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Original Article

The Existence of the Lex Certa Principle in the Construction of the Crime of Illicit Enrichment in the Criminal Law System of Timor-Leste

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Abstract

A core tenet of criminal law is the principle of legality, which dictates that no conduct is punishable without a pre-existing legal prohibition *(nullum crimen, nulla poena sine lege)*. This concept, codified in Article 1(1) of the Timorese Penal Code, forms the bedrock of the nation's legal framework, ensuring predictability in the law and the protection of fundamental human rights. With the ratification of the United Nations Convention Against Corruption/UNCAC 2003 by the Timor-Leste Government in 2009, and the National Parliament has criminalized Illicit Enrichment as a criminal act of corruption in its national law. However, in the formulation of illicit enrichment, there are norms that are unclear, vague and give rise to interpretation in law enforcement. The unclear formulation of the law, *lex certa* will create legal uncertainty for the community due to ambiguity. This study aims to analyze the existence of the *lex certa* principle in the theory of the principle of legality towards Illicit Enrichment, and how its implications in application, in order to build a strong legal system. Using a library research method, this study examines relevant legal, conceptual, and expert opinions. The results indicate that illicit enrichment cannot be implemented in Timor-Leste due to unclear, vague, and ambiguous formulations of the norm, as well as conflicts with the Timor-Leste Constitution. In conclusion, the study recommends clarifying and precisely defining illicit enrichment provisions to comply with the *lex certa* principle, ensuring legal certainty, effective enforcement, and alignment with constitutional norms.

Keywords: Criminal Law, Illicit Enrichment, *Lex certa*, Principle of Legality, Timor-Leste.

1. Introduction

Timor-Leste is a country that holds the status of a Democratic Rule of Law State based on law *(rechtsstaatliche)*. The Constitution is lex superior because it regulates a series of requirements necessary to produce other normative species *(formal supralegality)* and because it is recognized as having normatively superior value in a hierarchical sense in the matters it addresses *(material supralegality)*. It constitutes a set of principles and rules that must be observed by authorized bodies in carrying out their duties. In examining the various meanings of constitution, three positions of a state's constitution can be identified (Atmadja, 2010).

First, the Constitution as basic law contains fundamental norms that direct how the government obtains the authority to organize the exercise of state power. In its position as basic law, the constitution can serve as an effective instrument to prevent the emergence of abuse of power (Ahmad, 2025). The juridical consequence of recognizing the constitution as

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basic law can direct and inspire legal products oriented not only toward legal certainty, but also toward legal products that fulfill justice for all people.

Second, from the perspective of the hierarchy of legislation, the constitution as the supreme law holds a strong position, meaning other legal products must not contradict the constitution, and if they do, they must be annulled. Such annulment can occur through the principle of preference, namely the legal principle of *lex superiority derogat legi inferior* (higher legal rules override lower legal rules). The annulment or declaration that a lower legal product contradicts the constitution can be carried out through judicial review by the Supreme Court, reviewing legislation below the level of statutes against statutes; or by the Constitutional Court, reviewing statutes against the constitution (Beard, 2012).

Hans Kelsen's theory of *stufenbau des recht* (the hierarchical structure of law) describes the legal order as a tiered system where individual court decisions form the base, supported by statutes and customary law above them, with the constitution at the apex (Kelsen, 2011). However, the constitution itself derives its validity not from any higher positive legal norm, but from a hypothetical "basic norm" presupposed by legal reasoning. This basic norm in *Stufenbautheorie* is termed by Hans Kelsen *grundnorm* (in German), *grondnorm* (in Dutch), basic law or apex norm (in English). Third, the Constitution as a legal and political document *(politico-legal document)* occupies a special position. Beyond containing fundamental legal norms in its substance or content, it also embodies a birth certificate of a new state, the inspiration to realize state ideals *(staatsidee)* and legal ideals *(rechtsidee)*. Therefore, constitutional norms also govern other norms.

Based on Article 24 of the 2002 Constitution of the Democratic Republic of Timor-Leste, any limitation of rights, freedoms, and guarantees must meet several conditions: (1) it can only be established by law; (2) it must serve to protect other constitutionally safeguarded rights or interests; (3) it must be expressly provided for in the Constitution; (4) it must be general and abstract in nature rather than targeted; (5) it cannot diminish the essential core of constitutional rights; and (6) it cannot have retroactive effect.

Referring to the provisions of the article above, restrictions on rights, freedoms, and guarantees are not arbitrary in nature, but are only made possible by law, with the specific purpose of protecting other rights or interests protected by the Constitution, and only if the Constitution itself permits such restrictions. This principle establishes formal and material limits on the actions of the legislator, requiring that any restriction must be justified, necessary, proportional, and must not affect the essential core of that right.

While an individual's rights and freedoms are not absolute and can be restricted, such limitations are only permissible under three strict conditions: they must be established by law, intended to safeguard the constitutionally protected rights of others, and specifically allowed by the constitution. This ensures that restrictions are never arbitrary but are instead grounded in clear legislation serving a greater, constitutionally recognized interest. A rule-of-law state is fundamentally built on law and justice for its people. Consequently, all state authority and actions must derive from and be regulated by law. This principle is what guarantees justice in society (Yunas, 1992).

According to Prakoso (2016), in discussing the presence of law, one must not only examine its norms, but also its legal system, and law as a system will be subject to the limitations and characteristics of a system. Law as a system, according to Lawrence Friedman, consists of components including structural, substantive, and cultural. One component of the legal system, namely the substantive component, is the legal product produced by the structural (institutional) component, and one of these products is legislation.

