



## THE ATTORNEY'S AUTHORITY IN DETERMINING STATE FINANCIAL LOSSES IN CORRUPTION CRIMES

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**Abstract:** *The Attorney General's Office has the power to objectively assess state financial losses and make a Determination. In contrast, states have the power to assess and decide upon their own financial losses due to criminal acts to corruption, BPK and BPKP are responsible. The Office of the Prosecutor only relies on the attributive authority granted by the Prosecutor's Law which requires the Public Prosecutor to conduct investigations and finalize case files, including files for determining state financial losses. The Attorney General's Office losses in state finances need not be verified by the BPK and/or BPKP or any other auditing authorities and may be determined independently are transparent, real, and not complicated, and the proof will be easy to present before the court. If, on the contrary, namely complicated, not simple, and complex, then coordinate with the BPK and/or BPKP or other auditing institutions so that figuring out how much money the state lost are submitted to the authorized institution.*

**Keywords:** *Attorney's Authority, State Financial Losses, Corruption Crimes.*

### INTRODUCTION

The state is defined as an organization in a specific area with the highest authority that is legitimate and obeyed by its people. This power is used to influence the behavior of its people (individuals and society)<sup>1</sup>, including its government. The tool used by the state to influence the behavior of its people is the law. Likewise, the state relies on the law to keep the wheels of government running. This is explicitly stated Article 1, paragraph 3 of Indonesia's 1945 Constitution declares, "Indonesia is a state based on law." A rule of law state is, thus, a nation where the structure of government is predicated on the rule of law. When a government is founded on the rule of law, its manifestation is law enforcement in Indonesia, one of which is law enforcement on corruption crimes.

Etymologically, the term "corruption" in English is derived from the Latin words "corruptus" or "corruption," which means to break or separate.<sup>2</sup> Conceptually, corruption is defined as a form of behavior that separates itself from ethics, traditional morality, law, and legal policy. Corruption can be defined as rottenness, unpleasantness, dishonesty, deceitfulness, bribery, immorality, deviation from purity, offensive and abusive utterances.<sup>3</sup> While normatively, referring to Paragraph 1 of Article 2 of Law No. 31 of 1999 to Abolish Corrupt Practices in Criminal Proceedings (Hereinafter referred to as the Law on Corruption Abolition) defines corruption as an illegal action committed by a person aimed at enriching himself, other person, or an organization that is destructive to the state's economy.<sup>4</sup>

Suppose we identify Paragraph 1 of Article 2 of the Anti-Corruption Act above in substance. Therefore, we are able to judge that what is meant by corruption is when an element "harms the state's finances or the country's economy" occurs in addition to an element against the law. In criminal law offenses, this is what is meant by material offenses. Material offenses are offenses whose formulation emphasizes prohibited consequences, put differently, the legislator prohibits inevitable

<sup>1</sup> Rahmat Ramadhani. (2020). "Peran Politik Terhadap Pembangunan Hukum Agraria Nasional". Jurnal Sosel, Vol. 1, No. 1. p. 3

<sup>2</sup> Andi Hamzah. *Delik-Delik Tersebar di Luar KUH*, (Jakarta: Pradnya Paramita, 1985). p. 4

<sup>3</sup> Andi Hamzah. *Korupsi di Indonesia, Masalah dan Pemecahannya*. (Jakarta: Gramedia Pustaka Utama, 1984). p. 7

<sup>4</sup> Lihat Pasal 2 ayat 1 Undang-Undang Pemberantasan Tindak Pidana Korupsi



consequences from occurring.<sup>5</sup> That is, the act of corruption is deemed perfected when it causes harm to the financial standing of the state or the country's economy.

Before issuing the status quo Constitutional Court Decision, corruption was seen as a formal offense. Formal offenses are offenses or actions prohibited by law that have been considered by law or which have been considered perfect or fulfilled as soon as the action is committed without requiring that there be a consequence of the action.<sup>6</sup> The meaning of formal offenses in corruption cases rests on article 2, paragraph 1, and article 3 of the Corruption Law, both of which use the term "can", where grammatically, the legislators do not require the completion/occurrence of the consequences of "harming state finances or the state economy." The word "can" means that "harm to the state's finances or the country's economy" is not required.

