



The Authority of the Prosecutor's Office in Determining the Institution for Calculating State Financial Losses as Part of the Enforcement of Corruption Laws

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Abstract

Prosecutorial Authority in Determining State Financial Loss Calculation Institutions as Part of Corruption Law Enforcement, supervised by Abdul Wahid and H. Hamdan Hi. Rampadio. One of the very basic elements in the criminal act of corruption is the loss of the State. In reality, the determination of State losses is carried out by different agencies so that it is different, the problem in this paper is what is the attitude of the Prosecutor in investigating corruption criminal cases related to his authority to determine the state financial loss calculation institution and how is the role of the Prosecutor's Office as the Public Prosecutor in determining the state financial loss calculation institution Based on the results of the study, it can be seen that the Prosecutor is in the investigation stage based on its authority to determine the calculation of state financial losses if the case needs an in-depth audit, the Prosecutor's Office coordinates with the CPC to present to determine state losses, if the case is simple and the losses are real and can be determined then in accordance with its authority the determination of the value of state losses is carried out by the Prosecutor's Office itself and the role of the Public Prosecutor (JPU) in proving corruption crimes at the evidentiary stage of the elements of "harming state finances" JPU cooperate with relevant agencies that have expertise in financial audit matters, namely BPK or BPKP, where the two agencies both have auditors who have expertise in conducting investigative audits and calculating financial problems. In practice, law enforcement usually asks for help or cooperates with the BPKP in auditing the calculation of state financial losses considering that the audit carried out by the BPKP is faster and does not take a long time if the audit is requested to the CPC. The JPU sought to prove and present the auditor as an Expert Witness and the results of the calculations as evidence of the Letter. It is recommended that in the future in the Law on the Prosecutor's Office related to the duties and authorities of the Prosecutor's Office as an Investigator and Public Prosecutor, especially in handling corruption cases, be given the authority to calculate and determine state financial losses as long as they are easy to do or calculated to realize a fast, simple and low-cost trial so that legal certainty is achieved.

Keywords: *Prosecutor's Office; State Losses; Corruption*

Introduction

The role of government officials in Indonesia in law development efforts is the responsibility of Law Enforcement agencies, namely the Police, Prosecutors, the Supreme Court (Court) and the Ministry of Law and Human Rights. Because the Prosecutor's Office of the Republic of Indonesia is one of the Law Enforcement Officers and as a force in the superstructure of law in Indonesia. The Prosecutor's Office is a government agency whose function is related to the power of the Judiciary that exercises state power in the field of prosecution as well as other authorities under the Law.¹ In Indonesia, the term "Jaksa" has been used for centuries which comes from the Sanskrit *adhyaksa*. This designation is used for the title of the highest Pastor in the Hindu Kingdoms in Java and is mainly used for the title of the highest royal Judge.²

One of the duties and authorities of the prosecutor's office is related to its function, namely as the implementation of the prosecutor's function, namely enforcing the law against corruption crimes, namely investigation and prosecution. Based on the provisions of Article 30 of Law No. 16 of 2004 concerning the Prosecutor's Office, it is to collect and find evidence related to a criminal act. Therefore, in calculating state losses, if referring to an examination process on corruption crimes. Regarding this matter, the function of the Prosecutor in handling State losses for corruption crimes must also be in accordance with the provisions of Article 32 of Law No. 20 of 2001 concerning the Eradication of Corruption Crimes which states that State losses can be determined based on the calculation of competent institutions in their fields and appointed Public Accountants.

In the case of corruption crimes before they are determined as cases that harm the State, they must go through calculations. The calculation of state financial losses is not only a recording approach, plus it uses a calculator, or other calculation tools, because it contains the terminology "losses there is an element of Unlawful Acts that result in losses". The approach to determining the financial losses of the State must be carried out through the activities of the "examination", since in the examination contains the embodiment of independence, objectivity and professionalism based on the standards of examination in carrying out a process of activity.

The existence of elements of state losses is an entry point and one of the main keys to the success of efforts to seize and return assets obtained from corruption in Indonesia. The existence of state financial losses or the state economy is one of the elements of corruption crimes as regulated in Article 2 and Article 3 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes.