The ultimate goal behind any effort to craft effective criminal laws is crime prevention. This means that criminal law policy, also known as penal politics, is inherently a subset of overall criminal policy. In essence, when viewed through the lens of criminal policy, the two are synonymous, criminal law policy is simply the application of crime prevention principles via the criminal law (Arif, 2002). There are two central issues in criminal/criminal policy using penal means (law), namely the determination of what acts should be criminalized, and what sanctions should be used or imposed on the offender (Arif, 2002).

Penal reform is, at its core, a subset of the broader field of criminal law policy (penal policy). Consequently, efforts to reform the criminal justice system should be guided by both a practical, policy-oriented perspective and a foundational, value-oriented one (Arif, 2002). This means that crime prevention efforts require a holistic policy approach. Such an approach demands, firstly, the integration of criminal policy with broader social policy, and secondly, the coordination of both penal (criminal law) and non-penal measures. Furthermore, it recognizes that every policy decision inherently involves a consideration of underlying values.

There are three central/key issues in criminal law centered on what is called a criminal act (criminal act, *strafbaarfeit*, *delik*, criminal conduct), criminal responsibility, and the issue of punishment and sentencing. The term criminal act is a matter closely related to the issue of criminalization (criminal policy), defined as the process of determining that an act of a person, which was not previously a criminal act, becomes a criminal act. This process of determination is a matter of formulating acts that exist outside of a person (Ariman & Raghib, 2016).

Because criminal sanctions are meant to be the last resort (*ultimum remedium*), the topic of using them to fight crime has sparked considerable discussion among legal experts. When a legislature sets a punishment, it is making a policy choice to criminalize an act that was not previously illegal. At the heart of criminal law lies the fundamental question of what constitutes a crime. This involves the critical task of defining exactly which actions are forbidden and carry penal consequences. This task is, of course, directly tied to the precise wording and structure of criminal offenses in legislation.

How criminal provisions are formulated, meaning, how criminal acts are defined in written law is a matter of critical significance. This is especially the case in a state that relies on legislation as its main tool for addressing social problems. For the law to function effectively, the definition of a criminal act must be clear and exact. Without such precision, legal certainty is compromised, and the practical implementation of the law will inevitably fall short of delivering the justice and benefit it is meant to provide.

In practice, what is often overlooked by legislators is that various problems in criminal law still remain. Particularly the formulation of criminal provisions outside the Criminal Code (hereinafter abbreviated as KUHP). This is not only in the theoretical field, but further in legal practice. The reality in the practice of formulating criminal acts in Indonesia shows the absence of uniform patterns in formulating a criminal act. The process of drafting a criminal provision involves several key components. It must clearly define the legal subject to whom the norm is addressed (*addressaat norm*). It must then specify the prohibited conduct (*strafbaar*), which can take the form of a positive action (*commission*), a failure to act (*omission*), or the causation of a specific consequence. Finally, it must formulate the corresponding criminal penalty (*strafmaat*), which serves as the mechanism to enforce compliance with the provision.

Criminal law, at its most basic, is about imposing obligations on people either to refrain from an act or to perform one. This commanding function is why it holds a primary position in law. These obligations are, in effect, legal commands. Remmelink captures this by stating that criminal law has a distinctive character as a law (containing) commands (Remmelink &

Moeliono, 2003). This is particularly evident when an act is declared a criminal act. Every person is commanded to align their will so that, as far as possible, they can avoid committing such an act. Thus, the existence of a prohibition accompanied by a criminal threat against certain acts can be viewed as the regulation of certain obligations for members of society.

The basic unit for which a criminal act is formulated is the individual. A review of the articles in the modern Criminal Code confirms this, as they consistently treat a human being (*person*) as the subject of criminal law. This concept is supported by Gray's definition of a person as a subject who holds both legal rights and obligations (Loebby Loqman in Remmelink & Moeliono, 2003). Traditionally, criminal liability has been reserved exclusively for human beings. This is evidenced by the use of terms such as "*hij die*" or "*barangsiapa*" (meaning "whoever") in the articles of the Criminal Code, which explicitly denote a natural person as the subject of criminal law. However, in contemporary legal developments, this principle has expanded, and punishment may now also be imposed on non-human entities, including corporations (Loqman, 1992).

Under Article 1(1) of the Timor-Leste Criminal Code, a criminal act must be based solely on a provision of criminal legislation (*nullum delictum nulla poena sine praevia lege poenali*) (Hiariej, 2009). The central tenet of the Timor-Leste Criminal Code's provision on legality is that a criminal act must be established by law. This means that the principles of *nullum crimen sine lege* and *nulla poena sine lege* are the very essence of the legality principle. The legal system therefore strives, as far as possible, to prevent any exceptions or departures from these fundamental rules.

The objective of law enforcement is to achieve the tripartite goals of justice, legal certainty, and utility within society. Within the specific domain of criminal law, this function is critical for preserving social order and safeguarding the rights of both individuals and the community against conduct that transgresses established legal norms. However, in practice, law enforcement is often faced with moral dilemmas, values of justice, and different issues of legal interpretation. The legal purpose theory put forward by Gustav Radbruch has three main pillars as its foundation, namely Justice, Certainty, and Utility (Putri, 2024). These three aspects fundamentally emphasize the importance of the effectiveness of a legal product in achieving its desired objectives. In the process of forming legal products, the fulfillment of these three aspects is necessary so that the resulting law is not only normative in nature, but can also be practically accepted and applied in society. Moreover, in the context of criminal law, there is one fundamental principle that must be fulfilled in the formation of a legal product, namely the *Lex certa* Principle. This principle requires that the law enacted must be clear and certain, so as to provide legal certainty for every individual and prevent ambiguous interpretation.

