

## **The application of the state financial losses' assessment in corruption crime after the verdict of the constitutional court no. 31/Puu-X/2012**

**Anwar Sadat<sup>1</sup>**

<sup>1</sup>*STIHP PELOPOR BANGSA, Indonesia*

e-mail: anwar\_pengacaramuda@yahoo.com

### **ABSTRACT**

The corruption cases in Indonesia are considered as a crime which is increasingly worrying since it causes state losses, even in its development the value of losses suffered by the Indonesia state are getting increased. This study aims to find out the application of the state financial losses' assessment in corruption crime's verdict. This study is a normative legal study using a statutory approach, conceptual approach, and comparative approach. The legal materials are used such as primary material (the corruption law), secondary materials (book and journal), and tertiary materials (law dictionary and Indonesian dictionary). The technique of legal material collection is carried out by studying literature, while the analytical technique is carried out using the interpretation method. The results of the study show that in the context of assessing the state losses, not all the cases being tried which are related to corruption crime, must go through an audit process of BPK or BPKP. When the calculation and the determination of the state losses are easy to calculate, it is only needed to be done by an investigator or prosecuting attorney. Thus, the calculation and the determination of the state financial losses is only carried out if needed, or when the statements of the experts are entered, to add or to give their statements before the trial.

**Keywords:** *Losses; State Finances; Corruption.*

### **INTRODUCTION**

Corruption is a crime that violates social rights and the public economy as one of the human rights. Law No. 31 of 1999 on Eradication of the Criminal Act of Corruption that has been changed by Law No. 20 of 2001, that further will be abbreviated as anti-corruption law, is following the concept of state financial losses in the sense of the formal crime.<sup>1</sup> The

matter of 'being able to' harm the state finances should be interpreted as harming the state either in a direct or indirect sense. It means that an action can be considered as harming the state finances if the action potentially caused state losses. Here as unfolded by Indonesia Corruption Watch (ICW) related to the state losses in 2017 due to corruption.

---

<sup>1</sup>Chaerudin dkk, Strategi Pencegahan dan Penegakan Hukum Tindak Pidana

Korupsi. (Refika Aditama, Bandung, 2009), hlm, 12.

**Table 1.** The Amount of State Losses due to Corruption in Indonesia in 2017

No	Periode	Corruption Cases	The State Losses
1	January – April	49 cases	1,2 Billion
2	May – August	76 cases	1, 8 Billion
3	September – Desember	91 cases	2,9 Billion
<b>Total</b>		<b>216 cases</b>	<b>5,9 Billion</b>

Source : Indonesia Corruption Watch / icw.go.id (February 2018)

Based on the table presented above, it can be seen that the number of corruption cases that happened in Indonesia in 2017 reached 216 cases by losing Rp 5,9 billion of financial losses. Looking to this condition based on ICW, the number of corruption cases and the state losses will increase every year if there is no serious consideration from the law enforcement to eradicate the corruption which harms the state finances.

The state agency in charge of the state financial field is The Audit Board abbreviated as BPK and Indonesia's National Government Internal Audit abbreviated as BPKP.<sup>2</sup> BPK can calculate or investigate the state losses. The calculation of the state losses by the BPK is used as the basis for evidence of corruption crime cases in Indonesia. Therefore, the focus of this study is to understand the calculation method carried out by the BPK in establishing the amount of the state losses especially that is potential in Indonesia.<sup>3</sup>

The calculation of the state losses is not only related to the accountancy aspect. The potential calculation of the state losses depends so much on the ability of the auditor in understanding the meaning of the state losses, the various methods of the state losses' calculation, and in analysing the method that is believed as the best method of every corruption case. The comprehension is based on the auditor's point of view. Therefore, this study needs a qualitative approach to dig meaning, method, and technique to carry out the state losses' calculation.

Standing on the Law No. 15 of 2004 regarding The State Financial Management and Accountability Audit, mentioning that:

1. The Audit Board, which is further called BPK, is the Audit Board as mentioned in the 1945 Constitution of the Republic of Indonesia,
2. BPK executes the examination of the management and accountability regarding state finances,

<sup>2</sup>Anis Chariri. *Keuangan Negara dan Masalah Korupsi di Indonesia*. Universitas Diponegoro Semarang. 2015. hlm 16.

<sup>3</sup>Jaka Isgiyarta. *Penentuan Kerugian Keuangan Negara Yang Dilakukan Oleh BPK di Indonesia*. Universitas Diponegoro Semarang. 2017. hlm 12.

3. The state financial management and accountability audit carried out by the BPK encompasses the entire element of the state finances as mentioned in Article 2 of Law No. 17 of 2003 regarding the State Finances,
4. The determination of the object of examination, the design and the execution of the examination, the determination of time and examination method, the organization, and the presentation of examination reports are carried out freely and independently by the BPK”,<sup>4</sup>

Furthermore, related to the duties of the BPK based on Law No.15 of 2006 mentioning that:

1. The Audit Board, which is further abbreviated as BPK, is a state institution in charge of examining the management and responsibility regarding state finances as mentioned in the 1945 Constitution of the Republic of Indonesia.
2. BPK is a state institution which is independent in examining the management and responsibility regarding state finances.
3. BPK is in charge of examining the management and responsibility regarding state finances which are carried out

by Central Government, Local Government, another State Institutions, Bank Indonesia, Indonesian State-Owned Enterprise, Public Service Agency, Regionally-Owned Enterprise, and other institutions or agencies which manage the state finances”,<sup>5</sup>

The result of the state financial examination by the BPK based on Article 23 E paragraph (2) UUD 1945, namely: “shall be submitted to the People’s Representative Council, the Regional Representative Council, and the Regional People’s Representative Council, under their authority. The definition of state finances in the third amendment of the 1945 Constitution is interpreted broadly, which is not only limited to the APBN. Which is before making the third amendment of the 1945 Constitution, the responsibility of the state financial examination by the Audit Board is merely to be informed to the People’s Representative Council (Article 23 paragraph (5))”.<sup>6</sup>

The following duties from the result of the state financial examination by the BPK based on Article 10 Law No.15 of 2006 namely:

- 1) BPK shall evaluate and/or determine the number of state losses due to the deliberate tort

---

<sup>4</sup>Law No 15 of 2004. Regarding Pemeriksaan Pengelolaan dan Tanggung Jawab Keuangan Negara. Lembaran Negara Republik Indonesia Tahun 2004 Nomor 4400.

<sup>5</sup>Law No 15 of 2006. Regarding Badan Pemeriksaan Keuangan. Lembaran Negara Republik Indonesia Tahun 2006 Nomor 4654.

<sup>6</sup>Ibid. hlm. 12.

or negligence by treasurers, BUMN/BUMD management, and other institutions or agencies performing state financial management.

