CALCULATION OF INTERNAL STATE FINANCIAL LOSS CORRUPTION CRIMINAL ENFORCEMENT

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ABSTRACT

The legal regulation of criminal acts of corruption regulates the formulation of offenses for criminal acts of corruption, one of which is the loss of state finances or the country's economy as stated in Article 2 and Article 3 of the Law on the Eradication of Criminal Acts of Corruption. In calculating state financial losses on audited cases by performing: identification of irregularities that occur, identification of transactions, identification, collection, verification, and analysis of evidence, and calculating the amount of state financial losses. The method of calculating state financial losses is basically very diverse according to the modus operandi of corruption cases, including the total loss method, total loss with adjustments, net loss, fair price, cost of goods, opportunity cost. opportunity cost), and interest.

PRELIMINARY

The protection of the entire nation and the spilled blood of Indonesia through legal instruments is an absolute thing to be realized, it means nothing if there is still suffering of the people in the form of inequality of economic rights which reflects the welfare of all Indonesian people.[2] Welfare is driven by a government system that is not socially equitable for all Indonesian people and does not side with the people. Indonesia has not been separated from the multidimensional crisis. One of them is in law enforcement. Various unlawful acts committed by state administrators and justice witnessed by the public further distance the hope of justice in this country.[3]

One of the crimes of becoming an enemy of the nation is corruption that has existed since Indonesia was not yet independent, namely the tradition of giving tribute by the community to the authorities. Corruption is now a global problem, classified as a transnational crime. Even with the multidimensional negative implications of state economic and financial losses, corruption is classified as an extraordinary crime. In the Corruption in Government Resolution (Result of the 8th United Nations Congress in 1990) it is stated that corruption is not only related to various Economic Crime activities, but also to Organized Crime, Illicit Drug Trafficking, Money Laundering, Political Crime, Top Hat Crime, and even Transnational Crime.[4]

Corruption is a financial crime, the impact of which is significant, which is about 5 (five) percent of global GDP or $2.6 trillion dollars which damages the foundations of state finances. The explanation of corruption, like crime, tends to focus on the perpetrators of corruption and the general conditions that give rise to corruption. Corruption prevention strategies generally lead to tougher sanctions, institutional reform, or the adoption of new regulations. On the other hand, the environment that provides opportunities for crime is recognized as having a direct influence on the occurrence of crime. Therefore, a complementary perspective of the strategy mentioned above is needed in the form of a situational approach.

By looking at the events above, it is very interesting to reveal why corruption tends to increase. Whereas corruption becomes an obstacle to improve the welfare of the people which is the obligation of the state. Many state administrators today have deviated from applicable regulations and take state money that is not their right and prioritize their own interests rather than the interests of the community. For this reason, there needs to be an effort to reduce the level of corruption by preventing cases of corruption (fraud) that occur and how to reveal the modus operandi of these acts of corruption so that they can be prevented before corruption occurs in the government so far.

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1   *Program Doktor Ilmu Hukum Universitas Islam Sultan Agung Semarang.*
2   *Ridwan, Kebijakan Penegakan Hukum Pidana dalam Pemberantasan Tindak Pidana Korupsi di Indonesia, Journal of Jure Humano, Volume 1 Number 1 Year 2009, p. 74.*
3   *Neni Sri Imaniyati, Pengaruh Paradigma Positivisme Terhadap Teori Hukum dan Perkembangannya, Journal of the Mimbar Volume XIX Number 3 July – December 2003, page 261.*
4   *Nashriana, Asset Recovery Dalam Tindak Pidana Korupsi : Upaya Pengembalian Kerugian Keuangan Negara, Faculty of Law Universitas Brawijaya, No Year, page 1.*

Efforts to eradicate corruption in Indonesia as a developing country must always lead to the context and interests of the nation. However, in the midst of an increasingly borderless world, the relative position of the Indonesian state compared to other countries in the world in efforts to eradicate corruption cannot be ignored. The economic crisis in Europe as well as the resistance movement against government regimes in Arab countries in early 2013, showed that the chaos of a country due to poor economic governance and rampant corruption would not only damage the country, but had the potential for a domino effect on other countries. Surrounding

Extra Ordinary Crime shows the eradication of corruption in an extraordinary way. Corruption is a crime between the middle and upper classes (white collar crime), namely the crime of people who have excess wealth and are considered honorable, have an important position in government or the economy.[5] Corruption as abuse of power and public trust for personal gain, there are three elements: Abusing entrusted power (both public and private sectors); have access to business and material benefits, and personal benefits (not necessarily defined for personal, nor for family members or friends). Perpetrators of corruption are not random people because they have access by abusing the authority, opportunities or facilities available to them.[6] Corruption is the misappropriation of public office for personal gain by means of bribes or illegal commissions.[7]

Corruption is a big problem, so eradicating corruption is a priority, part of the program to restore the trust of the people and the international community in order to increase economic growth. The crime of corruption is a special part of the crime, in addition to having certain specifications, different from other criminal laws, such as deviations from the procedural law and in terms of the regulated material, it is intended to minimize leakage and irregularities in the state's finances and economy, it is hoped that development can be carried out properly. so that it has an impact on increasing development and the welfare of society in general.[8]

Corruption as an extraordinary crime requires extraordinary eradication, the government is making efforts to update the rules on corruption, from Law Number 3 of 1971 concerning the Eradication of Corruption, to Law Number 31 of 1999, concerning the Eradication of Corruption Crimes, and amended through Law No. -Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999. In addition, Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism, Government Regulation Number 71 of 2000, concerning Governance Methods of Implementing Community Participation and Giving Awards in the Prevention and Eradication of Corruption Crimes, Law Number 30 of 2002 concerning the Corruption Eradication Commission and Presidential Instruction Number 5 of 2004, concerning the Acceleration of Corruption Eradication and Law Number 7 of 2006, concerning Conventions United Nations Anti-Corruption 2003.

