then were brought to court for multiple counts including bribery, hobbs act, RICO. Marine, individually, was also charged for tax evasion.[178]These charges also included ten other incidents of bribery beside Mingo and Ryan trapping.[179]

To the point of joinder counts, Marine urged the government made an error in joining his other counts with tax evasion that based on another case, Mulvihill.[180] The court referred to "Federal Rule of Criminal Procedure 8, joinder of counts is permitted when 'the offenses charged ... are based on the same act or transaction ...' while in this case, bribery on Mulvihill became the predicate crime of RICO, and a foundation of hobbs act count and was one of unreported income for his tax evasion count."[181] The court distinguished this case with *United States v. Kenny and United States v. Kopituk*, showing that in *Kenny*, the court ruled joinder of tax evasion count is appropriate when it is based upon direct income from activities charged by other counts because in both of these cases, there was only one unreported income.[182] In fact, in *Anderson*, although the bribe was only one of three sources it could not get rid of the

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[174] *Id.* 1283
[175] *Ibid*
[176] *Ibid*
[177] *Ibid*
[178] *Ibid*
[179] Ibid
[180] *Ibid.* at 1288.
[181] *Ibid*
[182] *Ibid. See* also United States v. Kenny, 645 F.2d 1323 (9th Cir. 1981), United States v. Kopituk, 690 F.2d 1289, 1314 (11th Cir. 1982).

fact the tax evasion was some of based on this income;[183] however, the jury convicted a lessen offense for him which only filing a false return that lead Marine to urge before this court that this joinder could not be exist.[184] The court emphasized the evidence shown by the government was clear and joined counts could stand.[185]

C. THE USE OF INDIRECT METHOD OF PROOF IN INVESTIGATING ILLICIT ENRICHMENT

The tax evasion sub-chapter mentioned the government has the burden of proof to convict a defendant; in fact, often direct evidence could not be found because it has been destroyed or covered by the defendant. Responding this problem, the U.S. has established indirect methods of proof which allow special agents to "gather and present evidence to support the allegation";As IRS mentions in its guidelines, "tax crimes are often acts of individual greed and, therefore, very little "direct evidence" is usually available and depending on the facts and circumstances of each investigation, the subject's correct taxable income may be established by "direct" or several "indirect" methods of proof, usually using circumstantial or "indirect" evidence."[186] This indirect evidence will be used to decide what "income should have been reported on the subject's return and compare the result to the amount shown on the filed return"[187]

Nonetheless, "sources of income may not be identifiable, as in a specific item method of proof, thus taxable income often has to be computed indirectly based upon the tax payer's application of use of funds." [188]In using indirect methods of proof, the agents must "establish a prima facie understatement of income" which obligates the defendant to defend his or her claim. A court may find fraud sustained if the defendant has offered no adequate explanation of the difference between "(on the one hand) expenditures, bank deposits, and increases in net worth and

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[183] *Anderson*, *supra* note 181, 1288
[184] *Ibid*
[185] *Ibid*
[186] Internal Revenue Manual 9.5.9 Methods of Proof, 9.5.9.2.2 Indirect Methods [IRS Manual 5], *updated* March 19, 2012 *available* at http://www.irs.gov/irm/part9/irm_09-005-009.html.
[187] *Ibid*
[188] *Ibid*

(on the other hand) the amount of reported income." [189]

The IRS guidance mentions there are two approaches when it comes to use indirect methods of proof. If a tax payer has maintained his or her books and records, then the agents may use basic approach in which they may have to trace the books and specify the unreported income items; however, if they found it is difficult to specify unreported income because there are no accurate books or records, the agents may have to apply aggregate approach. This approach requires the agents to conduct specific item investigation of all income and compare the resulted income to the subject taxable income.[190]Further, the specific investigation may be applied by looking through third party books and records, but [191]the agents are not obligated to identify the individual items that increased the tax payer's income. [192]

1. The Net-Worth Method

The oldest indirect method of proof is the net worth method. The IRS has used this method for over fifty years to "satisfy one of the elements of proof is necessary to obtain a conviction for income tax evasion."[193] Special agents use the net worth method when they suspect a taxpayer is hiding increases in wealth, especially increases coming from non-taxable sources like gifts.[194]Conducting an investigation of this increasing of wealth is challenging because the suspect would likely "do not have sufficient books and records, or books and records are not available, or the taxpayer withhold the books and records."[195] The net worth method solves this problem by "providing probative circumstantial evidence which may be corroborated with other evidence of the substantive crime."[196]

In using this method, the special agents must establish correct taxable income, which can be broken down into four steps. *First*, the spe-

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[189] *Ibid*
[190] Internal Revenue 5, *supra* note 194
[191] *Ibid*
[192] *Ibid*
[193] Nossen, *supra* note 177, 1020
[194] Internal Revenue 5, *supra* note 194.
[195] *Ibid*
[196] Nossen, *supra* note 177, at 1020

cial agents have to establish the subject's net worth at the beginning and end period. After that they may deduct the beginning period's net worth from the ending period; this way, they may see the change of net worth (assets less liabilities).[197] *Second*, this change is adjusted for personal living expenses, nondeductible losses, and nontaxable items to arrive at a corrected adjusted gross income figure, so then the agents may find gross income.[198] *Third*, this gross income is adjusted to itemized deductions to correct the taxable income figure.[199] *Finally*, the agents may determine whether the subject failed to report any taxable incomes by comparing the corrected taxable income with the reported taxable income.[200]

In general, while courts have held that the net worth method is constitutional to be used in criminal cases, some questions remain: whether this method requires corroborating evidence derived from direct methods of proof; whether the government submitted sufficient evidence; whether expert witness testimony is admissible; how to establish the burden of proof; and whether the government has to negate all income to establish correct taxable income. The IRS uses *Holland v. United States* as guidance to respond those issues.

The Court in *Holland* affirmed the trial judgment where the defendants, Mr. and Ms. Holland, who had a hotel, a bar, and a restaurant, were found guilty of failing to report $19,736.74 of income. Before coming to the decision in *Holland*, the court answered some issues related to the use of net worth method.

First, to the question of corroboration validity, the Court cited to *Capone v. United States* where the Court held that the indictments were sufficient to uphold the demurrer and withstand the motion in arresting the defendant for tax evasion.[201] In *Capone*, the defendant brought the case before the court arguing that the count 13 and 18 (misdemeanor) are unrelated directly and positively to other tax evasion counts;[202] therefore the government cannot use the direct evidence of count 13 and 18

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[197] IRS Guidance 1, *supra* note 9.
[198] *Ibid*
[199] *Ibid*
[200] *Ibid*
[201] Capone v. United States, 56 F.2d 927, 934 (7th Cir. 1932).
[202] *Ibid*

in corroboration with tax evasion counts.[203]The Court reasoned "each of counts directly and positively affirm and no return whatever was made to proper collector from the IRS and it is clear that the statute gives the IRS authority to receive and file the return fully warrants." [204]

Second, the court explained how courts should determine sufficiency of evidence by citing to *Guzik v. United States*. [205]In that case, defendant argued that the government has failed to establish a net taxable income because it had lacked of accurate sources of the defendant's income.[206] The court held that the government has performed sufficient evidence to indict the defendant for tax evasion,[207]reasoned that the defendant in this case was not charged by "deviation of official form;"[208] thus the finding would not be different even if the defendant could give more accurate information.[209]

Third, the court in *Holland* explained how courts must validate expert witness from the government by citing to *United States v. Johnson*.[210] In *Johnson*, the Court reversed and remanded the judgment because the court of appeal's rule was error in determining that the jury could have been misled by the government's expert witness.[211] The Court in *Johnson* reasoned as long as a proper guidance has been delivered by a trial court then the jury has the authority to exercise the quality and weight of a testimony, and nothing could take it from the jury.[212]

Next, the Court in *Holland* examined the facts by considering the rulings of net worth method above. To the sufficiency of evidence in *Holland*, the Court ruled it is true that in tax evasion prosecution a defendant has right to defend his or her; showing that in *Holland*, the defendants had appropriate accounting system, including books and records but the government had the authority to prove beyond their

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[203] *Ibid*
[204] *Ibid*
[205] Holland v. United States, 348 U.S. 121(1954)
[206] Guzik v. United States, 54 F.2d 618, 620 (7th Cir. 1931)
[207] *Ibid.* p. 621.
[208] *Ibid*. p. 620.
[209] *Ibid*
[210] *Holland*, *supra* note 213,126
[211] United States v. Johnson, 319 U.S. 503, 520 (1943).
[212] *Ibid.* p. 519.

self-serving declarations using "all legal evidence to determine whether there is accurate.[213]

Moreover, the Court ruled that the government has performed sufficient evidence to establish the defendants' opening net worth,[214] in which the government looked through their income sources and their expenses.[215] To the issue of validity of government expert witness and jury instruction, the Court emphasized the instruction was not misleading because it reflected "the concept of beyond reasonable doubt to the jury."[216] All of reasons above brought the Court to hold that the judgment must stand, although the government might not negate all of non-taxable income, all of the government's evidence is convincing. Looking to discussion above, *Holland* has been noted as a very helpful case for lower courts in determining the constitutionality of net worth method application in tax evasion case.[217]

2. The Bank Deposit Method

Besides the net worth method, the U.S. special agents also use the bank deposit method to establish "understatement of taxable income" by "analyzing all of deposits and canceled checks which relate to any and all bank accounts controlled by the subject and documenting the subject's currency expenditures and cash on hand."[218] Additionally, the bank deposit method is used when there is lacking of information from books and records.[219] The IRS guidance for this method cites to *Gleckman v. United States, 80 F. 2d 394 (8th Cir. 1935)* to explain the

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[213] *Holland*, *supra* note 213, 131-32.