Article 2 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes which confirms that:

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 punished with imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp200,000,000.00 (two hundred million rupiah) and a maximum of Rp1,000,000,000, 00 (one billion rupiah).

Furthermore, the provisions of Article 3 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes affirm that:

Any person who for the purpose of benefiting himself or others or a corporation, abuses the authority, opportunity or means available to him because of his position or position that can harm the

¹ UU No. 11 Tahun 2021 Tentang Perubahan Atas UU No. 16 Tahun 2004 Tentang Kejaksaan Pasal 1 Ayat (1).

² Andi Hamzah. 1995. *Jaksa di berbagai Negara Peranan dan Kedudukannya*. Jakarta : Sinar Grafika, hlm.3.

state's finances or the economy of the State, shall be punished with imprisonment for life or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and a fine of at least Rp50,000,000,00 (fifty million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah).

The existence of an element of "harming state finances" in corruption crimes, in practice often raises problems that can affect the process of handling corruption cases. Starting from the multi-interpretation of the definition of State finances and State losses, the authority to calculate State losses, the slow process of calculating State losses which are considered to hinder the handling of corruption cases and to the inadequacy of substitute money in corruption cases.³

The provisions of Articles 2 and 3 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes which contain the words, "which can harm the State's finances or the State's economy". This element is important to determine whether or not corruption perpetrators can be convicted. Normatively, if all the elements in Article 2 and Article 3 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes are proven, then the perpetrator can be sentenced to imprisonment or substitute money. Meanwhile, if one of the elements is not proven, it can have an impact on the release of corruption perpetrators from legal entanglements (either because they are stopped by the investigation or released by the trial judge).⁴

Article 17 jo Article 18 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes confirms that in addition to being able to be sentenced to the main crime, defendants in corruption cases can be sentenced to additional crimes, one of the forms is the payment of substitute money. The criminal payment of substitute money is a consequence of the consequences of corruption crimes that "can harm the State's finances or the State's economy", so to recover the loss, juridical means are needed, namely in the form of payment of money to replace state losses, if it is not reimbursed, the corruptor's property will be seized and auctioned.

The problem is in judicial practice, as stated in the Explanation of Article 32 Paragraph (2) of the Tipikor Law by observing the provisions contained in the Constitutional Court Decision Number 31 / PUU-X / 2012 and Supreme Court Circular Letter (SEMA) Number 4 of 2016 has expanded or expanded the number of agencies authorized to calculate state financial losses in Tipikor cases, namely the Financial Audit Agency (BPK), The Financial and Development Supervisory Agency (BPKP), Inspectorate, Investigators, appointed Public Accountants, Regional Apparatus Work Units (SKPD) and other parties (including from companies) who can show material truth in calculating State financial losses. Based on these problems in the preparation of this thesis, the author limits the attitude of the Prosecutor in investigating corruption criminal cases related to his authority to determine the institution for calculating state financial losses and the role of the Prosecutor's Office as the Public Prosecutor in determining the institution for calculating state financial losses as part of law enforcement of corruption crimes.

That as a form of uniformity of rules for Law Enforcement Officers (APH), especially the Investigating Prosecutor and the Public Prosecutor, who are required to prove the existence of elements of state financial losses in a real and certain manner. Therefore, the proof of state financial losses or the real state economy (actual loss) should be emphasized using the State Financial Loss Calculation (PKKN) method by the authorized institution. Therefore, the author considers it important to conduct research with the issue of Corruption Crime Law with the title "Prosecutorial Authority in Determining State Financial Loss Calculation Institutions as Part of Law Enforcement of Corruption Crimes"

³ Emerson Yuntho, Illian Deta Arta Sari, Jeremiah Limbong, Ridwan Bakar, Firdaus Ilyas. 2014. *Penerapan Unsur Merugikan Keuangan Negara dalam Delik Tindak Pidana Korupsi*, Policy Paper, Indonesia Corruption Watch (ICW), Yayasan Lembaga Bantuan Hukum Indonesia Lembaga Bantuan Hukum Semarang. hlm.13.