Reviewing and conducting a literature search on corruption provides a broad picture of the meaning of corruption. The meaning of corruption in various perspectives or approaches to examine and understand the meaning of corruption. Giving the meaning of several reviews of the meaning of corruption will be relevant and useful for efforts to find ways to overcome it from a criminal law perspective. Understanding the meaning of corruption helps criminal politics to get clarity on aspects that have not been disclosed in the formulation of criminal law, so that the perfection of the formulation of criminal law related to the definition of corruption can be assessed.[9]

This is due to the plurality of aspects in corrupt behavior, making it difficult to draw a complete understanding.[10] The difference in meaning is due to different approaches giving the meaning of corruption. The use of a juridical approach understands the meaning of corruption, resulting in a different understanding from other approaches such as sociological, crimonological, and even political perspectives.[11]

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5   Sudarto, Hukum dan Hukum Pidana, Alumni, Bandung, 1997, hlm 102. Lihat juga J. Pope, Strategi Memberantas Korupsi, Yayasan Obor Indonesia, Jakarta, 2003, hlm 6,

6   Harkristuti Harkrisnowo, Korupsi, Konspirasi dan Keadilan di Indonesia, Jurnal Dictum LeIP, Edisi I, Lentera Hati, Jakarta, 2002, page 67.

7   Hans Otto Sano, et.al., Hak Asasi Manusia dan Good Governance, Membangun Suatu Ketertiban, Departemen Hukum dan Hak Asasi Manusia, Jakarta, 2003, page 157.

8   Lilik Mulyadi, Tindak Pidana Korupsi (Tinjauan Khusus Terhadap Proses Penyidikan, Penuntutan,Peradilan Serta Upaya Hukumnya Menurut Undang-Undang Nomor 31 Tahun 1999), Citra Aditya Bakti, Bandung, 2000, page 1.

9   Elwi Daniel, Korupsi, Konsep, Tindak Pidana dan Pemberantasannya, Raja Grafindo Persada, Jakarta, 2012, page 2.

10   Ibid, page 1.

11   Roberto Tilman. Timbulnya Birokrasi Pasar Gelap : Administrasi Pembangunan dan Korupsi di Negara Negara Baru dalam Muchtar Lubis dan James C Scoot, Bunga Rampai Korupsi, LP3ES, Jakarta, 1988, lihat juga Elwi Daniel, Op, Cit, hlm 2.

One of the elements of corruption is state losses. According to Articles 2 [12] and 3[13] of the Corruption Eradication Law, there must be indications that it is detrimental to state finances. A person or corporation deemed to have committed corruption must fulfill the elements of state financial loss. Calculation of state financial losses is needed in law enforcement of corruption.

In law enforcement of criminal acts of corruption, of course, the parties concerned must understand the various types of fraud that may occur. Investigative Auditor is one of the professions that is required to be able to understand cases of fraud that can occur. This is because the auditors are tasked with detecting fraud that may and may occur. Therefore, the discipline of accounting is required to be able to change and follow the trend of the latest problems, especially those related to fraud in the form of cases of corruption.

The calculation of state losses is not only related to accounting techniques. The calculation of potential state losses depends on the auditor's ability to understand the meaning of state losses, understand various methods of calculating state losses and analyze the method that is believed to be the most appropriate for each corruption case. Understanding depends on the point of view of the Auditor.

Based on the description above, the authors are interested in conducting research with the problem of how to calculate state financial losses in law enforcement of criminal acts of corruption?

DISCUSSION

State Financial Losses in Corruption Crimes

The state has a function as in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. The task of protecting the entire Indonesian nation and the entire homeland of Indonesia, promoting public welfare, educating the nation's life and participating in carrying out world order based on independence, eternal peace and social justice cannot be accomplished if it is not supported with state finances as a source of financing. State finances play an important role in realizing state duties which are the responsibility of the government.

State Finance in the 1945 Constitution of the Republic of Indonesia is regulated in CHAPTER VIII, concerning Financial Matters, Article 23 which reads:

(1) The Revenue and Expenditure Budget is determined annually by law. If the House of Representatives does not approve the government's proposed budget, the government will implement last year's budget.
(2) All taxes for state purposes are based on law.
(3) The types and prices of currencies shall be determined by law.
(4) State finances are further regulated by law.
(5) To examine the responsibility for state finances, a Supreme Audit Agency is established, the regulations of which are stipulated by law. The results of the examination are notified to the People's Representative Council.

