

## Misapplication of the Concept of Actual Losses in Pretrial Decision No.113/Pid.Pra/2024/PN.Jkt.Sel

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**Abstract.** *Corruption is a special crime that is different from general crimes because it requires state financial losses as a basic element. Constitutional Court Decision No. 25/PUU-XIV/2016 emphasizes that corruption must be viewed as a material crime, so that the element of real and definite state losses (actual loss) must be proven investigatively. This concept requires an accurate and final calculation of state losses as part of at least two valid pieces of evidence as specified in Article 184 of the Criminal Procedure Code. This study aims to examine the judge's error in the Pretrial Decision No. 113/Pid.Pra/2024/PN Jkt.Sel, which does not make actual loss a valid piece of evidence in the application of coercive measures against corruption suspects. Using normative research methods through a legal approach and case studies, as well as qualitative analysis, it was found that pretrial judges still use a formal crime approach and accept evidence that does not meet the actual loss standard. This error has implications for legal uncertainty and has the potential to harm the suspect's rights in the criminal process.*

**Keywords:** *Corruption; Crime; Evidence; Loss; Pretrial.*

### 1. Introduction

In the implementation of criminal justice, judges have the authority to handle cases starting from receiving, examining, to trying cases that come to court and the judge's main task is to resolve all cases submitted to him (Ismu Gunadi and Jonaedi Efendi,

2014). So it can be said that there is a need for the existence and implementation of good, orderly justice and fulfilling the sense of justice of the community, for that reason the figure of the judge is the main pillar and the last place for justice seekers in the judicial process because judges are required to provide justice to those seeking justice (Wildan Suyuthi Mustofa, 2013). and to create success and objectivity in the process law enforcement. In this case, M. Yahya Harahap emphasized: "The court hearing should not prove the defendant's guilt arbitrarily and at will" (M. Yahya Harahap, 2000).

Criminal law enforcement is a form of implementation of laws by law enforcement officers in a structured system. This principle is in line with the spirit of the Indonesian constitution which guarantees legal certainty, justice, and human rights, both for victims and perpetrators of criminal acts. Artidjo Alkotsar (Artidjo Alkotsar, 2008) affirms: "government or political power authority must be monitored, regulated and limited by legal authority so that the state is not taken over by criminal, dishonest and arbitrary parties."

The crime of corruption is a part of special criminal law, besides having certain specifications that are different from general criminal law, namely the existence of deviations from formal criminal law or procedural law (Ermansjah Djaja, 2010). Eradication Act Corruption Crimes specifically regulate their own procedural law regarding law enforcement of perpetrators of corruption crimes, generally distinguished from handling other special crimes. This is because corruption is an extraordinary crime that must be prioritized over other crimes (IGM Nurdjana, 2009).

Meanwhile, Article 2 paragraph (1) and Article 3 of the Corruption Law itself are included in the group of crimes that can harm state finances or the state economy (Fadillah, Syarif, Chaerudin, & Syaiful Ahmad Dinar, 2009). Constitutional Court (MK) Decision No. 25/PUU-XIV/2016 dated 25 January 2016 stipulates that the crimes in the two articles have changed from being formal crimes. becomes a material crime and at the same time forms the concept of state losses adopted by using the concept of actual losses (hereinafter referred to as actual loss).

Meanwhile, at the level of practice, investigators from the Police, Prosecutors, Corruption Eradication Commission (KPK) and including Judges, sometimes still use the old paradigm in viewing state losses on sufficient initial evidence in corruption cases as a potential loss from the formal crime element, namely that there is only an estimate, this is clearly counterproductive to the concept of actual loss as a loss in the material crime element as intended by the Constitutional Court Decision No. 25/PUU-XIV/2016.

In the pretrial hearing filed by Tom Lembong as the applicant against the Attorney General's Office, the debate regarding sufficient initial evidence as a basis for the investigator to exercise the authority to take coercive measures for detention in the case occurred again, where state financial losses became the subject of debate.

