

State Loss as the Basis for Criminalizing Corruption by State-Owned Enterprise Employees

Harry Harmono¹⁾ & Ade Adhari²⁾

¹⁾Faculty of Law, Universitas Tarumanagara, Indonesia, E-mail: harryharmonoai@gmail.com

²⁾Faculty of Law, Universitas Tarumanagara, Indonesia, E-mail: adea@fh.untar.ac.id

Abstract. *This study aimed to examine the legal certainty of the sentencing basis in the cassation ruling of Supreme Court Decision Number 283 K/Pid.Sus/2021, and to formulate the ideal sentencing model for determining the legal basis for imposing sanctions on corruption committed by State-Owned Enterprise (BUMN) employees. The research method used was normative legal research with a statutory approach and case approach, analyzing court decisions through library research and qualitative-prescriptive analysis. The novelty in this research lies in the identification of a structural normative weakness in the Supreme Court's reasoning, where the choice of article was based on the magnitude of state losses rather than systematic proof of the elements of the offense a practice that creates legal uncertainty and potential double standards in law enforcement. Based on the research, it was concluded that the cassation decision contained argumentation weaknesses from the standpoint of Gustav Radbruch's theory of legal certainty, and the ideal sentencing model must build juridical qualification in a structured manner, concretely prove formal unlawfulness, and integrate the principle of proportionality combining retributive, preventive, and restorative dimensions in a balanced manner.*

Keywords: *Certainty; Corruption; Employees; Enterprise; Legal.*

1. Introduction

Corruption is not a new problem in the legal and economic landscape of a nation, as it has existed for thousands of years in both developed and developing countries, including Indonesia (Tallaut and Adhari, 2022: 27). Corruption is one of the extraordinary crimes (*extraordinary crime*) that not only directly harms state finances, but also destroys the pillars of social, national, and civic life (Haga and Adhari, 2026: 314). In the context of Indonesia as a rule-of-law state founded on Pancasila and the 1945 Constitution of the Republic of Indonesia, the eradication of corruption has become a strategic agenda that receives the highest priority in national legal development (Suraya and Afrijal, 2026: 1). Corruption is multidimensional in nature because its impact is not only felt by the state in the form of reduced public finances, but also directly harms the public who should be the beneficiaries of state financial management (Puanandini, Maharani & Anasela, 2025: 47).

The policy to combat corruption as an extraordinary crime is enshrined in the Anti-Corruption Law, which requires strict regulation (Putra and Adhari, 2023: 4818). In Indonesia's criminal law system, the eradication of corruption is specifically regulated through Law Number 31 of 1999 on the Eradication of Corruption, as amended by Law Number 20 of 2001 (Kila, Sugiarta, and Ujianti, 2023: 6). This law firmly stipulates that anyone who unlawfully enriches themselves, another person, or a corporation in a manner that may harm state finances (Article 2(1)), as well as anyone who abuses authority by virtue of their position or office to harm state finances (Article 3), shall be subject to severe criminal sanctions (Fatah, Jaya and Juliani, 2017: 2). This formulation covers not only civil servants, but also employees of State-Owned Enterprises (BUMN) who carry out public functions (Pradipta and Widjajanti, 2025: 81).

A BUMN is a business entity whose majority or entire ownership is controlled by the state and is entrusted with a strategic public service mission (Harianto, 2025: 4). PT. Pos Indonesia (Persero) is one such BUMN with a vital role in distributing financial services to the public, including the payment of salaries and allowances to Indonesian Veterans sourced from the State Budget (APBN) through PT. Taspen (Persero). BUMN employees who manage or distribute state funds in the course of their duties are therefore in a position legally subject to the state financial law regime.

A legal question arises as to whether a BUMN employee particularly those who are not high structural officials but rather operational staff can be charged under Article 2(1) of the Anti-Corruption Law, which is broader in scope and carries heavier penalties, or can only be charged under Article 3 which requires "abuse of authority by virtue of position or office" (Prakoso, Pinasang and Bawole, 2023: 739). This debate is highly relevant in the context of Supreme Court Decision Number 283 K/Pid.Sus/2021, originating from the acts of I Putu Tika Ari Utama, an outsourced employee of PT. Pos Indonesia (Persero), who together with Branch Head Andi Wahyu Suwandito embezzled salaries of 175 Veterans and disbursed salaries of deceased Veterans, causing state losses of IDR 1,169,399,217 as verified by BPKP.