- 2) The assessment of state financial losses and/or determination of the parties obligated to pay for compensation as mentioned in paragraph 1) shall be stipulated in a BPK's regulation",<sup>7</sup>

The state financial management requires perpetual improvement adjusted to the national development dynamics. The government has gradually implemented amendments regarding the state financial management with the ratification of:

- a. Law No. 17 of 2003 regarding State Finances
- b. Law No. 1 of 2004 regarding State Treasury
- c. Law No. 15 of 2004 regarding The State Financial Management and Accountability Audit

Law No. 20 of 2001 regarding the Eradication of the Criminal Act of Corruption that is currently in effect does not define and regulate explicitly and definitely what is meant by state losses. The definition of state losses is regulated in other regulations such as the Law of State Treasury and the

Law of BPK. Law No. 1 of 2004 regarding State Treasury, Article 1 number 22 explains: "State/Regional Loss is real short of money, securities, and goods, of which amount is caused by unlawful actions, either intentionally or negligently".<sup>8</sup>

Based on the definition above, it can be stated that the elements of the state losses are: "The lessening of the state finances in the form of valuable money, stated-owned assets from its amount and/or the duly value, the deficit of state finances must be definite in amount or in other words the losses have occurred with the number of losses that can be determined in certain, thus, the state losses is merely an indication or potential losses, and the losses due to unlawful actions, either intentionally or negligently, the unlawful element must be proven carefully and precisely".<sup>9</sup>

The state losses are not only real but also potential ones, namely which have not occurred yet such as state revenues that will be received. There is also an opinion which sees that the loss of a transaction in which there is an element of the state, in this case for example BUMN, not necessarily the losses become the state losses. In many corruption cases, investigators, prosecuting attorneys,

---

<sup>7</sup>Law No 15 of 2006. Regarding Badan Pemeriksaan Keuangan. Lembaran Negara Republik Indonesia Tahun 2006 Nomor 4654.

<sup>8</sup>Law No 1 of 2004. Regarding Perbendaharaan Negara, Lembaran Negara

Republik Indonesia Tahun 2004 Nomor 5. Pasal 1 angka 22.

<sup>9</sup>Djaja, Ermansja. Tipologi Tindak Pidana Korupsi di Indonesia. Mandar Maju. Bandung. 2012. hlm 49.

and even judges in court fail to agree on the determination of the amount of state financial losses on criminal acts of corruption that are being handled.

This happens due to the absence of a unified perspective on the state finances itself. Renewal of various regulations in the field of state financial management is meant to change and handle the weakness of the regulations in the previous field of state financial management. However, in the development, the renewal of the regulations in the field of state financial management has not been able yet to effectively reduce the level of losses of state finances, which can be measured by the increasing crime which caused state financial losses or potentially caused state financial losses which filed in court as the criminal act of corruption.

Juridically it is not easy to set limits on the definition of state financial losses, thus giving rise to juridical debate in the doctrine and practice of law enforcement of corruption crime, namely debate regarding the definition limits and the scope of state finances, the elements of harming the state finances, and others. Based on those considerations, thus, the problem of this study can be formulated as How

the application of the assessment/the determination of the state financial losses in the verdict of the corruption crime's judges?

## RESEARCH METHOD

This study is juridical-normative, namely a study that is carried out through a literature study, which analyses (particularly) secondary data in the form of either legislations or studies, assessment results, and other references.<sup>10</sup> The approaches that are used such as the statutory approach, comparative approach, and conceptual approach. The legal materials that are used in this study consist of primary, secondary, and tertiary legal materials.<sup>11</sup> The primary legal material is the main legal material which becomes the main analysis of this study. The secondary legal material is obtained from legal books, including essays, thesis, and legal dissertation, as well as legal journals. The tertiary legal material is the legal materials taken from the Indonesian dictionary, legal dictionary, and English dictionary.<sup>12</sup> The technique of legal material collection with literature study is by learning and reading the books, magazines, printed media, others, as

---

<sup>10</sup> Peter Mahmud Marzuki, **Penelitian Hukum**, (Jakarta: Prenada Media, 2005), hlm. 93.

<sup>11</sup> Soerjono Soekanto dan Sri Mamudi. *Penelitian Hukum Normatif. Suatu Tinjauan Singkat*. (Rajawali Pres. Jakarta, 2005), hlm 12-13

<sup>12</sup> Khoirun Nisa, *Tanggung Jawab Notaris Sebagai Pejabat Urmurn Dalarn Perkara Pidana Mengenai Akta Yang Dibuatnya*, Tesis Program Studi Magister Kenotariatan Fakultas Hukum Universitas Brawijaya, Malang, 2013, hal. 31.

well as another handbook related to this study, intended to gain theoretical foundation as the basis of carrying out this study. The analytical technique of the legal materials uses the interpretation method in which after collecting the legal materials, further it will be analysed, so that it can be concluded that it is scientifically justifiable.

## **RESULT AND DISCUSSION**

### **The Application of State Financial Losses Element in Handling the Act of Corruption**

#### **Solely Regulated in Article 2 and Article 3 of Anti-Corruption Law**

Law No. 31 of 1999 jo by Law No. 20 of 2001 on Eradication of Criminal Act of Corruption (Anti-Corruption Law) – classifies corruption into seven types, namely: (1) harming the state finances (self-enrichment or abuse one's authority so that it causes harm to the state finances), (2) a bribe, (3) gratification, (4) embezzlement in office, (5) extortion, (6) manipulation, and (7) conflict of interest.

However, of the many provisions governing corruption crime in Anti-Corruption Law, the provisions governing “harming the state finances”, it is only in Article No. 2 and No. 3 of Anti-Corruption Law. Furthermore, the crime that is categorized as corruption does not require a calculation of state financial

losses. Several articles do not link corruption to state finances, for example, bribery. An official who receives a bribe from someone can not be charged as harming state finances. Although it is merely two articles, however, the article is often used or becomes the favorite of the law enforcement officers to ensnare the perpetrators of corruption who are entirely charged as causing state losses.

This can be seen from 735 corruption cases examined and decided at the cassation level of the Supreme Court, which the data is collected by LeIP in 2013. Of 735 cases, there are 503 cases or 68,43% using article 3 of Anti-Corruption Law to ensnare the perpetrators of the criminal act of corruption. In addition to article 3 of the Anti-Corruption Law, Prosecuting Attorney also uses Article 2 of Anti-Corruption Law to ensnare the perpetrators of the criminal act of corruption for about 147 cases or 20%. While for bribery, merely 26 cases use Article 11 of Anti-Corruption Law.

Although there are enough corruptors in Indonesia who have been ensnared by Anti-Corruption Law and thrown into prisons because they have been proven of harming the state finances, in its practice, the application of the element “harming state finances” in Anti-Corruption Law upon the handling process of corruption crime, it often causes problems. If one of the elements is not

proven, it can be affected to the release of the corruption perpetrators from the legal bondage (either because the investigation is stopped or released by the court judges). If this is examined further, the Anti-Corruption Law does not only regulate the corruption crime formula, but also regulates the type of “derivative” crime, which is a particular act that does not belong to the type of corruption crime, but it can be ensnared with the Anti-Corruption Law. The act can also be subject to Articles in Anti-Corruption Law because it relates to the handling of corruption crime, classified as follows:

There are several methods of causing state losses, which are the state losses that relate to various transactions: ”1) goods and services transactions, 2). Transactions that relate to debts, and 3) Transactions that relate to cost and income”.<sup>13</sup> Based on three possible state financial losses, it can be caused several possible events that can harm state finances or state economy, namely :

- a) Procurement of goods at unreasonable prices due to they far above the market price, so it can cause harm to state finances in the amount of purchase price difference with market price or reasonable price. This act of corruption in the

process of procurement of goods and services which is quite dominant happens in Indonesia. The procurement process of goods and services is often followed by bribes or kickbacks from bidders to state officials.