[214] The defendants argued the government failed to establish accurate opening net worth because the government only counted the stock costing $29,650 and $2,153.09 and left aside the defendants's cash on hand that they had kept in a canvas bag, a suitcase, and a metal box. *Id.* at 133.

[215] The government had presented to the jury that the defendants had spent small bills at that time. Although, the defendants claimed they had cash on hand and the husband had sold for about $50,000 in stock, the government found there was no receipt or dividends reported—showing that they had sold all stock that they have ever had. *Id.* at 134.

[216] *Ibid.* at 139

[217] *See* United States v. Hall, 650 F.2d 994, 1001 (9th Cir. 1981); United States v. Mastropieri, 685 F.2d 776, 793 (2d Cir. 1982).

[218] IRS Manual 2, *supra* note 10.

[219] *Id.* 9.5.9.7.2 When to Use Bank Deposits Method.

government's obligation to establish evidentiary facts when it uses this method:

> *"The subject was engaged in an income-producing business, activity, or profession; the subject made periodic deposits of funds into his or her bank accounts, or into nominee bank accounts over which he or she exercised control, the deposits into the above referenced accounts reflect current year income and adequate investigation of deposits was made by the investigating special agent to negate the possibility that deposits arose from nontaxable sources, unidentified deposits have an inherent appearance of income."*[220]

Like the net worth method, the bank deposit method also requires the government to establish taxable income. The IRS guidelines emphasize ownership of accounts or receiving money from other accounts is insufficient to establish taxable income.[221] The government, at least, has to collect several evidentiary facts: "the subject has a business or other regular income source; the subject made regular deposits into an account; the subject draws against the account for personal use; there is testimony that the subject has income; and deposited amounts exceed exemptions and deductions."[222]

Several steps should be taken by the agents to establish taxable income. *First*, accumulating all incomes including all deposits (bank and other saving accounts, cash on hand and non-negotiated instruments, other saving and currency expenditures, and noncash income.[223] *Second*, to get the gross income, the investigators should deduct the accumulating income with non income deposits and items (including loan, inheritance, decreasing cash on hand), and cash good sold.[224] *Third*, this gross income should be deducted with total business expenses, and adjustment to income (including IRS deduction), then the investigators will get the corrected adjusted gross income.[225] *Fourth*, to derive the cor-

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[220] *Ibid.* 9.5.9.7.1.1 Legal Requirements to Establish a Prima Facie Bank Deposits Investigation.
[221] *Ibid*
[222] *Ibid*
[223] *Id.* 9.5.9.7.4 Complete Bank Deposits Method of Proof Formula, *updated* March 12,2014.
[224] *Ibid*
[225] *Ibid*

rected taxable income, this adjusted gross income should be deducted by itemized deductions/standard deduction (as corrected) and personal exemptions (as corrected).[226] *Finally*, to get the additional taxable income for criminal purposes, the special investigators have to deduct the corrected taxable income with reported taxable income from the subject.[227]

3. The Expenditure Method

The expenditure method is an indirect method of proof used when the agents indicate a taxpayer report "does not substantially increase during the period under investigation," or if the agents notice "extravagant living expenditures."[228] These expenditures may be shown by tangible and intangible properties including food, gifts, and vacation, to third parties or stocks, bonds.[229] The expenditure method is so similar with the net worth method; thus if the special agents use the expenditure method, they must also use the net worth method.[230] When it comes to convincing the jury, the attorney will choose whichever is more persuasive in a given case.[231]

This method is conducted by establishing expenditures of the subject (money spent or applied).[232] Next, to get the corrected adjusted gross income, the agents should deduct the calculation of expenditures with non-taxable sources of funds.[233] The corrected adjusted gross income must be deducted by personal exemption;[234] so the agents will get the corrected taxable income.[235] Like other indirect methods of proof, the expenditure method is completed when the unreported income is found by deducting corrected taxable income with reported taxable income.[236]

[226] *Ibid*
[227] *Ibid*
[228] IRS Manual 3, *supra* note 11, 9.5.9.6.2 When and How the Expenditures Method is Used, *updated* Nov. 5, 2004, *available at* http://www.irs.gov/irm/part9/irm_09-005-009.html#d0e1812.
[229] *Ibid*
[230] *Ibid*
[231] *Ibid*
[232] *Ibid.* 9.5.9.6.3 The Expenditures Method of Proof Formula
[233] *Ibid*
[234] *Ibid*
[235] *Ibid*
[236] *Ibid*

4. The Cash Method

Another useful type of indirect method of proof is the cash method.[237] This method is dedicated to seek unreported cash income which is usually related to the investigation for underlying crimes "involving bribery, drug dealing, and cash skimming from businesses, and similar situations where unreported income is in the form of cash."[238] The agents use the cash method when it comes to a subject who "has limited sources of income and deposits in bank accounts where non-cash uses can be traced."[239] The cash sources include cash returned on deposits, checks written to cash, cash withdrawn from financial accounts, cash contents of a safe deposit box, and cash on hand."[240] The formula of this method is started by calculating all of the cash uses.[241] Next, the result calculation is deducted with known cash sources that will result in an additional taxable income (unreported income). [242]

Like other indirect methods of proof, the cash method is only governed by IRS guidance; however it has been supported by many courts's ruling. For instance, in *United States v. Hogan* where the defendant, Martin F. Hogan, once argued that the trial court was relied on inadmissible evidence and invalids the use of cash method.[243] The court held that the district court was not err on "the issues of severance and the admissibility of the cash method evidence."[244] First, the Court argued that the district court instruction to the jury was not err because it was the jury's duty to evaluate the credibility of the witnesses, including the tax experts. [245]

Next, to Hogan's argument that the cash method is "an untested and "unapproved circumstantial method of proof,"[246] the court ruled

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[237] IRS Manual 4, *supra* note 12, 9.5.9.8 Cash Method of Proving Income, *updated* Nov. 5, 2004, *available at* http://www.irs.gov/irm/part9/irm_09-005-009-cont01.html.
[238] *Ibid*
[239] *Ibid*
[240] *Ibid*
[241] *Ibid*
[242] *Ibid*
[243] United States v. Hogan, 886 F.2d 1497, 1508 (7th Cir. 1989).
[244] *Ibid.* p. 1513.
[245] *Ibid.* p. 1508
[246] *Ibid*

that "under appropriate circumstances the cash method is an admissible method of proof if the government satisfies evaluation criteria similar to the traditional cash expenditures method."[247] Specifically, in reasoning, the court emphasized the facts that Hogan used to save his income in a bank account and spent his money through a banking institution, and did have limited sources of income, made the use of cash method is appropriate.[248]

Moreover, the defendant urged that the government failed to "identify cash on hand."[249] The court mentioned in using the cash method, there should be an assessment of cash on hand at the beginning of the first year; in this case, the court found that the government has established sufficient investigation to establish cash on hand. Indeed, at the beginning of 1981, Hogan did not have cash on hand, no gifts, inheritances, and other nontaxable income in 1980.[250] Although "he had fancy boat and car, he was spending his money to pay interest and several loans and account at that time."[251]These findings are supported by "the defendant's testimony in the cross examination that he often received late payment notices from credit card companies and that one credit card company had placed his account in the hands of its collection department."[252]As a result, "the jury could have found with reasonable certainty that Hogan did not have any cash on hand at the beginning of 1981." [253]

In summary, the court in *Hogan* provided better explanation what the government needs to establish in using the case method and what is the relation of cash method and expenditure method. Indeed, in this case, the use of cash method is appropriate because the defendant had a very limited sources of income.[254] Additionally, like other indirect methods of proof, although in this case the government expert testified, the jury

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[247] *Ibid.* p. 1509
[248] *Ibid*
[249] *Ibid*
[250] *Ibid.* at 1510
[251] *Ibid*
[252] *Ibid*
[253] *Ibid*
[254] *Ibid.* at 1509

had the authority to decide the witness's credibility.[255] To the government performance in establishing cash on hand, the government in Hogan has performed sufficient evidence because it traced the defendant's income and transaction.[256] Finally, this section draws the U.S. approach in dealing with the illicit enrichment of public official; instead of criminalizing the illicit enrichment, the U.S. has developed financial disclosure system that provides civil and criminal prosecution and tax evasion prosecution that during the investigation, the special agents may use indirect methods of proof. This investigation may lead to underlying crimes, prosecutors may use joinder counts in further prosecution.

V. WHY INDONESIA HAS TO CONSIDER TO REFORM ITS SYSTEM IN DEALING WITH ILLICIT ENRICHMENT

It appears that Indonesia has a promising system for supporting corruption eradication. However, so far, this system has not yet worked because there is no enforcement mechanism if a public official fails to file or gives false information, and there is no specific indirect methods of proof to investigate the financial disclosure statement that may strength evidence to convict corruption. As a result, there is no significant number of public officials who file their financial disclosure statements. By the same token, for registered financial disclosure statements, the KPK cannot use indirect proof to convict defendants of corruption. The Prosecutor has the same problem in prosecuting tax evasion and joined it with other crimes.