Tom Lembong's attorney, Ari Yusuf Amir, explained that there have been no results of an investigative audit of state financial losses conducted by the Indonesian Audit Board (BPK) in the case that dragged his client. He cited the Constitutional Court (MK) ruling which stated that state financial losses must be real (actual loss) and not potential loss anymore (CNN Indonesia). Responding to this, the Prosecutor's Office as investigators is of the opinion that the BPK report is not a requirement for determining a suspect and that the standard for determining a suspect is the existence of at least two pieces of evidence.

As is known, in the end the sole judge of the South Jakarta District Court (PN Jaksel) rejected the pretrial motion filed by former Minister of Trade Thomas Trikasih Lembong or Tom Lembong so that the suspect status remains valid. The judge said that the Attorney General's Office (Kejagung) determined the suspect based on more than two pieces of evidence. Furthermore, it was said that the judge did not agree with the expert opinion from Tom Lembong's side who said that there must be a state loss audit result from the BPK to determine a corruption suspect (detiknews).

Basically a series of investigator's actions to search for and find proof of an incident that is suspected to be a criminal act of corruption cannot yet be judged (tried) for someone's actions (principle of presumption of innocence), so that everyone has the basic rights not to be treated arbitrarily and not to be forced into an arrest or detention scheme (criminalization).

Based on the background description above, there are two main problems that are the focus of the study in this research, namely: first, how is the legal certainty of the concept of actual loss as an element of state loss in the material offense of corruption? second, is there an error in applying the concept of actual loss as a material offense in the Pretrial Decision No.113/Pid.Pra/2024/PN.Jkt.Sel?

## **2. Research Methods**

This research is a normative legal research with a juridical approach and a case approach based on court decisions. This approach aims to determine and analyze legal certainty regarding the concept of actual loss as an element of state loss in its position as a material crime as regulated in Article 2 paragraph (1) and Article 3 of the UUPTPK. This concept is the starting point in assessing the existence of error in

applying the concept of actual loss as a material offense in Praperadilan Decision No.113/Pid.Pra/2024/PN.Jkt.Sel?

Research sources include: (1) Decision No. 113/Pid.Pra/2024/PN Jkt.Sel (2) Decision No. 13/Pid.Pra/2020/PN.Lbo (3) Pretrial Decision No. 2/Pid.Pra/2021/PN.Tte (4) Constitutional Court Decision No. 21/PUU-XII/2014 (5) Constitutional Court Decision No. 25/PUU-XIV/2016, and related regulations, namely (1) Criminal Procedure Code, (2) Law No.31 of 1999 as amended and supplemented by Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, (3) Law No. 1 of 2004 concerning State Treasury, and (4) Law No. 15 of 2006 concerning the Audit Board.

Secondary legal materials include legal publications such as books, journals, and expert opinions. Non-legal sources are also used. The collection of materials is carried out through literature studies that refer to primary and supporting legal references.

### **3. Results and Discussion**

#### **3.1. Legal Certainty of the Conception of Actual Loss as an Element of State Losses in Material Offences**

The principle of erga omnes is inherent in the product. The Constitutional Court's decision makes The Constitutional Court Decision No. 25/PUU-XIV/2016 has legally binding power on all components of the nation, so that all parties must submit and obey the decision. Hans Kelsen called it, "recognized the need for an institution with power to control or regulate legislation" (John E. Ferejohn, 2003).

Constitutional Court Decision No. 25/PUU-XIV/2016 is also a legal policy which is a source of legal basis. According to Mahfud MD (Miko Adiwibowo) legal policy is "legal policy or official policy lines regarding laws that will be enforced either by making new laws or by replacing old laws, in order to achieve the goals of the State."

Constitutional Court (MK) Decision No. 25/PUU-XIV/2016 dated 25 January 2016 stipulated that the crimes in Article 2 paragraph (1) and Article 3 of the PTPK Law had changed from being formal crimes to material crimes and at the same time confirmed that the form of concept of state losses adopted was to use the concept of actual loss.