Most importantly, the perpetrators' actions have "opportunities" to cause losses.<sup>7</sup>

In the logic of law, changing formal offenses into material offenses is rational. Because the term "can" in the formulation of Article 2 of the Corruption Eradication Law results in losses for every person or official who is always filled with uneasy and insecure feeling in making every policy or decision, since no matter how good the choice is to the people, it always runs the danger of being labeled as corrupt. Use of the term "can" creates room for doubt, which fails to provide definite and adequate legal protection related to determining the implementation of a project has the potential to damage the state's economy despite the decision-making process being conducted with utmost care and in accordance with the law and principles of good governance.<sup>8</sup>

The determination of corruption as a material offense places efforts to recover state finances due to corruption as an essential matter. That is, what is fundamental in corruption is that what has been taken by the perpetrators must be returned to the state. It is not limited to punishing (imprisoning) the perpetrators as a deterrent. Marwan Effendy calls this "state asset recovery."<sup>9</sup> The return on state assets is significant for the Indonesian nation. The existence of adequate assets can accelerate the achievement of the ongoing national development goals in the Republic of Indonesia. Especially if you look at President Joko Widodo, who is so aggressively carrying out developments in various regions in Indonesia, starting from the construction of toll roads, dams, bridges, and so on, and returning money from corruption will undoubtedly have an impact later.

The Supreme Audit Agency (BPK) is tasked with calculating state losses in accordance with the legislation and the constitution. Law Number 15 of 2006 establishing the Supreme Audit Agency (henceforth referred to as the BPK Law) is in accordance with Articles 23E through Article 23G of the 1945 Constitution. According to Article 10, paragraphs 1 and 2 of the BPK Law, the BPK is authorized to analyze and/or estimate the total amount of state damages attributable to purposeful or negligent illegal conduct as established by BPK judgments. According to Pradnyana and Parsa, the 1945 Constitution and the BPK Law grant the BPK the authority to evaluate and/or establish the value of state losses, and as such, the BPK is an independent institution that is not part of the branches of government.

Public sector trainee. The BPKP serves as the state's internal financial watchdog, with authority set out in Presidential Decree No. 20 of 2023, entitled "Amendments to Presidential Decree No. 192 of 2014 Regarding the Financial and Development Supervisory Agency" (henceforth referred to as the

<sup>5</sup> RB Budi Prastowo. (2006). "Delik Formil/Materil, Sifat Melawan Hukum Formil/Materil dan Pertanggungjawaban Pidana Dalam Tindak Pidana Korupsi: Kajian Teori Hukum Pidana terhadap Putusan MK RI Perkara Nomor 003/PUU-IV/2006". *Jurnal Hukum Pro Justitia*, Vol. 24, No. 3. p. 214

<sup>6</sup> Indah Sari. (2019) "Unsur-Unsur Delik Materil dan Delik Formil Dalam Hukum Pidana Lingkungan". *Jurnal Ilmiah Hukum Dirgantara*, Vol. 10, No. 1. p. 65

<sup>7</sup> RB Budi Prastowo. *Op.Cit.* p. 214

<sup>8</sup> Ester Sheren Monintja. (2020). "Tinjauan Yuridis Pasal 2 dan 3 Undang-Undang Tindak Pidana Korupsi Sebagai Delik Materil Menurut Putusan Mahkamah Konstitusi Nomor 25/PUU-XIV/2016". *Jurnal Lex Crimen*, Vol. 9, No. 2. p. 98

<sup>9</sup> Aset Negara adalah harta atau kekayaan negara termasuk segala hak-hak negara yang dapat dinilai dengan uang, benda- benda lain baik yang bergerak maupun yang tidak bergerak yang dapat diformulasikan dalam bentuk Anggaran Pendapatan dan Belanja Negara (APBN) dan Anggaran Pendapatan dan Belanja Daerah (APBD), serta termasuk pula Pendapatan Negara Bukan Pajak (Lihat Marwan Effendy, *Kejaksaan Republik Indonesia, Posisi dan Fungsinya dari Perspektif Hukum*, (Jakarta: PT. Gramedia Pustaka Utama, 2005,). p.165)



"BPKP Presidential Decree"). Article 3, letter e, requires oversight of development-hindering planning and execution; an audit of price changes and claims; an investigation of irregularities that could harm state finances; a calculation of regional financial losses; expert testimony; and anti-corruption safeguards.

