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THE REASSESSING STATE LOSS CALCULATIONS: LIMITED AUTHORITY OF BPKP & PUBLIC ACCOUNTANT FINDINGS IN CORRUPTION CASES

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ABSTRACT

The determining state losses in corruption cases is often a crucial issue that poses a significant legal challenge, despite corruption being categorized as a serious crime. This research aims to investigate the determination of state losses and analyze its impact on the principle of legal certainty. This research uses normative legal methods with a qualitative approach. The results of the study indicate a normative deviation, where judges frequently affirm state loss reports from institutions outside the regulated authority, such as Financial and Development Supervisory Agency or public accountants. This practice is fundamentally contrary to Audit Board of the Republic of Indonesia legal standing as stipulated in the Law on the Eradication of Corruption and its amendments. Because only the Audit Board of the Republic of Indonesia can determine actual state losses and potential state losses that could become actual state losses as a result of corruption crimes that occur. The implication of this deviation is grave legal uncertainty, potentially undermining the fundamental rights of suspects or defendants, and undermining the integrity of the criminal justice system.

1. Introduction

Republic of Indonesia after centuries of colonialism, gained its independence on August 17, 1945, and has faced many challenges in achieving prosperity for all its citizens.[1] The preamble to the 1945 Constitution summarizes the nation's fundamental principles, serving as a framework for the formation of constitutional provisions that uphold these core values. The rule of law in Indonesia is rooted in the theory of State Sovereignty, which asserts that the law holds the highest authority within the state. This doctrine requires all branches of government and citizens to obey and enforce the law without

1 Sulistyowati, Maharani, D. N., Maharaja, G. B. M., & Carnely Kahe, A. M., Hubungan Pemerintah Dan Rakyat Dalam Perspektif Hukum Administrasi Negara. *Journal of Indonesian Rural and Regional Government,* Vol.8 No.1, 2024

exception, regardless of their status or position.[2] A constitutional state is not just a state that operates under the law, as it can allow the Legislature to make laws at its own discretion, the executive to implement them, and the Legislature to enforce them. The constitutional state encompasses more than just law; These include the constitution, charters, and international conventions that limit legislative and executive powers and establish an independent judiciary as protection.[3] Because philosophically, in the preamble to the 1945 Constitution, the 4th paragraph states that the purpose of the state is to advance public welfare.[4] State finance is one of the crucial instruments in realizing the goals of the Indonesian nation. It serves as the primary tool to move the wheels of the economy and national development. Through effective financial management, the government can fund various strategic programs, including infrastructure development, education, healthcare, and defense.[5] Article 23 of the 1945 Constitution, before the amendment, stated that the State Revenue and Expenditure Budget (APBN) was a manifestation of state sovereignty. Philosophically, this means that the essence of state revenue and expenditure in the state budget reflects sovereignty itself.[6]

Corruption is internationally recognized as a serious crime due to its systemic and far-reaching impact on the lives of individuals.[7] Corruption is one of the crimes that has a very detrimental impact on the state. The effect is not only limited to the country's financial losses, but also includes losses in the social and economic fields. Therefore, efforts to eradicate corruption are a crucial part of the national development agenda.[8] The number and level of complexity of corruption cases in Indonesia have continued to increase over time.[9] The increase in corruption cases suggests that efforts to eradicate corruption have not been entirely successful. Many experts attribute this "failure" to inconsistent law enforcement and selective felling. Often, the authorities only process perpetrators who do not have political power. If the perpetrator comes from the

2 Sulistyowati, S., Salim, A., Eriyani, P., & Mastoah, S., Government Regulations Replacing the Job Creation Law in the Perspective of Constitutional Law. *Journal of Law*, Vol.39 No.2, 2023, page. 231.

3 Mance, J., Jonathan Mance. *Asia Pacific Law Review*, Vol.26 No.2, 2018, page.109–126.

4 Kurniawan, F., Alghazali, M. S. D., & Fadhila, A., Determinasi Upaya Pemulihan Kerugian Keuangan Negara Melalui Peran Kejaksaan terhadap Perampasan Aset Tindak Pidana Korupsi. *Jurnal Hukum Lex Generalis*, Vol.3 No.7, 2022, page.565–588.

5 Thalib, M. & Iswandi Syamsir., Analisis Kewenangan Badan Pemeriksa Keuangan Dalam Sistem Ketatanegaraan Indonesia Berdasarkan Peraturan Perundang–Undangan. *Limbago: Journal of Constitutional Law*, Vol.2 No.1, 2022, page.35–52.

6 Adrian Sutedi., *Hukum Keuangan Negara*. Sinar Grafika. 2012

7 Wijayanti, A., & Kasim, A., Collaborative Governance Strategi Nasional Pencegahan Korupsi (Stranas-PK) di Indonesia: Sebuah Studi Literatur. *Integritas : Jurnal Antikorupsi*, Vol.7 No.2, 2022, page.291–310

8 Janis, N., Pondaag, A. H., & Koesoemo, A. T. (N.D.),. *State Financial Losses Became the Basis for the Investigation of Corruption Criminal Cases After the Constitutional Court Decision Number: 25/PUU-XIV/2016*. Vol.12 No.04.

9 Hartono, C., & Boediningsih, W., Model Pemulihan Kerugian Keuangan Negara Akibat Kasus Korupsi melalui Civil Forfeiture. *Jurnal Ilmu Hukum, Humaniora dan Politik*, Vol.5 No.3, 2025, page.2332–2341

elite, the case is usually limited and does not reach the main mastermind.[10]

The eradication of corruption in various countries is carried out through diverse approaches and strict legal sanctions. In Singapore, the Corruption Practices Investigation Bureau (CPIB) is responsible for handling corruption cases by imposing prison sentences and heavy fines, depending on the severity of the crime. In Hong Kong, the Independent Commission Against Corruption (ICAC) focuses on law enforcement and provides public education about the dangers of corruption, with penalties that include imprisonment and substantial fines.[11] Meanwhile, in Malaysia, the Anti-Corruption Agency (BPR).[12] On the other hand, countries such as Denmark, Finland, and New Zealand have managed to maintain low levels of corruption through an approach that emphasizes transparency and accountability, as evidenced by their high scores in the Corruption Perceptions Index (CPI).[13] Although each country's approach is different, the main goal remains the same: to form a clean government and minimize the negative impact of corruption on society and the economy.