⁴ *Ibid.*, hlm.25.

Based on the background that the author has explained above, the Author focuses the formulation of the problem in two so as not to be too broad in the discussion, namely First, What is the attitude of the Prosecutor in investigating corruption cases related to his authority to determine the institution for calculating state financial losses as part of law enforcement; Second, How is the role of the Prosecutor's Office as the Public Prosecutor in determining the institution for calculating state financial losses as part of enforcing the law on corruption crimes.

Research Methods

This research is a normative law research, which is a type of research that describes the implementation of the authority of the Prosecutor's Office of the Republic of Indonesia in determining the occurrence of State losses as one of the elements in corruption crimes so that they can carry out the law enforcement process for corruption crimes. This type is more appropriately used in accordance with the formulation of the problem according to the provisions of the Invitation-Regulation. The main point of study is law which is conceptualized as a norm or rule of law that applies in society.⁵

Results and Discussions

The Prosecutor's Attitude in Investigating Corruption Cases Related to His Authority to Determine the State Financial Loss Calculation Institution as Part of Law Enforcement

The position of the Prosecutor's Office will be very influential in implementing its functions, roles and authorities, namely how the Prosecutor's Office carries out its roles and functions in accordance with the provisions of the Invitation, especially in Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Prosecutor's Office, especially those related to law enforcement. In addition, in the law enforcement process, the Prosecutor's Office must be independent, that is, independent of all forms of intervention.

In this case, institutional independence is external independence, which has a personal independence impact on the Prosecutor's Office apparatus in carrying out its duties and authorities. The Prosecutor's Office as an institution that controls the implementation of the duties and authorities of the prosecutor's office in the area of its law has the authority to conduct investigations, investigations and prosecutions of corruption crimes, which include corruption crimes.⁶

One of the duties and authorities of the Prosecutor's Office is related to its function, namely as the implementation of the functions of the Prosecutor's Office when referring to the provisions of Article 30 of Law No. 16 of 2004 concerning the Prosecutor's Office is to collect and find evidence related to a criminal act. Therefore, in calculating state losses, if referring to an examination process on corruption crimes. Regarding this matter, the function of the Prosecutor in handling State losses for corruption crimes must also be in accordance with the provisions of Article 32 of Law No. 20 of 2001 concerning the Eradication of Corruption Crimes which states that State losses can be determined based on the calculation of competent institutions in their fields and appointed Public Accountants.

In a case that has indications of corruption, before it is declared that there is a "state loss", it is necessary to go through the judicial process. Authorized institutions related to the judicial process of corruption crimes, according to their duties and functions consist of: the Police, the Prosecutor's Office,

⁵ Abdulkadir Muhammad. 2004. *Hukum dan Penelitian Hukum*. Cet. 1. Bandung : PT Citra Aditya Bakti, hlm.52.

⁶ Pasal 30 Ayat (1) huruf d UU No. 16 Tahun 2004 Tentang Kejaksaan sebagai berikut : "Di bidang pidana, kejaksaan mempunyai tugas dan wewenang melakukan Penyidikan terhadap tindak pidana tertentu" Berdasarkan Pasal tersebut maka tindak pidana korupsi adalah tindak pidana khusus dalam arti bahwa tindak pidana korupsi mempunyai ketentuan khusus acara pidana. Dengan demikian, Lembaga Kejaksaan berwenang melakukan Penyidikan.

the Corruption Eradication Commission (KPK), the Corruption Crimes Court, the High Court and the Supreme Court.

For the process of returning state financial losses due to perpetrators of corruption crimes, it is carried out through 3 (three) approaches, namely ⁷ :

1. Civil Path

This approach through civil channels can be seen in the provisions of Article 32 Paragraph (1) of the Typo law stipulating that in the event that the Investigator finds and argues that one or more elements of the corruption crime do not have enough evidence, while in fact there has been a financial loss to the State, the Investigator immediately submits the case file of the results of the Investigation to the State Attorney for a civil lawsuit to be filed or handed over to the aggrieved agency for filed a lawsuit. Article 33 of the Typo law stipulates that in the event that the suspect dies during the investigation, while there has been a real financial loss to the State, the Investigator immediately submits the case file from the Investigation to the State Attorney or is handed over to the aggrieved agency for a civil lawsuit to his heirs.