The *lex certa* principle, as applied in Article 98 of Law No. 7 of 2020, has a direct impact on criminal law enforcement. The overarching principle of legality, found in Article 1(1) of the Timor-Leste Criminal Code, is paramount and comprises four elements: *lex scripta*, *lex stricta*, *lex praevia*, and *lex certa* (Kantjai, 2016). The *lex certa* principle in criminal law emphasizes the requirement that the formulation of criminal offenses must be clear and certain. This aims to protect individual rights by ensuring that no action can be punished without a clear legal provision. In addition, the principle also emphasizes that legislation must have a clear and certain formulation. When speaking in the context of criminal law, this means that every offense or in this case all forms of criminal acts must be defined firmly and clearly so that society is able to understand what acts and actions are categorized as violations of law.

Based on the foregoing background, the research questions guiding this study are as follows. The first issue concerns how the offense of illicit enrichment can be formulated within

Timor-Leste's criminal law system to satisfy the *lex certa* principle without violating the overarching principle of legality. The second issue examines the broader implications that applying the *lex certa* principle in criminal law enforcement holds for the Timorese legal system.

2. Literature Review

2.1. The Principle of Legality in Criminal Law

The principle of legality is a fundamental principle in criminal law which states that an act cannot be punished unless it has been previously regulated in legislation. This principle is known through the adage *nullum crimen, nulla poena sine lege*, which affirms that punishment can only be imposed on the basis of pre-existing law. The concept of the principle of legality was systematically developed by Paul Johann Anselm von Feuerbach in the 19th century as a form of protection for individuals against the arbitrariness of state power. In its development, the principle of legality has become one of the main pillars of the rule of law because it guarantees legal certainty, the protection of human rights, and the limitation of law enforcement authority in determining whether an act constitutes a criminal offense.

In modern criminal law theory, the principle of legality is not only understood as the requirement for written legislation, but also encompasses several derivative principles such as *lex scripta*, *lex praevia*, *lex stricta*, and *lex certa*. These four elements function to ensure that criminal norms are formulated clearly and are not applied arbitrarily. Thus, the existence of the principle of legality is not only related to the existence of written regulations, but also concerns the quality of the formulation of criminal norms themselves.

2.2. The Principle of Lex Certa as an Element of the Principle of Legality

The principle of *lex certa* is one of the important elements of the principle of legality that requires criminal offense formulations to be made clearly, firmly, and without giving rise to overly broad interpretation. This principle aims to ensure that the public can know with certainty what acts are prohibited and what criminal sanctions may be imposed if those prohibitions are violated. In the view of several criminal law scholars, clarity in the formulation of offenses is a primary requirement for guaranteeing legal certainty in the criminal justice system. One figure who has extensively discussed the importance of clarity in criminal norms is Jan Remmelink, who stated that criminal norms must be formulated specifically so as not to provide excessive room for interpretation by law enforcement officials.

The principle of *lex certa* also functions to prevent arbitrary criminalization. If a criminal norm is formulated in a vague or ambiguous manner, law enforcement officials may interpret that norm subjectively. This has the potential to create legal uncertainty and violations of individual rights. Hence, in the formation of criminal regulations, legislators are required to formulate the elements of a criminal offense clearly, including with respect to the legal subject, the prohibited act, and the relationship between the act and the consequences it produces.

2.3. The Concept and Characteristics of the Criminal Act of Illicit Enrichment

Illicit enrichment is a legal concept referring to the increase in wealth of a person, particularly a public official, that cannot be reasonably explained on the basis of legitimate sources of income. This concept developed as one of the legal instruments to strengthen efforts to combat corruption, particularly in situations where proving acts of corruption directly is difficult. At the international level, the regulation of illicit enrichment gained legitimacy through the United Nations Convention against Corruption (UNCAC), adopted in 2003. This

convention encourages member states to consider criminalizing unexplainable increases in wealth as part of their anti-corruption strategy.

However, the concept of illicit enrichment often gives rise to debate in criminal law theory because it is considered to potentially conflict with the basic principles of criminal law, such as the presumption of innocence and the burden of proof. In some legal systems, provisions regarding illicit enrichment are even considered to potentially reverse the burden of proof onto the defendant, as individuals whose wealth is disproportionate to their income are required to provide an explanation regarding the source of that wealth.

3. Methods

The research method is a relevant and efficient way or procedure used in research to achieve the objectives of that research (Diantha & Made, 2017). In conducting research, it is mandatory to include a method for seeking correct knowledge, which in the future is expected to be used as a reference to answer certain questions or areas of ignorance (Sunggono, 2005). The type of research used is normative legal research. Since this research is normative legal research, the legislative approach is very important because the object of this research is the law itself (Ibrahim, 2006).

This research employs three distinct methodological approaches: (1) the statute approach, (2) the conceptual approach, and (3) the comparative approach. The statute approach, as outlined by Ibrahim (2006). involves an examination of relevant laws and regulations to assess their harmony with the constitution and other legislation. The conceptual approach draws upon established legal doctrines and scholarly views (Ibrahim, 2006) to incorporate the theories and principles necessary for addressing the legal issues at hand. Finally, the comparative approach is utilized to contrast the criminal law regulations concerning illicit enrichment in Indonesia and Timor-Leste.