Like Indonesia, the U.S. prefers not to criminalize illicit enrichment, staying focused on civil and criminal prosecution for financial disclosure statement, and tax evasion. Different with Indonesia, however, U.S., financial disclosure statements are filled to institution where a public official works, but the U.S. Department of Justice (hereinafter DOJ) may bring civil and criminal charge for violation for failed to file and to give false information. For tax evasion, the IRS investigates suspicious tax reports where tax-payers hid their wealth to avoid tax. That wealth would possibly come from illegal income. Investigating

[255] *Ibid*. at 1508
[256] *Ibid*. at 1510

this tax reports, agents may find lack of direct evidence; thus they may use the indirect methods of proof, such as the net worth, bank deposit, expenditure, and cash methods.

This paper finds that while the U.S. approach sounds promising, there has been no discussion about this approach in Indonesia. Indeed, several Indonesian researchers have been conducting research projects focused on looking to countries which prefer or tend to criminalize illicit enrichment, such as Australia, and China. To that point, this section is dedicated to analyze why Indonesia should consider to looking at the U.S. approach to figure out what and how Indonesia may improve its own approach to illicit enrichment cases. First sub-section will show rationales to look at the U.S. approach. Next sub-section will present what improvement may be proposed and what possible barrier may be faced.

A. RATIONALES AND RECOMMENDATIONS TO REFORM INDONESIAN ILLICIT ENRICHMENT INVESTIGATION

Indonesia has been driven to combat corruption by the facts of rampant and pervasive corruption not only steals state fund, violates citizen social and economic rights. Although, under international law jurisdiction, corruption has not yet been classified as an extraordinary crime, but to emphasize Indonesian government commitment to combat corruption, the Corruption Act in its preamble states that corruption as an extraordinary crime that should be treated in extraordinary way.[257] The extraordinary way includes prosecution and prevention that shall be in line with public aspiration.[258]

Scholars and civil society, of course, support the government commitment; but then the use term extraordinary creates heated debates. The government creates severe punishment in order to deter not only defendants, but also to prevent other people to commit the same offenses. It turns out by providing both criminal and economy sanctions under the Combating Corruption Act. Even this Act allows prosecutors to charge a defendant with capital punishment if he or she commits corruption in critical or emergency situation, such as natural disaster state fund or economic crisis; or continuing corruption.

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[257] Combating Corruption Act, *supra* note 3, Penjelasan Umum [General Explanation].
[258] *Ibid*

In fact, severe punishments are not a panacea to combat corruption—to decrease people commits this offense—a number of research show that enhancing certainty in prosecution is more effective to deter rather than creates more severe punishment.[259] Besides in imposing severe punishments, the government has to deal with human rights issue where Indonesian Constitution protect the right to live,[260] but it also allows the government to create laws to impose severe punishment when it comes to crimes that cause massive and serious damage to society.[261]

It turns out, reality is far from what the Clean-State Act and the Combating Corruption Act want to achieve. Fifteen years after the establishment of those Acts, corruption is still pervasive.[262] Severe punishments governed by the Corruption Act do not influence people to avoid to do corruption.[263] It is not because those punishments are not severe enough; scholars have found the problem is the uncertainty of Indonesian criminal justice system.[264] Indeed, during July 2012-june 2013, the Indonesian Corruption Watch (ICW) found there were 753 corruption cases.[265] Most of them got low sentences: probation for 4 defendants, one year imprisonment for 185 defendants, one-two years imprisonment for 167 defendants, two-five years imprisonment for 217 defendants, five-ten years for 35 defendants, and above ten years for

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[259] It can be seen by looking to several studies conducted by the Institute of Criminology at Cambridge University, DANIEL NAGIN AND GREG POGARSKY, VALERIE WRIGHT, DETERRENCE IN CRIMINAL Justice Evaluating Certainty vs. Severity of Punishment, The Sentencing Project 4, (2010) , *available at* http://www.sentencingproject.org/doc/deterrence%20briefing%20.pdf.

[260] Indonesian Constitution art. 28 A.

[261] *Id.* art. 28 J (2).

[262] *See* generally, Toto Suryaningtyas, *Reformasi Hukum Sebatas Jargon Semu*, UNISOSDEM, http://www.unisosdem.org/article_detail.php?aid=6251&coid=3&caid=21&gid=3 (last visited May 22, 2014).

[263] *See* generally, Yuni Arisandy, *ICW: Pengambilan Aset Sanksi Efektif Bagi Koruptor [ICW: Asset Recovery Would Deter Corruptors]*, ANTARA NEWS (Nov. 13, 2013), http://www.antaranews.com/berita/404856/icw- pengambilan-aset-sanksi-efektif-bagi-koruptor.

[264] *Tebang Pilih Sangat Kentara: Pemberantasan Korupsi di Daerah Mandek* [Selective Prosecution Revealed: Law Enforcement Has Been Stuck], ANTI KORUPSI-ICW (March 7, 2006), http://www.antikorupsi.org/id/content/tebang- pilih-sangat-kentara-pemberantasan-korupsi-di-daerah-mandek.

[265] Indonesia Corruption Watch et. al., supra note 60, at 26

five defendants, besides five defendants got releases.[266] If we look case by case, we could see the disproportionality of punishments.[267] As the Indonesian chapter of this paper mentioned the Combating Corruption Act has many provisions that give the opportunity to prosecutors and judges to exercise their powers.[268] Senior level of public officials who committed corruption mostly got lower punishments, but it does not work for lower level of public officials who committed the same offenses.[269] The disproportionality then causes lack of trust to the legal apparatus especially to the Attorney and the Supreme Court. This paper recommends that instead of figuring out how to criminalize and set up severe punishment for illicit enrichment, Indonesian government has to consider staying focus not to criminalize, but improve its financial disclosure system and tax evasion prosecution. The Indonesian government may look to the U.S. approach, and choose which part may be useful and applicable.

First, there are some similarity and differences of Indonesia and the U.S. financial disclosure system. Both countries obligate senior public officials from three branches of government: executive, legislative, and judicial to file financial disclosure statement before, during, and after office period that includes report of assets, income, and liabilities. In general, the purpose of financial disclosure system is to prevent conflict of interest and illicit enrichment.[270] For illicit enrichment, scholars found that "enhancing the effectiveness of [financial disclosure] system as a tool for the prosecution of corruption, or for the prosecution of corruption, or for the detection and return of stolen assets is a corollary of the [purpose] of financial disclosure system."[271]

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[266] *Ibid*

[267] Antikorupsi-ICW, *supra* note 272

[268] *See* Combating Corruption Act, *supra* note 3, art. 2, 3, 5, and 12.

[269] *See* generally, Ujang Idrus, *Legislator: Pemberantasan Korupsi Jangan Tebang Pilih [Lawmakers: Combating Corruption Should Be Impartial]*, ANTARANEWS (March 12, 2014), http://www.antaranews.com/berita/423682/legislator-pemberantasan-korupsi-jangan-tebang-pilih.=

[270] Ruxandra Burdescu, *et al,* Income and Asset Declarations: Tools And Trade-Offs at 4, the World Bank, Stolen Asset Recovery (STAR) Initiative, and UNODC (2009), available *at* https://www.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_Income_and_Asset_Declarations.pdf.

[271] *Ibid*

The finding reflects what has happened in Indonesia. Historically, illicit enrichment of public official happened massively under Soeharto era (dictatorship regime).[272] Soeharto, his family, along with his colleagues were extremely enriched during his presidency. [273]At that time there were no sufficient laws and independent legal apparatus taken place to prosecute them.[274] Learning from that experience, Indonesia established financial disclosure system under the Clean-State Act and the KPK under the Combating Corruption Act and the KPK Act. Meanwhile, in the U.S., financial disclosure was bought to people's attention as a response to the Watergate scandal.[275] In brief, the scandal was about illegally breaking to the Democratic National Committee offices by Nixon's administration.[276] This incident was believed related to Nixon's re-election campaign in which Nixon tried to cover up by raising hush money to pay the burglars, and destroying evidences.[277] Since then the U.S. established two laws to dealing with transparency and ethics: the Federal Election Campaign Act of 1971 and from the Ethics in Government Act of 1978.[278]

Although both countries have the similar experience, Indonesia and the U.S. included financial disclosure under different systems. Indonesia inserted financial disclosure into corruption eradication regime under the Clean-State Act—and it became stronger with the establishment

[272] According TI, Soeharto was the most corrupt president in the globe. He got more than $15-35 million from his 32 years presidency. *TI: Mantan Presiden Soeharto Pemimpin Paling Korup di Dunia* [TI: Soeharto, Former President of Indonesia Was the Most Corrupt Leader], HUKUM ONLINE (March 26, 2004), http://www.hukumonline.com/berita/baca/hol9987/ti-mantan-presiden-soeharto-pemimpin-paling-korup-di-dunia-.

[273] *Ibid*

[274] Gusti Grehenson, *Setelah Ada KPK, Kinerja Kepolisian and Kejaksaan Naik [*After the Establishment of KPK, the Kepolisian and the Kejaksaan Have Been Improved], UGM (Nov. 15, 2013), http://ugm.ac.id/id/berita/8410- setelah.ada.kpk.kinerja.kepolisian.dan.kejaksaan.naik.

[275] Burdescu*, et al*, *supra* note 281, p. 28

[276] *Watergate*, HISTORY, http://www.history.com/topics/watergate (last visited April 12, 2014).

[277] Mark Stencel, *The Reform,* WASHINGTON POST (June 13, 1997), http://www.washingtonpost.com/wp- srv/national/longterm/watergate/legacy.htm; *See* generally, John Blake, *Forgetting A Key Lesson From Watergate?* CNN.COM (Feb. 4, 2012)*,* http://www.cnn.com/2012/02/04/politics/watergate-reform/.