Furthermore, Article 38 C of the Tipikor Law stipulates that if after a court decision has obtained permanent legal force (*Inkrach Van Gewijde*), it is known that there is still property belonging to the convict who is suspected or reasonably suspected to also come from a corruption crime that has not been subject to deprivation for the State to be able to file a civil lawsuit against the convict and or his heirs. The purpose of regulating civil lawsuits is intended to meet the public's sense of justice for perpetrators of corruption crimes that hide the proceeds of corruption, hence the regulation of civil suits to maximize the financial returns of the State. Civil suits need to be placed as the main legal remedy in addition to criminal remedies, not merely facultative or complementary to the criminal law, as stipulated in the Act.

2. Criminal Pathways

In addition, in the case of Confiscation, it is regulated in Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), namely in Article 38 which regulates confiscation only carried out by investigators with the permission of the Chairman of the local District Court as specified in Paragraph (1), with exceptions as stipulated in Paragraph (2) without prejudice to the provisions of Paragraph (1); Article 39 on confiscatable objects; Article 42 on the authority of the Investigator to order the person in possession of the seized object, to hand over the object for the purpose of the Examination; and Article 273 Subsection (3) which provides that if the judgment of the court also provides that the evidence seized for the State, in addition to the exceptions provided for in Article 46, the Prosecutor seeks the object to the State auction office within three months for auction sale, then the proceeds are entered into the State treasury for and on behalf of the Prosecutor.

3. Dispossession Path

In the case of deprivation due to perpetrators of corruption crimes, the provisions are regulated in Article 38 Paragraph (5) of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes which stipulates that in the event that the Defendant dies before the verdict is handed down and there is strong enough evidence that the person concerned has committed a corruption crime, The law on the prosecution of the Public Prosecutor establishes the seizure of goods that have been confiscated. Article 38 Paragraph (6) of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes which stipulates that the determination of deprivation as referred to in Paragraph (5) cannot be appealed.

While Article 38B Paragraph (2) of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes which stipulates that in the event that the Defendant

⁷ Mustaghfirin, *Tinjauan Yuridis Terhadap Implementasi Pidana Korupsi Dalam Upaya Mengembalikan Kerugian Keuangan Negara*, Jurnal Pembaharuan Hukum Volume II No. 1 Januari - April, Universitas Islam Sultan Agung, Semarang, 2015.

cannot prove that property as referred to in Subsection (1) was acquired not because of a criminal offence of corruption, the property was deemed to have been acquired also from the crime of corruption and the Magistrate was authorized to decide that all or part of the property was seized for the State.

In relation to determining state financial losses in corruption cases, if the Prosecutor's Office in handling corruption crimes is already at the investigation stage, it usually requires the assistance of the CPC or BPKP. The form of BPK or BPKP assistance is to calculate losses, including providing inputs in disclosing additional facts that may exist. If in the Investigation stage there are enough foundations and strong reasons (meet the criteria), this can be upgraded to the Prosecution stage, so that the completion of the calculation of state financial losses is better. Furthermore, if the case has been transferred to the court, then in time the CPC or BPKP team will be asked to become an Expert Witness / Expert testifier at the trial.

In the regulations of the Invitation Regulation in Indonesia, it is not clearly regulated about a necessity to calculate state financial losses made by the CPC or BPKP or other agencies. However, investigators are given the right to ask for assistance from the CPC or BPKP or other agencies to calculate state financial losses due to alleged criminal acts. Likewise, in practice so far, the CPC or BPKP or other agencies calculate state financial losses that are suspected to be due to criminal acts, always based on the request of the Investigator.