4. Results and Discussion

The term criminal act originates from a term known in Dutch criminal law, namely *strafbaar feit*. *Straf* is interpreted as punishment or law, *baar* is interpreted as can or may, and *feit* is interpreted as act, event, violation, or conduct (Sutedi, 2008). However, there is no official explanation of what *strafbaar feit* means. Simon, a professor of criminal law at Utrecht University in the Netherlands, translated *strafbaar feit* as a criminal act. According to him, *strafbaar feit* is an unlawful act related to the fault *(schuld)* of a person who is capable of being held responsible (Chazawi, 2010). Furthermore, E. Utrecht formulated *strafbaar feit* with the term criminal event, which he also often called a *delik*, because it is an act of *handelen* or *doen positief*, or a *natalen-negatif*, as well as its consequences (the circumstances caused by the act or omission) (Ilyas, 2012).

The Timor-Leste criminal law system, influenced by Portuguese law, uses the terms *delicto* or *crime* to denote a criminal act. Essentially, a criminal act focuses on behavior or conduct that leads to a result forbidden by law. When we turn to special criminal acts, the emphasis shifts to purely legal or statutory matters. These acts refer exclusively to legal norms and do not extend to issues not explicitly regulated. They are usually found in legislation that exists outside the main body of general criminal law. It is important to note that all criminal acts, whether general or special, must consist of external elements, that is, facts observable in the world. This includes the conduct itself, the consequences arising from it, and the relationship between them.

The elements of a criminal act are first, objective elements which refer to components that exist outside the perpetrator and relate to the circumstances in which the act is committed. These include the unlawful nature of the act, the specific quality or status of the perpetrator where required by law, and the element of causality between the act and its consequences. Then, subjective elements, which by contrast, are those inherent in or attached to the perpetrator and connected to their internal state of mind. They encompass intent or negligence *(dolus or culpa)*, as well as intent in the context of an attempt, as stipulated in Article 53 paragraph (1) of the Criminal Code.

When criminal provisions are formulated in legislation, they must always adhere to the principle of legality. This is mandated by Article 1, paragraph (1) of the Timor-Leste Criminal Code (KUHPTL), which clearly states that punishment is only permissible if based on a criminal law that existed prior to the act. In essence, the act must be formally defined and written into law before it can be considered a crime with a penal threat.

According to Article 1, paragraph (1) of the KUHPTL, an act can only be deemed a criminal offense if it is explicitly defined as such in a written penal statute. This enshrines the core principle of legality, expressed in the Latin maxim *nullum delictum nulla poena sine praevia lege poenali* (Hiariej, 2009). According to Saleh (1981), the *nullum delictum* principle provides a full guarantee for the rights and freedoms of the individual. This means that a person is assured that they cannot be punished for any act that was not already prohibited by law at the time it was committed, a concept universally known as the principle of legality. In essence, a person may be subjected to criminal punishment if there is a legal provision prohibiting the act, the prohibition is accompanied by a criminal sanction, and the law was already in force prior to the commission of the act.

When designing a criminal offense, it is important to carefully plan it in order to avoid facing challenges during its execution. Formulating a criminal act is difficult, because what is formulated must cover all circumstances that occur, so that no act or opportunity escapes the formulation. The formulation of criminal acts in legislation constitutes regulation of individuals not to commit a particular act, which can be described as a command. A command not to do what is prohibited by criminal law, so that every person is expected to avoid committing such an act as far as possible. Formulations of criminal acts in each article of the Criminal Code are formulated for individuals. Other than human beings, no entity can be held criminally accountable. This is based on the phrase *"hij die"* or *"barangsiapa"* (whoever) in each article of the Criminal Code (Loqman, 1992).

The formulation of a criminal act is a function of substantive criminal law as the ratio of the principle of legality. However, it also has a formal function, namely as evidentiary guidance in criminal procedural law. What is included in the formulation of the criminal act must be proven by criminal procedural law, where the formulation of the criminal act must be proven by the public prosecutor to declare that a person has committed a criminal act.

4.1. The Elements of a Criminal Act

The elements of a criminal act serve as the benchmark for determining whether a person's conduct qualifies as a criminal offence. Criminal liability may only be imposed when all constitutive elements of the offence have been fulfilled. Fundamentally, these elements comprise the objective component and the subjective component.

The objective component relates to the external aspects of the offence, namely the conduct and its consequences, which together form an event contrary to positive law. This reflects the element of unlawfulness *(onrechtmatig)* that renders the act punishable. The subjective component concerns the element of fault, referring to the perpetrator's culpable mental state in committing the act (Moeljatno, 1984).

According to Sianturi (1986), the elements contained in a criminal act include the subject (the perpetrator), fault, the unlawful nature of the act, a specific act that is prohibited or required by law and for which the perpetrator is threatened with punishment, as well as time, place, and other relevant circumstances constituting additional objective elements (Sianturi, 1986).

When examined in light of the five elements of an offence mentioned above, they may be classified into two categories: subjective and objective elements. The subjective elements comprise the subject (the perpetrator) and fault. The objective elements include the unlawful nature of the act, the prohibited conduct that is threatened with punishment by law, and other objective factors accompanying the act (Sianturi, 1986).

Furthermore, according to Satochid Kartanegara, the elements of a criminal act likewise consist of objective and subjective components. The objective elements are those existing outside the individual, namely an act, a consequence, and certain circumstances *(omstandigheid)*, all of which are prohibited and subject to criminal sanction under the law. The subjective elements, on the other hand, relate to aspects inherent in the perpetrator and include capacity *(toerekeningsvatbaarheid*) and fault *(schuld)* (Marpaung, 2005).