- b) The price of procurement of goods and services is reasonable but inappropriate with the specification of goods and services that is required. If goods and services are at a low price, but the quality of goods and services is less good, it can be said that it is harming state finances.
- c) Some transactions unreasonably increased state debts, so it can be said as harming state finances due to the state obligation to pay the debts is increasing. For example, in the past few times, there was a private bank whose majority share is Bank Indonesia, guaranteed securities of billion rupiahs which was issued by the bank group. When the securities mature, the issuer of the securities not being able to pay, so the bank as the warrantor shall

---

<sup>13</sup> Emerson, Y. Dkk. 2014. Penerapan Unsur Merugikan Keuangan Negara dalam

Delik Tindak Pidana Korupsi. Indonesia Corruption Watch. Jakarta. hlm 11

pay. As a result, the amount of the debts is greater and becomes a burden for the owner to help solve it.

- d) State debt reduced unreasonably can be said as harming state finances.
- e) State assets are reduced due to they are sold at low prices or given to another party or exchanged with a private party or individual (*ruilslag*). In another case, it can also state assets that cannot be sold, but then it is sold after changing the class of state assets that will be sold into a lower class, as what has happened to one of the government agencies several times ago.
- f) To increase the costs of agency or company, this can happen either due to waste or otherwise, such as making a fictitious fee. By the increased costs, the profit of the company which becomes the tax object is decreased, so the state does not receive tax income or receive less income than it should be.
- g) Sales results of a company are reported less than the actual sales, so it decreases the legal income of the company. For example, by carrying out transfer pricing, in which the

company sells goods at a low price to other companies abroad which still correlates to the sales company. As a result, the income of the company is less than it should be, so that the tax object does not exist at all or gets smaller.

However, the inclusion of the “harming state finances” element in the corruption crime (particularly Article 2 and Article 3 of Anti-Corruption Law) in the practice often causes a problem that can affect the handling process of the corruption case. Starting from multiple interpretations of state finances and state losses definition, the authority of calculating state losses, the low process in calculating state losses which are considered hampering the handling of the corruption case, and comes to the unmaximize execution of replacement money in the corruption case.

The policy of lawmaking in the field of State Finances is based on the 1945 Constitution as the basic principles of state financial management. The basic regulation is described in the form of common principles of state financial management which relates to the constitutional law, contained in Law No. 17 of 2003 regarding State Finances. Furthermore, which concerns the basis of the organization of the administrative rules of state financial management refers to the administrative law of state finances

which is contained in Law No. 1 of 2004, while the common principles of The State Financial Management and Accountability Audit are contained in Law No. 15 of 2004.

Related to the problem of state finances due to the corruption act, Phiter, J (2011) states :

*“Corruption in the international discourse pressure is maintained on the government to continue working towards a solution. The values its reputation within the international community, international relations are critical for trade and security in the contemporary globalized environment. Addressing the link between corruption and social welfare is also a necessary and critical first step to resolving one of the many causes of global poverty, given that a key measure of social welfare is the level of poverty. Despite the awareness of the previous associations between corruption and economic development, the ubiquitous studies of it over decades, the creation of international and domestic anti-corruption laws, and powerful international organizations to combat it, political corruption not only persists but is perceived to be increasing according to*

*Transparency International’s most recent corruption data”*.<sup>14</sup>

Furthermore, review of the implementation of the United Nations Convention Against Corruption (UNCAC) which is carried out by the United Kingdom and Uzbekistan towards Indonesia in 2011, one of the recommendations is to assure that the norms in the abuse of the function includes non-material profit and consider to revise the law to remove the references regarding state losses (*Ensure that the existing norms on abuse of functions cover also a non-material advantage, and consider revising the laws to remove the reference to state loss*).<sup>15</sup> As a result of many problems and the review result of the implementation of UNCAC in Indonesia, a discourse to review whether or not it is necessary to maintain the “harming state finances” element in the revision of the Anti-Corruption Law in the future.

### **Multiple Interpretations Regarding State Finances**

One of the basic elements in corruption crime is the existence of state financial losses. Various regulations currently do not have the same definition of state finances. Article 1 No. 1 Law No. 17 of 2003

---

<sup>14</sup>Phiter, J. and Ronald MacDonald. Corruption and financial intermediation in a panel of regions: cross-border effects of corruption. Working Paper, University of Glasgow, 2011–18

<sup>15</sup> Riawan Tjandra. Hukum Keuangan Negara. (PT Gramedia Widiasarana Indonesia, Jakarta, 2013), hlm 34.

regarding State Finances defines state finances as “State finances are all rights and obligations of a state that can be valued in money, as well as everything in cash or in the form of goods that can be owned by the state in connection with the implementation of the rights and obligations.” In Article 1 paragraph 1 Law No.19 of 2003 regarding BUMN asserts that state participation derives from the restricted state assets.

The meaning of this Article is when the state assets have been restricted, so the assets are no longer in the realm of public law but in the realm of private law. The Law regarding State Finances positioning BUMN at the level of public law. On the other hand, Article 11 of BUMN Law asserts that the management of BUMN is carried out based on Law No. 1 of 1995 regarding Limited Liability Companies and its implementing regulations. Thus, the Limited Liability Companies Law under the principle of *lex specialis derogat lex generalis* that apply to BUMN. In the matter of a loss to the BUMN, the law enforcement and state officials adhere to Article 2 letter g Law of State Finances which asserts that state assets / regional assets managed by themselves or by other parties in the form of cash, securities, debts, goods, and other rights that can be valued in money, including the assets that are restricted in state or regional companies and general explanation of the Anti-Corruption

Law which asserts that “Restricted state participation is state assets” is still in the public law realm.

The definition of state finances in Anti-Corruption Law is different from State Finances Law and BUMN Law. The section of General Explanation of Anti-Corruption Law mentioned that state finances are the whole state assets in any form, either restricted or not, including all state financial losses and all rights and obligations arising from:

- a. In the control, management, accountability of state agency officials either in central or regional level;
- b. In the control, management, accountability of State-Owned Enterprise/ Regionally-Owned Enterprise, Foundation, Legal Entity, and Company that attaches state equity, or company that attaches third party assets based on an agreement with the state.

However, what is meant by State Economy is an economic life organized as a joint enterprise based on kinship principles or independent social enterprise based on government policy either at a central or regional level, under the provisions of the applicable legislation which aims to provide benefits, prosperity, and welfare to all public’s live.