The form of legal policy in question functions as a source of law and direction in determining the validity or revocation of legal norms, in order to achieve the goals of the state as mandated in the Preamble to the 1945 Constitution. Therefore, legally, the decision is binding and becomes the legal basis for purifying the laws and regulations formed by the legislature.

According to Jimly Asshiddiqie (Jimly Asshiddiqie, 2006) which is based on Hans Kelsen's view, the character of legal norms is the basic norm of a legal system is the basic rule that regulates the creation of norms in the system. Furthermore, it is said that every higher legal norm is a source for lower legal norms. So the source of law is the law itself.

Kelsen believes that law is a system of norms. Norms are statements that emphasize the aspect of "should" or *das sollen*, by including some rules about what must be done. He further said, the existence of these rules and the implementation of these rules creates legal certainty (Peter Mahmud Marzuki, 2008).

In this context, the Constitutional Court Decision No. 25/PUU-XIV/2016 is an important reference in ensuring legal certainty regarding the element of state losses in Article 2 paragraph (1) and Article 3 of the PTPK Law. The legal certainty referred to is, First, legal certainty regarding the integration of the concept of actual loss in related regulations, including the implications of its application to the position of evidence in Article 184 of the Criminal Procedure Code. Second, legal certainty regarding the position of the offense in Article 2 paragraph (1) and Article 3 of the PTPK Law as a material offense.

The implementation of legal certainty from this concept in practice must be reflected and become the basis for investigators and judges in interpreting the elements of state losses, both in enforcing coercive measures and in court decisions.

According to Lon L. Fuller in his book *The Morality of Law*, the principle of legal certainty is a legal system composed of regulations that are not based on misleading decisions on a particular issue (Pandu Akram). Meanwhile, according to Utrech (Debora Tyas Wradiningsih) Legal certainty is not only in the form of articles in the law but also consistency in judges' decisions between one judge's decision and another judge's decision for similar cases that have been decided.

Legal certainty is the principle that the law must be clear to those subject to the law, so that they can adjust their actions to existing regulations and the state does not exercise its power arbitrarily.

The definition of a material crime according to Adam Chazawi (Adami Chazawi, 2002) *material criminal acts are criminal acts that focus on the prohibition of their occurrence due to certain reasons or constitutive reasons*. Furthermore, to complete a crime does not depend on the completion of the act, but depends on the prohibited consequences resulting from the act.

Joko Sriwidjojo (Joko Sriwidodo, 2019) adding, The formulation in a material way means that the main point of the prohibition of the crime formulated is to cause certain consequences, called prohibited consequences or constitutive consequences. The emphasis of the prohibition is on causing consequences, while the form of the act that causes the consequences is not a problem.

The application of the concept of actual loss as an element of state loss in its position as a material crime means that The formulation in this material way has made the main point of the prohibition of the formulated offense to cause certain consequences, the intended consequence is the emergence of state losses which places it as a prohibited consequence or a constitutive consequence. So the emphasis of the prohibition on formulating the offense of Article 2 paragraph (1) and Article 3 of the PTPK Law is on causing consequences, namely state losses, while the form of action that causes state losses as a result is not an issue.

By interpreting the concept of actual loss as an element of state loss in its position as a material offense in article 2 paragraph (1) and article 3 of the PTPK Law cannot be separated from the implementation provisions in Article 1 No. 22 of Law No. 1 of 2004 concerning State Treasury and Article 1 No. 15 of Law No. 15 of 2006 concerning the BPK, because state losses must fulfill the element of a real and definite deficiency.

State losses are not losses that are estimated or assumed by themselves because real and definite elements must be met according to formal requirements. Therefore, the calculation of state losses must be based on procedures and methods that contain certainty, and not based on conjecture or calculations that are assumptions, potential, or possibilities or only on one's own interpretation of the norms of laws and regulations (Dian Puji Nugraha Simatupang, 2011).