The formulation of state finances uses several approaches, namely:

1. Approach from the object side
   All rights, obligations, and obligations of the state that can be valued in money, including policies and activities in the fiscal, monetary and management of state assets that can be used as state property in relation to the implementation of rights and obligations.
2. Approach from the subject
   All financial objects owned by the state and/or controlled by the state/regional government and other entities related to state finances.
3. Approach from the process side
   The whole series of activities related to the management of the objects mentioned above, starting from policy formulation and decision making to accountability.
4. Approach from the side of the goal

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12 Article 2: *Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years. twenty) years and a fine of at least Rp. 200,000,000, - (two hundred million rupiah) and a maximum of Rp. 1,000,000,000, - (one billion rupiah).*

13 Article 3: *Any person who with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunities or facilities available to him because of his position or position which can harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment at the most. a short period of 1 (one) year and a maximum of 20 (twenty) years and a fine of at least Rp. 50,000,000, - (fifty million rupiah) and a maximum of Rp. 1,000,000,000, - (one billion rupiah).*

All policies, activities and legal relations related to the ownership and/or control of objects as mentioned above in the context of administering the state government.

The definition of state finance was first found in the Law on the Eradication of Criminal Acts of Corruption, especially in general explanations. State finances are all state assets, in any form, separated or not separated, including all parts of state assets and all rights and obligations arising from:

1. Being in the control, management and accountability of state agency officials, both at the central and regional levels;
2. Are in the control, management, and accountability of state-owned enterprises/regional-owned enterprises, foundations, legal entities, and companies that include third party capital based on agreements with the state.

Management of state finances in an orderly, careful, effective and efficient manner requires a clear legal framework design that can be used as a reference in state financial management policies. The renewal of the legal basis for managing state finances has resulted in four main regulations, namely:

1. Law Number 17 of 2003 concerning State Finances;
2. Law No. 1 of 2004 concerning the State Treasury;
3. Law No. 15 of 2004 concerning Audit of State Finance Management and Accountability
4. Presidential Decree Number 42 of 2002 concerning Guidelines for the Implementation of the State Revenue and Expenditure Budget.

Law Number 17 of 2003 concerning State Finances, states the definition of state finances in Article 1 number 1: State finances are all state rights and obligations that can be valued in money and everything in the form of money or goods that can be used as state property in connection with implementation of these rights and obligations.

The definition of state finances in Article 1 point 1 of Law Number 17 of 2003 concerning State Finances has a substance that can be reviewed in a broad sense. State finances in a narrow sense are only limited to state rights and obligations that can be valued in money, including state property listed in the state budget for the year concerned. State finances in a narrow sense, only include every legal entity authorized to manage and account for it.

State finances in a narrow sense are only limited to state rights and obligations that can be valued in money, including state property listed in the state budget for the year concerned. State finances in a narrow sense, only include every legal entity authorized to manage and account for it. nor narrow. The purpose of separating the substance of state finances in a broad sense with a narrow meaning is so that there is uniformity of understanding. This has benefits for the authorities in managing state finances so that they do not commit acts that violate state finance laws.

Article 2 of Law Number 17 of 2003 concerning State Finance describes Article 1 number 1 which is the scope of state finances from a juridical aspect including:

a. The right of the state to collect taxes, issue and circulate money, and make loans;
b. The state's obligation to carry out public service tasks, state government and pay third party bills;
c. State revenue;
d. State spending;
e. Regional revenue;
f. Regional spending;
g. State/regional assets managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated from state/regional companies;
h. The wealth of other parties controlled by the government in the context of carrying out government duties and/or public interest
i. The wealth of other parties obtained by using facilities provided by the government.

Elucidation of Article 2 letter i: The assets of other parties as referred to in letter i include assets managed by other people or entities based on government policies, foundations within state ministries/institutions or state/regional companies.

Legally allowed state income, spread in various types. This is intended to make it easy to understand the substance of the state's income. The types of state revenue as a source of state finance are:

1. State taxes consisting of: Income Tax, Value Added Tax on Goods and Services, Sales Tax on Luxury Goods, and Stamp Duty;

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2. Customs and Excise consisting of: Import duties, sugar excise, and tobacco excise;
3. Non-tax state revenue consisting of:
   a. Revenue sourced from the management of government funds;
   b. Revenue from the use of natural resources;
   c. Revenue from the results of the management of separated state assets;
   d. Revenue from service activities carried out by the government;
   e. Acceptance based on court decisions and originating from the imposition of administrative fines;
   f. Receipts in the form of grants which are the right of the government;
   g. Other receipts regulated by law.

State sources in the form of state revenues can change at any time, either in the form of additional types of revenue or in the form of reducing types of state revenues. The addition or subtraction of the types of state revenues is an inseparable part of the enforcement of the 1945 Constitution of the Republic of Indonesia. This is based on the regulation of state revenues as a source of state finance derived from the provisions of the 1945 Constitution of the Republic of Indonesia and described in the law.

The law enacted based on the provisions of the 1945 Constitution of the Republic of Indonesia relating to state revenues is the legal basis for the existence and management of state finances that must be obeyed. When there is a deviation from the law, it means the consequences of misuse of state finances that cause state financial losses.

Law Number 17 of 2003 concerning State Finance in Article 6 states that the President holds the power to manage state finances as part of the government's power. The management of state finances is authorized to the Minister or the head of the institution that uses the state budget as well as to the Head of the regional government. However, the law does not affirm the granting of authority to the President, through the government's internal auditor, to oversee the management of state finances. In essence, the President must be accountable for the management of the state's finances to the people.