Trainee in the public sector. Presidential Decree No. 20 of 2023, entitled "Amendments to Presidential Decree No. 192 of 2014 Regarding the Financial and Development Supervisory Agency" (henceforth referred to as the "BPKP Presidential Decree"), establishes the BPKP as the state's internal financial watchdog and outlines its authority. Oversight of planning and execution that impedes growth; an audit of pricing adjustments and claims; an examination of anomalies that might hurt public finances; a computation of regional financial losses; expert evidence; and anti-corruption protections are all required under Article 3, letter e.

It is just that, in several corruption cases, the Prosecutor's office and the courts have calculated country financial losses, for example, the Medan District Court Decision Number 17/Pid.Sus.TPK/2016/PN.Mdn. Even though, when connected with the theory of authority, that authority is a right owned by an official or institution acting to exercise its authority based on applicable laws and regulations, then in corruption cases, it should have been executed by the BPK, BPKP or at least a public accountant others appointed by the Attorney General. Surprisingly, it was determined by the Attorney General himself.

Based on what has been previously described, the researcher wants to investigate the power of the Attorney General's Office in determining and assessing state financial losses due to criminal acts of corruption.

#### RESEARCH METHODS

This study employs normative legal research that analyzes various statutory regulations and legal literature related to the legal issues being studied. This study employs a statutory research technique, with primary and secondary legal texts serving as the study's legal materials. The legal documents gathered are used to settle the legal concerns under investigation. The legal material collected will be analysed qualitatively normatively, that is, by analysing and expanding on the information obtained using appropriate legal norms or legal principles.

#### DISCUSSION

The verification process that is carried out to prove that a corrupt act has been committed is not much different from other crimes, which also refers to the provisions stipulated in Article 184 of the Criminal Procedure Code that in the proof, there must also be fulfilled the evidence used to ensnare the perpetrator, which must be met with at least 2 (two) good pieces of evidence, namely in the form of:<sup>10</sup>

- a) Testimonies from witnesses
- b) Statements from expert
- c) Letters
- d) Instructions
- e) Statements from the accused (in compliance with the provisions of Article 184, paragraph 1 of the Criminal Procedure Code)

However, the difference lies in each component of the offense that you want to prove against the indicated article. For the corruption crime itself, as stated in Article 2 of the Corruption Eradication Law, the most prominent element one wants to prove is the element of "state financial loss or state economy." As previously explained, this departs from the meaning that the criminal act of corruption is a material offense. Of course, without ignoring the other elements, for example, elements against the law. Because there could be a loss to state finances, the act was carried out without violating the law.

<sup>10</sup> Agung Tri Wahyudianto. *Op.Cit.* p. 251



According to Tuanakota, determining state financial losses has 3 (three) stages: first, determining whether or not state losses exist. Second, calculate the amount/amount of state financial losses (if any). Third, determine state losses. State losses are determined in a decree by the competent authority. These three stages are inseparable from each other.

Currently, we know that 2 (two) institutions audit state financial losses, namely the BPK (according to Article 10 paragraphs 1 and 2 of the BPK Law) and BPKP (based on Article 3 letter e of Presidential Regulation Number 20 of 2023). In fact, for BPK itself, the publication of TAP MPR VI/ MPR/ 2002 has also strengthened BPK's position. The government reaffirmed its status as the only place for independent financial audits without intervention. BPK is an organization that aims to "examine the management and accountability of state finances". This function is undoubtedly a vital function in the constitutional system. Therefore, in studying state management, only independent organizations have the right to issue it. Implementing an independent state institution means that it is hoped that the BPK can be unrestricted by any power in carrying out its authority. Moving on from this, it is hoped that the examination results will be truly objective and can be used as a benchmark for good state administration.<sup>11</sup>