A number of the descriptions above show the non-uniform understanding of state finances in

BUMN Law, State Financial Law, or Anti-Corruption Law. Differences in giving meaning to the regulation can cause adversity. The adversity is in the attempt of determining how much the state financial losses is, due to corruption crime, and how much the replacement money will be charged to the convict, besides the adversity regarding evidence at the trial of eradicating corruption crime.

Chairman of the national law commission, J.E Sahetapy on public discussion of state finances definition in corruption crime asserts that clarity of juridical definition of state finances is needed. According to him, the definition of state finances is still spread in several laws such as Law No. 17 of 2003 regarding State Treasury, Law No. 49 Prp. of 1960, as well as the emergence of the article on state company receivables of Government Regulation No. 14 of 2005 on Procedure for Writing off State/Regional Receivables.

Parties who are pro-expansion of the definition of state finances will adhere to the provisions of Anti-Corruption Law. If there is a loss to BUMN and the company, law enforcement and state officials use the provisions of article 2 letter g of State Finances Law and general explanation of Anti-Corruption Law. The essence, restricted state participation is state assets which by their nature are in the realm of public law. Therefore, if there is a state loss, the provisions of the Anti-Corruption

Law can be applied to the management of BUMN.

While those who want a narrowing definition of state finances particularly for BUMN, use the provisions of Law No. 19 of 2003 regarding BUMN, Article 1 paragraph (1) which asserts state participation is restricted state assets. When state assets have been restricted, then the assets are no longer included in the realm of public law, but in the realm of private law.

On the other hand, there is an attempt to file judicial review regarding state finances definition in State Finances Law. The application of the material test is submitted by BUMN Legal Forum and Study Center of Strategic Problem of Universitas Indonesia. The point is, the applicant states that the BUMN assets are not included in the realm of State Finances as regulated in State Finances Law. The Article that is required in the material test is article 2 letter g and i of Law No. 17 of 2003 regarding State Finances.

While article 2 letter g and i states, “State Finances as mentioned by article 1 number 1 encompasses (letter g) state/regional assets managed on its own or by other parties in the form of cash, securities, receivables, goods and other rights that can be valued in money, including assets separated on state enterprise/local company and (letter i) assets of other parties obtained using facilities provided by the

government.” What is meant by state finances are all rights and obligations of the state that can be valued in money, as well as everything in cash or in the form of goods that can be owned by the state in connection with the implementation of the rights and obligations.

The application of the material test regarding State Finances is rejected by BPK. Hasan Basri, Vice Chairman BPK asserts that if the application of the material test is accepted, this is not only state finances that are in endanger condition, but also four losses that will arise. First, local finances, income, and local expenditure, as well as other local assets which are separated in BUMD are also separated from state finances. Second, all of the APBN funds in the form of General Allocation Fund (GAF), Specific Allocation Fund (SAF), and Revenue Sharing Fund (RSF) have been channeled to regional treasury and included in APBN systems are also separated from state finances.

Third, institutions whose finances' source is not from APBN, such as Bank Indonesia, Financial Services Authority, Health Social Security Agency (HSSA), are also separated from state finances. And Fourth, all institutions which are formed by the law and stated that their

assets is restricted state assets such as Indonesia Deposit Insurance Corporation (IDIC), Special Task Force for Upstream Oil and Gas Business Activities, by themselves are no longer part of state finances.<sup>16</sup>

### **Different Scope of State Losses**

Anti-Corruption Law that is currently applied does not define and regulate strictly and definitely regarding what is meant by state losses. The state losses definition is regulated in another regulation such as State Treasury Law and BPK Law. Law No. 1 of 2004 on State Treasury, Article 1 paragraph 22 explains “State/Regional Loss is real short of money, securities, and goods, of which amount is caused by unlawful actions, either intentionally or negligently.”

Based on the definition above, it can be stated that the elements of state losses are:

1. State losses are lessening of the state finances in the form of valuable money, stated-owned assets from its amount, and/or the duly value.
2. The deficit of state finances must be definite in amount or in other words the losses have occurred with the number of losses that can be

---

<sup>16</sup> Uji Materi UU Keuangan Negara Tak Tepat, 25 Oktober 2013, Harian Ekonomi Neraca.

determined in certain, thus, the state losses are merely an indication or potential losses.

3. The losses due to unlawful actions, either intentionally or negligently, the unlawful element must be proven carefully and precisely.

Based on provisions of Article 1 paragraph 22 Law No. 1 of 2004 as stated above, it can be seen that the followed concept is the concept of state losses in the meaning of material crime. An action can be said as harming state losses on the condition that there should be real state losses. This is different from Article 2 paragraph (1) Anti-Corruption Law which explains that state losses in the concept of formal crime is said as being able to harm state finances or state economy.

Article 1 number 15 Law No. 15 of 2006 regarding the Audit Board explains that state/local losses is real short of money, securities, and goods, of which amount is caused by unlawful actions, either intentionally or negligently. Other than based on BPK Law, BPKP judges that in financial losses/state assets, a state loss is not only the real one but also the potential one, namely that has not been occurred such as the state income that will be received.

In many corruption cases, either investigator, prosecuting attorney, even judges at court, are

failed to agree on the determination of the amount of state financial losses on the corruption crime that is being handled. This happens due to the absence of a unified perspective on the state finances itself. As a result, often arises a difference between prosecuting attorneys and judges regarding the number of state losses that is corrupted by the defendant as an additional criminal determinant in the form of state compensation money.

### **Juridical Implication of Constitutional Court's Verdict No. 31/PUU-X/2012 Towards Judicial Practice in Provisions of the Agency who Authorized in Auditing State Losses in Indonesia**

The sample case which causes State Financial Losses is the case of corruption experienced by former chief director of PLN, Ir. Eddie Widiono Suwondho. The KPK's Prosecuting Attorney prosecutes the former chief director of PLN Eddie Widiono Suwondo of 7 years imprisonment. The prosecuting attorney assesses that the defendant is legally proven to have committed a corruption crime by enriching himself and other people. Eddie is legally proven to have committed a corruption crime by enriching himself and other people. This is mentioned in primer accusation article 2 Law No. 31 of 1999 regarding eradication of corruption crime. As for the

chronology of this case can be concisely explained as follow".<sup>17</sup>

In January 2001 the defendant invited Gani Abdul Gani, the Chief Director of PT Netway Utama to present the offer of PT Netway on project procurement of Customer Information System-Rencana Induk Sistem Informasi (CIS-RISI) in PLN Disjaya Tangerang. After the presentation, the defendant said that this was an opportunity for PT PLN with the risk of failure was endured by PT Netway Utama which could also benefit both parties with a joint venture system. The defendant sent a letter to the General Manager of PLN asking PLN to continue the process with PT Netway Utama. The defendant asked CIS-RISI offered by Netway to be implemented as soon as possible.