Article 34 of Law Number 17 of 2003 concerning State Finances is regulated by the Minister/Leading Institution/Governor/Regent/Mayor who is proven to have violated the policies stipulated in the Law on State Revenue and Expenditure Budget/Regional Regulation concerning Regional Revenue and Expenditure Budget, shall be threatened with imprisonment and fines in accordance with the provisions of the law. In addition, Article 35 states that every state official and civil servant who is not a treasurer who violates the law or neglects obligations, either directly or indirectly harming state finances, is required to compensate for the loss. Supervision is any action or activity to ensure that the implementation of an activity does not deviate from the predetermined plan. The main purpose of supervision is not to make mistakes, but to direct the implementation of the planned activities that have been set to be carried out optimally.

With the regulation of state financial management, it does not guarantee proper implementation. The number of regulations for managing state finances does not mean that there is no misappropriation of state finances. The errors found are the result of deviations from the established plan. Because what is meant by state financial supervision does not only cover its implementation, but has started from the preparation stage to the stage of state financial accountability.

It must be admitted that in the management of state finances there are still leaks caused by corruption, manipulation, and other acts of misappropriation. The phenomenon of corruption where there are indications that reflect the people's distrust of the government. The demand for a clean government is getting tougher, following the economic crisis. The root of the problem due to corruption that has spread both in government institutions and other institutions so that the Indonesian economy slumps.

In relation to state financial losses, one must know the intent of harm. To be detrimental is the same as to become a loss or to be reduced, so that it is detrimental to state finances to be a loss to state finances or a reduction in state finances.[14] Harm to the state economy is the state's economy becomes a loss or the state's economy becomes less running. State finances according to the Law on the Eradication of Criminal Acts of Corruption are discussed in two forms or types of corruption related to state financial losses in Article 2 and Article 3.

Section 2:

(1) Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the state's economy, shall be sentenced to life imprisonment or a minimum of 4 (four) years and a maximum of 20 (two) years. twenty) years and a fine of at least

14 R. Wiyono, *Pembayahasan Undang-Undang Tindak Pidana Korupsi, Sinar Grafika, Jakarta, 2006, page 32.*

Rp. 200,000,000,- (two hundred million rupiah) and a maximum of Rp 1,000,000,000 (one billion rupiah).

(2) In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed. What is meant by unlawfully in Article 2 paragraph (1) includes acts against the law in a formal and material sense, namely even though The act is not regulated in laws and regulations, but if the act is considered disgraceful because it is not in accordance with the sense of justice or the norms of social life in society, then the act can be punished.

In this provision, the word can before the phrase detrimental to the state's finances or economy indicates that a criminal act of corruption is a formal offense, i.e. the presence or absence of a criminal act of corruption is sufficient to fulfill the elements of an action that has been formulated not with the emergence of consequences. Certain provisions in this provision are conditions that can be used as a reason for criminal offenses for perpetrators of criminal acts of corruption, namely if it is carried out on funds allocated for handling dangerous conditions, national natural disasters, overcoming the effects of social unrest that extends to dealing with economic and monetary crises, and repeating criminal acts. corruption.

Article 3: Any person who intentionally benefits himself or another person or a corporation, abuses the authority, opportunity or facilities available to him because of a position or position that can harm the state's finances or the state's economy, shall be punished with life imprisonment or imprisonment at the most. a short period of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000 (one billion rupiah).

The word can in this provision is interpreted the same as the explanation of Article 2. Summary of the decision of the Constitutional Court (MK) in the case of a petition for judicial review of Law Number 31 of 1999 as amended by Law Number 20 of 2001 against the 1945 Constitution of the Republic of Indonesia. In summary, the contents The decision emphasizes Article 2 paragraph (1) and Article 3 of the Law on the Eradication of Criminal Acts of Corruption with regard to the phrase "can", as well as Article 15 of the Law on the Eradication of Criminal Acts of Corruption. The word can in Article 2 paragraph (1) and Article 3 result in two types of corruption, namely:

1. Has harmed the state (state losses have occurred in real and real terms);

2. No loss to the state (state loss does not occur).

The Constitutional Court is of the opinion that state financial losses must be proven and must be calculated, even though they are estimates or estimates and state losses have not yet occurred. Losses incurred in criminal acts of corruption, especially on a large scale, are difficult to prove precisely and accurately. The decision to be prosecuted in such a way will raise doubts as to whether a single figure for the amount of loss is submitted and it cannot always be proven accurate, but the loss has occurred, will result in whether or not the act has been proven.

The opinion of the Constitutional Court in the sentence that it can harm the state's finances or the state's economy does not conflict with the rights or fair legal certainty as referred to in Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, as long as it is interpreted in accordance with the interpretation of the Constitutional Court. The Constitutional Court is of the opinion that Article 2 paragraph (1) is related to the explanation, so the main questions that must be answered are:

1. What is the meaning of can in Article 2 paragraph (1) of the Law on the Eradication of Criminal Acts of Corruption, the meaning of which is explained in the explanation of Article 2 paragraph (1), with the addition of the word can make the criminal act of corruption in Article 2 paragraph (1) a formulation of the offense formal;

2. Does the meaning as explained in point 1 above, the phrase can harm state finances or the state economy, which is defined as either real or only potential losses or in the form of possible losses, is an element that does not need to be proven or must be proven.

Corruption crime is classified by law as a formal offense, thus, the category of corruption is classified as a formal offense, where the elements of the act must have been fulfilled, and not as a material offense, which requires that the consequences of the act in the form of losses incurred must actually occur.