4.2. Formulation of the Subject *(Addressaat Norm)*

A central question in criminal law pertains to the definition of criminal acts themselves. This involves the critical task of determining which specific behaviors are to be prohibited and punished, a process intrinsically linked to how offenses are formulated in legislation. Drafting these provisions is inherently a difficult and weighty responsibility. The challenge lies not in describing a single, concrete event, but in crafting language that encompasses every possible manifestation of the prohibited conduct, ensuring no act or circumstance can escape its scope. Generally, a penal provision comprises three elements: (1) the formulation of the criminal act, (2) its qualification (or legal classification), and (3) the sanction. However, these components are not always explicitly present together; in some instances, the formulation of the act may be little more than its qualification.

A well-drafted criminal provision typically includes three core elements. The first is the *addressaat norm*, which specifies who is bound by the rule. The second is the description of the prohibited conduct itself (*strafbaar*), which can involve an act, an omission, or the causing of a particular result. The third is the *strafmaat*, or the penalty, which exists to ensure that the rule is followed and enforced.

How criminal provisions are formulated, meaning, how criminal acts are defined in written law is a matter of critical significance. This is especially the case in a state that relies on legislation as its main tool for addressing social problems. For the law to function effectively, the definition of a criminal act must be clear and exact. Without such precision, legal certainty is compromised, and the practical implementation of the law will inevitably fall short of delivering the justice and benefit it is meant to provide.

In practice, what is often overlooked by legislators is that various problems in criminal law still remain. Particularly the formulation of criminal provisions outside the Criminal Code (KUHP). This is not only in the theoretical field, but further in legal practice. The reality in the practice of formulating criminal acts in Timor-Leste shows the absence of uniform patterns in formulating a criminal act. The process of drafting a criminal provision involves several key components. It must clearly define the legal subject to whom the norm is addressed (*addressaat norm*). It must then specify the prohibited conduct (*strafbaar*), which can take the form of a positive action (*commission*), a failure to act (*omission*), or the causation of a specific consequence. Finally, it must formulate the corresponding criminal penalty (*strafmaat*), which serves as the mechanism to enforce compliance with the provision.

Criminal law, at its most basic, is about imposing obligations on people either to refrain from an act or to perform one. This commanding function is why it holds a primary position in law. These obligations are, in essence, legal commands. Remmelink captures this by stating that criminal law has a distinctive character as a law (containing) commands (Remmelink & Moeliono, 2003). This is particularly evident when an act is declared a criminal act. Every person is commanded to align their will so that, as far as possible, they can avoid committing such an act. Thus, the existence of a prohibition accompanied by a criminal threat against certain acts can be viewed as the regulation of certain obligations for members of society.

Criminal acts are designed for individual perpetrators. The Criminal Code reflects this by consistently defining the legal subject as a human being (*person*). As Gray notes (in Remmelink & Moeliono, 2003), a person is a subject of legal rights and duties. Only human beings were initially subject to criminal accountability, as seen in the "*hij die*" ("whoever") formulation of the Code. Despite this traditional stance, the law has evolved to allow for the punishment of non-humans, such as corporations.

According to Hiariej (2009), Article 1, paragraph (1) of the Criminal Code establishes that a criminal act can only be based on a pre-existing penal law (*nullum delictum nulla poena sine praevia lege poenali*). Although the Criminal Code does allow for some exceptions to this rule, the fundamental requirement that crimes be grounded in legislation remains the heart of the provision. This means that *nullum crimen sine lege* (no crime without law) and *nulla poena sine lege* (no punishment without law) are the main components of the legality principle, and the legal system strives to prevent any deviations from them wherever possible. In the words of Moeljatno (1983), a criminal act is defined by two key components: a description of forbidden conduct and a corresponding threat of punishment for the offender. The principle of legality governs both of these components. Consequently, the prohibition of the act and the penalty for committing it must both find their source in statutory law.

A criminal provision, and thus the criminal act it defines, becomes applicable from the moment it is enacted by the competent authority. The drafting of such provisions is fundamentally governed by the principle of legality. This principle carries several key consequences: any punishable act must have a basis in written law; the principle of retroactivity is prohibited; the formulation of the criminal act must be clear and precise (lex stricta); and the use of analogy is not permitted. According to Saleh (1981), this *nullum delictum* principle provides a full guarantee for the rights and freedoms of the individual, assuring them that they will not be punished for any act that was not previously prohibited by law.

While the definition of a criminal act plays a protective role in substantive law and embodies the reason for the legality principle, it has another important function in the realm of criminal procedure. There, it serves as a roadmap for what must be proven. Specifically, the formulation of the offense provides the legal basis that the prosecutor must demonstrate to prove a person's guilt. This means that all components described in the criminal act's definition must be established through evidence, following the procedures set out in criminal procedural law.

Timor-Leste, following the tradition of civil law systems, generally places its criminal acts within a codified legal framework. Yet, there are currently no established rules or criteria to guide how these criminal provisions should be drafted. This lack of guidance has resulted in inconsistent formulations, where some criminal provisions contain elements that stray from the basic components of an act and its penalty. As a result, many offenses, especially those found in laws outside the main Criminal Code, are not always drafted in a way that respects

the standard structure of a criminal act or the important separation between the act and the question of criminal responsibility.