This case reveals a serious problem from the perspective of legal certainty. The Supreme Court at the cassation level overturned the lower court's finding under Article 3 and convicted the defendant under Article 2(1), relying primarily on the argument of "the magnitude of losses suffered by the public and the state." This approach raises a fundamental question: whether the magnitude of losses constitutes a normative element of the offense that determines the qualification of the act, or whether it merely functions as a factor influencing the severity of the sentence (*strafmaat*). This issue has major implications for the principle of legal certainty (*rechtszekerheid*), which is one of the fundamental objectives of law. Hans Kelsen affirms that law must have certainty in its application to function as an instrument of justice (Asshiddiqie and Safa'at, 2006: 56), while Gustav Radbruch states that law must simultaneously fulfill three basic values: justice (*Gerechtigkeit*), utility (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*) (Ali, 2009: 288).

The research gap (GAP) in existing scholarship is that studies on corruption by BUMN employees have largely focused on the classification of BUMN employees as subjects of

corruption law, without critically examining the normative quality of the judicial reasoning used when courts shift the applicable article based on a quantitative measurement of harm. This study addresses that gap by analyzing the argumentative structure of the cassation decision against the standard of legal certainty theory. In the context of combating corruption by BUMN employees, uncertainty in the application of the legal basis for sentencing can create unhealthy disparities in decisions, eroding the principle of equality before the law as mandated by Article 1(3) of the 1945 Constitution (Setiawan and Ma'ruf, 2018: 93).

This study examined the legal certainty of the sentencing basis in Supreme Court Decision Number 283 K/Pid.Sus/2021 and formulated the ideal sentencing model for determining the legal basis for imposing sanctions on corruption committed by BUMN employees, with reference to Decision Number 5/Pid.Sus-TPK/2020/PN.Dps, analyzed through Gustav Radbruch's theory of legal certainty, the theory of punishment, and criminal law policy theory.

2. Research Methods

This study was normative legal research (*normative legal research*) that examined law as a norm, using library materials as the primary data source, through a statutory approach (*statute approach*) and a case approach (*case approach*) by analyzing court decisions that had attained permanent legal force in order to find their *ratio decidendi*. The legal materials used included primary legal materials consisting of legislation and court decisions, secondary legal materials in the form of books, scientific journals, and prior research results, as well as tertiary legal materials such as legal dictionaries and encyclopedias. All legal materials were collected through library research and analyzed qualitatively using the prescriptive method namely, providing assessments and recommendations on the legal issues studied based on applicable legal norms, theories, and principles.

3. Results and Discussion

3.1. Legal Certainty of the Sentencing Basis in Supreme Court Decision Number 283 K/Pid.Sus/2021

The issue of legal certainty of the sentencing basis in this case cannot be separated from the dynamic conflict of views among the three levels of adjudication: the Corruption Crime Court at the Denpasar District Court, the Denpasar High Court, and the Supreme Court at the cassation level. This conflict pivots on one fundamental question: whether the acts of defendant I Putu Tika Ari Utama as an outsourced employee of PT. Pos Indonesia (Persero) are more appropriately qualified as a violation of Article 2(1) or Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001 on the Eradication of Corruption.