The concept of actual loss has legal implications for criminal procedure law, especially in determining sufficient initial evidence as a legitimate basis for the use of coercive measures in the form of determination, arrest and detention in corruption cases. Therefore, the element of state loss in the form of the concept of actual loss must be proven concretely as part of at least two valid pieces of evidence, with sufficient evidentiary power and clear relevance in proving the existence of a corruption crime that causes state losses and directly linking it to the actions of the suspect.

To obtain initial evidence that can state/declare real and definite state losses as a parameter of the truth of the existence of a criminal act of corruption is the authority of the BPK as referred to in the Explanation of Article 32 paragraph (1) of the PTPK Law and Article 10 paragraph (1) of Law No. 15 of 2006 concerning the BPK. This is in line with the Constitutional Court Decision No. 21/PUU-XII/2014 (Constitutional Court



Decision No. 21/PUU-XII/2014) and is an implementation of the principle of legal certainty in criminal acts of corruption.

In the event that no evidence of state losses is found, and/or at least two valid pieces of evidence are not met, the Prosecutor's Office as investigator is legally permitted to stop the investigation referring to Article 109 paragraph (2) of the Criminal Procedure Code, this has been done in major corruption cases handled by the Prosecutor's Office, such as the Procurement of Sisminbakum Access Fees at the Ministry of Law and Human Rights, the Procurement of Pertamina Tanker Ships (VLCC), and corruption at PT. Texmaco, the investigation was stopped because no elements of state financial losses were found (Indonesia Corruption Watch).

### **3.2. Errors in Application of the Conception of Actual Losses as a Material Offense in Pretrial Decision No. 113/Pid.Pra/2024/PN Jkt.Sel.**

In pretrial cases No. 113/Pid.Pra/2024/PN Jkt.Sel submitted by pretrial applicant Thomas Trikasih Lembong with the Respondent being the Attorney General's Office of the Republic of Indonesia, it was revealed that the Respondent did not have evidence of calculating state losses and what was used was only the Minutes or Minutes of the Expose Results between the Investigator and the BPKP Auditor on November 9, 2023 which concluded that there was an unlawful act in the form of irregularities in the Importation of Raw Crystal Sugar to be produced into White Crystal Sugar resulting in State Financial Losses.

The Praperadilan Judge in decision No. 113/Pid.Pra/2024/PN Jkt.Sel decided to reject the applicant's application. The judge was of the opinion that the determination of suspect status did not require the results of a state loss audit from the BPK, and considered that the determination of the suspect by the Respondent (Attorney General's Office) had been based on more than two pieces of evidence, which made the Minutes or Minutes of the Expose Results between the Investigator and the BPKP Auditor as indicative evidence so that the arrest and detention of the Applicant were considered valid.

The pretrial decision has drawn pros and cons. In response, the Center for Leadership and Law Development Studies (CLDS) of the Faculty of Law, Islamic University of Indonesia (UII) Yogyakarta held an examination hearing on the decision. The CLDS Examination Team consisted of leading criminal law experts, including Prof. Dr. Rusli Muhammad, Prof. Hanafi Amrani, Dr. Muhammad Arif Setiawan, and Wahyu Priyanka Nata Permana. The event was attended by academics, legal practitioners, and Master of Law students majoring in criminal law (Sketsa.Co).

The Examination Team is of the opinion that the determination of Tom Lembong as a suspect is not based on preliminary evidence, namely in the form of certainty of the results of the calculation of state financial losses based on the results of an audit from an authorized audit institution, in addition, it is necessary to state that if the determination of the amount of state losses can also be known at the end of the examination, or if the certainty of the existence of state financial losses is at the end of the investigation, then the determination of the suspect must also be at the end of the investigation examination. Given that the alleged crime is a material crime, the prohibited consequences must occur, thus the "state financial loss" must be determined with certainty first, before determining someone as a suspect (Investing.com).