[278] *Ibid*

of the Combating Corruption Act and the KPK Act that mentions the result of financial disclosure investigation may be used to strengthen the evidence in corruption prosecution—essentially financial disclosure is seen as morality obligation because there is no civil and criminal prosecution. Interestingly, the US established financial disclosure system under the ethic Act, but it provides civil and criminal prosecution for public officials who fail or give false with imprisonment and fine sanction. Meanwhile, the Indonesian laws provide administrative sanction that is not specifically explained.

According to the UNODC, preferences to provide civil and criminal prosecution depend on the goals of financial disclosure system. If the system is created to investigate illicit enrichment, then governments may focus on monitoring public official's wealth with the goal to detect the "concealment or theft of assets" and provide "administrative and criminal sanctions, including heavy fines."[279] In contrast, if the goal is to prevent conflict of interest that will lead to ethics misbehavior, then the sanction is unnecessary.[280] When look at the Indonesian government intention on inserting financial disclosure into the Clean-State Act, and supported by the Combating Corruption Act, it must be clear that the financial disclosure system is meant to be an active tool to detect corrupt offenses; therefore providing civil and criminal prosecution with administrative, imprisonment, and fine sanctions will be necessary.

Furthermore, there should be a method to investigate illicit enrichment showed by financial disclosure statement that may lead to corrupt offenses. The Indonesian government should consider developing indirect methods of proof like what the U.S. has in its tax prosecution. These indirect methods of proof may be varied such as net worth method, bank deposit, cash and expenditure methods. Looking to resources that Indonesia already has, those indirect methods of proof may be incorporated to financial disclosure system under the KPK and tax evasion prosecution under the Civil Tax Investigator.

Practically, this paper suggests when it comes to a suspicious financial disclosure statement, the KPK may ask the Civil Tax Investigator for more information about the suspect's tax return along with their

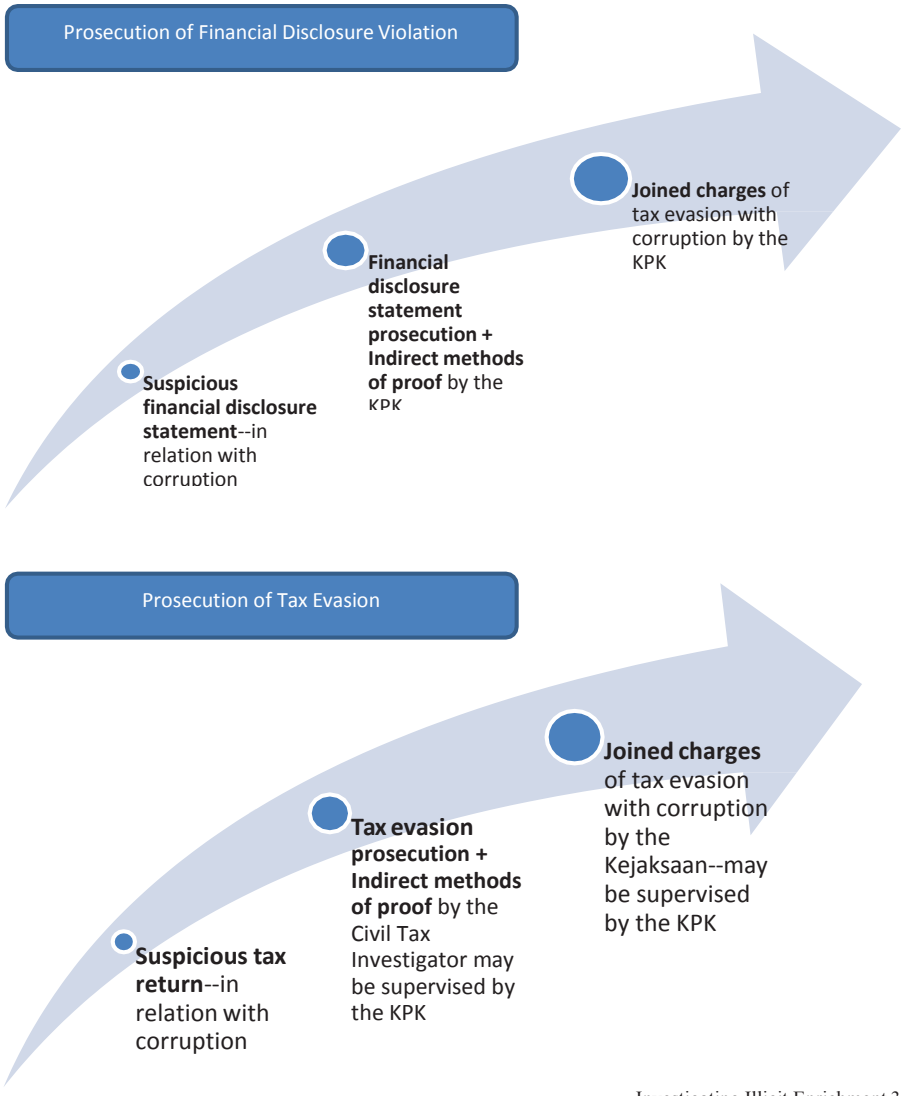
[279] Burdescu, *et al*, *supra* note 281, at 7.
[280] *Ibid*

families and colleagues that may be related with his alleged corrupt offenses. Those institutions may work together to investigate the illicit enrichment, and the KPK may prosecute for civil or criminal prosecution of financial disclosure violation along with joinder corrupt offenses. The same collaboration may be established, when the Civil Tax Investigator finds a suspicious tax return that may be related to corruption. This institution may ask the KPK about the financial disclosure information. Further, if there is substantial evidence to continue to joinder prosecution of tax evasion and corruption, the KPK may supervise the Kejaksaan in this regard. Of course, those institutions also need to collaborate with the PPATK when it comes to investigate bank and other accounts.

To implement those ideas, there must be amendment of the KPK Act and the Combating Corruption Act by adding a special chapter about illicit enrichment which includes law enforcement mechanism for failure to file or to give false information of financial disclosure, joining charges of financial disclosure and tax evasion with corruption. In addition, the Acts should incorporate with memorandum of understanding on investigating illicit enrichment between the KPK, the Civil Tax Investigator, the Attorney, and the PPATK. This graphic below shows the new approach of investigating illicit enrichment.

This paper finds several advantages that Indonesia would get if the government implements the ideas. First, the government does not have to face constitutional issues as consequences of criminalizing illicit enrichment because this paper suggests another way to address illicit enrichment. Second, by applying the indirect methods of proof, Indonesia would not only improve its law enforcement to combat corruption, but also to increase the conviction rate of tax evasion. Third, as the legal apparatus would perform better, Indonesia would get more asset recovery both from corruption and tax evasion convictions.

Feature 1: Proposed Law Enforcement Mechanism



Investigating Illicit Enrichment 34

B. POSSIBLE CHALLENGES AND OVERCOME STRATEGIES IN REFORMING INDONESIAN ILLICIT ENRICHMENT INVESTIGATION

As the UNODC mentions in its report, investigating illicit enrichment and preventing conflict of interest "require management and accountability arrangements in terms of human resources, budget, technology, and facilities." These requirements would also be possible

challenges if the Indonesian government establishes civil and criminal prosecution for financial disclosure system, incorporates the indirect methods of proof and joinder violation of corruption and tax evasion prosecution.

First, the lacking of government political will would likely be a challenge to reform the approach to illicit enrichment; however, the reform of laws may still have chances in the future because the Corruption Act and the KPK Act has been put on bill lists of Indonesian Parliament (DPR) since 2010.[281] In addition, Indonesia is now holding Election for new government. Clearly, all of candidates promise there would be improvement law enforcement for corruption.[282] Despite the decreasing of public distrust to election, this momentum may be used to push the new government to prove their promises. As usual, the new government will be very concern with their public image at the beginning of their leadership.[283]

Second, the quantity and quality of human resources specifically in

[281] *Prolegnas 2010-2014*, DIREKTORAT JENDRAL PERATURAN PERUNDANG-UNDANGAN, KEMENTERIAN HUKUM DAN HAK ASASI MANUSIA, http://ditjenpp.kemenkumham.go.id/prolegnas-2010-2014.html (last visited April 16,2014).
[282] Fiddy Anggriawan, *Janji Pemberantasan Korupsi Masih Mendominasi* [Promises to Enhance Law Enforcement to Combat Corruption Have Dominated], OKEZONE.COM,http://pemilu.okezone.com/read/2014/03/20/567/958319/janji-pemberantasan-korupsi-masih-mendominasi.
[283] For instance, President Yudhono (2004-2009, and 2009-present) has used improving law enforcement performance to combat corruption as main campaign and it has been proven he tried to keep good image in the first 100 days of his leadership by enacting President Memorandum about Combating Corruption. See generally, Ihsan Dalimunte, *Skandal Century Awal Tumpulnya Taji SBY Berantas Korupsi* [Century Case, Beginning of SBY Failure to Combat Corruption], RMOL.CO (Oct. 2, 2011) http://www.rmol.co/read/2011/10/02/41178/Skandal-Century- Awal-Tumpulnya-Taji-SBY-Berantas-Korupsi-.

the KPK and the Civil Tax Investigator, as a new independent institution the KPK has an outstanding performance showing within five years this institution was able to reach 100% conviction rate.[284] To some cases, the KPK took quite long time. According to the ICW, the KPK would have done better if this Institution is supported by sufficient number of investigators. The commissioner of Hong Kong Corruption Eradication Commission (ICAC) shares his concern that the 750 personals of KPK have to look out for five million civil servants, 500,000 police officers, with 200 million citizens. As a result, the KPK has a number of workloads as shown by this table.