When viewed through the theory of legal certainty as developed by Gustav Radbruch, law must fulfill three basic values in a balanced manner: justice (*Gerechtigkeit*), utility (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*) (Margono, 2021: 105). Legal certainty, in Radbruch's view, demands that the determination of the applicable article must be based on standardized, verifiable, and consistent normative criteria across cases not subject to

arbitrary interpretation (Manullang, 2017: 9). The table below summarizes the key differences between Articles 2(1) and 3 as applied by each level of court:

Table 1. Comparison of Article Application Across Court Levels

Court Level				Article Applied	Basis of Reasoning
Denpasar District Court (PN)				Article 3 (<i>lex specialis</i>)	Defendant acted within the capacity of his position; abuse of authority element fulfilled
Denpasar High Court (PT)				Article 3 (upheld)	Confirmed lower court reasoning
Supreme Court — Cassation				Article 2(1)	Magnitude of state and public losses

In this case, the Denpasar District Court subsequently upheld by the Denpasar High Court built its reasoning on a solid foundation of legal certainty. The first-instance judges clearly explained that the fundamental difference between Article 2(1) and Article 3 lies in two aspects: first, the quality of the subject/perpetrator (*kwaliteitsdelict* versus *commune delict*); and second, the position of the object of the act in relation to the perpetrator's power or authority. In Article 3, the perpetrator must hold authority, opportunity, or certain means by virtue of their position or office all of which were factually fulfilled in the defendant's conduct, as he was able to disburse Veterans' salaries precisely because of his position, and gained broader access when his superior gave him the username and password for the FD Pos application. On this basis, referring to Supreme Court Jurisprudence Number 821 K/Pid/2005, the first-instance judges applied the principle of *lex specialis derogat legi generali*, finding Article 3 to be the *lex specialis* of Article 2 and therefore the more appropriate provision.

However, the Supreme Court concluded otherwise. What is simultaneously interesting and problematic is the justification used: the Supreme Court explicitly stated that "in considering the magnitude of the losses suffered by the public and the financial losses suffered by the state, the most appropriate and correct article to be applied is Article 2(1)." When analyzed using Radbruch's theory of legal certainty, this statement contains at least three significant normative weaknesses. First, from the perspective of proof of the elements of the offense (*bestanddeel bewijs*), the determination of the applicable article must be based purely on whether all elements of the offense can be proven through valid evidence at trial not on quantitative considerations such as the magnitude of losses. As elaborated by Moeljatno, criminal sentencing is only legally valid if both the subjective condition (fault/*schuld*) and the objective condition (the prohibited act and its consequences) are met in accordance with the applicable norm (Moeljatno, 2015: 45). The magnitude of loss is not a distinguishing element between Articles 2 and 3 both equally contain the element of "potentially harming state finances or the state economy" without establishing any specific threshold value.

Second, using the magnitude of losses as the determinant of article qualification creates systemic legal uncertainty. If adopted as a general guideline, no norm establishes at what value a loss is considered "large" enough to trigger Article 2(1) rather than Article 3. This creates the potential for double standards in law enforcement acts that are qualitatively identical may be charged under different articles simply due to differences in the value of losses incurred. In the long term, such practice erodes the principle of equality before the law,

one of the main pillars of the rule of law (*rechtsstaat*) as mandated by Article 1(3) of the 1945 Constitution (Setiawan and Ma'ruf, 2018: 93).

Third, it is important to note that Constitutional Court Decision Number 003/PUU-IV/2006 dated July 25, 2006 declared that the Elucidation of Article 2(1) of the Anti-Corruption Law regarding material unlawfulness is contrary to the 1945 Constitution and has no binding legal force. This means prosecution under Article 2(1) must be grounded strictly in formal unlawfulness conduct that is concretely contrary to prevailing positive legal norms. The Supreme Court could have legitimately qualified the defendant's conduct under Article 2(1) had it systematically proved that the acts (forging signatures, disbursing deceased Veterans' salaries, deducting salaries, and using the Branch Head's credentials without authorization) were formally contrary to Law Number 17 of 2003 on State Finances and Law Number 1 of 2004 on State Treasury. Such comprehensive proof of formal unlawfulness would have provided strong normative legitimacy for applying Article 2(1). Unfortunately, the cassation reasoning emphasized the magnitude of losses rather than systematically constructing this proof which weakens the quality of the legal reasoning even though, in practice, the cassation ruling produces a sentence that better reflects substantive justice for the hundreds of victimized Veterans.