In May 2001, in a meeting with the staff of the central PLN to discuss CIS-RISI roll out with PT Netway Utama. Planning Director suggested it through a tender. However, the defendant still maintained PT Netway as the executor, and later, the General Manager PLN Disjaya Tangerang Margo Santoso continued the negotiation process. On May 22, 2001, Margo sent a letter to *Reksa Paramita's* legal office which attached the proposal document with PT. Netway Utama by the request that

was carried out by the applicable legal study. *Reksa Paramita* published a memorandum that stated CIS-RISI could be applied after the general meeting of shareholders. The defendant approached Sofyan Djalil to ask for a roll-out agreement of CIS-RISI which appointed PT. Netway Utama, however, the board of commissioners requested to be submitted in writing. Upon the defendant's letter, the board of commissioners sent the letter of August 22, 2001, which stated that the legal study was not comprehensive. Thus, it needed to be equipped with a price aspect that is still high and processing time.

The defendant sent another letter to the commissioners' board stating that the intellectual owner of the CIS-RISI application is PT Netway Utama, and the direct appointment has been based on the director's decision. While at that time there was no legal study yet and CIS which was based on the defendant of PT Netway Utama had not been listed yet in Directorate General HAKI. The defendant sent the letter as an answer to the commissioners' board. The defendant said that the roll-out project of CIS-RISI is the most possible one at that time and the direct appointment had been over. Even though without the agreement of the commissioners' board, on November

---

<sup>17</sup>Santoso, D. 2014. Kronologi Korupsi di PLN Disjaya Tangerang. Indonesia Corruption Watch / icw.go.id

23, the defendant informed Margo Santoso through a letter stating that the commissioners' board had been accepted and supported the plan of CIS-RISI and approved that plan. Margo then made a negotiation and reevaluation team. Since January 1, 2002, the team held a meeting with Gani in which costs were borne by PT Netway Utama. Margo made a direct appointment team on February 17, 2003, which stated to command the direct appointment team to make a planning.

The defendant published a decree of PLN which considered the witness, Fahmi Mochtar, replacing the witness, Margo Santoso. Commanded Margo and stated that as if he explained the study process of PT Netway Utama, and that the direct appointment had been under the provisions.

The defendant re-applied the principle permit to the commissioners' board of PLN for direct appointment. By the budget of 2004 in the amount of Rp. 100 M. However, on November 7, 2003, the commissioners' board answered that the commissioners' board had not approved the defendant's price. The witness, Sunggu Aritonang with the knowledge of the defendant requested to the Chief Director of PLN 2008-2009, Fahmi Mochtar to renegotiate with PT. Netway Utama. Later, on November 12, 2003, Gani agreed to

lower the price from Rp. 142 M to Rp 137 M.

The defendant published a specific letter of authorization, based on that decree Fahmi and Gani signed a letter of cooperation with the implementation period of 24 months. While the cooperation agreement was not based on the agreement of the stockholders. The defendant act which agreed to the direct appointment was not under the directors' provisions.

Further, it was explained that the former Chief Director of PLN, Eddie Widiono Suwondo, was prosecuted by the KPK's Prosecuting Attorney for seven years of imprisonment. The defendant was legally and convincingly proven committed in corruption crime by enriching himself and other people. Demanding to the panel judges to impose a prison sentence of 7 years, "According to the prosecutor, Muhibuddin, in Corruption Crime's Court, Jakarta, Wednesday, December 7, 2011. Besides being threatened with 7 years in prison, Eddie was also fined in the amount of Rp. 500 million subsidiaries 6 months confinement. Besides, The prosecuting attorney also requested the defendant to pay replacement money of Rp 2 billion.<sup>18</sup>

If in a month after the court's decision, the money was not paid, then it would be replaced by

---

<sup>18</sup>Simanjuntak, J. 2014. Putusan Terhadap Kasus Korupsi di PLN Disjaya

Tangerang. Tribunnews.com. Diakses 10 Januari 2019.

confinement of 2 years in prison. Based on JPU, Eddie was proven enriching himself and other people as mentioned in the primary accusation Article 2 Law No. 31 of 1999 on Eradication of Criminal Act of Corruption. Eddie along with Margo Santoso, Fahmi Mochtar, and Chief Director of PT Netway Gani Abdul Gani were proven to commit corruption. Eddie as the Chief Director of PLN commanded the direct appointment to the General Manager of PLN Disjaya Tangerang, Fahmi Mochtar, to appoint PT. Netway as project executor of CIS RISI's outsourcing of 2004-2006. "The action of the defendant is not under Presidential Decrees on Procurement of Goods and Services".<sup>19</sup>

Judges of Corruption Court sentences 5 years of prison to the former Chief Director of PLN Eddie Widiono Suwondo. The verdict is a punishment as the act of Eddie who has proven guilty, legally and convincingly, committing corruption either alone or together in the project of CIS-RISI procurement in PLN Disjaya and Tangerang of 2004-2006. The panel of judges chaired by Tjokorda Rae Suamba states that Eddie has proven to have violated Article 3 Law No. 31 of 1999 on Eradication of Criminal Act of Corruption as amended by Law No. 20 of 2001 *juncto* article 55 paragraph

(1) number 1 Book of Criminal Law (KUHPidana) as stated in the indictment of Prosecuting Attorney.

Sentence five years imprisonment and a fine of Rp 500 million. If the fine is not paid then it is replaced with 6 months of confinement," said Tjokorda while he read the verdict, in Corruption Court, Wednesday, (21/12/2011). As for the criminal offense assessed that has been committed by Eddie is that he commands the General Manager of PT PLN Disjaya-Tangerang Fahmi Mochtar appoints PT Netway Utama as the project partner of Rp 92,27 billion. From the calculation of Indonesia's National Government Internal Audit (BPKP), as the assembly said, the project shall only spend a budget in the amount of Rp 46,08 billion. As for the difference, it is considered to have PT Netway Utama enriched as well as caused state losses of Rp 46,18 billion. The assembly also considers Eddie's move as not getting approval from the commissioners' board of PLN. However by Eddie, as if there has been approval from the Minister of BUMN as the commissioner board of PLN. The five years of the verdict itself is lighter than the prosecutor's demand. In previous, the KPK's prosecuting attorney asked the assembly to sentence seven years of prison and a fine of Rp 500 million subsidiaries six months of

---

<sup>19</sup>Santoso, D. 2014. Op.Cit., hlm 3

confinement. The aggravating thing about Eddie's verdict is that his action was considered unprofessional as a state official. "The action of the defendant which agreeing to the direct appointment on the CIS-RISI project is considered unprofessional", he said. While the mitigating one is that Eddie still has family responsibilities, has not proven to enjoy the money from the CIS-RISI project, and always be polite in court. Based on that verdict, either Eddie or KPK's prosecuting attorney has not decided either to accept or to file an appeal. Eddie and his legal advisor as well as the prosecuting attorney assert to thinking about it. However, after the trial, Eddie admits he is disappointed with the verdict. "The verdict from the assembly is disappointing. There are so many things that are not considered".<sup>20</sup>