In connection with the above, comprehensive guidelines are needed regarding the formulation of criminal provisions in legislation. This is because, in any case, such formulation will affect the formulation of three fundamental issues in criminal law, namely: (1) the formulation of conduct that is against the law or constitutes a criminal act, (2) criminal responsibility or fault, and (3) sanctions, both criminal punishment and measures that can be imposed, along with the underlying principles of criminal law. Particularly in the formulation of "criminal provisions" through which problems in law enforcement can be mapped.

The principle of legality is designed to protect both the state and its citizens by ensuring legal certainty. This is enshrined in Article 1, paragraph 1 of the Timor-Leste Criminal Code, which provides that no action or omission can be considered a crime unless a pre-existing law explicitly defines it as such and sets out the penalty. The core message of this article is simple: all criminal liability must be grounded in existing law. Anselm von Feuerbach famously articulated this principle through his trio of Latin maxims: *nullum crimen sine lege; nulla poena sine lege; nulla poena sine crimen* (no crime without law, no punishment without law, no punishment without a crime) (Hiariej, 2016).

The origins of the principle of legality can be traced back to Paul J. Anselm von Feuerbach, a German criminal law expert, who introduced it in his 1801 book, *Lehrbuch des Peinlichen Rechts*. Feuerbach expressed the core idea through three Latin phrases: *nulla poena sine lege; nulla poena sine crimine; nullum crimen sine poena legali*. As Hiariej (2016) explains, these three maxims together form the basis for the well-known principle *nullum delictum, nulla poena sine praevia lege poenali*. The main goal of this principle is to curb the arbitrary actions of authorities when they seek to punish individuals. It does so by requiring that all criminal law be written (*lex scripta*), interpreted strictly (*lex stricta*), and formulated with clarity (*lex certa*).

1) *Lex scripta*: the main element in criminal punishment in Indonesia's positive law must be based on legislation, because Indonesia adheres to the civil law system, in other words, based on written law. Written law (legislation) regulates all conduct considered as criminal offenses. This implies that customary law/living law in society currently cannot be used as one of the main elements to punish a person. Therefore, the law living in society does not play an important role in the criminal law system in Indonesia. Without legislation regulating prohibited acts, such acts cannot be called criminal acts (Gofar, 2005).
2) *Lex stricta*: means that written law must be interpreted rigidly, without expanding offenses in a way that is detrimental to legal subjects.
3) *Lex certa*, or *bestimmtheitsgebot*: means that the law maker must define legislation clearly without giving the impression of ambiguity to the public *(nullum crimen sine lege stricta)*, which causes legal uncertainty, so that there is no ambiguous formulation regarding prohibited conduct and sanctions imposed in connection with written law. The legislature in formulating regulations must be interpreted clearly and in detail regarding conduct referred to as criminal acts (Remmelink & Moeliono, 2003).

The journey of the principle of legality into positive law began with its inclusion in the American Constitution of 1776. It was then enshrined in Article 8 of the French Declaration of the Rights of Man and of the Citizen in 1789, which proclaimed that no one could be punished except under a law established and promulgated prior to the offense. This principle was carried forward into Article 4 of the French Penal Code, created under Napoleon Bonaparte. The

French Code served as a model for the Dutch, who adopted the principle in Article 1, paragraph (1) of their *Wetboek van Strafrecht*, stating that no act is punishable except by virtue of a prior legal provision. Ultimately, this principle was passed on to become Article 1, paragraph (1) of the Indonesian Criminal Code (Hiariej, 2014).

The English formulation of the legality principle comes from the philosopher Francis Bacon, who expressed it in the Latin maxim *moneat lex, prius quam feriat*. This phrase conveys the idea that the law must provide a warning before it can impose its sanction. Over time, this principle has evolved from a purely criminal law doctrine to a fundamental constitutional norm. Today, it is not only found in the criminal codes of various nations but is also embedded in their respective constitutions (Hiariej, 2014).

The principle of legality, as enshrined in the criminal codes or constitutions of various nations, is a fundamental tenet that must be upheld to ensure legal certainty. Its interpretation, however, must be approached judiciously within the broader context of law enforcement and the pursuit of justice. When considered in light of the historical circumstances surrounding its emergence, the principle was primarily designed to safeguard individual interests, a hallmark of the classical school's conception of criminal law's purpose.

How the principle of legality is applied differs from country to country, influenced by whether the government is democratic or authoritarian, and by the legal tradition it follows. In the Continental European tradition, the principle is applied quite strictly because it is seen as a vital tool for limiting the power of the state. In contrast, it is less prominent in Common Law systems. There, the goals of the rule of law are already secured through the established concept of due process, backed by strong procedural rules. Interestingly, while analogy is generally forbidden, it can be a source of reform in Common Law. The United States takes a very firm line against analogy, and the only area where retroactive application is permitted is in procedural law, particularly in rules concerning evidence (Muladi, 2002).

Timor-Leste as a newly independent country in 2002, in the Constitution of the Democratic Republic of Timor-Leste, as regulated in Article 1 paragraph (1), states that:

1) *A República Democrática de Timor-Leste é um Estado de direito democrático, soberano, independente e unitário, baseado na vontade popular e no respeito pela dignidade da pessoa humana.* Free translation: (The Democratic Republic of Timor-Leste is a democratic rule-of-law state, sovereign, independent, and united, based on the will of the people and respect for the dignity of the human person.)
2) *O dia 28 de Novembro de 1975 é o dia da Proclamação da Independência da República Democrática de Timor-Leste.* (November 28, 1975 is the day of the Proclamation of Independence of the Democratic Republic of Timor-Leste.)