3.2. The Ideal Sentencing Model for Determining the Legal Basis for Imposing Sanctions on Corruption by BUMN Employees

To construct an ideal sentencing model, it must first be understood that the core problem in this case is structural and systemic: Indonesian criminal corruption law has not explicitly regulated the legal position of BUMN employees in the spectrum between "every person" in Article 2(1) and "a person with authority or position" in Article 3. A BUMN such as PT. Pos Indonesia (Persero) carries out public service functions and manages state budget funds, so that substantively its employees are subject to state financial discipline. However, the defendant's outsourced employment status placed him in a structurally ambiguous position not a state official, not a civil servant, and not even formally a permanent employee, but rather an officer appointed by Transfer Note and Board of Directors Decree.

This legal ambiguity reflects the need for a sentencing model that is not merely mechanistic-normative, but capable of responding to the factual complexity of contemporary corruption involving actors outside conventional government bureaucracy. Within the framework of criminal law policy theory (*penal policy*) as developed by Marc Ancel through Social Defence, criminal sentencing must be designed rationally, proportionally, and oriented toward the protection of society (Waluyo, 2004: 135). The corruption committed by the defendant had a very strong dimension of community protection its victims were Indonesian Veterans, a socially and economically vulnerable group and the conduct spanned more than four years (2015–2019) with a growing number of victims.

Table 2. The Ideal Sentencing Model for BUMN Employee Corruption

Component	Ideal Standard
-----------	----------------

Juridical Qualification	Structured proof of all elements of the offense (<i>bestanddeel</i>) based on applicable legal norms
Formal Unlawfulness	Concrete proof of violation of positive law norms (State Finance Law, State Treasury Law, cooperation agreements)
Subject Classification	Explicit determination of the perpetrator's capacity as BUMN employee exercising public function
Proportionality	Integration of retributive, preventive, and restorative dimensions in a balanced manner
Sentencing Basis	Normative element fulfillment — not the quantitative magnitude of losses

The ideal sentencing model therefore rests on three pillars. First, it must build juridical qualification in a structured manner by systematically verifying whether the elements of the offense under the applied article are fully met without substituting this analysis with consequentialist reasoning based on the magnitude of harm. Second, it must concretely prove the formal element of unlawfulness by identifying the specific positive law norms violated, ensuring that post-Constitutional Court Decision 003/PUU-IV/2006, every conviction under Article 2(1) is grounded in demonstrable formal unlawfulness. Third, it must integrate the principle of proportionality that combines retributive, preventive, and restorative dimensions taking into account not only the severity of the sentence as a deterrent, but also the restoration of the rights of victims and the long-term protection of society (Setiawan et al., 2021: 268). National criminal law reform, when viewed from the perspective of the sentencing system in a broad sense, encompasses the entirety of the sub-systems of the existing sentencing system (Adhari, 2020: 6), and this model aligns with that broader reform agenda. The tension that Gustav Radbruch described between legal certainty and justice when they cannot be fulfilled simultaneously must be resolved not by abandoning legal certainty, but by elevating the quality of judicial argumentation so that both values are demonstrably served.

4. Conclusion

This study concluded that the cassation decision in Supreme Court Decision Number 283 K/Pid.Sus/2021 contains a structural weakness in its argumentation from the standpoint of Gustav Radbruch's theory of legal certainty, because the Supreme Court based its choice of Article 2(1) over Article 3 on the magnitude of state losses rather than on systematic proof of the elements of the offense — a method that lacks strong dogmatic foundation in criminal law and risks creating double standards in law enforcement. The ideal sentencing model for determining the legal basis for imposing sanctions on corruption committed by BUMN employees must build juridical qualification in a structured manner, concretely prove formal unlawfulness as required post-Constitutional Court Decision 003/PUU-IV/2006, and integrate the principle of proportionality that combines retributive, preventive, and restorative dimensions in a balanced manner, thereby ensuring that both the correctness of the outcome and the correctness of the argumentative process are maintained as equal demands of the rule of law.