As for the implementation of the function of the Prosecutor's Office in the calculation of State losses in corruption crimes, namely: the results of the Investigation and the results of the Investigation, that in practice the determination of State losses is not required to be done by the Auditor but can be done by the Prosecutor himself as long as the losses are clear, real and not convoluted with easy proof. Other efforts made by prosecutors to restore the wealth of the State, using the functions described in the Act, namely as Law Enforcement, Legal Aid, Legal Services. The scope of activities carried out by the Prosecutor in restoring state assets, namely through 2 (two) processes: inside the court (litigation) and outside the court (non-litigation).

As for the implementation of the function of the Prosecutor's Office in the calculation of State losses in corruption crimes, namely: the results of the investigation and the results of the investigation, that in practice the determination of State losses is not required to be carried out by the Auditor but can be done by the Prosecutor himself as long as the losses are clear, real and not convoluted with easy proof. The Prosecutor's Office for the determination of State losses by the previous needs to be seen first the case, if in practice the corruption case is simple, then sometimes the loss of the State can be calculated and determined directly by the Prosecutor, but if the case is complex then the Prosecutor can coordinate with the CPC, BPKP, Inspectorate / Task Force.

Based on the foregoing, it can be seen that although it has a constitutional basis in determining the number of losses suffered by the State, the CPC in practice is not currently the only / sole institution in assessing the state's finances. The establishment of the "Financial and Development Supervisory Agency" abbreviated as BPKP makes the existence of the CPC today no longer "single" in conducting state financial examinations because the duties and functions of the BPKP resemble the CPC. The formation of the BPKP makes it part of the Government Internal Supervisory Apparatus (APIP) so that it can perform the same task as the BPK, namely calculating the amount of state financial losses but in the context of internal government only.

In determining State losses, the Prosecutor's Office bases on the state's financial loss calculation report. It can be in the form of an Examination Result Report (LHP) as an audit report from the Financial Audit Agency (BPK) or a State Financial Loss Calculation Report (LHPKKN) with written evidence or auditor's statement before the trial under oath (Expert statement).

LHPKKN (Report on the Results of Calculating State Financial Losses) issued by the BPKP is evidence of a Letter in Court (the result of an Investigative examination by the competent authority) in addition to the expert's statement before the court regarding the "conclusion of State losses" to the case being heard.⁸

The Criminal Procedure Code has strictly stipulated, that it is important for investigations and investigations to find and collect evidence that by that evidence makes light of the criminal act that occurred and in order to find the Suspect who because of his actions or circumstances based on preliminary evidence should be suspected of being the perpetrator of a criminal act, and against his Suspect to be prosecuted, examined and tried at the trial court as a Defendant. If the investigation process for corruption crimes related to state financial losses is carried out in accordance with the Criminal Procedure Code and there is an Expert Statement that calculates state financial losses whose calculation results are contained in the examination result report and there is sufficient evidence, then against the suspect for the purposes of investigation or prosecution and or justice can be arrested, and even detention of suspects who are strongly suspected of committing criminal acts based on sufficient evidence.

The preliminary evidence, sufficient evidence or sufficient evidence referred to by the Criminal Procedure Code is based on valid evidence, because if the provisions are not met with the reasons for arrest in the absence of sufficient evidence and detention without sufficient evidence, then this has implications for the submission of a Pretrial request by the Suspect, his family or attorney about the validity or not of the arrest, detention, termination of investigation or termination of prosecution. Likewise, the termination of the Investigation because there is not enough evidence or the event turns out not to be a criminal act or the Investigation is stopped in favor of the Law.

Such is the importance of expert testimony evidence that conducts an examination of the calculation of state financial losses as well as evidence of the report of the results of the examination carried out by the Expert, in the process of Investigation and Prosecution of corruption criminal cases, so that in the examination of the trial the expert testimony evidence and evidence The letter is a valid evidence tool used to prove the guilt of the Suspect / Defendant which is indisputable the facts of the Law nor the facts of his trial.

Similarly, the authority of the agency to determine the calculation of State losses, should guide the calculation of State losses by the BPK RI both carried out by the BPK and other agencies for and on behalf of the BPK RI against the findings and for examinations carried out with certain objectives where the expert meets the requirements set by the BPK and determined by the BPK RI. In practice, the law enforcement process against corruption crimes, which relates to the existence of several agencies that determine or calculate state losses, it is very possible that each agency that calculates losses incurred by the State using calculation techniques is not the same and in the end, the reports provided are also different so that it can affect the performance of law enforcement agencies in dealing with corruption allegations.