Indonesia has reform goals, one of which is to eradicate corruption (TIPIKOR). In this case, a particular law or *lex specialis violates the general legi*.[14] There is not only a specific law. The Corruption Eradication Commission (KPK) is an institution that explicitly handles this. However, in recent years, there has been criticism of the government's effectiveness and seriousness in tackling corruption, particularly regarding changes to the Corruption Eradication Commission (KPK) Law, which are considered to weaken its authority and erode public trust. Despite the implementation of various policies, challenges such as the integrity of law enforcement agencies and low public participation remain significant obstacles. To achieve more effective efforts to eradicate corruption, a more substantial commitment is needed from all parties, including both the government and the community. Sustainable efforts to prevent and eliminate corruption aim to foster awareness and anti-corruption attitudes in society.[15]

For its implementation, the law on corruption is not exempt from various legal problems, especially related to the calculation of state losses and the elements of corruption. Unfortunately, there is no description or criteria for it, thus giving rise to various interpretations and practices in the field. Then, problems arise from this situation.[16] The theory of state losses plays a crucial role, particularly

10 Kurniawan, I., Criteria For Determining The Forms Of Criminal Acts And Criminal Liability Of Corporations That Commit Corruption Crimes. *UNES Law Review*, Vol.5 No.3, 2023, page.1285–1306.

11 Rahmiati, Trias Saputra, Nurhafni, & Muhamad Sobih., Perbandingan Lembaga Anti Korupsi di Indonesia, Singapura dan Hongkong. *Eksishum : Jurnal Ekonomi Bisnis dan Humaniora*, Vol.1 No.1. 2021

12 Adinda Febriana & Viona Salsabila., Pengaturan Tindak Pidana Korupsi (Suap) Menurut Hukum Pidana Indonesia dan Hukum Pidana Malaysia. *Datin Law Jurnal*, Vol.1 No.1. 2020.

13 NN., Belajar dari Tiga Negara Paling Antikorupsi di Dunia. *Pusat Edukasi Anti Korupsi*. https://aclc.kpk.go.id/ Accessed 22 May 2022

14 Anindyajati, T., & Wijayanti, W., Implementasi dan Akibat Hukum Penerapan Asas Lex Spesialis Derogat Legi Generalis terhadap Keistimewaan Aceh. *Jurnal Konstitusi*, Vol.18 No.3, 2021.

15 A. Syamsuddin., *Tindak Pidana Khusus*. Sinar Grafika, 2011

16 Emerson Yuntho, et al., *Penerapan Unsur Merugikan Keuangan Negara dalam Delik Tindak*

in criminal law related to corruption. Legal experts and accountants have developed various approaches to analyzing state losses. One such approach is the theory of actual and definite losses, which posits that losses occur when there is a measurable decline in state assets, such as theft of money or embezzlement of assets. This approach provides legal certainty but is not suitable for measuring long-term losses.[17] Additionally, there is a theory of potential losses, which encompasses losses that have not yet occurred but may occur in the future, such as those associated with an installed construction project. Although this approach is more comprehensive, its implementation is challenging due to the many uncertain variables in measuring potential losses.[18]

The Indonesian government has made various efforts to eradicate corruption, one of which is by drafting and implementing progressive laws and regulations.[19] Based on Law No. 31 of 1999 and Law No. 20 of 2001 concerning the Eradication of Corruption Crimes, the definition of state losses is not explicitly explained. This ambiguity has given rise to debate, especially regarding whether ecological losses fall under the category of state losses, as well as losses caused by bribes or gratuities. The law only classifies the types of corruption, without providing an in-depth explanation of the meaning of the country's own losses.[20]

Abstract loss theory expands the concept of state loss by incorporating non-material aspects, such as damage to the state's reputation or the erosion of public trust resulting from acts of corruption. Although this perspective is broader, quantitative measurements of abstract losses are becoming challenging. Furthermore, the theory of cumulative losses explains that state losses can result from a series of interconnected actions. For example, environmental damage can occur in cases of corruption involving the issuance of exploration permits by officials for illegal activities. A strong understanding of these various theories is essential for law enforcement, calculating state losses, and efforts to prevent corruption. In practice, these theories are often used to determine the extent of state losses in cases of corruption.[21] One of the evolving interpretations is that state losses should be calculated based on actual losses that can be proven by accurate and objective evidence, not on hypothetical and subjective potential losses. The trial was conducted to determine the calculation of State losses. The decision is Number 25/PUU-XIV/2026. In the ruling, the Constitutional Court ruled that actual losses are a

Pidana Korupsi. Policy Paper Indonesia Corruption Watch: Yayasan Lembaga Bantuan Hukum Indonesia, South Jakarta. 2014

17 Ahmadie Azra Isnain., Teori Hukum Tentang Kerugian Negara yang Nyata dan Pasti. *UNES Law Review*, Vol.6 No.2, 2023, page.6051–6057.

18 Arif Setiawan & Umar Ma'ruf., Penerapan Unsur Dapat Merugikan Keuangan Negara Dalam Tindak Pidana Korupsi. *Jurnal Hukum Khaira Ummah*, Vol.13 No.2, 2018, page.93–102.

19 Andi Hamzah., *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional,*. Raja Grafindo Persada. 2007

20 Kusworo, D. L., & Anggraini, T., Extensive Interpretation Of State Financial Losses In Tin Sector Corruption: A Comparative Study Of Emerging Economies. *Integritas: Jurnal Antikorupsi*, Vol.10 No.2, 2025, page.173–186.

21 Pattiwael, J. J. P., Kerugian Ekologis akibat Tindak Pidana Korupsi. *Jurnal Rechtens*, Vol.10 No.1, 2021, page.27–42.

measure of state losses, and potential losses cannot be the basis for calculating state losses. The Constitutional Court argued that the Financial Audit Board, an independent, professional, and constitutionally based institution, is authorized to examine the governance and accountability of state finances.[22] Of course, the Constitutional Court's decision has significant implications for the application of evidence of state losses in corruption cases. For the suspect or defendant, this brings legal certainty. This ruling is also challenging because law enforcement must gather more substantial evidence to demonstrate the State's actual harm, not just potential harm.