5. References

Journals:

- Adhari, A., & Poliman, H. (2021). Disparitas penjatuhan pidana tambahan dalam perkara tindak pidana korupsi pengadaan barang dan jasa. *Jurnal Hukum Adigama*, 4(2), 3607.
- Adhari, A., & Putra, M. A. (2023). Perubahan pidana minimal khusus terhadap delik korupsi dalam Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana. *Unes Law Review*, 6(2), 4818.
- Adhari, A., & Tallaut, L. J. (2022). Kepastian hukum penerapan kriteria kewenangan penyidikan perkara tindak pidana korupsi oleh Komisi Pemberantasan Korupsi Republik Indonesia. *Jurnal Analisis Hukum (JAH)*, 5(1), 27.
- Afrijal, & Suraya, A. (2026). Dampak korupsi terhadap pembangunan ekonomi dan penegakan hukum di Indonesia. *Mahkamah: Jurnal Riset Ilmu Hukum*, 3(1), 1.
- Fatah, A., Jaya, N. S. P., & Juliani, H. (2017). Kajian yuridis penerapan unsur merugikan keuangan negara dalam penegakan hukum tindak pidana korupsi. *Diponegoro Law Journal*, 6(1), 2.
- Hariato, B. (2025). Kerugian negara diakibatkan oleh Badan Usaha Milik Negara (BUMN) sebagai kerugian keuangan negara. *Jurnal Pengabdian Masyarakat dan Riset Pendidikan*, 3(4), 4.
- Kila, F., Sugiarta, I. N. G., & Ujianti, N. M. P. (2023). Pertanggungjawaban pidana tanpa sifat melawan hukum dalam perspektif pembaharuan hukum pidana. *Jurnal Konstruksi Hukum*, 4(1), 6.
- Pradipta, F. S., & Widjajanti, E. (2025). Pembaharuan hukum pidana korupsi dalam pengelolaan BUMN pasca revisi UU No 1 Tahun 2025. *Locus Journal of Academic Literature Review*, 4(2), 81.
- Prakoso, A., Pinasang, D. R., & Bawole, H. (2023). Kepastian hukum atas tindakan bisnis direksi BUMN Persero beritikad baik yang menimbulkan kerugian keuangan negara. *Journal of Social Science Research*, 3(4), 739.
- Puanandini, D. A., Maharani, V. S., & Anasela, P. (2025). Korupsi sebagai kejahatan luar biasa: Analisis dampak dan upaya penegakan hukum. *Jurnal Sosial Politik, Pemerintahan dan Hukum*, 4(1), 47.
- Setiawan, A., & Ma'ruf, U. (2018). Penerapan unsur dapat merugikan keuangan negara dalam tindak pidana korupsi. *Jurnal Hukum Khaira Ummah*, 12(3), 93.
- Setiawan, H., et al. (2021). Penerapan asas proporsionalitas dalam penjatuhan pidana terhadap pelaku peredaran narkoba. *Iuris Studia: Jurnal Kajian Hukum*, 2(2), 268.



Books:

- Adhari, A. (2020). *Pembaharuan sistem hukum pelaksanaan pidana*. Deepublish.
- Ali, A. (2009). *Menguak teori hukum (legal theory) dan teori peradilan (judicialprudence)*. Kencana.
- Asshiddiqie, J., & Safa'at, M. A. (2006). *Teori Hans Kelsen tentang hukum*. Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI.
- Manullang, E. F. M. (2017). *Legisme, legalitas, dan kepastian hukum*. Kencana Prenada Media.
- Margono. (2021). *Asas keadilan, kemanfaatan dan kepastian hukum dalam putusan hakim*. Sinar Grafika.
- Moeljatno. (2015). *Asas-asas hukum pidana*. Rineka Cipta.
- Radbruch, G. *Einführung in die Rechtswissenschaft*. Sebagaimana dikutip dalam A. Ali, *Menguak teori hukum (legal theory) dan teori peradilan (judicialprudence)* (hlm. 288). Kencana.
- Waluyo, B. (2004). *Pidana dan ppidanaan*. Sinar Grafika.

Regulation:

- The 1945 Constitution of the Republic of Indonesia
- Criminal Code (KUHP)
- Law Number 31 of 1999 on the Eradication of Corruption
- Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999
- Law Number 17 of 2003 on State Finances
- Law Number 19 of 2003 on State-Owned Enterprises
- Law Number 1 of 2004 on State Treasury