Since the enactment of its national Criminal Code (KUHP) in 2009, Timor-Leste has adhered to the principle of legality. This fundamental doctrine is explicitly (*expressis verbis*) set forth in Article 1, paragraph (1) of the Code. The provision embodies the formal principle of legality, meaning that no act can be criminalized unless it has first been clearly defined in written legislation. A key consequence of this formal approach is that an act cannot be subject to punishment simply because it is considered morally wrong or reprehensible by the community; it must be proscribed by law.

The main meaning of the principle of legality according to Machteld Boot is categorized into four principles: the principle of *nullum crimen, nulla poena sine lege praevia*, meaning that criminal law must not be retroactive; *nullum crimen nulla poena sine lege scripta*, meaning that there is no punishment without written legislation; the principle of *nullum crimen, nulla poena sine lege certa*, meaning that criminal rules in legislation must be clear;

and the principle of *nullum crimen, nulla poena, sine lege stricta*, meaning that criminal rules in legislation must be strict and analogy is not permitted (Boot, 2002).

Schaffmeister, Keijzer, and Sutorius provide a detailed elaboration of the principle of legality, identifying seven distinct aspects. First, no person may be punished except under criminal provisions established by law. Second, the application of criminal law by analogy is prohibited. Third, punishment cannot be based on custom alone; a violation of customary norms does not automatically constitute a criminal act. Fourth, criminal offenses must be formulated with sufficient clarity, embodying the *lex certa* principle. Fifth, criminal provisions cannot be applied retroactively (the non-retroactive principle). Sixth, no punishment may be imposed other than that which has been prescribed by law; judges are therefore bound by the penalties set forth in legislation. Seventh and finally, criminal prosecution may only be conducted in the manner prescribed by law, meaning the entire process from investigation to the execution of the verdict must have a legal foundation.

Meanwhile, Indonesian criminal law experts such as Moeljatno, Roeslan Saleh, Eddy O.S Hiariej, and others provide further explanations of the meaning contained in the principle of legality as follows.

1) *Nullum crimen, nulla poena sine lege Scripta* (punishment based on written law)

According to Hiariej (2016), departing from the principle of *Nullum crimen, nulla poena sine lege scripta* (no criminal act, no punishment without written law). The consequence of this meaning is that all criminal provisions must be written. In the Continental European tradition based on the civil law system, the main aspect is that prosecution and punishment must be based on legislation. Legislation must regulate human conduct considered as criminal acts. Without a legal rule, an act cannot be called a criminal act (Yuherawan, 2014). Its implication is that customary law cannot be the basis for prosecution and punishment, and cannot be considered a criminal act because there is no formulation of an offense. This principle provides an understanding that law must be written in legislation so that society can know what acts are prohibited and what acts are not prohibited.

2) *Nullum crimen, nulla poena sine lege certa* (legislation formulated in detail, carefully, with clear and precise punishment)

Criminal legislation has wide-ranging implications for those suspected of committing criminal acts formulated in legislation. Formulations that are not careful, too broad, unclear, or confusing criminal threats both in form and severity will certainly make application difficult and can harm many people. Given that criminal law sanctions are very severe and the implications of sanctions are significant, the formulation of criminal legislation must be formulated in detail, carefully, firmly, precisely, and without multiple interpretations that are detrimental and one-sidedly advantageous. This principle is what is referred to as *Lex certa*. Legal certainty is an important value to be protected in such formulations. Legal certainty for every person must not be endangered by vague and unclear formulations of criminal acts and criminal threats. Therefore, vague formulations can harm society.

Topo Santoso explains that *lex certa* requires lawmakers to be meticulous in drafting criminal laws. The goal is to create provisions that are so clear and detailed that they leave no room for confusion or conflicting interpretations. When laws are unclear or needlessly complicated, they create legal uncertainty. This, in turn, makes successful prosecution difficult because individuals can always argue in their defense that the law is too vague to be meaningfully enforced (Santoso, 2021).

3) *Nullum crimen, nulla poena sine lege praevia* (no criminal act without prior law)

Criminal law with its sanctions must not operate retroactively or be applied to acts that have already occurred. According to Sudarto, criminal legislation must exist before a criminal

act occurs; therefore, criminal law must not apply retroactively (Sudarto, 1990), which is known as non-retroactive.

According to Moeljatno, there are three meanings contained in the principle of legality, namely: a) No act can be subject to criminal sanctions if the act has not yet been stated in a piece of legislation; b) Analogy may not be used in determining criminal acts; c) Rules of criminal law must not apply retroactively. If criminal law could operate retroactively which means applying to acts that occurred before the criminal law existed, it would certainly make everyone anxious, worried, and uneasy, because at any time they could be prosecuted criminally due to the existence of new legislation. Yet, when they committed the act, it was not a criminal act, so there was no prohibition. This would certainly create legal uncertainty for society.

In applying the principle of legality in criminal law regarding cases in society, law enforcers must first examine whether the act committed violates a rule written in the Criminal Code, because philosophically the birth of the principle of legality as mentioned above serves as a form of protection of society from powerful authority, and also refers to the meaning contained in the principle of legality so as not to abuse power. Here the law referred to is law in the formal sense (Hiariej, 2016). In other words, lower-level legislators are prohibited from making rules of criminal procedure.

From the various interpretations of the principle of legality discussed above, it can be concluded that its core meaning comprises three essential elements. First, no conduct may be prohibited and subject to punishment unless it has been previously established in a legal rule. Second, all prohibited conduct must be articulated within the formulation of an offense with the greatest possible clarity. Third, criminal law rules must not be applied retroactively. These three elements constitute the formal principle of legality, as enshrined in Article 1, paragraph (1) of the Criminal Code. This principle underscores that the determination of whether an act can be considered punishable must first be based on existing legislation.