Feature 2: the workloads of KPK

Year	Prelimenary Probes	Investigations	Prosecutions	Verdicts
2009	67	49	61	34
2010	54	62	55	38
2011	78	66	45	34

However, this condition would not be a problem because the KPK is not meant to be the one and only institution to combat corruption. This institution has been working together with the Attorney, the PPATK, the Police, and other special intelligences. This collaboration should also be implemented in investigating illicit enrichment. For instance, the Attorney has more 8500 prosecutors all over Indonesia;[285] The Police has

[284] ANTI-CORRUPTION RESOURCE CENTER (U4), AN EXCEPTION TO THE RULE? WHY INDONESIA'S ANTI-CORRUPTION COMMISSION SUCCEEDS WHERE OTHERS DON'T- A COMPARISON WITH THE PHILLIPPINES' OMBUDSMAN (2010), http://www.u4.no/publications/an-exception-to-the-rule-why-indonesia-s-anti-corruption-commission-succeeds-where-others-don-t-a-comparison-with-the philippines-ombudsman/#sthash.7cUnnMkt.dpuf.

[285] Djibril Muhammad, *Punya 8500 Penyidik, Kejagung Tunggu Permintaan KPK* [The Kejagung Waits for KPK to Coordinate its 8500 Prosecutors], ROL REPUBLIKA ONLINE (Oct. 2, 2012), http://www.republika.co.id/berita/nasional/hukum/12/10/02/mb9ql3-punya-8500-penyidik-kejagung-tunggu- permintaan-kpk.

special subdivision of corruption which consists of 600 investigators[286] and there are more 32000 tax officers.[287] These numbers of apparatus along with sufficient technology would likely give more opportunity to investigate illicit enrichment. Additionally, there are many ways to enhance the skills of investigators. For one, holding more seminars and workshops would be necessary.

Second, investigating illicit enrichment would likely spend more money to set up the technology and enhancing the skills of investigators; however this challenge may be overcome by collaborating financial opportunity of the institutions (the KPK, the PPATK, the Attorney, the Police, the Tax Investigator). Notably, some of those institutions have started to work with legal apparatus all over the globe sharing legal information especially when it comes to money laundering and asset recovery. As a follow up, Indonesian investigators may invite these foreign investigators to share their experience. Unconventional training, such as teleconference, may also be used that would likely cut the expenses.

Third, inflexibility of court jurisdiction in Indonesia would be a challenge in integrating financial disclosure and tax evasion prosecution with corruption. This paper has been discussing that the KPK has authority for registering and investigating financial disclosure. The finding in financial disclosure investigation may be used by the KPK to strengthen the evidence in prosecuting corruption in which the special court of corruption has jurisdiction of it. Meanwhile, tax evasion prosecution is under the tax regime where Civil Tax Investigator is leading investigation and passes the case to Attorney for prosecution under the Special Court of Tax jurisdiction. For the idea of establishing financial disclosure criminal and civil prosecution, this paper urges the govern-

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[286] Dani Prabowo, *Polri Akui Kekurangan Penyidik Kasus Korupsi* [Indonesian National Police Admits Having Lack of Investigators], Kompas.com (Nov. 12, 2013), http://nasional.kompas.com/read/2013/11/12/1406543/Polri.Akui.Kekurangan.Penyidik.Kasus.Korupsi.

[287] Dina Mirayanti Hatauhuruk, *Dirjen Pajak: Banyak Pegawai Pajak 'Bandel'!* [The Head of Direktorat Pajak: There Are Many Negligence Officers],OKEZONE.COM (May 20, 2013), http://economy.okezone.com/read/2013/05/20/20/809474/dirjen-pajak-banyak-pegawai-pajak-bandel.

ment should add joined of tax evasion with corruption charge under the Special Court of Corruption jurisdiction, historically and practically speaking, this court has been handling corroboration of money laundering and corruption. Under Indonesian Money Laundering Act stipulates that money laundering should be held by a court which has jurisdiction of the predicate or underlying crime.[288] Furthermore, the idea to corroborate evidence on tax evasion and corruption and join those charges would likely to be resolved under flexibility of special court of corruption jurisdiction. This paper suggests that if a tax evasion charge related to corruption it should be held in the special court of corruption. This argument is supported, again, by the experience in prosecuting money laundering. [289]

VI. CONCLUSION

Although there has been robust improvement in Indonesian legal frameworks, corruption remains as a big problem, imposing economic, social, and political costs in Indonesia. One issue contributing to this lack of stability is illicit enrichment of public officials. Instead of complying with Article 20 UNCAC which recommends criminalizing illicit enrichment of public officials, in Indonesia illicit enrichment of public official is monitored by the KPK through financial disclosure of public officials and may be used to strengthen the evidence in corruption prosecution. However, to date, there is no law to allow the civil and criminal prosecution for failing to file or to give false statement, nor does the law describe the specific methods of proof which may be used by the KPK to investigate the illicit enrichment. As a result, this system does not work. Only few public officials file their financial disclosure statements; meanwhile there are no further steps to investigate the registered financial disclosure statements. This paper urges the Indonesian government to consider adapting the U.S. approach, where illicit enrichment has been addressed by criminal and civil prosecution of financial disclosure along with tax evasion prosecution that may be joined with corruption charge. The U.S. tax investigators use indirect methods of proof, such

[288] Undang-Undang tentang Pencucian Uang [Money Laundering Act], Act No. 8, 2010, art. 74 and 75
[289] *Ibid*

as the net worth, bank deposit, and cash expenditure, to proof indirectly tax evasion and other underlying crimes. This approach would be beneficial to Indonesia for strengthening both corruption and tax evasion prosecutions because the Indonesian legal apparatus will enable to use both financial disclosure statement and tax return in finding evidence of illicit enrichment that may be use in corruption prosecutions.

Finally, this paper recommends that the Indonesian government amend the KPK Act and the Combating Corruption Act by adding a special chapter about illicit enrichment. This chapter should include law enforcement mechanisms for failure to file, for giving false information on financial disclosures, and for joining charges of financial disclosure and tax evasion with corruption. In addition, the Acts should be supported by a memorandum of understanding on investigating illicit enrichment between the KPK, the PPATK, the Civil Tax Investigator, the Attorney and the Police. Some possible challenges to this recommendation are the quality and quantity of investigators, financial barriers, and court jurisdiction. These challenges, however, may be overcome by integrating the resources from each of these law enforcement institutions, enhancing network with foreign legal apparatus, and integrating financial disclosure prosecution and tax evasion under special court of corruption when corruption is an underlying offense.

REFERENCES

Conventions

Inter-American Convention Against Corruption [IACAC], Marc 29, 1996, *reprinted in* 35 I.L.M. 724 (1996), *avalaible at* http://www.oas.org/juridico/english/treaties/b-58.html.

United Nations Convention Against Corruption [UNCAC], Dec. 14, 2005, 2349 U.N.T.S 41, *avalaible at:* http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08- 50026_E.pdf.

United Nations Convention Against Transnational Organized Crime [UNTOC], Sept. 29, 2003, 2225 U.N.T.S 209.

United Nations Materials

United Nations on Drugs and Crime (UNODC), Legislative Guide for the Implementation of UNTOC, 2004, *available at* https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

United Nations on Drugs and Crime (UNODC), Legislative Guide for the Implementation of the UNCAC (2006), *avalaible at* https://www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf.

Organization of American States Materials,

Departement of International Law the Organization of American States, Signatories and Ratifications B-58: Inter-American Convention Against Corruption,[hereinafter Reservation to IACAC] http://www.oas.org/juridico/english/sigs/b-58.html (last visited May 22, 2014).

NATIONAL LEGAL FRAMEWORKS

INDONESIA

Constitution

Indonesia Constitution (1945) (as amended 2002).

Law

Undang-Undang tentang Pencucian Uang [Money Laundering Act], Act No. 8, 2010.

Undang-Undang Nomor 28 Tahun 2007 jo. Undang-Undang Nomor 16 Tahun 2000 jo. Undang-Undang 6 Tahun 1983 tentang Ketentuan Umum dan Tata Cara Perpajakan [Indonesian Taxation Act], 2007.

Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan [Prosecutor Act]

Undang-Undang tentang Komisi Pemberantasan Korupsi [KPK Act], Act. No. 30, 2002.

Undang-Undang tentang Pemberantasan Tindak Pidana Korupsi [Combating Corruption Act], Act. No. 31, 1999 jo. Act. No 20, 2001.

Undang-Undang tentang Penyelenggara Negara yang Bersih dan Bebas Korupsi [State Clean Act], Act. No. 28, 1999.

Undang-Undang tentang Kitab Undang-Undang Hukum Acara Pidana [Criminal Procedural Act], Act. No. 8, 1981.

Agency Regulations

Keputusan KPK tentang Tata Cara, Pendaftaran, Pengumuman, dan Pemeriksaan Laporan Harta Kekayaan Penyelenggara Negara [Memorandum of KPK for Government Official Income and Asset Disclosure], Memo No. KEP/07/KPK/02/2005.