Understanding the word can in Article 2 paragraph (1) and Article 3 of the Law on the Eradication of Corruption Crimes cause actions to be prosecuted before the court not only because of actions that actually harm state finances or the state economy, but can only cause losses as a possibility or potential loss. If the elements of a criminal act of corruption are met, it can be brought before the court. The word can

before the phrase detrimental to state finances or the state economy, indicates that the crime is a formal offense, namely the existence of a criminal act of corruption, it is sufficient to fulfill the elements of the formulated act, not the consequences. The Constitutional Court may accept the explanation of Article 2 paragraph (1) as long as it involves the word can before the phrase detrimental to state finances or the state economy.

The word can before the phrase is detrimental to state finances or the country's economy, can be seen in the same sense as the word can which precedes the phrase endangering the security of people or goods, or the safety of the state in a state of war, as stated in Article 387 of the Criminal Code. An offense is considered proven, if the elements of a criminal act have been fulfilled, and the consequences that occur from prohibited acts and are threatened with criminality, do not have to actually occur. The state loss factor must be proven and must be calculated, even if it is an estimate or has not occurred. By adhering to the meaning of the word detrimental, which has the same meaning as losing or being reduced, harming the country's economy means that the country's economy is at a loss or the country's economy is running less.

Article 32 of the Law on the Eradication of Criminal Acts of Corruption states that state financial losses are losses that can be calculated based on the findings of the authorized agency or appointed Public Accountant. The authorized agency was not explained further. However, according to the applicable laws and regulations, there are at least 3 (three) institutions that have the authority, namely the Supreme Audit Agency, the Financial and Development Supervisory Agency, and the Inspectorate at both the central and regional levels.[15]

In the Law on the Eradication of Criminal Acts of Corruption, state financial losses are caused by unlawful acts or acts of abusing the authority, opportunities or facilities available to a person because of his position or position and carried out in connection with acts of enriching oneself or another person or a corporation. State financial losses in Article 1 number 22 of Law Number 1 of 2004 concerning the State Treasury are a real and definite lack of money, securities and goods as a result of unlawful acts, either intentionally or negligently. This article must be a benchmark for what is meant by state financial losses because it provides legal certainty that state losses must be real and definite in amount and cannot be detrimental, of course this does not bring legal certainty, because losses are not yet real, do not necessarily occur and the amount of state losses suffered is unknown. . To find out the state's losses, it is necessary to calculate the competent institutions to determine state financial losses due to corruption. Taking into account the formulation of state finances, state financial losses can be in the form of:

1. Expenditure of a source/state wealth (can be in the form of money, goods) that should not be issued;
2. The expenditure of a state/regional resource/wealth is greater than it should be according to the applicable criteria;
3. Loss of state/regional resources/wealth that should have been received;
4. State/regional source/wealth receipts are smaller/lower than they should be (including receipt of damaged goods, inappropriate quality);
5. The emergence of a state/regional obligation that should not exist;
6. The emergence of a state/regional obligation that is greater than it should be
7. Loss of a state/regional right that should be owned/accepted according to the applicable rules;
8. State/regional rights received are smaller than what should be received.

Of the many provisions regulating criminal acts of corruption in the Corruption Eradication Act, provisions that harm state finances are only found in Articles 2 and 3 of the Corruption Eradication Law. The rest, criminal acts categorized as corruption do not require calculating state financial losses. There are several articles that do not link corruption with state finances, for example, bribery of officials who accept bribes from someone cannot be said to be detrimental to state finances. Even though there are only two articles, these articles are often used or become a favorite of law enforcement officers to ensnare the perpetrators of corruption who are suspected to have caused state losses.

Calculation of State Financial Losses in Law Enforcement of Corruption Crimes

The steps to calculate state financial losses basically cannot be patterned uniformly, due to various modus operandi of corruption. In calculating state financial losses on audited cases, the following steps can be taken:[16]

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15 Eddy Mulyadi Soepardi, *Memahami Unsur Kerugian Keuangan Negara sebagai Salah Satu Unsur Tindak Pidana Korupsi, Kuliah Umum pada Universitas Pakuan Bogor,24 Januari 2009.*

16 Budiman Slamet, *Metode Penghitungan Kerugian Keuangan Negara Dalam Audit Investigatif, Makalah pada Widyaiswara Madya Pusdiklatwas Badan Pengawasan Keuangan dan Pembangunan di Bogor, 2013, hlm 10.*

1. Identifying Deviations That Occur
   a. At this stage, the auditor identifies the types of deviations that occur, such as fictitious contracts/payments, mark-ups/price exaggerations, the volume of goods is smaller than it should be, the quality of the goods is lower, the selling price is too low and so on.
   b. Reviewing the legal basis of the activities being audited (laws, government regulations, presidential decrees, financial accounting standards, and other laws and regulations).
   c. Examine whether the audited case is included in the category of state finances.
   d. Determine the cause of the loss (unlawful elements, abuse of office, negligence and so on, whether it fulfills the elements of a criminal act of corruption or not).
   e. Identify the time and location of the occurrence of irregularities and/or unlawful acts.
1. Identify Transactions
   a. Identify the type of transaction, for example: the problem of procurement of goods/services, land, ruislag, credit distribution, and so on.
   b. Determine the type of loss (eg loss/less receipt of a right, arising/increasing liability, greater expenditure, less receipt of received/unaccepted, and so on).
2. Identify, Collect, Verify, and Analyze Evidence

Identify, obtain, verify, and analyze evidence related to the calculation of state financial losses on audited irregularities.