In the context of the court, the application of the *lex certa* principle can influence the judge's decision in several ways. First, with a clear definition, the judge has a strong guideline for assessing whether the defendant's conduct fulfills the elements determined in the article. This reduces the possibility of subjective or biased interpretation, which can lead to unjust decisions (Weber et al., 2014). Second, the *lex certa* principle also provides protection for defendants. If an action does not fulfill all the elements regulated in the article, the judge cannot impose punishment. For example, if a defendant takes another person's property but did not have the intent to contribute to justice in the judicial process meaning without the intent to possess it unlawfully then the action cannot be categorized as theft. Thus, the application of *lex certa* contributes to justice in the judicial process. Third, the application of the *lex certa* principle can also affect the level of public trust in the legal system. When the public sees that the law is applied consistently and fairly, they will be more inclined to comply with the law and report criminal actions. Conversely, if the law is applied arbitrarily or unclearly, this can reduce public trust in law enforcement institutions.

Overall, the application of the *lex certa* principle in criminal legislation, as seen in the provisions regarding theft, not only provides legal certainty but also plays an important role in influencing court decisions, protecting individual rights, and increasing public trust in the legal system. However, on the other hand, the fulfillment of the *lex certa* principle in the legal system faces various challenges that can affect the effectiveness and fairness of law enforcement. One of the main challenges is the existence of ambiguity and lack of clarity in legislation. Legal provisions that are not clearly formulated can cause different interpretations

among law enforcers, judges, and the public, resulting in legal uncertainty and the potential for abuse of authority.

In addition, rapid social change and the dynamics of society often make existing legal provisions irrelevant or inadequate, making it difficult to fulfill the principle of *lex certa*. Limited resources and training for law enforcers and judicial apparatus are also challenges, where a lack of understanding of the *lex certa* principle can lead to inconsistent and unjust application of the law. Furthermore, political influence and personal interests can influence law enforcement, potentially leading to non-objective interpretation of the law.

Limited access to legal information and legal services in some areas, particularly in remote regions, also hinders the fulfillment of *lex certa*, because people who do not have sufficient understanding of the law may not be able to recognize their rights. Then, differences in interpretation at various levels of justice can also create legal uncertainty, where different verdicts between courts of first instance and courts of appeal can confuse the public and law enforcers. These challenges show that the fulfillment of the *lex certa* principle requires ongoing efforts from all relevant parties to create a more transparent, fair, and reliable legal system.

In connection with the application of the *lex certa* principle in Article 98 Paragraph (1) of Law Number 7 of 2020 on the Prevention and Eradication of Corruption in Timor-Leste, it is very important to ensure legal certainty and justice in the process of law enforcement. The *lex certa* principle, which means "clear law," requires that every legal provision must be formulated clearly and firmly, so that society can understand well what is considered a criminal act and what sanctions will be imposed.

In the context of Article 98 Paragraph (1) of Law Number 7 of 2020, the application of the *lex certa* principle can be seen from several aspects:

1) Clarity of Definition of Criminal Act: This article must clearly define actions considered as a significant increase beyond lawfully known income. This clarity is important so that individuals understand that such actions can be subject to criminal sanctions.
2) Clear criteria of significant lawfully obtained income: The application of the *lex certa* principle also requires the existence of clear criteria. In the context of this article, such criteria must be formulated firmly so as not to cause different interpretations among law enforcers.
3) Certainty of Sanctions: Article 98 paragraph (1) of Law Number 7 of 2020 must provide certainty regarding the sanctions that will be imposed on those who violate the provisions. With clear provisions, compliance with the law is ensured.
4) Transparency of Legal Process: The application of the *lex certa* principle also includes transparency in the legal process. Law enforcers must apply this article consistently and fairly, without discrimination or abuse of authority. This is important to maintain public trust in the legal system.

Thus, the application of the *lex certa* principle in Article 98 paragraph (1) of Law Number 7 of 2020 is crucial to ensure that the legal provision can be applied effectively and fairly. Clarity in legal formulation, clear criteria, certainty of sanctions, and transparency of the legal process will help create a better justice system, in which individual rights remain protected and law enforcement can be carried out with full integrity.

5. Conclusion

This study highlights that the application of Article 98 paragraph (1) of Law Number 7 of 2020 on the Prevention and Eradication of Corruption, particularly the phrase "significantly far higher than lawfully known income," creates legal ambiguity and undermines the *lex certa* principle, which requires criminal law to be clear, precise, and predictable. Illicit enrichment under UNCAC 2003 remains non-mandatory, reflecting a broader lack of recognition of such conduct as corruption in national legislation. In Timor-Leste, criminal acts must be clearly defined, analogy prohibited, and citizens protected from punishment under unclear or retroactive laws. Because illicit enrichment does not involve a legally protected interest, its criminalization may conflict with the core objective of modern criminal law, which is to defend society without enabling excessive or arbitrary state control.

To address these issues, it is recommended that the National Parliament ensure that criminal offenses balance state, individual, and community interests while fully adhering to the principles of legality and *lex certa*. Additionally, the Parliament, together with the *Provedor Direitos Humanos e Justiça* (Ombudsman), should conduct a legislative review of the illicit enrichment provision and, if necessary, submit it to the Constitutional Court to test its constitutionality. Clarifying the definition and measurement of "significantly far higher than lawful income" will enhance legal certainty, prevent divergent interpretations, and strengthen public trust in Timor-Leste's criminal justice system.

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