Surat Edaran Menteri Negara Pendayagunaan Aparatur Negara Nomor: SE/03/M.PAN/01/2005 tentang Laporan Harta Kekayaan Penyelenggara Negara [Administration Minister Memorandum about Financial Disclosure Statement], 2005.

Agency Materials

KPK, *WAJIB LAPOR LHKPN* [PUBLIC OFFICIALS WHO ARE OBLIGATED TO FILE FINANCIAL DISCLOSURE STATEMENTS], ACCH http://acch.kpk.go.id/wajib-lapor-lhkpn (last visited May 22, 2014).

Prolegnas 2010-2014, DIREKTORAT JENDRAL PERATURAN PERUNDANG-UNDANGAN, KEMENTERIAN HUKUM DAN HAK ASASI MANUSIA, http://ditjenpp.kemenkumham.go.id/prolegnas-2010-2014.html (last visited April 16, 2014).

UNITED STATES

Constitution

1.S. Constitution. amend. V.

Statutes

Attempt to Evade or Defeat Tax, 26 U.S.C.A. §7201 (West, Westlaw through P.L. 113-

93 (excluding P.L. 113-79)).
Bribery of Public Officials and Witnesses, 18 U.S.C.A. §201 (West, Westlaw through P.L. 113-93 (excluding P.L. 113-79)).
Ethics in Government Act of 1978, 5 U.S.C.A. App. 4. (West, Westlaw through P.L. 113- 93 (excluding P.L. 113-79)).
Fraud and False Statement, 26 U.S.C.A. §7206 (West, Westlaw through P.L. 113-93 (excluding P.L. 113-79)).
General Rule for Methods of Accounting, 26 U.S.C.A. §446 (West, Westlaw through P.L. 113-93 (excluding P.L. 113-79)).

Cases

Capone v. United States, 56 F.2d 927 (7th Cir. 1932).
Friedberg v. United States, 348 US 142 (1954).
Guzik v. United States, 54 F.2d 618 (7th Cir. 1931).
Holland v. United States, 348 US 121 (1954).
Massei v. United States, 355 US 595 (1958).
Smith v. United States, 348 US 147 (1954).
United States v. Anderson, 809 F.2d 1281 (7th Cir. 1987).
United States v. Calderon, 348 US 160 (1954).
United States v. Coyne, 4 F.3d 100 (2d Cir. 1993).
United States v. Gant, 268 F. Supp. 2d 29 (D.D.C. 2003).
United States v. Hall, 650 F.2d 994 (9th Cir. 1981).
United States v. Hogan, 886 F.2d 1497 (7th Cir. 1989).
United States v. Johnson, 319 US 503 (1943).
United States v. Kenny, 645 F.2d 1323 (9th Cir. 1981).
United States v. Kopituk, 690 F.2d 1289 (11th Cir. 1982).
United States v. Mastropieri, 685 F.2d 776 (2d Cir. 1982).
United States v. Sun-Diamond Growers of California, 526 U.S. 398 (1999).
United States v. Todaro, 744 F.2d 5 (2nd Cir, 1984).

Agency Regulations

Internal Ravenue Manual 9.5.9 Methods of Proof, 9.5.9.7 Bank Deposits Method of Proving Income, *updated* November 5, 2004, *available at* http://www.irs.gov/irm/part9/irm_09-005-009-cont01.html.
Internal Ravenue Manual 9.5.9 Methods of Proof, 9.5.9.8 Cash Method of Proving Income, *updated* November 5, 2004, *available at* http://www.irs.gov/irm/part9/irm_09- 005-009-cont01.html.
Internal Revenue Manual 9.5.9 Methods of Proof, 9.5.9.2.2 Indirect Methods, *updated* March 19, 2012 *avalaible* at http://www.irs.gov/irm/part9/irm_09-005-009.html.
Internal Revenue Manual 9.5.9 Methods of Proof, 9.5.9.6. Expenditures Method of Proving Income, *updated* November 5, 2004, *available at* http://www.irs.gov/irm/part9/irm_09-005-009.html#d0e1812.
Internal Revenue Manual 9.5.9, .9.5.9.5 The Net Worth Method of Proof, *updated* March 19, 2012 *avalaible* at http://www.irs.gov/irm/part9/irm_09-005-009.html.
The Departement of Justice Criminal Tax Manual 31.00 Net Worth Method, *updated* June 2012, http://www.justice.gov/tax/readingroom/2001ctm/31ctax.html.

Agency Materials

Background, ORGANIZATION OF AMERICAN STATES, SECRETARIAT OF LEGAL AFFAIRS, DEPARTMENT OF LEGAL COOPERATION, http://www.oas.org/juridico/english/corr_bg.html.

Foreign Corrupt Practices Act, THE UNITED STATES DEPARTEMENT OF JUSTICE, http://www.justice.gov/criminal/fraud/fcpa/.

OTHER FOREIGN NATIONAL STATUES

The India Prevention of Corruption Act No. 48 of 1988, Chapter III: Offences and Penalties, Point 13, September 9, 1988, *available at* http://www.persmin.gov.in/DOPT/EmployeesCorner/Acts_Rules/PCAct/pcact.pdf (last visited May 5, 2014).

BOOKS

Ali, Shaukat. Corruption A Third World Perspective (1985)

Borowiak, Craig T., Accountability and Democracy, The Pitfalls and Promise of Popular Control (2011).

Brickey, Katheleen F. Corporate and White Collar Crime Cases and Materials (2011)

Burdescu, Ruxandra, *et al*, Income and Asset Declarations: Tools and Trade Offs. (2009).

Butt, Simon. Corruption and Law In Indonesia (2008).

Harris, Robberth, Political Corruption: In and Beyond the Nation State (2003).

Heidenheimer, Arnold J, Michael Johnston and Victor T. Levine, Political Corruption (1949).

Klitgaard, Robert. Controlling Corruption (1988).

Mocthar, Akil, Pembalikan Beban Pembuktian Tindak Pidana Korupsi, [Shifting The Burden Of Proof In Corruption Prosecution] (2009).

Monterio. John B.Corruption: Control and Maladministration (1966).

Muzila, Lindy. *et al*. On the Take: Criminalizing Illicit Enrichment to Fight Corruption 8 (2012)

Strader, J Kelly, Understanding White Collar Crime (2006).

REPORTS

Anti-Corruption Resource Center (U4) "An exception to the Rule? Why Indonesia's Anti-Corruption Commission Succeeds Where Others Don't-A Comparison With The Philippines Ombudsman (2010), http://www.u4.no/publications/an-exception-to-the-rule-why-indonesia-s-anti-corruption- commission-succeeds-where-others-don-t-a-comparison-with-the-philippines- ombudsman/#sthash.7cUnnMkt.dpuf.

DANIEL NAGIN AND GREG POGARSKY,VALERIE WRIGHT, DETERRENCE IN CRIMINAL JUSTICE EVALUATING CERTAINTY VS. SEVERITY OF PUNISHMENT, THE SENTENCING PROJECT (2010), *available at*

http://www.sentencingproject.org/doc/deterrence%20briefing%20.pdf.

TI, *EXPORTING CORRUPTION PROGRESS REPORT 2013: ASSESSING ENFORCEMENT OF THE OECD CONVENTION ON COMBATING FOREIGN BRIBERY*

(2013), *available at* http://www.transparency.org/whatwedo/pub/exporting_corruption_progress_report_2013_assessing_enforcement_of_the_oecd.

INDONESIA CORRUPTION WATCH - YAYASAN LEMBAGA BANTUAN HUKUM INDONESIA- PUKAT UGM, *IMPLEMENTASI DAN PENGATURAN ILLICIT ENRICHMENT (PENINGKATAN KEKAYAAN TIDAK SAH) DI INDONESIA* [IMPLEMENTATION AND REGULATION OF ILLICIT ENRICHMENT IN INDONESIA] (2013).

KPK, *GAP ANALYSIS STUDY REPORT; IDENTIFICATION OF GAPS BETWEEN LAWS/REGULATIONS OF THE REPUBLIC OF INDONESIA AND UNCAC* (2012).

JACK MASKELL, *FINANCIAL DISCLOSURE BY FEDERAL OFFICIALS AND PUBLICATION OF DISCLOSURE REPORTS LEGISLATIVE ATTORNEY*, CONGRESSIONAL RESEARCH SERVICE, *avalaible at* http://www.fas.org/sgp/crs/misc/R43186.pdf (2012).

PUSDIKLAT KEJAKSAAN REPUBLIK INDONESIA, *PENELURUSAN ASET* [ASSET TRACING], *available at* http://www.kejaksaan.go.id/pusdiklat/uplimg/File/PENELUSURAN%20ASET.pdf.

MUHAMMAD YUSUF, IMPLEMENTASI DAN PENGATURAN ILLICIT ENRICHMENT DALAM DELIK KORUPSI [IMPLEMENTATION AND REGULATION OF ILLICIT ENRICHMENT IN COMBATING CORRUPTION LEGAL FRAMEWORK], http://www.antikorupsi.org/sites/antikorupsi.org/files/doc/Audit%20Keuangan/PPATK_I mplementasi%20Illicit%20Enrichment-MYusuf.pdf (presented Feb. 18, 2014).

JOURNALS

Allan G. Burrow, *Effective Cross-Examination: A Practical Approach for Prosecutors Part II*, 44 ADVOCATE 8 (2001).

Anthony F. Arguijo, *Worth Another Look: Net-Worth Discovery Standards in Texas*, 89 TEX. L. REV. 1433 (2011).

