Efforts to Achieve Legal Certainty in the Authority to Calculate State Losses in Corruption Cases

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Abstract

This study aims to examine the efforts to establish legal certainty concerning the authority to calculate state financial losses in corruption cases. The primary issue lies in the overlapping mandates among several institutions, such as state auditing bodies and law enforcement agencies, which often result in differing assessments of state losses. This situation creates legal uncertainty that may affect both the evidentiary process in court proceedings and judicial decisions. The research employs a normative legal method, utilizing both statutory and conceptual approaches. The data consist of primary, secondary, and tertiary legal materials, all of which are analyzed qualitatively. This study reviews various laws and regulations, as well as court decisions, related to the authority in determining state financial losses in corruption cases. The findings indicate that there is no clear and definitive regulation specifying which institution holds the authority to calculate state financial losses. This lack of clarity leads to varying interpretations and inconsistent practices in implementation. Furthermore, there is no standardized methodology governing the calculation of such losses. Efforts to achieve legal certainty may include harmonizing existing laws and regulations, clearly defining the authority of the competent institutions, and developing standardized technical guidelines for calculating state financial losses. Through these measures, it is expected that a more coherent and consistent legal framework can be established, thereby ensuring greater legal certainty in handling corruption cases.

Keywords: *Legal Certainty, Authority, State Financial Losses, Corruption, Regulatory Harmonization.*

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2nd International Conference on Islamic Community Studies (ICICS)
Theme: History of Malay Civilisation and Islamic Human Capacity and Halal Hub in the Globalization Era
https://proceeding.pancabudi.ac.id/index.php/ICIE/index

Introduction

The development of the global legal system, from the colonial era to the present day, has significantly influenced the Indonesian legal system. This influence is particularly evident in the evolution of legal policy in Indonesia, especially with regard to the substance, structure, and legal culture in combating corruption.[1] From the perspective of legal substance, criminal law has regulated various provisions concerning corruption and the sanctions imposed upon it. A number of legislative instruments have been enacted, including laws on taxation, forestry, environmental protection, as well as other regulations addressing emerging forms of crime categorized as corruption, in addition to the specific legislation governing corruption itself.[2]

From a social science perspective, crime is often understood as a social phenomenon that arises from structural inequality or as a manifestation of the diversity of human behavior, reflecting responses to varying socio-economic conditions experienced by individuals or groups. Regardless of its origins, individuals facing economic hardship and pressing life demands, coupled with weak moral or ethical restraint, are more likely to adopt short-term thinking and may resort to any means necessary to fulfill their needs.[3]

In this context, one of the key law enforcement institutions is the prosecution service, which functions as a government body responsible for law enforcement, particularly in the field of prosecution, while also exercising other powers as provided by law. The Kejaksaan Republik Indonesia forms an integral part of the state apparatus, with primary duties centered on prosecution. As an institution vested with authority, it plays a crucial role in upholding law and justice.[4]

As a central component of the criminal justice system, the prosecution service holds a strategic position, especially at the prosecution stage. The authority of prosecutors is not merely administrative in forwarding cases to the courts, but also encompasses discretionary powers to determine whether a case should proceed to trial or be discontinued.[5]

In efforts to combat corruption in Indonesia, the effectiveness of law enforcement largely depends on the role of law enforcement officials in consistently implementing and applying both formal and substantive legal norms in imposing criminal sanctions on perpetrators of corruption.[6]

Corruption is classified as an extraordinary crime that requires equally extraordinary measures to effectively prevent and suppress its occurrence, as stipulated in Article 37 of Law Number 31 of 1999, as amended by Law Number 20 of 2001 concerning the Eradication of Corruption. Within the judicial process, if a defendant is unable to demonstrate the lawful origin of their assets, such assets may be presumed to have been derived from corrupt activities.[7]

Corruption constitutes a social crime that has the potential to undermine the very foundations of governmental structures and serves as a major obstacle to development. In many cases, it becomes one of the most feared threats within a state, as it can destabilize or even overthrow a ruling government. Indeed, corruption poses a serious threat to societal sustainability. The incidence of corruption continues to increase from year to year, both in terms of the number of cases, the scale of state financial losses, and the complexity of the offenses. Indonesia, as a state governed by the rule of law (*rechtsstaat*), as enshrined in Article 1 paragraph (3) of the 1945 Constitution, establishes that all aspects of national, social, and governmental life must be grounded in legal norms. Consequently, all governmental and societal activities are carried out in accordance with applicable laws and regulations. The law is designed not only to address individuals who clearly violate legal norms, but also to regulate potential legal conduct and to ensure that state institutions act in accordance with legal principles. The functioning of the legal system itself reflects the implementation of law enforcement. Criminal law, as a subsystem of the broader legal system, determines which acts are punishable and prescribes the sanctions that may be imposed. Thus, prohibitions and obligations are accompanied by penal sanctions, and any violation gives rise to the state's authority to prosecute, adjudicate, and enforce judicial decisions.[8]

Corruption offenses are categorized as extraordinary crimes due to their far-reaching impact on a country's economic, social, and political stability. Beyond causing significant state financial losses, corruption also hampers national development and erodes public trust in

governmental institutions. Therefore, anti-corruption efforts must be carried out in a systematic manner and grounded in legal certainty.[9] One of the critical aspects of corruption law enforcement is the determination and calculation of state financial losses, which constitute a key element in proving such cases. In the absence of clear authority regarding which institution is responsible for calculating these losses, law enforcement processes become vulnerable to disputes and legal uncertainty.