The appeal of the former Chief Director of PLN, Eddie Widiono Suwondho, is unsuccessful. DKI Jakarta High Court strengthens the verdict of Special Court for Corruption Crime, Central Jakarta. The spokesman of PT DKI Jakarta Achmad Sobari asserts that this verdict is decided by the Appellate Panel of Judges chaired by Jurnalisa Amrad on March 15, 2012. While the members of panel of judges consist of Achmad Sobari, Zahrul Rabain, As'adi Al Ma'ruf, dan Hadi Widodo. Other than strengthening the verdict

of Central Jakarta's Corruption Court, the panel of judges also corrected the editorial verdict. "Due to the unproven accusation—primary accusation—has not been included in the decision of the district court," Ahmad explained. The verdict of the district court shall attach the instruction: "*Stated that the defendant, Eddie Widiono Suwondo, is legally and convincingly not proven guilty committing a crime in the primary accusation and releasing the defendant from the accusation.*" Further, added by Ahmad, the verdict mentioned: *the defendant is guilty of a subsidiary accusation crime.* "The rest is similar to the verdict of the district court".<sup>21</sup>

In the previous, The Corruption Court on Central Jakarta's High Court sentences Eddie to five years in prison due to committing corruption together in the CIS-RISI outsourcing project in 2004-2006. The judges of the Corruption Court also instruct Eddie to pay Rp 500 million of fine. Problems related to the authority of calculating the state losses in the handling of corruption cases are answered by the publishing of the Constitutional Court's Verdict No. 31/PUU-X/2012 on October 23, 2012. This verdict is a rejection from the Constitutional Court upon the judicial review that is submitted by the former Chief Director of PLN Eddie Widiono Suwondho, which is a

---

<sup>20</sup>Simanjuntak, J. 2014. Op.Cit., hlm 4

<sup>21</sup>Santoso, D. 2014. Op.Cit., hlm 4

material test application of Law No. 30 of 2002 on Eradication of Criminal Act of Corruption towards the 1945 Constitution Article 23E paragraph (1) which stated that: "To examine the management and the responsibility of state finances a free and independent Audit Board is established". The case is investigated by KPK in coordination with BPKP.

"Judicial Review is a process of examining lower regulations to higher regulations carried out by judiciary. In the practice, judicial review of the 1945 Constitution is carried out by the Constitutional Court (MK). While, while the judicial review under the Law against the Law is carried out by the Supreme Court (MA)".<sup>22</sup>

Previously, there are various opinions from the experts related to the polemic on the authority to calculate the state losses, including the State Financial Experts, Dian Puji Simatupang who is presented by the legal advisory team of the former Chief Director of PLN. In her testimony, the lecturer of the Faculty of Law Universitas Indonesia states that BPKP is no longer has the authority to stipulate the state losses. According to her, the one who has the authority to stipulate and audit the state losses is BPK. It can be emphasized in Law No. 15 of 2006 on BPK.

Based on the legal point of view, BPKP can do an audit as long as there is permission from the President and ministers. She states that if there are audit results issued simultaneously by BPK and other institutions, law enforcement must refer to the result of BPK. Since the institution has the authority to stipulate and audit the state losses. "It is absolutely that the BPK has the authority." It is undeniable that in Article 6 Law No. 30 of 2002 on KPK so that BPKP is permitted to stipulate and to audit the state losses. However, the clause in the law is renewed with the enactment of the BPK Law in 2006.

On that basis, the new Law that can be used by law enforcement as the basis for determining who should stipulate state losses. Other than Law of KPK, Presidential decrees No. 103 of 2001 on UJDIH East Java Province representative of BPK RI, Position, Task, Function, Authority, Organization Structure and Work Procedure for Non-Departmental Government Agencies, also stated that BPKP is permitted to stipulate and to audit state losses. Again, however, the experts assess that the position of the Presidential Decree is inferior to the Law of BPK which stated that BPK is the institution that is authorized to stipulate the state losses. Meanwhile, Oce Madril from Pukat UGM stated BPKP is

---

<sup>22</sup> R. Wiyono, 2009. Pembahasan Undang-Undang Pemberantasan Tindak Pidana

Korupsi, Sinar Grafika, Edisi Kedua, Jakarta. Hlm 32.

authorized, while Mudzakir from Universitas Islam Indonesia (UII) stated that BPKP is not authorized.

By the publishing of the Constitutional Court's Verdict No. 31/PUU-X/2012 on October 23, 2012, therefore Constitutional Court admits the authority of BPKP in conducting an investigative audit which strengthens the authority of BPKP to conduct the investigative audit based on Presidential Decree No. 103 of 2001 and PP No 60 of 2008. each BPKP and BPK has the authority to conduct an audit based on regulation. According to Constitutional Court, in the context of proving a criminal act of corruption, KPK is not only able to coordinate with BPKP and BPK, but also able to coordinate with other institutions, even can also prove itself beyond the findings of BPKP and BPK, for example by inviting experts or by UJDIH East Java Province representative of BPK RI requesting material from the inspectorate general or the institution which has the same function as that. Even, from other parties (including from companies), which can show material truth in state financial losses calculation and/or can prove the case being handled. Thus, this statement of the Constitutional Court can at least answer the doubts of several parties who have been confused about the existence of BPKP and BPK in the handling process of the corruption case.

### **Legal Policy in Determining State Financial Losses Against Corruption Crime**

The law-making policy is the work of the legislature which incidentally is political work in the true sense and not legal work in a technical sense. So that the products of legal policy are more of a crystalization of competing for political wills. The law-making policy needs to be discussed and commented on as well as assessed by the experts especially legal experts. The opinions of the legal experts are valuable in the effort of developing and fostering national law particularly in stipulating state financial losses against corruption crime.

Harming state finances is one of the elements to be categorized as a corruption crime as mentioned in Article 2 paragraph (1) and Article 3 of Law No. 20 of 2001 on the amendment to Law No. 31 of 1999 regarding eradication of criminal act of corruption. Development in the application of the definition of this harming state finances cannot be separated from the regulations related to the definition of state finances.

Some cases which have been decided in the first level have a different application of the regulations regarding the definition of state finances. The definition of state finances spreads in the existing regulations other than in the provision of Law No. 31 of 1999 jo. Law No. 20 of 2001. Among others, contained in

the Law No. 17 of 2003 on State Finances, Law 19 of 2003 on State-Owned Enterprise, Law No. 1 of 2004 on State Treasury, Law No. 49 of 1960 on Committee of State Receivables Management and implicitly contained in Government Regulation No. 14 of 2005 on Elimination of State/Regional Debt.<sup>23</sup>

Article 2 and Article 3 of Law No. 3 of 1999 jo. Law No. 20 of 2001 on Eradication of Criminal Act of Corruption states, “that can harm state finances or state economy”. This element is important to stipulate whether or not the corruption perpetrators can be convicted. Normatively, if all the elements in the Article 2 and Article 3 are proven, so the perpetrators can be sentenced to imprisonment or replacement money.

Whereas, if one of the elements is not proven, so it can have an impact on the release of the corruption perpetrators from legal bondage (either because the investigation is stopped or released by the court judge). The formulation of crime (criminal acts) in criminal law, for example, it can be divided into two types namely formal and material crime. Formal crime is a crime whose formulation emphasizes prohibited action, or in other words, the legislators prohibit certain actions from being carried out without

requiring any consequences from the action.