In order to handle corruption crimes, especially regarding the calculation and determination of state financial losses, the Prosecutor's Office is given standard guidelines issued by the Attorney General's Office in determining the boundaries of a corruption crime case whose state financial losses can be calculated by the Prosecutor's Office, so that the Prosecutor's Office in carrying out its duties both as an investigator and public prosecutor in handling corruption crimes can be effective and efficient and the achievement of a fast, simple and low-cost judicial process.

⁸ R. Bayu Ferdian, dkk, *Penetapan Kerugian Negara Dalam Perkara Tindak Pidana Korupsi*, dalam Jurnal Syiah Kuala Law Journal, Vol. II, No. 3 Desember 2018, hlm.332.

The determination of state losses is the territory of the Judge's authority in the trial. The determination is carried out with 2 (two) approaches, namely through the consideration of "the value of state losses" and "additional criminal returns of State losses". Unlike the case with the calculation of State losses, which is a process of calculating State financial losses carried out by agencies in the investigation to obtain conclusions of State losses contained in the indictment clause of the Public Prosecutor (JPU).⁹

The Role of the Prosecutor's Office as a Public Prosecutor in Determining the State Financial Loss Calculation Institution as Part of Law Enforcement of Corruption Crimes

The authority of the prosecutor in prosecution is regulated in Law Number 8 of 1981 concerning the Criminal Procedure Law (KUHP) Article 14 which confirms that receiving and examining investigation case files from investigators or auxiliary investigators, holding pre-prosecutions and if there are deficiencies in the investigation, the Public Prosecutor gives instructions in order to improve the investigation from the Investigator, then the Public Prosecutor and after it is considered that the results of the Investigator's examination are complete, the Public Prosecutor make a letter of indictment and transfer the case to the Court, after transferring the case to the court, the Public Prosecutor gives notice to the Defendant of the provisions of the day and time the case is heard accompanied by a summons, both to the Defendant and to the Witness, to come to the appointed hearing. After the trial the Public Prosecutor reads out the indictment that the Prosecutor usually does is a charge of subsidiarity, then continued with the Examination and after the examination is declared complete, the Public Prosecutor files a Criminal Charge.¹⁰

Article 1 Paragraph (1) of Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Prosecutor's Office that the Prosecutor's Office is a government agency whose function is related to the Judicial Power that exercises State power in the field of Prosecution and other authorities based on the Law, whose duties and authorities¹¹ conducting prosecutions, carrying out the determination of judges and court decisions that have obtained permanent legal force, supervising the implementation of conditional criminal judgments, supervisory criminal judgments and conditional release decisions, conducting investigations into certain criminal acts under the Law, completing certain case files and for that reason, can conduct additional examinations before being delegated to the court which in its implementation is coordinated with Investigators.

The settlement of a criminal case is a process that runs continuously, starting when there is an allegation that an act of a criminal nature has occurred until a court decision is carried out. Prosecution is one of the parts or stages of solving a criminal case. All actions of the Public Prosecutor shall be based on the Minutes of Inquest (BAP) which have been fully prepared by the Investigator.

Both the Prosecutor's Office and the Police, their roles, duties and authorities have been regulated in the Criminal Procedure Code, where these two institutions do not have the duty and authority to calculate state financial losses for actions as referred to in Article 2 Paragraph (1) or Article 3 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes even to be examined as Experts who provide Expert information regarding financial losses. Country.

Law Enforcement that is currently being carried out by the Government in an effort to uphold the rule of law related to Article 2 Paragraph (1) or Article 3 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes in the case of unlawfully or abusing the authority, opportunity or means available to him because of his position or position, commit acts of

⁹ R. Bayu Ferdian, dkk, *op.cit.*, hlm.323.