Comparing the judge's attitude in decision No. 113/Pid.Pra/2024/PN Jkt.Sel regarding at least two pieces of evidence, it seems very contradictory to the pretrial decision No. 13/Pid.Pra/2020/PN.Lbo (Case Tracking Information System ) where the judge in principle firmly decided that BPKP does not have the authority to conduct an audit of State/Regional Financial Losses, resulting in the written evidence of the Audit Report of the Calculation of State Financial Losses by BPKP being invalid and the actions of Respondent I who have determined Applicant I, Applicant II, and Applicant III, are formally flawed because they are not accompanied by initial evidence, namely two valid pieces of evidence, so that the investigation actions carried out by Respondent I against Applicants I, II and III are invalid, have no legal basis and have no binding force.

The same verdict was also found in the Praperadilan Decision No. 2/Pid.Pra/2021/PN.Tte filed by Ibrahim Ruray as the applicant against the North Maluku High Prosecutor's Office. In this case, they were named as suspects in the alleged corruption case of the Procurement of Fishing Vessels at the North Maluku Provincial Education and Culture Office in 2019.

In essence, it states that the written evidence used as the basis for the Respondent to determine the Applicant as a Suspect does not fulfill the requirements as stipulated in the provisions of the law, so that the determination of the Applicant as a Suspect by the Respondent against the Applicant is not based on 2 [two] sufficient initial evidence as required by the Criminal Procedure Code and the Constitutional Court Decision No.: 21/PUU-XII/2014, dated 28 April 2015, so that it must be declared invalid and states that the determination of the Applicant as a Suspect is invalid (Pretrial Decision No. 2/Pid.Pra/2021/PN.Tte).



To get a clear picture of the differences in the judges' views on each of their decisions, please see the Comparison Table below.

Aspect	Decision No. 113/Pid.Pra/2024/PN Jkt.Sel	Decision No. 13/Pid.Pra/2020/PN Lbo	Decision No. 3/Pid.Pra/2023/PN. Amb
<b>Crime View</b>	Formal	Material	Material
<b>The Core of the Problem</b>	The validity of the determination of suspects and detention without calculating state losses by the BPK	The validity of the determination of a suspect based on a BPKP audit which is considered invalid	The validity of the determination of suspects and detention without calculating state losses by the BPK
<b>Sources of State Losses</b>	Minutes/Minutes of Expose between BPKP Investigators and Auditors	BPKP Audit Result Report	no audit results for calculating state losses
<b>BPKP's Authority</b>	Considered valid as a compiler of indicative evidence in the form of an exposé report	Invalid because it does not have the authority to calculate state losses	Must meet the requirements in Article 1 No. 15 of Law no. 15 of 2006, Law no. 1 of 2004 and Elucidation of Article 32 paragraph (1) of the PTPK Law
<b>Approach to Evidence</b>	It does not require an audit, just two pieces of evidence according to Article 184 of the Criminal Procedure Code	There must be an audit that meets legal requirements to meet at least two valid pieces of evidence.	There must be an audit that meets legal requirements to meet at least two valid pieces of evidence.
<b>Views on Loss Audits</b>	allows the calculation of state losses to be non-formal and does not have to be accurate/final/definite in advance	The element of state loss must be proven objectively, accurately and finally. Officially stated (declare) by the authorized institution (BPK)	There must be audit results as regulated in Article 1 point 15 of Law no. 15 of 2006, Law no. 1 of 2004 and Elucidation of Article 32 paragraph (1) of the PTPK Law
<b>Suspect Determination Status</b>	Has fulfilled the minimum requirement of two pieces of evidence	Does not meet the two pieces of evidence	Does not meet the minimum requirement of two pieces of evidence
<b>Judge's Conclusion</b>	The judge assessed that the Attorney General's actions (determination of suspect, detention) against the Applicant were legal and based on law.	The judge stated that the investigation and determination of the suspect was legally flawed and invalid due to the absence of two valid pieces of evidence.	The judge stated that the investigation and determination of the suspect were invalid due to the absence of two valid pieces of evidence.
<b>Legal Consequences</b>	Pretrial motion rejected; suspect determination and detention deemed legal	The pretrial motion was granted; the determination of the suspect and the investigation were declared invalid and had no binding legal force.	Pretrial motion granted; suspect determination and investigation declared invalid and null and void by law