Therefore, a formal crime is considered to have been completed if the perpetrator has completed (a series of) actions that are formulated in the crime formulation. In formal crime, the consequence is not an important thing and is not a condition for the completion of the crime. While material crime is a crime whose formulation emphasizes more on the prohibited consequences, or in other words the legislators prohibit the occurrence of certain consequences. In material crime, the consequence is something that should exist. The completion of a material crime is if the prohibited consequences in formulation crime have occurred. If the perpetrator has completed all the necessary actions to cause the prohibited consequences, but due to some reason the prohibited consequences do not occur, then there is no crime, at most only a trial against crime.

The attachment of a word or an element of “being able to” in Article 2 paragraph (1) and Article 3 of Law no. 31 of 1999 jo. Law No. 20 of 2001 on Eradication of Criminal Act of Corruption so it is clear that the legislators are not requiring the occurrence/ the completion of consequence “harming state finances

---

<sup>23</sup>Philipus M. Hadjon, 2010. Tanggung Jawab Jabatan dan Tanggung Jawab Pribadi Atas Tindak Pemerintahan (makalah), dalam Pelatihan Hakim Tindak Pidana

Korupsi, diselenggarakan oleh Mahkamah Agung Republik Indonesia, tanggal 25 April s/d 12 Mei 2010, di Bogor, hlm 6

or state economy”. The word “able” means that “harming state finances or state economy” does not occur, the important is that the act of the perpetrator has an opportunity to cause the consequence of “harming state finances or state economy”.<sup>24</sup>

The interpretation is strengthened by the authentic interpretation of the Law of Eradication of Criminal Act of Corruption maker who states “.....that corruption crime is a formal crime, which the existence of corruption crime is only by the fulfillment of the element of formulated actions, and not by the occurrence of the consequences”. Related to the formal crime in corruption crime, the Verdict of Constitutional Court No. 31/PUU-X/2012 decides that the word “able” Article 2 paragraph (1) of Law no. 31 of 1999 jo. Law No. 20 of 2001, which states “Anyone who illegally commits an act to enrich oneself or another person or a corporation, thereby creating losses to the state finance or state economy, is sentenced...”.<sup>25</sup>

So that not against Article 28 D paragraph (1) of The 1945 Constitutions as long as interpreted under the court’s interpretation (*conditionally constitutional*), namely: “the element of state financial losses must be proven and must be able to be counted. The

matter of the word “able” in Article 2 paragraph (1) of Law No. 31 of 1999 jo. Law No. 20 of 2001, is more to be the matter of practical implementation by the law enforcement, and not related to the constitutional norm so that the explanation of Law No. 31 of 1999 jo. Law No. 20 of 2001 states, “what is meant by illegally commits in this article includes the unlawful action both in the meaning of formal and material, which is, even though the action is not regulated in the regulations, but if the action is considered disgraceful because not under the sense of justice or norms of social life in society, so the action can be convicted” is not valid according to the Constitutional Court since it contradicts The 1945 Constitutions.

Even though in Anti-Corruption Law, particularly Article 2 and 3 regulate the element of state financial losses as corruption crime, but this regulation does not explicitly state what institution or party authorized in stipulating the calculation of state losses. Based on the explanation of Article 32 of Anti-Corruption Law it is only stated that “state financial losses are losses which the amount has been able to be counted based on the result of the authorized institution or the appointed public accountant.

Practically, the institutions that are often involved by law

---

<sup>24</sup> R. Wiyono. Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi,

Edisi Kedua. Sinar Grafika. Jakarta, 2009. hlm 57.

<sup>25</sup> Ibid. hlm 57.

enforcement in stipulating the state losses are The Audit Board and Indonesia's National Government Internal Audit. Other than those institutions, the calculation of state finances can also be carried out by a public accountant. Even in some cases the prosecutors and courts have carried out the calculation of state finances by themselves. The authority of BPK in stipulating the state losses is regulated in Article 10 of Law No. 15 of 2006 on The Audit Board (BPK Law) which mentions: "BPK shall evaluate and/or determine the number of state losses due to the deliberate tort or negligence by treasurers, BUMN/BUMD management, and other institutions or agencies performing state financial management".

At last, what stipulates a person is guilty or not is the evidence that is presented by the prosecuting attorney as the investigators who must prove what has been accused in their indictment. It needs to know that the proofing system in the trial at court is the most important part of criminal law (formal crime). Proofing trial is a process to stipulate whether it is true or not that the defendant or the one who has committed an act that is accused to him.

The law enforcement of corruption case is still shrouded by the euphoria of implementing the *Lex Talionis* (retaliation) principle. This

phenomenon cannot be separated from the legal basis of the corruption case handling in Indonesia, that if it is seen from the perspective of the legal establishment, it is still as a 'repressive law'. It is explicitly stated in the title "Law No. 31 of 1999 jo Law No. 20 of 2001 on the Eradication of Criminal Act of Corruption" and "Law No. 30 of 2002 on Corruption Eradication Commission". In the context of this complex eradication of corruption, reviewed from both the cause and effect, the 'repressive law' will not be able to be the means of directing changes and gaining substantive justice. Therefore, the existence of responsive law is needed. In other words, an effort to fight corruption must be based on the law which in material substantive gives spaces on its eradication to respond to the dynamics of life and public aspiration.<sup>26</sup>

If we put a concern there is a lot of substance of regulations, especially which relates to the state/regional finances overlapping and inconsistency management. The provision of such norms is unclear and gives an impact to the difference of basic regulations by each law enforcement due to different interpretations. As a previous experience, the unclear regulatory reference of "DPRD's Financial Position" when PP 110 of 2000 of

---

<sup>26</sup> Philipus M. Hadjon, 2010. Op.Cit, hlm 15.

Ministerial Decree still applied, becomes the main cause of many senators in various regions trapped in the legal bondage” for further becomes jailbirds.

For example, in the context of regulating state/regional financial management which relates to proofing problem or process. In Article 13 and 14 of Law No. 15 of 2004 on The State Financial Management and Accountability Audit confirmed that The Audit Board authorized investigating to reveal any indication of state/regional losses and if the element of the crime is found, BPK shall immediately report to the competent authority. The interpretation of the two articles is: in the matter of state/regional financial management, police officers, prosecutors, and the Corruption Eradication Commission are not allowed to do an investigation of ‘*pro justitia*’ before the report from BPK. So, the evidence that can be used as proof to the allegation of the occurrence of corruption crime which relates to the state/regional financial management must be sourced from BPK as the only institution which authorized conducting investigation and assessment of state/regional losses.<sup>27</sup>

The example of ‘inconsistency’ of the regulation of norm regarding state losses can be found in Chapter IX Criminal Provision,

Administrative Penalty and Indemnification on Article 35 of Law No. 17 of 2003 on State Finances. The formulation of norms in the article gives a penalty to indemnify the state to every state official breaking the law and neglecting their obligation which causes state losses. While in Article 2 and 3 Law of Corruption Crime, the formulation of norms is more strict because the unlawful actions or abusing the authority which potentially caused state losses, is threatened and can be criminalized. In criminal law terminology, Law on State Finances uses the formulation system of ‘material crime’, while Law of Corruption Eradication related to state financial losses uses the formulation of ‘formal crime’.