¹⁰ Pasal 182 Ayat (1) huruf a KUHP dalam <https://dok.com/document/ydek88lq-kewenangan-kejaksaan-terhadap-tindak-pidana-korupsi-kerugian-keuangan.html> diakses tanggal 13 Agustus 2022.

¹¹ Pasal 30 UU No. 16 Tahun 2004 Tentang Kejaksaan jo. UU No. 11 Tahun 2021 Tentang Perubahan Atas UU No. 16 Tahun 2004 Tentang Kejaksaan.

enrichment or benefit to oneself or others or a corporation that may harm the State's finances or the State's economy.

Thus, the calculation and proof of the existence of state financial losses is very important, in addition to ensnaring corruption perpetrators as well as to return the losses that have been caused by these acts of corruption to the State treasury. The calculation of state financial losses is the basis for the Prosecutor in his indictment to calculate how much State Financial Losses were lost as a result of the defendant's actions in corruption cases. Similarly, for the Judge in determining the amount of State losses that the Defendant must return.

Thus, the calculation and proof of the existence of state financial losses is very important, in addition to ensnaring corruption perpetrators as well as to return the losses that have been caused by these acts of corruption to the State treasury. The calculation of state financial losses is the basis for the Prosecutor in his indictment to calculate how much State Financial Losses were lost as a result of the defendant's actions in corruption cases. Similarly, for the Judge in determining the amount of State losses that the Defendant must return.¹²

Related to proving the element of "detrimental to state finances" Law Enforcement usually asks agencies for help or cooperates with relevant agencies that have expertise in financial audit matters, namely the CPC or BPKP, where the two agencies both have Auditors who have expertise in conducting Investigative Audits and calculating financial problems. In its paraktek, Law Enforcement usually asks for help or cooperates with the BPKP in auditing the calculation of state financial losses considering that the audit carried out by the BPKP is faster and does not take a long time if the audit is requested to the CPC.

From the above corruption cases, which concern the financial losses of the State or the economy of the State, the current reality of the financial losses of the State has not been proven by a result of the calculation of the State's financial losses carried out by the competent authority. The calculation of the State's losses should be absolutely first substantiated and determined by the competent authority. Not only is it just an Investigative Audit Report or Examination Result Report, nor calculations of State losses carried out by incompetent parties or agencies that are used as evidence for Letters or Expert Information evidence from unauthorized agencies that provide expert information at the trial used to prove State financial losses.

The return of State Financial losses (asset recovery) in the Corruption Crime is very important. Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes does not provide a clear and unequivocal formulation of so-called state financial losses. In the Explanation of Article 32 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes, it is only stated "that what is meant by state financial losses is losses that can be calculated in amount based on the findings of authorized agencies or appointed Public Accountants, namely BPK and BPKP.

The result of calculating the amount of State financial losses, both from the CPC and the PBKP in the Prosecutor's indictment, becomes dilemmatic for the Judge in determining which institution is authorized to calculate the State's losses which then becomes a reference for the Judge through consideration of the "value of the State's financial losses" and "additional criminal returns of State financial losses".

The calculation of the financial losses of the State is also necessary to determine the amount of surrogate money that the Convict must pay. Because in addition to being able to be sentenced to the main and additional crimes in the Criminal Code, corruption convicts can also be sentenced to additional

¹² Pasal 184 dan Pasal 183 KUHAP.

crimes in the form of payment of substitute money as stipulated in Article 18 Paragraph (1) letter b of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes.

With a report from the Auditor or an institution authorized to declare the value of state financial losses, the report is then a valid evidence and is considered by the Judge at the trial of corruption cases. So that it becomes the basis for the judge in giving a verdict or verdict. because in determining the magnitude of the loss the State is based on facts and concrete evidence in the trial not bound to the findings of the CPC or other institutions

Investigative examination report in which there are state financial losses with the amount of the value of audit results both internal prosecutors, CPC and BPKP as well as the conclusion "proven to be a state financial loss". In this case, the role of the Prosecutor is to present valid evidence as a judge's consideration. The most important evidence is the audit results or the value of State losses due to corruption crimes derived from agencies authorized to calculate State losses. The size of the State's losses will be one of the determining factors for the severity of the Prosecutor's demands or the judge's verdict. There are 3 (three) stages that must be passed in the process of determining state losses, namely first, determining the presence or absence of State losses; secondly, calculating the amount of the State's financial losses if they do exist and thirdly, determining the State's losses.¹³ The three series are an equally important unit.