From the table above, there are different views of judges regarding the implications of calculating state losses as a minimum of proof as a basis for the validity or otherwise

of coercive measures by investigators. There are several crucial things that need to be assessed and re-analyzed by the judge's considerations, namely as follows:

### **3.3. Calculation of State Losses Must be Done Accurately and Final**

Decision No. 113/Pid.Pra/2024/PN Jkt.Sel is wrong in understanding the principle of proving state losses. The judge adhered to the Constitutional Court Decision No. 003/PUU-IV/2006 which allows losses to be sufficiently proven through expert testimony, without having to be accurate and final. However, this is not in line with the concept of material offenses from the Constitutional Court Decision No. 25/PUU-XIV/2016, where according to Adam Chazawi (Adami Chazawi) and Joko Sriwidodo (Joko Sriwidodo), a material crime is a crime whose essence lies in the emergence of prohibited legal consequences (constitutive consequences). In this crime, the completion of a crime is not determined by the completion of the act, but by the creation of consequences that are the core of the prohibition of criminal law. Therefore, the element of consequence is the main element in proving the occurrence of a material crime.

In the Constitutional Court Decision No. 25/PUU-XIV/2016, which requires real and definite losses as a legal consequence that must actually occur. According to Prof. Romli Atmasasmita, Professor of Criminal Law at Padjajaran University, he is of the opinion (Antara) "If the loss is only based on an estimate, it cannot be used as a basis by the judge in deciding a corruption case. The judge is free to consider, but the Constitutional Court emphasized that the loss must be concrete."

Referring to the theory of criminal law and the expert opinion in question, the material crime emphasizes the concrete (constitutive) consequences of the act, so that the element of state loss cannot simply be assumed, but must be proven objectively, accurately and finally by the authorized institution.

### **3.4. Obligation to Officially Declare State Losses (Declare)**

The judge in decision No. 113/Pid.Pra/2024/PN Jkt.Sel stated that it was sufficient for BPKP to calculate state losses. However, the regulation stipulates otherwise, namely that only BPK as a state audit institution has the authority to attribute state financial losses as stated in Article 10 paragraph (1) of Law No. 15 of 2006 concerning BPK and SEMA No. 4 of 2016.

BPKP can indeed calculate state losses, but legally it does not have the public authority to state/declare state losses, so investigators are still required to continue to

coordinate with the BPK RI, this is in line with the judge's considerations in decision No. 13/Pid.Pra/2020/PN.Lbo.

#### **3.4.1. Limitations of the Power of Expose Evidence between Investigators and BPKP**

In Decision No. 113/Pid.Pra/2024/PN Jkt.Sel, the judge wrongly assessed the minutes of the exposure between investigators and BPKP as evidence indicating state losses. This is not enough to state that state losses have occurred because the evidence in question is not valid and independent evidence as referred to in Article 1 No. 15 of Law No. 15 of 2006 concerning BPK in conjunction with Article 1 No. 22 of Law No. 1 of 2004 concerning State Treasury, which requires state losses to have a definite and legally valid basis, therefore, state losses must be calculated based on valid procedures, containing certainty, and not merely estimates or assumptions.

#### **3.4.2. Requires calculation of state losses in a formal and definite form**

In decision No. 113/Pid.Pra/2024/PN Jkt.Sel the judge appears to have erred by allowing the calculation of state losses is not in a formal form and is not final/definite in advance, such an approach by judges will open up space for abuse of law enforcement authority and harm a person's human rights. This clearly creates legal uncertainty, because the proof in corruption cases has started from the preliminary stage, namely starting at the investigation and inquiry stage.