This research shares a similar theme with previous studies from Ahmadie, namely that the calculation of state financial losses must be based on real and definite losses, as stipulated in Article 1 point 22 of Law No. 1 of 2004 concerning the State Treasury. However, this study differs in terms of the focus of its analysis when associated with the principle of good governance. In essence, state losses must take the form of a shortage of money, securities, or state-owned goods that can be proven through valid documentation and have a clearly determined amount based on recorded transactions, rather than merely on estimates, assumptions, or potential losses. The clarity of the concept of state losses is crucial to ensuring the realization of the principles of good governance and to preventing the abuse of power under the pretext of policy considerations. Nevertheless, it can be concluded that the focus of this research differs from that of Ahmadie Azra Isnain, whose study primarily emphasizes the understanding of state losses that has not yet fulfilled the concept of good governance.[23]

Sukinto, in terms of discussing state losses, a new concept can be introduced to recover state losses due to corruption crimes in Indonesia by applying the theory of Imprisonment for Non-Payment of Fine.[24] However, the study does not provide an in-depth explanation of the process preceding the state's repayment efforts. Because often the authority in determining a state loss is unclear, as to which institution owns it. In the law, it is clearly stated that the Financial Audit Agency is entitled to this. Still, in practice, audits conducted by the Financial and Development Supervisory Agency (BPKP) and Public Accountants are often used as the basis for state losses. For example, in the case of Decision Number 112/PID. SUS-TPK/2022/PN.Mks, the Defendant was sentenced to imprisonment and additional penalties based on evidence submitted by the Public Accountant, without any determination of state losses by the Financial Audit Board. The Financial Audit Agency is also responsible for determining both actual state losses and potential state losses that may become actual state losses. Therefore, the purpose of writing this article is to clarify the legal standing of which institution is authorized to determine state

22 M.Thalib, S. & Iswandi. (n.d.)., Analisis Kewenangan Badan Pemeriksa Keuangan Dalam Sistem Ketatanegaraan Indonesia Berdasarkan Peraturan Perundang-undangan. *Limbago: Journal of Constitutional Law*, Vol.2 No.1.

23 Ahmadie Azra Isnain., Teori Hukum Tentang Kerugian Negara yang Nyata dan Pasti. *UNES Law Review*, Vol.6 No.2, 2023, page.6051–6057.

24 Sukinto, Y. W., A New Concept of Returning State Losses from Corruption Crimes. *Jurisprudence*, Vol.31 No.2, 2017, page.339.

losses. To minimize the occurrence of errors regarding the authority to determine state losses.

This article aims to critically analyze and reaffirm the legal standing of institutions authorized to determine state financial losses within the Indonesian legal system. Such reaffirmation is important given the continuing differences in institutional practices regarding the use of state loss calculation results, which may lead to legal uncertainty and overlapping authority in the law enforcement process, particularly in corruption cases. The novelty of this research lies in its attempt to reformulate the limits of institutional authority in determining state financial losses through a normative analysis of the constitutional framework and the applicable laws and regulations. Accordingly, this study not only examines the practices that have developed in law enforcement but also provides stronger juridical arguments regarding institutional legitimacy in determining state financial losses, with the aim of strengthening legal certainty and preventing the abuse of authority in law enforcement practices.

2. Research Methods

This type of research is normative juridical research. The normative juridical approach examines the application and norms that govern positive law.[25] The results of this study will be disclosed in the form of a detailed description. Descriptive research aims to provide a thorough description of a person, situation, or other phenomenon. The method used is qualitative. This method's research approach focuses on an in-depth understanding of a phenomenon through interpretation. Data is collected descriptively, prioritizing subjective perceptions and experiences.[26] The results of the analysis are expressed orally in descriptive sentences, referring to the object of the observed research.[27] Qualitative analysis is used to answer questions related to determining state losses.

3. Results And Discussion

3.1 Corruption and State Financial Losses in Indonesia

Economic growth, measured by the increase in output per capita, is the primary benchmark of a country's development success and a crucial indicator in analyzing economic conditions.[28] In the era of a new civilization, as awareness of the rapid growth of human economic needs increases, many individuals are seeking practical ways to meet the high demands of the economy. Ultimately, the primary focus appears to be on enriching oneself by harnessing its power. Currently, corruption has become a global problem that Indonesia is also facing. This reflects the modern approach that some people use to achieve personal

25 Johnny Ibrahim., *Teori Dan Metodologi Penelitian Hukum Normatif*. Banyumedia Publishing. 2008. page.295.
26 Soerjono Soekanto., *Pengantar Penelitian Hukum*. UI Press., 2006, page.10
27 Syafrida Hafni Sahir., *Metodologi Penelitian*. KBM Indonesia., 2021, page.6
28 Haldi, M., Analysis of the Influence of Corruption, Investment, and Unemployment on Economic Growth in the Asia-Pacific Region. *Journal of Economics (JIE),* Vol.7 No.3, 2023, page.346–368

gain.[29] The issue of corruption in Indonesia remains a persistent topic of discussion among the public and the media, both at the local and national levels.[30] In general, corruption can be interpreted as an act carried out to benefit oneself, others, or an institution, which indirectly causes financial losses to the state, region, or entity. This action is usually carried out by abusing the power or authority they have. Corruption is also considered a violation of the social and economic rights of the community. Therefore, corruption is no longer categorized as a general crime, but rather as a special crime.[31] Corruption can occur at various levels, not only in the public and private sectors, but also within government, from the highest levels to individual officials.[32]

In this case, a widespread awareness has been formed that corruption must be eradicated because of its highly detrimental impact. Corruption imposes a substantial burden on society, particularly on the most vulnerable members, including those with low incomes. In addition, corruption poses a significant risk to macroeconomic stability, threatens financial stability, and weakens security, law, and public order. Furthermore, corruption also undermines legitimacy and erodes people's trust in the State.[33] Since the ratification of the 1945 Constitution on August 18, 1945, the nation's founders have established a functional relationship between the House of Representatives and the BPK in terms of supervising the government. This indicates that all state financial receipts and expenditures must be closely monitored to ensure their use is efficient, effective, and accountable.[34] In terms of its resolution, the Corruption Law (Corruption Law) combines the approach through criminal procedure and civil procedure in Indonesia's legislation policy to combat corruption. Essentially, the return of state financial losses plays a crucial role and cannot be overlooked.[35]

In Indonesia, the controversy surrounding the use of private jets by Kaesang Pangarep, the youngest son of former President Joko Widodo, has sparked debates about gratuities and potential corruption. Although Kaesang is not a public official, the issue arose after he and his wife, Erina Gudono, reportedly used a Gulfstream G650 private jet for a trip to the United States. The

29 Gomgom TP Siregar., Asset Recovery of Corruption Offenders. *UNES Law Review*, Vol.6 No.2, 2023, page.4560–4571.

30 Lamijan, L., & Tohari, M., The impact of corruption on economic development and political development. *JPeHI (Indonesian Journal of Legal Research),* Vol.3 No.1, 2022. page.40.