The Supreme Court Circular Letter (SEMA) Number 4 of 2016 was issued to strengthen the authority of the two institutions within the criminal justice environment, stating that "the Agency authorised to declare whether there has been a loss to state finances is the Financial Audit Agency (BPK), which has constitutional authority." Another consequence of the emergence of SEMA Number 4 of 2016 was the signing of a Memorandum of Understanding (MoU) in 2007 between the Attorney General's Office of the Republic of Indonesia, the Police of the Republic of Indonesia, and BPKP No: KEP1093/K/D6/2007 regarding cooperation in addressing cases of irregularities in state financial management with indications of criminal acts of corruption, including Non-budgetary Funds, as stated in Article 5 paragraph (4). "in every investigation and/or investigation whether carried out by the Attorney General's Office or the National Police, BPKP assigns professional auditors to carry out investigative audits or calculations of state losses as requested". And in Article 6 paragraph (3) it states "the investigating agency determines a violation of the law. Meanwhile, the BPKP determines whether there are indications of state losses, so that the status of cases that indicate corruption or not corruption can be determined."<sup>12</sup>

The examination of state financial losses for corruption is independent from the Prosecutor's institution because the evaluation of state financial losses is separate from the Prosecutor's institution. must be done using an investigative examination approach.<sup>13</sup> namely an audit with a specific purpose that is conducted for a particular aim apart from financial and performance audit, namely to provide a conclusion on a matter being examined, which is reactive in nature and is a "continuation" examination of the previous audit, a more specific and in-depth examination, leading to disclosure deviation.<sup>14</sup>

In connection with the investigative audit, the BPK then issued technical guidelines, which divided the investigative audit into 3 (three) stages, namely: first, preparation, namely preparation of an inspection program, and preparation of an assignment letter. The second is implementation, namely, understanding the case and evaluating and analyzing the evidence; the third is reporting.<sup>15</sup> Likewise, BPKP issued technical guidelines, namely Regulation of the Head of BPKP No. PER-1314/K/D62012 concerning the guidelines for the appointment of the Investigation Sector include information on:

<sup>11</sup> Setiawan A. (2019). "Eksistensi Lembaga Pengawasan Pengelolaan Keuangan Negara". Jurnal Hukum & Pembangunan, Vol. 49, No. 2: 265-278

<sup>12</sup> Edy Suranta, et al. *Op.Cit.* p. 188-189

<sup>13</sup> Menurut Pasal 1 ayat 1 Undang-Undang Nomor 15 Tahun 2004 tentang Pemeriksaan Pengelolaan dan Tanggung Jawab Keuangan Negara, pemeriksaan adalah proses identifikasi masalah, analisis, dan evaluasi yang dilakukan secara independent, objektif dan profesional berdasarkan standar pemeriksaan untuk menilai kebenaran, kecermatan, kredibilitas, dan keandalan informasi mengenai pengelolaan dan tanggung jawab keuangan negara.

<sup>14</sup> Keputusan BPK RI Nomor 17/K/I-XII.2/12/2008 tanggal 24 Desember 2008 tentang "Petunjuk Teknis Pemeriksaan Investigatif atas Indikasi Tindak Pidana Korupsi yang mengakibatkan Kerugian Negara/Daerah", p. 139-141.

<sup>15</sup> *Ibid.* p. 142-157



- 1) An audit for calculating State Financial Losses is an audit with the aim of expressing an opinion on the value of State financial losses caused by irregularities and supporting litigation actions.
- 2) Audit results in the context of calculating State Financial Losses in the form of the BPKP auditor's opinion regarding the amount of state financial losses are the opinion of the auditor's professional expertise, which is documented in the State Financial Losses Calculation Results Report (LHPKKN)
- 3) Based on expert evaluation. The Audit Team and Work Unit Leader sign LHPKKN as Expert (without letterhead or work unit stamp)
- 4) LHPKKN is sent to the head of the requesting Investigating Agency, carried out with a letter of introduction (SP) that is coded SR (Secret Letter) and signed by the work unit.