Calvin H. Johnson, *The Illegitimate "Earned" Requirement in Tax and Non-Tax Accounting*, 50 TAX L. REV. 373 (1995).

Candace Saari Kovacic-Fleischer, *Restitution Rollout: The Restatement (Third) of Restitution and Unjust Enrichment*, 68 WASH. & LEE L. REV. 1407 **(**2011).

Daniel Hays Lowenstein, *Political Bribery and the Intermediate Theory of Politics*, 32 UCLA L. REV. 784 **(**1985).

Ethan Bercot, John Thompson, *Tax Violations*, 50 AM. CRIM. L. REV. 1559 (2013).

Gregory Harbaugh, *A Tradition of Asset Protection: Wealth Preservation Strategies for Pittsburgh's High Net-Worth Individuals*, 1 No. 11 LAWYERS J. 7 **(**1999).

Ian M. Comisky, *The Likely Source: An Unexplored Weakness in the Net Worth Method of Proof*, 36 U. MIAMI L. REV. 1 (1981).

John T. Simpson, Jr., *Discovery of Net Worth in Bifurcated Punitive Damages Cases: A Suggested Approach After Transportation Insurance Co. v. Moriel*, 37 S. TEX. L. REV. 193 (1996).

Kathleen Barney, *Special Focus Computer Forensics: This Thing Called Forensic Accounting*, 43-AUG ARIZ. ATT'Y 34 **(**2007).

Laura M. Cohen et all, *Eighth Survey of White Collar Crime Substantive Crimes: Tax Evasion*, 30 Am. Crim. L. Rev. 961 (1993).

Linda S. Eads, *From Capone to Boesky: Tax Evasion, Insider Trading, and Problems of Proof*, 79 CAL. L. REV. 1421 (1991).

Lucinda A. Low et. al., *The Inter-American Convention Against Corruption: A Comparison with the United States Foreign Corrupt Practices Act*, 38 VA. J. INT'L L. 243, 281-82 (1998).

Luz Estella Nagle, *The Challenges of Fighting Global Organized Crime in Latin America*, 26 FORDHAM INT'L L.J. 1649 (2003).

Marcus Schoenfeld, *A Critique of The Internal Revenue Service's Refusal to Disclose How It "Determined" A Tax Deficiency, and of the Tax Court's Acquiescence with This View*, 33 IND. L. REV. 517 (2000).

Margaret K. Lewis, *Presuming Innocence, or Corruption in China*, 50 COLUM. J. TRANSNAT'L L. 287 (2012).

Ndiva Kofele-Kale, *Presumed Guilty: Balancing Competing Rights and Interests in Combating Economic Crimes*, 40 INT'L LAW. 909 (2006).

Peter J. Henning, *Public Corruption: A Comparative Analysis of International Corruption Conventions and United States Law*, 18 ARIZ. J. INT'L & COMP. L. 793 (2001).

R. Michael Northrup, Melinda R. Newman, *In Search of Consensus on "Net Worth",* 22 APP. ADVOC. 235 (2010).

Ray A. Knight, Lee G. Knight, *Criminal Tax Fraud: An Analytical Review*, 57 MO. L. REV. 175 (1992).

Richard A. Nossen,"*One-On-One" Uncorroborated Testimony: the Dilemma of Prosecutors, Defense Attorneys, and the Courts in Fraud, Waste, and Abuse Cases,* 58 NOTRE DAME L. REV. 1019 (1983).

Robert J. Stuart, *Taxpayer Procedures and Remedies in Tax Controversies: The Elusive Maze of the "Net Worth" Limitations*, 61 TAX LAW. 941 (2008).

Steven M. Levin, *Illegal Gratuities in American Politics: Learning Lesson From the Sun-Diamond Case*, 33 LOY. L.A. L. REV. 1813 (2000).

Teresa E. Adams, *Tacking on Money Laundering Charges to White Collar Crimes: What Did Congress Intend, and What Are the Courts Doing?* 17 GA. ST. U. L. REV. 531 (2000).

Towner S. Leeper, *Proving Tax Evasion by the Net Worth Method*, 34 TEX. L. REV. 606 (1956).

Willard H. DaSilva, *The Critical Net Worth Statement*, 79-DEC N.Y. ST. B.J. 53 (2007).

INTERNET AND ELECTRONIC MEDIA

1. Indra Akuntono, *KPK Akan Panggil Ibas Asalkan* [KPK Would Arrest Ibas With Special Circumtances], KOMPAS.COM (DEC. 12, 2013).

http://nasional.kompas.com/read/2013/12/12/1346464/KPK.Akan.Panggil.Ibas.asalkan.

Silvanus Alvin, *7 Tahun Tidak Lapor Kekayaan, Harta Ratu Atut Meningkat* [Seven Years Ignored to File Financial Disclosure Statement, Atut Has Gained Enrichment], LIPUTAN 6 (Oct. 12, 2013), http://news.liputan6.com/read/718485/7-tahun-tidak-lapor- kekayaan-harta-ratu-atut-meningkat#sthash.n5ouE73t.dpuf.

Fiddy Anggriawan, *Janji Pemberantasan Korupsi Masih Mendominasi* [Promises to Enhance Law Enforcement to Combat Corruption Have Dominated], OKEZONE.

COM, http://pemilu.okezone.com/read/2014/03/20/567/958319/janji-pemberantasan-korupsi- masih-mendominasi (last posted March 20, 2014).

Iqra Anugrah, *Indonesia Long Journey Toward Democracy*, GLOBAL POLITICS, http://www.global-politics.co.uk/issue9/iqra/ (last visited May 22, 2014).

Yuni Arisandy, *ICW: Pengambilan Aset Sanksi Efektif Bagi Koruptor [ICW: Asset Recovery Would Deter Corruptors]*, ANTARA NEWS (Nov. 13, 2013), http://www.antaranews.com/berita/404856/icw-pengambilan-aset-sanksi-efektif-bagi- koruptor.

Rina Atriana, *Gelar Resepsi Mewah*, *Sekretaris MA Nurhadi Belum Lengkapi Laporan Kekayaan* [The Secretary of Supreme Court Ignored to File Financial Disclosure Statement for Three Years], DETIK.CO (March 18, 2014), http://news.detik.com/read/2014/03/18/065203/2528677/10/gelar-resepsi-mewah- sekretaris-ma-nurhadi-belum-lengkapi-laporan-kekayaan.

Randy "Duke" Cunningham Completes Prison Sentence, ABC7 (June 4, 2013), http://www.wjla.com/articles/2013/06/randy-duke-cunningham-completes-prison- sentence-89652.html.

Tebang Pilih Sangat Kentara; Pemberantasan Korupsi di Daerah Mandek [Selective Prosecution Revealed: Law Enforcement Has Been Stuck], ANTI KORUPSI-ICW (March 7, 2006), http://www.antikorupsi.org/id/content/tebang-pilih-sangat-kentara- pemberantasan-korupsi-di-daerah-mandek.

Oki Baren, *Bisnis Cantik Mas Ibas* [Ibas's Fancy Business], GRESNEWS (Dec. 5, 2011), http://gresnews.com/berita/somasi/1740512-bisnis-cantik-mas-ibas. Allie Bidwel, *Majority of Americans Say Corruption Has Increased*, US NEWS (June 10, 2013), http://www.usnews.com/news/newsgram/articles/2013/07/10/majority-of- americans-say-corruption-has-increased.

John Blake, *Forgetting A Key Lesson From Watergate?* CNN.COM (Feb. 4, 2012), http://www.cnn.com/2012/02/04/politics/watergate-reform/.

Kartika Chandra, *Ibas Bantah Terima Duit Wisma Atlet* [Ibas Urgued He Didn't Receive Money From Wisma Atlet Scandal], TEMPO.CO (Dec. 21, 2011),http://www.tempo.co/read/news/2011/12/08/063370596/Ibas-Bantah-Terima-Duit- Wisma-Atlet.

Ihsan Dalimunte, *Skandal Century Awal Tumpulnya Taji SBY Berantas Korupsi* [Century Case, Beginning of SBY Failure to Combat Corruption], RMOL.CO (Oct. 2, 2011), http://www.rmol.co/read/2011/10/02/41178/Skandal-Century-Awal-Tumpulnya-Taji- SBY-Berantas-Korupsi-.

Rangga D. Fadhilah, '*Weak' KPK Set to Lose War: ICW*, THE JAKARTA POST (July 9, 2012), http://www.thejakartapost.com/news/2012/07/09/weak-kpk-set-lose-war-icw.html (last posted July 9, 2012).

Edwin Firdaus, *KPK Himbau Ratu Atut Segera Laporkan LHKPN* [KPK Recommends Ratu Atut to File Her Financial Disclosure], Tribun Sumsel (Oct. 6, 2013), http://sumsel.tribunnews.com/2013/10/06/kpk-himbau-ratu-atut-segera-laporkan-lhkpn.

Gusti Grehenson, *Setelah Ada KPK, Kinerja Kepolisian and Kejaksaan Naik* [After the Establishment of KPK, the Kepolisian and the Kejaksaan Have Been Improved], UGM (Nov. 15, 2013), http://ugm.ac.id/id/berita/8410- setelah.ada.kpk.kinerja.kepolisian.dan.kejaksaan.naik.

Zaki Al Hamzah, *SBY: Cermati Korupsi Pajak* [SBY: Monitors Corruption in Tax System], REPUBLIKA ONLINE (ROL) (Dec. 10, 2013), http://www.republika.

co.id/berita/koran/news-update/13/12/09/mxjq7f-sby-cermati- korupsi-pajak.