31 Aulia Rahman & Mispansyah., Additional Criminal Penalty of Payment of State Financial Loss in Installments in a Fair Perspective. *Rio Law Journal*, Vol.1 No.2, 2024, page.623–635.

32 Paraswansa, A. D., & Utomo, D. C., Whistleblowing and Corruption in the Public Sector: A Systematic Review. *Journal of the Academy of Accounting*, Vol.7 No.1, 2024. page.94–113.

33 Firman, R., Sari, D. A., & Faizal, N., The effectiveness of the implementation of Law Number 20 of 2001 concerning the Prevention and Eradication of Corruption Crimes in the Return of State Financial Losses. *Ar-Risalah Journal*, Vol.3 No.2, 2024. page.1–11.

34 Nasarudin, T. M., The Position of the Financial Audit Agency (BPK) as a State Institution in the field of State Financial Supervision. *Justicia Ciencias: Journal of Legal Sciences*, Vol.5 No.1, 2020, page.78–92.

35 Brunner, E., Mulyadi, M., Ekaputra, M., & Ikhsan, E., Legal Analysis of the Return of State Financial Losses through Compensation in the Decision of the Corruption Court at the Medan District Court No. 41/Pid.Sus-K/2011/PN.Mdn. *Locus Journal of Academic Literature Review*, Vol.3 No.3, 2024. page.266–282.

allegations of gratuities arose from social media posts showing the windows of the jet, which allegedly came from a private plane. The Corruption Eradication Commission (KPK) initially planned to request clarification from Kaesang, but later canceled this plan, instead focusing on examining public reports. Gibran Rakabuming Raka, Kaesang's brother and the elected Vice President, denied that there were gratuities and suggested that the public should immediately ask Kaesang. Corruption Eradication Commission Chairman Nawawi Pomolango also noted that, although Kaesang is not a public official, allegations of gratuities can still be investigated, given his family's government position. A report by the Indonesian Anti-Corruption Society (MAKI) highlights the use of private jets. It attributes it to a partnership between the Solo city government and a company signed by Gibran during his tenure as Mayor of Solo. This case highlights the complexity of the relationship between social status, power, and law in Indonesia, particularly in relation to alleged gratuities and potential conflicts of interest involving the use of luxury facilities.[36]

The Indonesian people who are actively pursuing development require conditions that support the achievement of national development goals, namely the creation of a just and prosperous society based on Pancasila. To achieve this, Indonesia needs a law to regulate it.[37] Regarding this law, Indonesia has adopted various regulations from the Netherlands based on the principle of concordance. This principle affirms that the law of colonial power also applies in its colonies. As for corruption, it has not been regulated by Dutch regulations.[38] Corruption in Indonesia is increasingly prevalent among the public, with state officials, civil servants, and the private sector often involved in acts of corruption.[39]

Corruption is one of Indonesia's biggest challenges. This must be addressed immediately to achieve development progress and improve community welfare. Due to its profoundly detrimental impact on the nation, corruption is a serious crime.[40] According to data from Indonesia Corruption Watch (ICW), in the first semester of 2022, there were 252 corruption cases involving 612 suspects, with potential state losses exceeding thirty-three trillion rupiah. This figure does not even account for the social costs associated with corruption, which are significantly greater.[41]

36 MS., Gibran and Jokowi's Different Responses to the Alleged Gratification of Kaesang's Private Jet. *Tempo.Co*. https://nasional.tempo.co/, Accessed 11 September 2024

37 Ubwarin, E., & Salamor, Y. B., Mechanism for Reimbursement of State Losses by Convicts Who Died After the Constitutional Court Decision Number 25/PUU-XIV/2016. *Journal of Muara Social Sciences, Humanities, and Arts*, Vol.1 No.1, 2017, page.51–57.

38 Sulistyowati & Dewi Nadya Maharani. (2024). Legal Political Aspects of the Importance of Improving the Marriage Law. *Journal of Legal Reform*, Vol.11 No.1, 2017, page.126–138.

39 Debbie Lontoh helped., Shift from Formal to Material Litigation on State Financial Losses in the Implementation of Regional Development after the Constitutional Court Decision Number 25/PUU/XIV/2016. *Lex et Societatis*, Vol.VI No.1, 2018, page.73–80.

40 Dwi Astrianti Defretes & Kristoforus Laga Kleden., Corruption as an Extraordinary Crime. *JHP 17 (Journal of Research Results)*, Vol.7 No.2, 2022, page.120–133

41 Junaedi Seto Saputro., Hakordia Commemoration 2023, Corruption Is a Parasite of Society and the State. *Ministry of Finance of the Republic of Indonesia* https://www.djkn.kemenkeu.go.id/, Accessef 1 Desember 2023

Corruption in Indonesia is often carried out systematically, intricately, and deliberately by state officials, making it a deep-rooted part of the bureaucratic system that is difficult to eradicate. These crimes are typically organized and involve methods that are challenging to uncover, presenting significant challenges for eradication. Corruption is also inherently linked to power, with perpetrators often abusing their authority for personal gain, thereby compromising the public interest. As a result, public funds that should have been used for the community's welfare were diverted. Furthermore, corruption has denied citizens their fundamental right to access adequate public services. According to the UN Human Rights Commission, corruption undermines trust in government institutions, hinders development, and weakens a country's legal system.[42] Why is this associated with state officials? Because the President holds control over state financial management, he then delegates the authority to regional heads (Governors, regents, or mayors) to manage regional finances and assets that are part of state officials.[43] In fact, professional, open, and responsible state financial management is fundamental to creating good state governance, as mandated by the Constitution.[44] Literally, finance is a translation of the word "monetary," while the word "finance" refers to the act of providing financial support. On the other hand, state finance is often equated with the term public finance. In general, finance or financing is any activity related to money.[45]

In Indonesia, some of the primary causes of high levels of corruption include weak law enforcement and supervision, low integrity and morality among certain officials, a culture of offering bribes to expedite services, inefficient bureaucracy, and low salaries for civil servants, which make them vulnerable to bribery.[46] Discussing state losses involves not only corruption but also collusion and nepotism.[47]

Collusion is a conspiracy or secret cooperation between two or more parties to achieve an unethical goal or harm others. In law and government, collusion often occurs when public officials collaborate with private entities in corrupt activities, such as bribery or the acceptance of gratuities, which have an

42 MS., This is why corruption is considered an extraordinary crime. *Anti-Corruption Education Center*. https://aclc.kpk.go.id/, Accessed 9 Februari 2023

43 Susanti, A. D., State Financial Law Perspective on the Accountability Mechanism for Regional Revenue and Expenditure Budget Management. *El-Dusturie Journal*, Vol.1 No.2, 2022, page.53–70.