3. Calculating the Amount of State Financial Losses

Based on the evidence that has been identified, collected, verified, and analyzed, then the amount of state financial losses that have occurred is calculated.

The process of calculating state finances is divided into four (4) stages, namely:

1. Determine whether or not there is a state financial loss

At this stage, the Investigator, Investigator, and then the Public Prosecutor formulate unlawful acts based on legal facts, including criminal acts of corruption, determining whether or not there is state financial loss, and the form of state financial loss.

In addition to analyzing legal facts, Law Enforcers also see how big the chances of winning this case in court are related to the strength of the evidence and the evidence presented, which then becomes evidence for the consideration of the Panel of Judges. In this case, law enforcement determines articles that are easier to ensnare the suspect, for example, the suspect will be charged with the article on enriching himself or the article on abusing authority in Article 2 and Article 3 of the Corruption Eradication Law.

The final result of the first stage is to determine whether there is a state financial loss. This is closely related to the final product of the second stage, which is calculating the amount of state financial losses.

2. Calculating State Financial Losses

At this stage, the party responsible for calculating state financial losses is the Accountant/Auditor/Forensic Accountant. Parties who calculate state financial losses are referred to as Experts, as regulated in:

a. Article 1 number 28 of the Criminal Procedure Code
   An expert is someone who has special expertise in matters needed to make light of a criminal case for the purpose of examination.
b. Article 11 letter c of Law Number 15 of 2006
   Expert is the Supreme Audit Agency (not personal, member, employee, auditor).
c. Article 32 paragraph (1) of the Law on the Eradication of Corruption Crimes
   Expert is an authorized agency or appointed Public Accountant who calculates the amount of state financial losses in fact there has been a state financial loss is state financial loss whose amount can be calculated based on the findings of the authorized agency or appointed Public Accountant.

The first stage (determining state financial losses) and the second stage (calculation of state financial losses) are closely related, the process is interactive and reiterative. These two stages practically end together, and continue until law enforcement (Polri, Prosecutors, Judges) and Forensic Accountants are ready with prosecution in court.

Based on the evidence and evidence gathered, they can decide:

a. Collect evidence and additional evidence;

b. Seek recovery of state financial losses through civil law or administrative law;

c. Stop the investigation/investigation by the Police and the Prosecutor's Office,

If at the end of the first and second stages, the Investigator concludes: there is not enough evidence to prove the element of a criminal act of corruption, but in fact there has been a state financial loss, the Investigator submits the case file, the results of the investigation to the State Attorney for a civil lawsuit or submitted to the agency. harmed to file a lawsuit (Article 32 paragraph (1) of the Law on the Eradication of Corruption Crimes).[17] It is supported by Article 32 paragraph (2) that the acquittal in a corruption case does not abolish the right to claim losses on state finances.

3. Determining State Financial Losses
   In the case of corruption, the third stage is the decision of the Panel of Judges, both at the District Court, High Court, and at the Supreme Court.
4. Determine the amount of replacement money
   The fourth stage is related to the punishment of perpetrators of corruption. Payment of replacement money is one of the additional crimes in the Law on the Eradication of Criminal Acts of Corruption which is regulated in Article 18 paragraph (1) the third point, that: payment of replacement money in the maximum amount equal to the property obtained from the crime of corruption.

From the stages of calculating state losses, it can be seen that the party responsible for calculating state financial losses is an Accountant/Auditor/Forensic Accountant or in law, the party who calculates state financial losses is called an Expert.

In calculating state financial losses, it must first be known whether what is calculated is included in the scope of state finances, or not. According to Law Number 17 of 2003 concerning State Finance.[18] Based on the perspective of financial accounting, basically state financial losses occur if the achievements received by the state are less than the money paid by the state. Same thing with accounting principles, achievements received as a debit side, money issued by the state as credit.

Between debits and credits must be the same (balance). If there is a debit side that is smaller than the credit side, aka unbalance, then what is called a state financial loss arises. What if the debit side is greater than the credit side, in the sense that the achievements obtained by the state are greater than the money paid. Can partners/providers of goods and services demand more payment? The answer, of course, is no, because the basis for the engagement is the initial contract between the state and the partner/provider of goods/services. On the other hand, if the achievement received by the state is less than the money paid, the state has the right to request a refund from the partner/provider of goods/services.[19]

The purpose of an investigative audit or an audit of calculating state financial losses is to determine whether or not there are deviations and losses arising from these deviations. If there is a financial loss, it is almost certain that there is a deviation. However, there are conditions where there are deviations but no state financial losses are found. For example, in the case of procurement of goods/services above Rp. 200,000,000,- (two hundred million rupiah) according to the Presidential Regulation, the procurement of goods/services must use the public auction method, but the Regional Apparatus Work Unit does it independently. Deviations have occurred, but after an investigative audit, it turns out that the goods are in accordance with specifications and there is no high price, so there is no state financial loss.

During an investigative audit of the calculation of state financial losses in cases of corruption, the Auditor needs an appropriate calculation method to be able to calculate the amount of state financial losses that have occurred. The use of the method of calculating state financial losses is determined based on audit evidence that supports the disclosure of the chronology of facts and the occurrence of state expenditures.