Dina Mirayanti Hatauhuruk, *Dirjen Pajak: Banyak Pegawai Pajak 'Bandel'!* [The Head of Direktorat Pajak: There Are Many Negligence Officers],OKEZONE. COM (May 20, 2013), http://economy.okezone.com/read/2013/05/20/20/809474/dirjen-pajak-banyak- pegawai-pajak-bandel.

Hendrizal, *Pajak dan Masalah Transparansi* [Tax and Problem of Transparency], PELITA (April 11, 2014),http://www.pelita.or.id/baca.php?id=92915.

Ed Henry & Mark Preston, *Congressman Resigns After Bribery Plea: California Republican admits selling influence for $2.4 million,*CNN.COM (nov. 28, 2005), http://www.cnn.com/2005/POLITICS/11/28/cunningham/.

Watergate, HISTORY, http://www.history.com/topics/watergate (last visited April 12, 2014).

TI: Mantan Presiden Soeharto Pemimpin Paling Korup di Dunia [TI: Soeharto, Former President of Indonesia Was the Most Corrupt Leader], HUKUM ONLINE (March 26, 2004), http://www.hukumonline.com/berita/baca/hol9987/ti-mantan-presiden-soeharto- pemimpin-paling-korup-di-dunia-.

Tentang Sistem Pembuktian Terbalik [About Sifthing the Burden of Proof], HUKUMONLINE (MARCH 19, 2013), http://www.hukumonline.com/klinik/detail/lt-513ff99d6eedf/tentang-sistem-pembalikan- beban-pembuktian.

Potensi Wajib Pajak di Indonesia Baru 67 Juta Orang [67 Million People: Small Possibility of Indonesian New Taxpayers], INFOBANKNEWS.COM (August 15, 2012), http://www.infobanknews.com/2012/08/potensi-wajib-pajak-di-indonesia-baru-67-juta- orang/.

Ujang Idrus, *Legislator: Pemberantasan Korupsi Jangan Tebang Pilih [Lawmakers: Combating Corruption Should Be Impartial]*, ANTARANEWS (March 12, 2014), http://www.antaranews.com/berita/423682/legislator-pemberantasan-korupsi-jangan-tebang-pilih.

Saldi Isra, *Seratus Hari Tanpa Kejutan [100 days Without Any Suprises]*, ANTI KORUPSI, http://www.antikorupsi.org/id/content/seratus-hari-tanpa-kejutan (published January 28, 2005).

Astrid Felicia Lim, *KPKPN Resmi Bubar [KPKPN officially Shut Down]*, DETIK. CO (June 29, 2006),http://news.detik.com/read/2004/06/29/113149/169807/10/kpkpn-resmi-bubar.

Bunga Manggiasih, *Tuduh Ibas, Anas Urbaningrum Diminta Tunjukkan Bukti [Accused Ibas*, *Anas Urbaningrum Is Asked for Envidence],* TEMPO. CO (Jan. 30, 2014), http://www.tempo.co/read/news/2014/01/30/063549489/Tuduh-Ibas-Anas-Urbaningrum-Diminta-Tunjukkan-Bukti.

Richard Marosi, *Contractor Gets 12 Years for Bribing Congressman*, LOS ANGELES TIMES (Feb. 20, 2005), http://articles.latimes.com/2008/feb/20/local/me-duke20.

Adyan Mohamad, *Kemenkeu Sanksi 83 Pegawai Karena Transaksi Mencurigakan* [Ministry of Finance Gives Sanctions to 83 Officials Who Have Been Tied Up with Suspicious Transaction], MERDEKA.COM (Nov. 5, 2013), http://www.merdeka.com/uang/kemenkeu-hukum-83-pegawai-karena-transaksi-mencurigakan.html

Djibril Muhammad, *Punya 8500 Penyidik, Kejagung Tunggu Permintaan KPK* [The Kejagung Waits for KPK to Coordinate its 8500 Prosecutors], ROL REPUBLIKA ONLINE (Oct. 2, 2012), http://www.republika.co.id/berita/nasional/hukum/12/10/02/mb9ql3- punya-8500-penyidik-kejagung-tunggu-permintaan-kpk.

Adnan Buyung Nasution, *Reformasi Konstitusi di Indonesian* [Constitutional Reform in Indonesia], HUKUM ONLINE, http://www.hukumonline.com/berita/baca/hol4057/reformasi-konstitusi-di-indonesia (last posted November 1, 2001).

Abdul Qodir, *Rumah Nurhadi Terbesar di Dekat Senayan City* [Nurhadi Has The Biggest House in Senayan City], Tribun News (March 18, 2014), http://www.tribunnews.com/nasional/2014/03/18/rumah-nurhadi-terbesar-di-dekat- senayan-city.

Putri Artika R, *KPK Imbau Nurhadi Lengkapi Laporan Harta Kekayaan* [KPK Recommends Nurhadi to File His Financial Disclosure Statement], MERDEKA. COM (March 14, 2013), http://www.merdeka.com/peristiwa/kpk-imbau-nurhadi-segera- lengkapi-laporan-harta-kekayaan.html.

Sukma Indah Permana, *ICW: Pendekatan Illicit Enrichment Bisa Maksimalkan Upaya Pemiskinan Koruptor* [ICW: Investigating Illicit Enrichment Would Support Fighting Against Corruption], Detik.co (Nov.1, 2011), http://news.detik.com/read/2013/11/01/173946/2401813/10/icw-pendekatan-illicit- enrichment-bisa-maksimalkan-upaya-pemiskinan-koruptor.

Dani Prabowo, *Polri Akui Kekurangan Penyidik Kasus Korupsi* [Indonesian National Police Admits Having Lack of Investigators], Kompas.com (Nov. 12, 2013), http://nasional.kompas.com/read/2013/11/12/1406543/Polri.Akui.Kekurangan.Penyidik.Kasus.Korupsi.

Wayan Agus Purnomo & Angga Sukma Wijaya, *Soal Belanja Mewah Ratu Atut*, *Ini Kata Keluarga* [Related to Shopping Life Style, Here Is What The Atut's Family Thinks], TEMPO.CO (Nov. 4, 2013), http://www.tempo.co/read/news/2013/11/04/063526888/Soal-Belanja- Mewah-Ratu-Atut-Ini-Kata-Keluarga.

Gusti Sawabi, *Perintah Menyuap Akil Mochtar Diduga Datang dari Ratu Atut Chosiyah*[Order to BribeAkhil Mochtar Was Suspected Came From Ratu Atut Chosiyah], *Terungkap, Ratu Atut Kerap Belanja Keliling Dunia* [Uncovered, Ratu Atut Often Goes Shopping Overseas], TEMPO. CO (Nov. 4, 2013), http://www.tempo.co/read/news/2013/11/04/063526886/Terungkap-Ratu-Atut-Kerap-Belanja- Keliling-Dunia.

Herry Susanto, *Membangun Kesadaran dan Kepedulian Sukarela Wajib Pajak* [Enhancing Awarness to Pay Taxes], PAJAK (Jan. 9, 2012), http://www.pajak.go.id/content/membangun-kesadaran-dan-kepedulian-sukarela-wajib-pajak.

Martha Thertina, *PPATK Usulkan Ada RUU Perampasan Aset Koruptor* [PPATK Proposes Asset Recovery Bill], TEMPO.CO (April 16, 2013) http://www.tempo.co/read/news/2013/04/16/092473857/PPATK-Usulkan-Ada-RUU-Perampasan-Aset-Koruptor.

KPK Arrests Banten Governor, THE JAKARTA POST (Dec. 20, 2013), http://www.thejakartapost.com/news/2013/12/20/kpk-arrests-banten-governor.html.

TI, *Corruption Perceprtion Index 2012*, TRANSPARENCY, http://www.transparency.org/cpi2012/results (last visited Dec. 14, 2013).

TI, *Corruption Perceprtion Index 2011*, TRANSPARENCY, http://www.transparency.org/cpi2011/results/ (last visited Dec. 14, 2013)..

Arlette Saenz, *Ferraris, Rolexes And A Shopping Spree: Inside The Extravagant Life Of Bob McDonnell And His Wife*, ABCNEWS.COM (Jan. 21, 2014), http://abcnews.go.com/blogs/politics/2014/01/ferraris-rolexes-and-a-shopping-spree-inside the-extravagant-life-of-bob-mcdonnell-and-his-wife/ (posted Jan 21, 2014).

David Sherfinski, *Democratic Governors in VA also Took Expensive Gifts under Lax*

*State Law,*WASHINGTON TIMES (Jan. 27, 2014), http://www.washingtontimes.com/news/2014/jan/27/virginia-governors-before-bob-mcdonnell-accepted-l/?utm_source=RSS_Feed&utm_medium=RSS.

Mark Stencel, *The Reform,*WASHINGTON POST (June 13, 1997), http://www.washingtonpost.com/wp-srv/national/longterm/watergate/legacy.htm.

Toto Suryaningtyas, *Reformasi Hukum Sebatas Jargon Semu*, UNISOSDEM, http://www.unisosdem.org/article_detail.php?aid=6251&coid=3&caid=21&gid=3 (last visited May 22, 2014).

Rendi A. Witular & Hans David Tampubolon, *First Family Tax Returns Raises Flags*, THE JAKARTA POST (January 30, 2013), http://www.thejakartapost.com/news/2013/01/30/first-family-tax-returns-raises- flags.html.