44 Rahim, A., Hakim, A. F., Purnama, A., Hafitsyah, E. A., & Zahira, F., State Financial Management Based on State Administrative Law Reviewed from Law Number 17 of 2003. *JIIP - Scientific Journal of Educational Sciences*, Vol.6 No.9, 2023, page.7012–7018.

45 Andriani Naftali, S., Widhiana Suarda, I. G., & Anggraini, R. A. R., The consequences of recovering state financial losses through the imposition of state compensation against village heads in corruption crimes. *Journal Law*, Vol.13 No.1, 2024, page.59–80.

46 Fazar Ramadana & Ramadhan Rafsanjani., Factors Driving Corruption in Indonesia. *JHP 17 (Journal of Research Results)*, Vol.6 No.1, 2021, page.30–35

47 Tantyo, M. G., Tackling Corruption, Collusion, and Nepotism in the Procurement of Government Goods and Services in Lampung Province. *Corruption*, Vol.1 No.2, 2020, page.117–128.

adverse impact on society and the state.[48] Typically, collusion involves a covert act to obtain illegal benefits for an individual or group. In the realm of economics, collusion is frequently observed in oligopolistic markets, where large corporations collaborate to control prices and supply, ultimately harming consumers. Collusion is also part of the phenomenon of Corruption, Collusion, and Nepotism (KKN), which hinders economic growth and weakens public trust in the government. Preventing collusion involves increasing transparency, enhancing accountability, and strictly enforcing laws within the governance process.[49]

Nepotism occurs when individuals in positions of authority bestow benefits or appointments on family members or close friends without objectively considering their qualifications or competencies. This practice is often contrary to the principles of justice and can harm society and the nation. The causes of nepotism include inadequate information, where leaders or authorities lack sufficient data on other candidates of higher quality, which leads them to prefer close associates to avoid making mistakes. Additionally, building trust plays a role, as officials may feel more comfortable working with individuals they know. Power dynamics also play a role, as influential individuals can appoint close associates to strengthen their position and influence. In some cultures, nepotism is seen as a habit and is accepted because of social norms that encourage promoting family members or friends. In addition, greed and low moral standards among officials can exacerbate this practice, prioritizing personal interests over the public welfare. Nepotism often results in conflicts of interest and disadvantages for more deserving individuals, making it a serious problem, especially within governments and public organizations.[50] If corruption continues to run rampant and existing sanctions are not able to deter the perpetrators, it is necessary to consider the application of social sanctions so that the corruptors feel ashamed of their actions. In this context, law enforcement must prioritize benefits that do not cause unrest but provide tangible benefits to the community.[51]

The development of calculating state losses in the context of anti-corruption efforts in Indonesia indicates an increasingly systematic and comprehensive approach to addressing this issue. The origin of the word *corrupt.*[52] Corruption violates legal, moral, or social norms to gain personal or group advantage in

48 Jisman, J., The Practice of Collusion and Nepotism in Bureaucracy. *PARADIGM: Journal of Public Administration*, Vol.1 No.2, page.93–108

49 Rahman, H., Bureaucratic Reform: Corruption in Indonesian Bureaucracy. *Scientific Journal of Local Government Administration*, Vol.14 No.1, 2022. page.135–161.

50 Ayu Linanda., The Practice of Nepotism as a Corrupt Behavior in Building an Anti-Corruption Culture Based on the Perspective of the Community of Kampung Pelangi, Sidodadi Village, Samarinda City. *The Legal Journal The Juris,* Vol.IV No.I, 2020, page.40–50.

51 Sudikno Mertokusumo., *On the Usefulness of Law*. Liberty. 1991

52 Hasoloan, R.J., Larasati, MGD, Yusuf, F.E., Imantria, D.B., & Sulistyawati, N., The spirit of the anti-corruption movement in the campus environment through various community creativity, social media movements. *Journal of Creativity Students*, Vol.7 No.2, 2022, page.283–310; Alsp see, Hasoloan, Rudolf Johanes, et.al., The spirit of the anti-corruption movement in the campus environment through various community creativity, social media movements. *Journal of Student Creativity*, Vol.7 No.2, 2022, page.283-310.

disadvantaged circumstances. The definition of corruption, according to Nurdjanaa, argues that it is a reprehensible act, involving fraud, bribery, and deviations from sacred norms, as well as violations of religious, legal, and moral principles.[53] Laws related to anti-corruption efforts, especially Law No. 31 of 1999 concerning the Eradication of Corruption Crimes (Corruption Law), which was later amended into Law No. 31 of 2001, have provided a strong legal foundation. This is further strengthened by Law No. 30 of 2002 concerning the Corruption Eradication Commission. Over time, the rules governing the application and interpretation of the law have evolved, resulting in more accurate and transparent methods for calculating state losses. Institutions such as the Audit Board (BPK) play a central role in conducting investigative audits and determining the exact amount of state losses.[54] This is crucial to ensure that perpetrators of corruption can be prosecuted legally and the state's losses can be recovered. Despite significant progress, calculating state losses in corruption cases in Indonesia still faces several challenges. The complexity of corrupt methods, especially those involving money laundering, often complicates the calculation process. Additionally, the lack of accurate data and the limited availability of competent human resources in forensic accounting pose significant obstacles. The Corruption Eradication Law and its implementing regulations provide an adequate legal framework; however, their implementation on the ground still requires continuous improvement.