After the BPK and/or BPKP carry out an investigative audit, the two institutions will issue an official report that outlines the outcome of determining state financial losses. Audit Reports (LHP) are issued by BPK, while BPKP issues State Financial Losses Calculation Reports (LHPKKN).<sup>16</sup>

The audit results, conducted by either BPK or BPKP institutions, are then taken and followed up by the Public Prosecutor to be used as valid evidence, which the Judge will later consider in convicting the perpetrators of the corruption crime. From this point, we can position the positions of the Prosecutors, Audit Institutions, and Judges. The public Prosecutor asked the BPK and/or BPKP to audit someone who is under suspicion for committing an act of corruption. BPK and/or BPKP then conduct an audit based on the stages of investigative inspection. Then, the audit results or reports are submitted or given to the Public Prosecutor. The Prosecutor followed up on the results or audit reports of the BPK and/or BPKP to be used as evidence and included in the indictment. Finally, the Judge then decides or convicts by considering the results or audit reports of the BPK and/or BPKP, which have been used as evidence in court by the Prosecutor. The amount of the state's financial loss can determine the severity of the Judge's sentence.

In fact, several cases of corruption, in calculating state financial losses, were not carried out by the two audit institutions above. However, the Corruption Prosecutors conducted independent calculations of state financial losses. Not only that, referring to Leo Nugroho's opinion, BPK and/or BPKP, and the accounting profession. Even though BPK is authorized to perform calculations according to the law, not all BPK employees can carry out calculations. To be able to perform the calculation must be a person who has the competence mentioned above.<sup>17</sup>

Hutabarat, as the BPKP Auditor for the Central Java Representative Office, once explained that in the process of assessing state losses, not all corruption cases must go through the BPK or BPKP audit process. If it is easy to calculate, it is enough to go directly to the investigator or the public Prosecutor. If needed, new calculations are carried out, or when expert testimony is entered to add to or give their opinion before the court.<sup>18</sup>

For example, Decision Number: 31/Pid.SusTPK/2016/PN.Plk dated October 3 2016, the Prosecutor calculated the state financial losses himself and found Rp. 770.141.964,- (seven hundred seven million one hundred and forty-one thousand nine hundred and sixty-four rupiah) is not used or properly used. In addition, Decision Number: 1/Pid.SusTPK/2017/PN.Plk March 30, 2017, with a total state loss of Rp.770,141,964,- (seven hundred seventy million one hundred forty-one thousand nine hundred sixty four rupiah). There is also Decision Number: 25/Pid.SusTPK/2017/PN.PL.K dated 02 November 2017, with a total state financial loss of Rp. 640,042,000,- (six hundred forty million forty two thousand rupiah) calculated and determined by Central Kalimantan High Court investigators.<sup>19</sup> Indeed, there is no regulation that prohibits or allows prosecutors to conduct independent calculations of state financial losses. Article 30 of the Attorney General's Law does not explicitly state this. However, look at the editorial section of Article 30, paragraph 1, letters d and e, where the Prosecutor is authorized to conduct investigations and complete the case file. In that case, it means

<sup>16</sup> R. Bayu Ferdian, Mohd. Din, M. Gaussyah. *Op.Cit.* p. 332

<sup>17</sup> Fatah A Jaya N.S.P. & Juliani H. (2016). "Kajian Yuridis Penerapan Unsur Merugikan Negara dalam Penegakan Hukum Tindak Pidana Korupsi" *Diponegoro Law Journal* Vol. 6, No. 1: 1-15

<sup>18</sup> Hutabarat, Auditor BPKP Jawa Tengah, Local Workshop "Kaji Unsur Kerugian Keuangan Negara dalam Delik Tipikor", Semarang 5 November 2013.

<sup>19</sup> Agung Tri Wahyudianto. *Op.Cit.* p 254-257





that with that argument, the Prosecutor can only look for data on the amount of state financial losses as data to complete the case file. As long as it is easy to calculate and determine the state financial losses, the Prosecutor's office, based on the reasons for the investigation and the completeness of the file, can perform the task to calculate and determine the state financial losses himself.

Because the institution responsible for assessing state financial losses is distinct from the Prosecutor's office, any investigation into possible corruption in connection with such losses must rely solely on this metric. KEP1093/K/D6/2007, BPKP No. As a memorandum of understanding, it is not legally binding.

Some, however, argued that the report on state loss calculations was vulnerable to a legal challenge on the grounds that it was not valid evidence due to the Prosecutor's office's involvement in the calculation and determination of state financial losses. According to Article 10 of the BPK Law, only the BPK can declare state losses and specify the specific amount based on the calculations in the LHP, therefore this is the legal basis for the argument.