Legal considerations in a misleading decision will certainly be damaging a legal system consisting of regulations (Pandu Akram), because legal certainty must guarantee consistency in the Judge's Decision between one Judge's Decision and another Judge's Decision for similar cases that have been decided (Debora Tyas Wradiningsih). Theo Huijbers (Theo Huijbers, 1995) termed the use of "analogia iuris", namely the similarity of one case to another case, so that it is prosecuted on the basis of the same legal principles.

The pre-trial judge's considerations should be more focused on maintaining the consistency of his decision with legal provisions and with previous judges' decisions in viewing state losses as an element of the material crime based on calculation of state losses in formal and final/definite forms as the minimum evidence that must be present before investigators use coercive measures against someone.

Judge's considerations on decision No. 113/Pid.Pra/2024/PN Jkt.Sel not in line with Constitutional Court Decision No. 25/PUU-XIV/2016 and contrary to provision Article 1 No. 22 of Law No. 1 of 2004 concerning State Treasury and Article 1 No. 15 of Law No. 15 of 2006 concerning BPK, because state losses are basically not

losses that are estimated or assumed by themselves because real and definite elements must be fulfilled according to formal requirements.

### **3.4.3. Calculation of state losses must be done first**

The judge in Decision No. 113/Pid.Pra/2024/PN Jkt.Sel wrongly assessed the minutes of the investigation exposure as evidence of state losses, and argued that the calculation of state losses was not necessary before determining the suspect, sufficient with two pieces of evidence as regulated in Article 184 of the Criminal Procedure Code. This view is not in line with other practices and decisions, such as Decision No. 13/Pid.Pra/2020/PN.Lbo and No. 2/Pid.Pra/2021/PN.Tte, which emphasize the importance of investigative calculations by authorized institutions (BPK) to prove actual losses.

In the criminal procedure process, a system that can be trusted is needed so that the public is confident in the legal system or its judicial system. If judges are accustomed to condoning investigators and prosecutors in presenting evidence obtained illegally, then the legal system will be doubted as legitimate and the public will immediately reduce its respect (Paul Roberts & Adrian Zuckerman, 2008).

Criminal law expert who is also a Professor at the Islamic University of Indonesia (UII) Yogyakarta, Mudzakkir stated in the trial: "The determination of Tom Lembong as a suspect must be declared invalid. The reason is, there have been no results of the audit of state financial losses conducted by the BPK. Because there is no state financial loss, it means there is no crime, then the next implication, the next legal consequence is that there is also no person who can be charged with committing a crime" (CNN Indonesia).

Without calculating state losses, the evidence of the exposure minutes is considered premature and invalid as evidence, on the contrary, the judge's action in making the exposure minutes as evidence has exceeded the limits of authority of the pretrial institution and is contrary to the principle of due process of law.

## **4. Conclusion**

The concept of actual loss as an element of state loss in its position as a material crime requires that all coercive measures by law enforcement officers – including the determination of suspects, arrests, and detention – must be based on at least two valid pieces of evidence, one of which is a calculation of real and definite state losses. This is in line with the Constitutional Court Decision No. 21/PUU-XII/2014, and is an implementation of the principle of legal certainty in criminal acts of corruption.

Pretrial Decision No. 113/Pid.Pra/2024/PN Jkt.Sel shows an error in implementing the concept of actual loss as one of the minimum two valid pieces of evidence in the implementation of coercive efforts against perpetrators of corruption which is contrary to the direction of legal policy set out in the Constitutional Court Decision No. 25/PUU-XIV/2016. The approach used by the judge in his considerations still reflects the formal crime paradigm, which has been abandoned by the Constitutional Court Decision No. 25/PUU-XIV/2016. This has serious implications for the protection of the suspect's human rights and the integrity of the corruption criminal justice system.

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