Refers to various corruption cases related to violation or error in administrative law and sentenced ‘released’ (*vrijspreek*) or free from all lawsuits (*onslag van rechtsvervolging*), so the verdict includes ‘a message’ to the investigators and prosecuting attorneys to be careful and not careless in suspecting, accusing, or prosecuting corruption crime. The words ‘to be careful and not careless’ implied to ‘the government’ to master and understand well and correctly in applying the regulations which cover the accusation basis. Particularly

---

<sup>27</sup> Rahardjo, Satjipto. *Sosiologi Hukum Perkembangan Metode dan Pilihan*

Masalah, Yogyakarta, Genta Publishing, 2010, hlm 104.

which relates to the administrative regulations.<sup>28</sup>

The President has released Presidential Instructions No. 5 of 2004 on December 9, 2004, on Acceleration of Corruption Eradication, which instructs the Governor and Regent/Mayor to:<sup>29</sup>

- a. Implementing good governmental principles in regional government environment
- b. Increasing public service and eliminating illegal levies in its implementation
- c. Along with the Regional People's Representative Council carrying out prevention against possible state financial leaks which either sourced from State Budget or Regional Budget.

Various circles consider corruption has absorbed into life, becomes a system, and unites with the state governmental management, including regional government. According to Patrick Glynn, Stephen J. Korbin, and Moises Naim what causes the escalation of corruption, either the real one or the one which occurs in some countries, because systematic political changes are occurred, so it weakens or destroyed not only social and political agencies but also the law.

## CONCLUSION

Juridically the calculation of state financial losses needs to be standardized and must have standards, so there is certainty regarding the method in stipulating the state financial losses, so there will be a similar point of view or understanding of state financial definition. In the context of assessing state finances, not all cases that are on trial and relates to corruption crime must through the audit process of BPK or BPKP. If the calculation and stipulation of state financial losses are easy to calculate, it is only needed to be done by the investigator or prosecuting attorney. Therefore to calculate and stipulate state financial losses will be carried out if needed, or if experts' information is added to add or give their opinions before the trial. One that is more important to be considered is that the investigation of the finances is a part that cannot be separated from the audit function of government performance in general. So the control or the investigation of government performance should be done simultaneously and thoroughly since at the planning level to the evaluation and assessment level, start from rule-making level to rule enforcing level. Related to the assessment of state financial losses in corruption crime by BPK. Thus, BPK

---

<sup>28</sup> Amiruddin. Pemberantasan Korupsi Dalam Pengadaan Barang Dan Jasa Melalui Instrumen Hukum Pidana dan Administrasi. Media Hukum. Fak.

Hukum Universitas Mataram. 2012, hlm 14.

<sup>29</sup> Philipus M. Hadjon, 2010. Op.Cit, hlm 16

as the investigator of state finances' management and accountability is authorized to take control and audit state financial management to prevent

the occurrence of deviation which can cause state losses, and as a preventive action to overcome corruption crime.

## REFERENCES

- Amiruddin. (2012). Pemberantasan korupsi dalam pengadaan barang dan jasa melalui instrumen hukum pidana dan administrasi. media hukum. (Fak. Hukum Universitas Mataram).
- Anis Chariri. (2015). Keuangan negara dan masalah korupsi di Indonesia. (Universitas Diponegoro Semarang.).
- Chaerudin dkk, (2009). Strategi pencegahan dan penegakan hukum tindak pidana korupsi. (Refika Aditama, Bandung).
- Djaja, Ermansja. (2012). Tipologi tindak pidana korupsi di Indonesia. (Mandar Maju. Bandung).
- Emerson, Y. dkk. (2014). Penerapan unsur merugikan keuangan negara dalam delik tindak pidana korupsi. (Indonesia Corruption Watch. Jakarta).
- Jaka Isgiyarta. (2017). Penentuan kerugian keuangan negara yang dilakukan oleh BPK di Indonesia. (Universitas Diponegoro, Semarang).
- Khoirun Nisa, (2013). Tanggung jawab notaris sebagai pejabat urnurn dalam perkara pidana mengenai akta yang dibuatnya. (Tesis Program Studi Magister Kenotariatan Fakultas Hukum Universitas Brawijaya, Malang).
- Peter Mahmud Marzuki, (2005). Penelitian hukum. (Jakarta: Prenada Media).
- Philipus M. Hadjon, (2010). Tanggung jawab jabatan dan tanggung jawab pribadi atas tindak pemerintahan (makalah), dalam pelatihan hakim tindak pidana korupsi, diselenggarakan oleh mahkamah agung republik Indonesia, tanggal 25 April s/d 12 Mei 2010, di Bogor.
- Phiter, J. and Ronald MacDonald. (2011). Corruption and financial intermediation in a panel of regions: cross-border effects of corruption. Working Paper. (University of Glasgow).
- Rahardjo, Satjipto. (2010). Sosiologi hukum perkembangan metode dan pilihan masalah, (Yogyakarta, Genta Publishing).
- Riawan Tjandra. (2013). Hukum keuangan negara. (PT Gramedia Widiasarana Indonesia, Jakarta).
- R. Wiyono, (2009). Pembahasan undang-undang pemberantasan tindak pidana korupsi, (Sinar Grafika, Edisi Kedua, Jakarta).
- Santoso, D. (2014). Kronologi korupsi di PLN Disjaya Tangerang. Indonesia corruption watch / <https://icw.go.id>.
- Simanjuntak, J. (2014). Putusan terhadap kasus korupsi di PLN Disjaya Tangerang. Tribunnews.com. Diakses 10 Januari 2019.
- Soerjono Soekanto dan Sri Mamudi. (2005). Penelitian hukum normatif. Suatu tinjauan singkat. (Rajawali Pres. Jakarta).

## Law and Regulation

- Undang-Undang Nomor 15 Tahun 2004. Tentang Pemeriksaan Pengelolaan dan Tanggung Jawab Keuangan Negara. Lembaran Negara Republik Indonesia Tahun 2004 Nomor 4400.
- Undang-Undang Nomor 15 Tahun 2006. Tentang Badan Pemeriksaan Keuangan. Lembaran Negara Republik Indonesia Tahun 2006 Nomor 4654.
- Undang-Undang Nomor 15 Tahun 2006. Tentang Badan Pemeriksaan Keuangan. Lembaran Negara Republik Indonesia Tahun 2006 Nomor 4654.

Undang-Undang Nomor 1 Tahun 2004. Tentang Perbendaharaan Negara, Lembaran Negara Republik Indonesia Tahun 2004 Nomor 5. Pasal 1 angka 22.

Uji Materi UU Keuangan Negara Tak Tepat, 25 Oktober 2013, Harian Ekonomi Neraca.

.