This has happened in the case of Dahlan Iskan before. The Prosecutor used evidence obtained from the BPKP audit results to trial, culminating in a pre-trial hearing that Dahlan Iskan won. With the argument that the Prosecutor failed to present complete evidence in the form of an audit of state losses from the BPK, the case was ruled as non-detrimental to the state. It is expected that equal legal measures will be taken against all perpetrators of corruption, and there will be no provisions made for them to evade the enforcement of corruption laws.<sup>20</sup>

Junifer Girsang explains in his book "Abuse of Power" that there will be legal uncertainty in handling criminal acts of corruption; this will also impact which institutions have the right and authority to declare that state financial losses have occurred.<sup>21</sup>

Whatever it is, the fact is, calculations and determinations of state financial losses have been carried out by the Prosecutor's office, even for state financial losses reaching hundreds of millions, moreover for relatively small/small amounts of state financial losses. For example, in Decision No.17/Pid.Sus-TPK/2016/PN.Mdn., wherein the decision stated that "Defendant Parno was legally and convincingly proven guilty of committing a crime of corruption. as in the Subsidiary indictment, and sentenced the Defendant accordingly to imprisonment for 3 (three) years and a fine of Rp. 50,000,000.- (fifty million rupiahs), provided that if the fine is not paid, it must be replaced by imprisonment for 3 (three) months."<sup>22</sup>

both conditions have occurred. No regulation prohibits this, whether the calculation is done by the BPK and/or BPKP or by the Prosecutor himself. There are indications that the Prosecutor's calculation has a risky legal loophole, as in the Dahlan Iskan case above.

It can be concluded that the Prosecutor's office is not granted the attributive power to calculate and determine state's financial losses in corruption cases. However, the Prosecutor's office is not prohibited from doing so. Implementing the function of calculating state losses in corruption cases relies on the Prosecutor's authority to conduct investigations into corruption cases, where determining the amount of state financial losses is one of the files that must be completed and then brought to court for trial.

As far as the researcher is concerned, prosecutors can determine state financial losses independently without going through the BPK and/or BPKP or other auditing institutions, as long as these losses are transparent, accurate, and not complicated, and the proof will be easy to present before the court. That is, if the calculation and determination of the state's financial loss are simple, then the Prosecutor can do it independently. However, the calculation and determination of state financial losses are complicated and complex. In that case, it is best to coordinate with the BPK and/or BPKP and/or other audit institutions of a mandatory nature.

<sup>20</sup> R. Bayu Ferdian, Mohd. Din, M. Gausyah. *Op.Cit.* p. 335

<sup>21</sup> Junifer Girsang. *Abuse of Power: Penyalahgunaan Kekuasaan Aparat Penegak Hukum dalam Penanganan Tindak Pidana Korupsi.* (Jakarta: JG Publishing, 2012). p.81

<sup>22</sup> Edy Suranta, et al. *Op.Cit.* p. 190

## CONCLUSION

In an attributive manner, the power to calculate and determine state financial losses or the state's economy in corruption acts is only given to the BPK and/or BPKP; even the 1945 Constitution, the MRP, and SEMA Decrees mandate this. It is just that practice at the Attorney General's Office shows that the Attorney General's Office also has/independently calculated and determined state financial losses, despite there is no attributive authority from the law that mandates this. The Prosecutor's Office only relies on the attributive power granted by the Prosecutor's Law which requires the Public Prosecutor to conduct investigations and finalize case files, including files for determining state financial losses.

No Attorney's authority is mandated by law to calculate and determine state financial losses independently. However, this is not accompanied by a prohibition. If it relies on the principle of legality, which substantially implies that "a person may not be punished/convicted for actions that are not prohibited by law." That is, the Attorney General is allowed to do it, because there is no rule that prohibits it.

The Attorney General's Office can independently determine state financial losses without going through the BPK and/or BPKP or other auditing institutions, as long as these losses are transparent, accurate, and not complicated, and the proof will be easy to present before the court. Suppose, on the contrary, that it is simple, simple, and complex. In that case, it is best to coordinate with the BPK and/or BPKP or other auditing institutions so that the calculation and determination of state financial losses are left to the authorized institution.

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