The method of calculating financial losses cannot be generalized from one case to another. In terms of the method of calculating state financial losses, it depends on the nature of the case, the judgment of the Auditor itself and the criteria used. So do not be surprised if there is a case of the same corruption, several examiners have different results of calculating state financial losses.

The method of calculating state financial losses basically varies according to the modus operandi of irregularities in corruption. Theodorus M. Tuanakotta in Calculating State Financial Losses in Corruption Crimes discusses several patterns of calculating state losses. Each calculation pattern is given a common name for ease of mention in the following discussion:

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17 Elucidation of Article 32 paragraph (1): in fact there has been a state financial loss is a state financial loss whose amount can be calculated based on the findings of the authorized agency or appointed public accountant.
18 Article 1 number 1 of Law Number 17 of 2003 concerning State Finance. The scope of state finances is all rights and obligations of the state that can be valued in money, as well as everything in the form of money or goods that can be used as state property in connection with the implementation of these rights and obligations.
19 https://inspektoratbekasikota.wordpress.com/2016/04/30/menghitung-kerugian-keuangan-negara

1. Total Loss (Total Loss)

   The total loss is calculated from the total amount of money paid/expended by the state for not getting a reward/achievement equal to the amount of the expenditure. Total loss calculation method for calculating state financial losses in cases of fictitious activities and goods/services that cannot be used at all. In this method, the entire amount paid is declared a state financial loss. For example, a high-ranking official in a Ministry approves the purchase of components (spare parts) for machinery and heavy equipment from other countries. These machines and heavy equipment, either in a built-up state or in a decomposed state, are no longer produced in the exporting country. No other factory in the world produces machinery and heavy equipment or spare parts that can be used as a substitute for imported components. This crime involved several high-ranking Indonesian officials, both at home and abroad. The total expenditure for this purchase reached trillions of rupiah. All expenditures are state financial losses. The Defense Team tried to use the argument that the component (read: junk) still has value as scrap metal. This argument is rejected, because the cost of scrapping these spare parts and transporting them to the nearest steel mill is very expensive (salvaging cost). This method is also applied to state revenues that are not deposited, either partially or wholly. The portion not deposited is a total loss. Some conditions when the total loss method can be applied:[20]

   a. Procurement of fictitious goods/services;

   b. fictitious activities;

   c. Fictitious/unpaid honors;

   d. The goods/services received are not in accordance with the contract specifications so that they cannot be used or utilized.

2. Total Loss With Adjustment

   The method of calculating state financial losses is (Total Loss + Adjustment). This adjustment is necessary if the purchased item is to be destroyed and its destruction is costly. Chemicals to be destroyed must be handled in a certain way and are expensive. State financial losses are not only in the form of expenditure on procurement of goods, but also the cost of destroying or getting rid of them.

3. Net Loss

   The net loss method is used in the case of procurement of goods/services when there is a shortage of work volume. In this case, the partner is only entitled to receive a payment in the amount of achievement to the state in accordance with Government Regulation Number 16 of 2018 Procurement of Government Goods/Services.

4. Reasonable Price

   The fair price method is used if there is a mark-up in the procurement of goods/services (expensive prices). Mark-up cases are very common in the process of procuring goods/services so that partners get greater profits. Mark-up indications are usually seen since the procurement planning process, namely in making their own estimated prices. Calculating state financial losses from mark-up cases comparing the price in the contract with the fair market price. A fair market price can be obtained with the price of similar goods in the same year and under the same conditions. When it is difficult to find the price of the item on the market, the prices issued by government agencies such as the Central Statistics Agency, the Public Works Service and other competent sources can be used.

5. Cost

   In addition to the calculation based on the apples-to-apples comparison approach, there are two types of comparison prices that we want to discuss, namely the calculation of the cost of goods. The cost of goods method is used to calculate the principal loss or principal value in cases of procedural deviations in the distribution of government bank loans. The cost of banking credit means the principal when the money is liquidated from state finances. Usually the deviation is in the form of credit that is not eligible to be liquidated or used not according to its designation. Interest that has been paid or even paid does not reduce state financial losses. However, if the actual interest has been paid but not included in the state treasury, then the interest will increase the state's financial losses.

6. Opportunity Cost

   The fair price method can be applied in the procurement of goods, disposal of goods through sale, and disposal of goods through exchange. In the transaction, the question is what is the fair price. In the opportunity cost calculation method, the question is What is the best alternative in a decision. For example, a state institution must make a decision about an asset, the first question that must be answered is with the existing conditions, what is the best alternative, whether to sell the asset, rent it out, exchange it, or hold on (in the sense of doing nothing for a while), and take advantage of it in the future if the situation has changed (with established objective criteria).[21] This opportunity cost method is interesting, because it can also be used to assess whether the decision maker has considered various alternatives, and whether the best alternative is taken.

7. Interest (Interest)

   In civil law, interest is an important element, in terms of losses (konsten, schaden en interessen).

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20 https://inspektoratbekasikota.wordpress.com/2016/04/30/menghitung-kerugian-keuangan-negara
21 *Ibid.*

Interest is an important element of state financial losses, especially (but not limited to) financial transactions such as in the placement of assets. The actors generally understand the concept of the time value of money. In practice, interest is not stipulated as an element of state financial loss in corruption. Fines are not intended to recover losses due to corruption. As a discourse, interest needs to be included in the calculation of state financial losses. In civil disputes, interest losses are calculated based on the period (period) and the applicable interest rate.