In practice, corruption cases are generally in testing indications of state losses, the prosecutor calculates the state's own losses. In several other cases, the prosecutor presented the LHPKKN from the BPKP and only a small part of the cases was asked to calculate state losses from the CPC. In principle, whoever is the Auditor, what is certain is that the calculation is carried out to find the real value of State losses due to corruption crimes.

This could be a loophole in the state's loss calculation report being presented as invalid evidence. Because they adhere to Article 10 of Law No. 15 of 2006 concerning the Financial Audit Agency, that only the CPC has the right to declare a case there is a state loss and mention the nominal in accordance with the calculation results in the Examination Result Report (LHP).

The Prosecutor's Office in handling corruption cases sometimes presents a Report on the Results of State Loss Calculations from the two institutions, namely the BPK and BPKP, thus having an impact on the contradictory value of State losses between auditors. This can set a bad precedent and create Legal uncertainty. Not to mention that if the Prosecutor's Office calculates the value of the State's own losses, in the trial the evidence is doubtful because it is not the result of the CPC audit. Based on SEMA No. 4 of 2016, only the CPC as the only institution authorized to declare state financial losses. However, with the issuance of the Letter of the Attorney General of the Republic of Indonesia number: B-22 / A / SUJA / 02/2021 dated February 3, 2021 concerning the Determination of Suspect Status and the Authority to Calculate State Financial Losses in Corruption Crime Cases as an effort to uniformize understanding and attitudes related to the determination of suspect status and the authority to calculate state financial losses in corruption cases. Has provided guidance in the implementation of the functions of the Prosecutor's Office related to the calculation of State losses in corruption crimes, namely: the results of the Investigation and the results of the Investigation, that in practice the determination of State losses is not required to be carried out by the Auditor but can be done by the Prosecutor himself as long as the losses are clear, real and not convoluted with easy proof. The Prosecutor's Office for the determination of State losses by the previous needs to be seen first the case, if in practice the corruption case is simple, then sometimes the loss of the State can be calculated and determined directly by the Prosecutor, but if the case is complex then the Prosecutor can coordinate with the CPC, BPKP, Inspectorate / Task Force.

¹³ Theodorus M. Tuanakotta. 2009. *Menghitung Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi*. Jakarta: Penerbit Salemba Empat, hlm.43.

Conclusion

The prosecutor in the investigation stage based on his authority determines the calculation of state financial losses if the case needs an in-depth audit, the Prosecutor's Office coordinates with the CPC to present an Examination Result Report (LHP) or can also coordinate with the BPKP to present the State Financial Loss Calculation Results Report (LHPKKN) as preliminary evidence regarding the value of State losses caused by corruption crimes, if the case is simple and the loss is real and can be determined then in accordance with its authority the determination of the value of the State's loss is made by the Prosecutor himself. In the statement of the Invitation, it is not clearly stated what institution is authorized to declare the value of State losses, so that there is uncertainty when determining the institution as the State Loss Auditor of the CPC / BPKP, the two institutions have different methods and principles. The CPC and the CPC, both of which have the authority to determine the value of State losses, then in practice the Prosecutor in particular can choose one of the two, so there is no legal certainty for the agency authorized to determine state losses. The role of the Public Prosecutor in proving corruption crimes at the stage of proving the elements of "harming state finances", the Public Prosecutor cooperates with relevant agencies that have expertise in financial audit matters, namely the CPC or BPKP where the two agencies both have Auditors who have expertise in conducting Investigative Audits and calculating financial problems. In its paraktek, Law Enforcement usually asks for help or cooperates with the BPKP in auditing the calculation of state financial losses considering that the audit carried out by the BPKP is faster and does not take a long time if the audit is requested to the CPC. The Public Prosecutor sought to prove and present the Auditor as an Expert Witness and the results of the calculations as evidence of the letter.

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