3.2 Authority to Determine State Financial Losses

The understanding of state losses in Indonesia remains significantly influenced by those in power. The concept of state losses does not yet have a strong legal theoretical basis, so its assessment depends more on the applicable laws and regulations. In practice, the interpretation of state losses remains a source of controversy, so judges' decisions are often based solely on personal views without a clear and firm theoretical basis for determining the amount of state losses.[55] State losses occur when there is a shortage of pre-existing cash. In other words, the current state of money is less than it should be. If a dividend is not received, it is not considered a loss because there is no reduction in existing funds; instead, it only reduces the amount of income that the state would have received had it been received.[56]

There is a relationship between corruption and the position held, as well as the losses incurred as a result of the action. The state is harmed, which refers to the reduction of money, state securities, and tangible goods, resulting from the appropriate amount for committing illegal acts, whether intentionally or

53 Husnul Abdi., The Definition of Corruption According to Experts, Its Causes, and Impacts. *Coverage6*. https://www.liputan6.com/, Accessed: 28 January 2024

54 Sabrina Hidayat, Oheo Kaimuddin Haris, Ali Rizky, & Endang Seriyati., The Authority of the Audit Board (BPK) and the Financial and Development Audit Agency (BPKP) in Determining State Financial Losses. *Halu Oleo Legal Research*, Vol.5 No.2, 2023, page.592–604.

55 Ahmadie Azra Isnain., Legal Theory of Real and Definite State Losses. *UNES Law Review*, Vol.6 No.2, 2023, page.6051–6057.

56 Budi Harianto., State Losses Caused by State-Owned Enterprises (SOEs) as State Financial Losses: A Study. *Journal of Community Service and Educational Research*, Vol.3 No.4, 2025, page.3899–3905.

negligently. In the decision of the Constitutional Court No. 25/PUU/XIV/2016 concerning the Review of the Corruption Law on Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, before the Judicial Review in 2016, corruption was a criminal act with formal elements as in the 2003 UN Convention on Anti-Corruption, which has been ratified. The deal does not specify the countries harmed, as the corruption factor is clearly stated. Corruption as a formal crime is no longer an appropriate designation. The Constitutional Court, in its decision No. 25/PUU-XIX/2016, made changes. Why? Given the changing social dynamics of society and shifting legal politics, it is already under judicial review, with a decision pending that could reject changes in the law, specifically the Constitutional Court decision Number 003/PUU-IV/2006. In the material test, we can see that the formulation of Article 2 Paragraph (1) and Article 3 of the Corruption Law has been declared revoked and invalid because the phrase, the Constitutional Court can state the word, does not provide legal certainty, according to the results of the material test on the Constitutional Court's decision Number 25/PUU/-XIV/2016. After the Constitutional Court Decision No. 25/PUU-XIV/2016, the word "can" was removed from the formulation of the article. This abolition changes the nature of the crime from what was a formal crime to a material crime. This means that to ensnare someone with this article, law enforcement is no longer sufficient to prove the existence of an abuse of authority; there must be objective evidence of state losses caused by the act. Therefore, a more in-depth investigation and a thorough investigation process are needed to prove the existence of state losses before determining the suspects.[57] Law enforcement is required to calculate real state losses before designating someone as a suspect in a corruption case.[58]

Based on *the a quo decision*, the evidence of the existence of an element of state financial loss shifted from potential losses to factual losses (actual losses), not unreal or concrete potential. It changed from a formal violation to a material criminal act before the Constitutional Court decided on the article. Formal violations have fulfilled these elements by complying with the formulation of the elements of the article that are transferred to material criminal acts, which means that Article 2, Paragraph (1), and Article 3 are considered to meet these elements. It is proven that, in addition to fulfilling the aspects of the article, it must also be proven that the state is harmed as a result of the act. Related to the decision quo becomes a factual loss, meaning that there is a state loss based on the calculation of the appointed institution (the Financial Audit Agency). In the case of abuse of authority, new acts can be considered as a criminal act of corruption if they have an impact on state losses (except bribery in the form of bribes, gratuities, or extortion), the perpetrators obtain illegal benefits, the community does not receive services, and the act is reprehensible. Therefore, if it is associated with Article 2, Paragraph (1), and

57 Dudy, A. A., & Ashady, S. (n.d.)., *The role of APIP in enforcing corruption crimes against the results of the abuse of authority audit*.

58 Qurniawan, N. R., & Sulistyowati, T., Juridical Analysis of the Constitutional Court Decision Number 25/PUU-XIV/2016 Regarding Article 2 Paragraph (1) and Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption. *Trisakti Law Reform*, Vol.2 No.2, 2020

Article 3 of the Law on Corruption, the application of state financial losses is now more focused on the impact caused, not just on the act itself.[59] In addition, the aspect of proving whether there is an element of State loss by the public prosecutor is an important issue that falls under the prosecutor's responsibility, as the proof will affect the judge's decision, especially regarding the payment of compensation as a form of recovery of state financial losses. According to the law, the payment of compensation must be charged to the defendant if the prosecutor succeeds in proving that a state loss has been caused by corruption.[60]

In the case of abuse of authority, new actions can be considered corruption only if they harm the country or region. However, exceptions apply to corruption crimes such as bribery, gratuity, and extortion, where the perpetrators obtain unlawful profits. When addressing state losses, it is crucial to distinguish between losses resulting from management errors and those arising from fraud or abuse of authority by financial management officials. All of this aims to restore the country's lost or diminished wealth and increase the discipline and responsibility of the state's civil apparatus and financial managers.

Legal experts, however, have differing views on the State's definition of danger, and synchronization of relevant legislation remains a challenge. Mahfud said there are 3 (three) steps to overcome these obstacles: unification of one container, Human Resource Development, and digitalization. Questioning the authority to determine state losses, there is a debate about the interpretation of who has the right to declare state losses. At least two (2) were discussed regarding the authority to declare the state loss-making, both the Financial Audit Agency (BPK) and the Financial and Development Supervisory Agency (BPKP).[61] In practice, the calculation of state losses due to corruption crimes often involves the Financial Audit Agency (BPK) and the Financial and Development Supervisory Agency (BPKP). However, outside of these two institutions, calculations can also be done by other parties, such as public accountants. In fact, in several cases, the Prosecutor's Office and the Court have independently calculated state financial losses.[62] The Financial Audit Agency is authorized to calculate and determine state losses based on Article 10, paragraph (1), of the Law. The Financial Audit Agency has the right to exercise its constitutional authority to assess state finances. Meanwhile, Article 3 of Presidential Regulation Number 192 of 2014 includes the Financial and Development Supervisory Agency. The development finance supervisory agency

59 Mahendra, A., Sinaulan, R. L., & Chandra, T. Y., Juridical analysis of corruption crimes that cause state losses in the perspective of the Constitutional Court of the Republic of Indonesia's decision. *Journal of Legal Research*, Vol.4 No.1, 2022, page.157–168.