The amount of state financial losses in a corruption case must be calculated using an appropriate and accountable method. Auditor's understanding and experience in conducting investigative audits/calculation of state financial losses is required in determining the appropriate method to calculate the amount of state financial losses. When carrying out an investigative audit/calculation of state financial losses, it is not possible to calculate state financial losses if the evidence obtained is not competent, sufficient and relevant.

CLOSING

The legal regulation of criminal acts of corruption regulates the formulation of offenses for criminal acts of corruption, one of which is the loss of state finances or the country's economy as stated in Article 2 and Article 3 of the Law on the Eradication of Criminal Acts of Corruption. In calculating state financial losses on audited cases by performing: identification of irregularities that occur, identification of transactions, identification, collection, verification, and analysis of evidence, and calculating the amount of state financial losses. The method of calculating state financial losses is basically very diverse according to the modus operandi of corruption cases, including the total loss method, total loss with adjustments, net loss, fair price, cost of goods, opportunity cost. opportunity cost), and interest.

REFERENCES

Budiman Slamet, *Metode Penghitungan Kerugian Keuangan Negara Dalam Audit Investigatif*, Makalah pada Widyaiswara Madya Pusdiklatwas Badan Pengawasan Keuangan dan Pembangunan di Bogor, 2013.

Chaerudin, dkk. *Strategi Pencegahan dan Penegakan Hukum Tindak Pidana Korupsi,* Refika Aditama, Bandung, 2008.

Deputi Bidang Investigasi Bagian Proyek Penyuluhan Strategi Pencegahan dan Penanggulangan Korupsi, *Peran Asosiasi Pengusaha Indonesia Dalam Mencegah dan Menanggulangi Korupsi*, Badan Pengawasan Keuangan dan Pembangunan, Jakarta, 2003.

--------, *Petunjuk Pelaksanaan Pemeriksaan Khusus Kasus Penyimpangan Yang Berindikasi Merugikan Keuangan/Kekayaan Negara dan/atau Perekonomian Negara*, Badan Pengawasan Keuangan dan Pembangunan, Jakarta, 2001.

Eddy Mulyadi Soepardi, *Memahami Unsur Kerugian Keuangan Negara sebagai Salah Satu Unsur Tindak Pidana Korupsi*, Kuliah Umum pada Universitas Pakuan Bogor,24 Januari 2009.

Elwi Daniel, *Korupsi, Konsep, Tindak Pidana dan Pemberantasannya,* Raja Grafindo Persada, Jakarta, 2012.

Emerson Yuntho, *Penerapan Unsur Merugikan Keuangan Negara Dalam Delik Tindak Pidana Korupsi*, Indonesian Corruption Watch - Yayasan Lembaga Bantuan Hukum Indonesia - Lembaga Bantuan Hukum Semarang, Jakarta, 2014.

Hans Otto Sano, et.al., *Hak Asasi Manusia dan Good Governance, Membangun Suatu Ketertiban,* Departemen Hukum dan Hak Asasi Manusia, Jakarta, 2003.

Harkristuti Harkrisnowo, *Korupsi, Konspirasi dan Keadilan di Indonesia,* Jurnal Dictum LeIP, Edisi I, Lentera Hati, Jakarta, 2002

Leo Nugroho, *Mengaji Ulang keberadaan Unsur Merugikan Keuangan Negara dalam Delik Tindak Pidana Korupsi*. Focus Group Discussion, 17 September 2013.

Lilik Mulyadi, *Tindak Pidana Korupsi di Indonesia, Normatif, Teoritis, Praktik dan Masalahnya*, Alumni, Bandung, 2007

---------, *Tindak Pidana Korupsi (Tinjauan Khusus Terhadap Proses Penyidikan, Penuntutan, Peradilan*

Serta Upaya Hukumnya Menurut Undang-Undang Nomor 31 Tahun 1999), Citra Aditya Bakti, Bandung, 2000.

M. Achsin, *Deteksi Fraud & Audit Investigatif*, Paparan pada Fakultas Ekonomi dan Bisnis Universitas Ma Chung, Malang, 19 Maret 2016.

Muchtar Lubis dan James C Scoot, *Bunga Rampai Korupsi*, LP3ES, Jakarta, 1988

Nashriana, *Asset Recovery Dalam Tindak Pidana Korupsi : Upaya Pengembalian Kerugian Keuangan Negara*, Fakultas Hukum Universitas Brawijaya, Tanpa Tahun.

Neni Sri Imaniyati, *Pengaruh Paradigma Positivisme Terhadap Teori Hukum dan Perkembangannya,* Jurnal Mimbar Volume XIX Nomor 3 Juli – Desember 2003

Ridwan, *Kebijakan Penegakan Hukum Pidana dalam Pemberantasan Tindak Pidana Korupsi di Indonesia*, Jurnal Jure Humano, Volume1 Nomor 1 Tahun 2009.

R. Wiyono, *Pembayahasan Undang-Undang Tindak Pidana Korupsi,* Sinar Grafika, Jakarta, 2006

Shvoong, *Pengertian Korupsi dan Tindak Pidana*, http://id.shvoong.com/law-and-politics/law/2027081-pengertian-korupsi-dan-tindak-pidana.

Sudarto, *Kapita Selekta Hukum Pidana*, Bandung, Alumni, 1991.

Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, 1996.