60 Amiarsa, P., The Status of Corruption Delik After the Constitutional Court Decision Number 25/PUU-XIV/2016 and Its Impact on the Return of State Losses. *Legal Science: Journal of Legal Sciences*, Vol.19 No.2, 2021, page.198–212.

61 Pradnyana, I. M. F., & Parsa, I. W., The Authority of BPK and BPKP in Determining State Financial Losses in Corruption Cases. *Journal of Master of Law, Udayana University*, Vol.10 No.2, 2021, page.344–356.

62 Tarigan, E. S., Ablisar, M., & Mulyadi, M., (n.d.). *The Existence of the Prosecutor's Authority in Determining the Elements of State Financial Losses as Evidence in Corruption Cases*.

is responsible for conducting audits and reviews related to state financial management. However, the authority remains with the Financial Audit Board to determine state losses.[63]

The state, not the ministry, owns the financial and development supervisory agency. The institution is responsible for overseeing government activities related to finances and developments. The Development Financial Audit Agency is tasked with auditing, consulting, assisting, evaluating, combating corruption, and educating and training supervisors in accordance with applicable regulations. This is an issue that should be taken into consideration when developing government policies and implementing measures related to accountability. The results can also be used. In addition, the results of the supervision of the Financial and Development Supervisory Agency are also demanded by other government officials,[64] Including provincial and district/city governments, to achieve and improve the performance of governance under them.

In addition to these two institutions, public accounting firms are often used to calculate and declare primary state losses in the explanation of Article 32 Paragraph (1) of the Criminal Law by making their own interpretation. On the contrary, even if they mention public accounting firms, they do not stand alone; they are public accounting firms registered with the Audit Board and are required to report to the Audit Board for development. It must be understood that the institution authorized to implement the law and obtain the constitutional mandate of Article 23 E of the 1945 Law, as the State Auditor, is the Financial Audit Agency.

For example, in the case of Decision Number 112/PID. SUS-TPK/2022/PN.Mks briefly began with an alleged corruption crime committed by AY, as a party involved in financial management related to the rental of stalls in Pasar Butung, Makassar City. In his capacity, the defendant is suspected of having abused his authority by not depositing the entire proceeds of the rental of a kiosk owned by the local government into the official treasury, but using it for personal and/or other parties' interests. As a result of these acts, the state suffered significant financial losses, specifically Rp26,298,046,238 (twenty-six billion two hundred ninety-eight million four hundred and thirty-eight rupiah), as calculated by the Public Accountant, but not confirmed by the Financial Audit Agency. In the trial process at the Makassar District Court, the public prosecutor filed primary and subsidiary charges under the Corruption Crime Law. Although the primary indictment was not legally and conclusively proven, the court held that the defendant was found guilty in the subsidiary indictment for having committed an unlawful act that caused state loss. The defendant was sentenced to prison, fined, and required to pay compensation, with additional criminal penalties if these obligations were not met. Here, AY was convicted due to a Public Accountability report that was not authorized to determine state

63 MS.. (n.d.)., There Must Be a BPK Audit for Corruption Investigations. *Constitutional Court*. https://www.mkri.id/, Accessed: January 28, 2024

64 Presidential Regulation No. 192 of 2014 concerning the Financial and Development Supervisory Agency

losses; on the other hand, AY won a civil lawsuit because the primary key in this case was an agreement. This case highlights the weakness of the supervisory and transparent system in the process of determining state losses.

Because, as we understand, the Public Accounting Firm is an institution appointed by the Financial Supervisory Agency of the Republic of Indonesia, based on the Law of the Financial Supervisory Agency number 15/2006 Article 6 paragraphs (3 and 4). At the same time, technical inspections are conducted in accordance with Regulation No. 1 of 2020 issued by the Financial Supervisory Agency. There is a requirement that public accountants conduct state financial audits. It is stated that the public accounting firm appointed to calculate state losses must report the results of its work to the Financial Supervisory Agency, not declare itself.

Article 10A of Law No. 15 of 2006 is based on how the Financial Supervisory Agency assesses the extent to which the state is harmed by willful negligence. A corroborating point is the content of the Constitutional Court's decision number 54/PUU-XVII/2019, which emphasizes that audits with a specific purpose (PPDT) remain the duties and authority of the Financial and Development Audit Agency or Public Accountants. This underscores the need for the Financial Audit Board to ensure that state finances are managed in a transparent, accountable, and corruption-free manner. This became a debate because it was considered that the interpretation was not accurate. The appointed public accounting firm can only calculate, but does not have the authority to declare the state to be in a state of loss. This means that the public accounting firm does not have the Legal Position/authority to calculate, determine, and declare state losses. Even in Law No. 15 of 2011 concerning Public Accountants, there is not a single article in which a public accounting firm has the right to declare state losses. From the above description, it is clear that only the BPK has the right to declare state losses. Financial and development supervisory bodies do not have the right, let alone Public Accountants. Even though public accountants hold CFE (Certified Fraud Examiner) certification at the international level or at least CFrA (Certified Forensic Auditor) certification from the Indonesian Forensic Auditors Association, they still cannot declare a state of loss.

Government Regulation Number 60 of 2008 regulates internal control within the government and emphasizes the importance of transparency through the publication of audit results by Public Accountants. Another legal basis is the Decree of the Minister of Finance No. 423/KMK.06/2002 concerning guidelines for the implementation of state financial audits by public accountants. This Decree provides guidelines for public accountants in calculating state losses. This guideline regulates the obligations of Public Accounting Firms to submit reports to the Financial Audit Agency and publish them. However, this is often violated if the public accounting firm is not an institution/entity that can declare losses suffered by the state. Indonesia's diverse legal system usually leads to conflicts between various legal regulations.[65]

Public Accountants do not have the right to declare state losses as the decision of the Constitutional Court of the Republic of Indonesia number 54/PUU-XVII/2019 concerning audits with specific purposes (PDTT) remains the authority of the Indonesian Financial Audit Board, based on Law No. 15 of 2006 and Law No. 15 of 2004 concerning Audit of State Financial Responsibility Management, meaning that public accounting firms, not institutions/bodies of the Financial Audit Board regulated by both law. The difference in interpretation of who has the right to declare state losses should no longer become a polemic with the issuance of the Supreme Court Circular Letter (SEMA) number 4 of 2016 which was strengthened by number 04/Bua.6/Hs/SP/XII/2016 dated December 9, 2016 Number 6 states that the authority to declare whether or not there is a state financial loss is the Financial Audit Agency, other institutions are not authorized.

SEMA is an internal rule of the Supreme Court and serves as the primary function of the law enforcement judicial institution within its authority. In principle, SEMA is classified as a beleidsregel.[66] Supreme Court Decision number 57/KMA/SK/IV/2016 explains that the circular letter is an urgent and essential directive in the state administrative court. Although SEMA has binding powers, its powers are not equivalent to those of other laws and regulations because they do not fall under the legislative order and are therefore referred to as pseudo-legislative. Typically, state agencies that implement SEMA guidelines are responsible for their implementation in legal practice and usually carry them out.[67] Thus, the judiciary, including the Supreme Court, is subject to the Supreme Court, as well as SEMA.

The determination of state financial losses, both potential and actual, is legally the exclusive authority of the Audit Board of the Republic of Indonesia (BPK-RI). This is affirmed in Article 23E, paragraph (1) of the 1945 Constitution, which states that to examine the management and responsibility of state finances, an independent financial audit body was established, namely the BPK. Furthermore, Law No. 15 of 2006 concerning the BPK emphasizes that the BPK has the duty to provide an opinion if there is an indication of state or regional financial losses. Thus, only the results of audits and official reports from the BPK can be used as a valid legal basis to declare that state losses have occurred. Other institutions, such as the Financial and Development Supervisory Agency (BPKP) under the president, or Public Accountants, do not have the juridical authority to determine state losses. Their role is limited to

65 Sayit Bandung Bondowoso & Dian Afrilia., Accountability of SOEs Directors for State Losses Based on Corporate and Criminal Sector Government Regulations. *Lex Stricta*, Vol.4 No.1, 2025, page.13–22.

66 Santoso, R. A., & Jaelani, E., The Position and Legal Strength of the Supreme Court Circular Letter (Sema) in Indonesian Positive Law. *Deposition: Journal of Legal Publications*, Vol.1 No.4, 2023

67 Shabir, Ananda Salim., Pseudo-law legislation and its impact on the legal order. *Law Window: UIN Sunan Kalijaga University*. https://jendelahukum.com/, accessed: 28 January 2024

providing estimative calculations or professional opinions, rather than serving as formal evidence in criminal proceedings. It has been stated that the only institution that has the authority to determine the existence of state losses in cases of corruption is the BPK. Suppose this provision is ignored and another institution is tasked with deciding state losses. In that case, the legal process becomes formally flawed, potentially aborting the criminal element, and may even result in the defendant being released due to the non-fulfillment of the "detrimental to state finances" element. This inequality, if left unchecked, will create legal uncertainty, overlap of authority between state institutions, and undermine the principle of due process of law. Therefore, to maintain the integrity of the criminal justice system and ensure that the corruption eradication process runs according to the legal framework, the determination of state losses must be carried out by the BPK as a legitimate and constitutional institution.

The findings of this study indicate that clarity regarding the constitutional authority of the Audit Board of Indonesia in determining state financial losses is essential to ensure legal certainty in the law enforcement process of corruption cases. If the determination of state losses continues to be conducted by other institutions outside their constitutional authority, such as the Financial and Development Supervisory Agency or public accountants, it may create difficulties in proving the element of “causing losses to state finances” before the court. This situation may trigger institutional disputes over authority, open space for debates regarding the validity of evidence, and potentially weaken the law enforcement process. Furthermore, these findings also have implications for judicial practice under the Supreme Court, which has thus far treated the Supreme Court Circular Letter (SEMA) as an internal guideline in adjudication. Although SEMA functions as an administrative and interpretative guideline for judges, its position as a form of pseudo-legislation cannot override constitutional provisions and statutory regulations that affirm the authority of the Audit Board of Indonesia. Therefore, this study emphasizes the practical need for harmonization between judicial practices, internal guidelines within judicial institutions, and the constitutional legal framework in order to avoid overlapping authority in determining state financial losses. Such harmonization is crucial to strengthening legal certainty, maintaining the integrity of the criminal justice system, and ensuring that anti-corruption enforcement operates in accordance with the principles of due process of law.

4. Conclusion

In the context of law enforcement, the element of state losses is a crucial component that must be proven in corruption crimes, particularly in the application of Article 2, Paragraph 1, and Article 3 of the Corruption Law. To overcome the complexity of law enforcement in corruption cases and strengthen state financial governance, several strategic steps are necessary. First, the government and law enforcement agencies must be consistent in recognizing the BPK as the only legitimate institution to declare state losses, as stipulated in the 1945 Constitution and Law No. 15 of 2006. This is to prevent conflicts of authority between institutions and maintain the legitimacy of the legal process. Second, it is necessary to revise and harmonize regulations to ensure that there are no gaps in multiple interpretations between institutions, particularly regarding the roles of BPK, BPKP, and Public Accountants in the process of calculating and determining state losses. Third, the government needs to develop competent human resources in the fields of forensic accounting and investigative auditing, as well as expand the use of digital technology to enhance transparency and efficiency in state financial supervision. Fourth, the implementation of an effective and accountable internal control system in every government agency must be carried out. The results of audits and oversight must also be publicly published to encourage public participation and prevent irregularities. Fifth, the public prosecutor and law enforcement officials must be more careful and adhere to formal and material legal principles in proving the elements of state losses, so that there is no violation *of the principle of due process of law*. Ultimately, it is crucial to promote legal and anti-corruption literacy within the community, thereby enhancing public awareness of the impact of corruption. Additionally, fostering a culture of integrity from an early age in the educational and bureaucratic environments is crucial. With these steps, it is hoped that the process of eradicating corruption can run effectively, in accordance with the Constitution's mandate and the values of Pancasila.

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