This ambiguity in authority not only affects law enforcement agencies but also has direct implications for the rights of suspects and defendants. The reliance on loss calculations produced by institutions whose authority is contested may potentially violate the principle of due process of law as well as the principle of legal certainty, both of which are fundamental to the rule of law.[10]

In practice, the authority to calculate state financial losses often gives rise to disputes among state institutions. Several bodies, such as the Badan Pemeriksa Keuangan (BPK), the Badan Pengawasan Keuangan dan Pembangunan (BPKP), and law enforcement agencies each play distinct roles in auditing or assessing state losses. However, the absence of clear and consistent regulatory frameworks frequently leads to overlapping authority. This situation results in differing calculation outcomes, which in turn affect the evidentiary process in court and may even weaken the prosecutor's position in proving the element of state financial loss.

Legal certainty regarding the authority to calculate state losses is crucial, as it is directly with the principle of legality and the doctrine of due process of law. In criminal law, every element of an offense must be proven lawfully and convincingly, including the element of state loss in corruption cases. Ambiguity over which institution holds the authority to conduct such calculations can lead to uncertainty in judicial proceedings and provide opportunities for defendants to challenge the admissibility of evidence presented by the prosecution. This condition is clearly inconsistent with the fundamental objectives of law, namely to ensure certainty, justice, and utility.[11]

Furthermore, judicial practice reveals differing perspectives among judges concerning the validity of state loss calculations. In some decisions, judges recognize only audit results issued by the BPK as the constitutionally authorized institution, whereas in other rulings, audit findings from the BPKP or even independent experts are accepted as valid evidence. These divergent interpretations indicate the absence of a uniform standard in determining the authority to calculate state financial losses, which ultimately leads to inconsistency in court decisions.

From the perspective of administrative and state financial law, the BPK possesses constitutional authority to examine the management and accountability of state finances. Nevertheless, in law enforcement practice, investigators and prosecutors often rely on audit results produced by the BPKP due to considerations of efficiency and the need for expediency during investigations. At the same time, the use of audit findings from institutions other than the BPK is frequently challenged by defendants on the grounds that such findings do not carry equivalent legal authority. This situation reflects a lack of synchronization between legal norms and their practical implementation in law enforcement.

A notable example can be seen in a corruption case decided in Pretrial Decision Number 6/Pid.Pra/2022/PN.Kbj, where differing views emerged regarding the authority to calculate state financial losses. In that case, the calculation was conducted by an auditor from a public accounting firm at the request of investigators from the District Prosecutor's Office of Karo. However, the presiding judge held the view that the authority to calculate state losses rests with the BPK and/or the BPKP.

The pretrial application was subsequently granted in its entirety by the court through Decision Number 6/Pid.Pra/2022/PN.Kbj dated 15 August 2022. The judge declared that the respondent's action in designating the applicant as a suspect was unlawful and devoid of binding legal force. Consequently, the suspect designation letter Number Pds02/L.2.19/Fd.1/07/2022 dated 21 July 2022 was also declared invalid, and the applicant was ordered to be released from detention.

These issues, along with the increasingly diverse modus operandi of corruption offenses, highlight the tension between the need for effectiveness in combating corruption and the

requirement to uphold legal certainty.[12] On the one hand, law enforcement authorities require a degree of flexibility in utilizing various sources for calculating state financial losses in order to expedite case handling. On the other hand, such flexibility must not compromise the principle of legal certainty. Therefore, a clear and firm legal framework is needed to determine which institution is authorized to conduct such calculations, as well as to establish accountable methodological standards.

Efforts to achieve legal certainty in this area must also take into account the principle of transparency. The process of calculating state financial losses should be carried out objectively, professionally, and free from any external interference. This is essential to maintain the integrity of audit results and to ensure that the calculated losses accurately reflect actual conditions. In this way, such calculations can serve as reliable evidence in judicial proceedings.

Based on the foregoing discussion, legal certainty regarding the authority to calculate state financial losses constitutes a fundamental element in the enforcement of corruption law. The lack of clear regulation in this regard not only results in inconsistent court decisions but also has the potential to undermine broader anti-corruption efforts. Accordingly, further indepth study is required to analyze and formulate appropriate measures to establish legal certainty in this domain, so that law enforcement processes may operate effectively, fairly, and in accordance with well-defined legal principles.

Research Methodology Type of Research

This study employs a normative legal research method (juridical-normative), which focuses on examining applicable legal norms as embodied in statutory regulations as well as judicial decisions. This approach is selected because the research aims to analyze legal certainty concerning the authority to calculate state financial losses in corruption cases. To achieve this objective, the study applies several approaches, namely the statutory approach and the conceptual approach. The statutory approach involves a thorough review of laws and regulations governing institutional authority in determining state financial losses, while the conceptual approach is utilized to explore the notions of legal certainty and authority from the perspective of legal theory.[13]

Nature of the Research

This research is descriptive-analytical in nature, meaning that it seeks to provide a systematic description of the issues under study while also offering an in-depth analysis. It not only outlines the existing legal provisions but also examines the gap between legal norms and actual practices, particularly in relation to overlapping authority in the calculation of state financial losses. Accordingly, this research is expected to contribute both to a clearer understanding of the issue and to the formulation of potential solutions to the existing legal problems.[14]

Data Analysis

Data analysis in this study is conducted qualitatively by processing legal materials obtained through library research. Primary, secondary, and tertiary legal sources are analyzed through legal interpretation, deductive reasoning, and the systematic organization of legal norms. The data are then linked to relevant legal theories and concepts in order to draw logical conclusions. The results of the analysis are subsequently presented in a structured manner to address the research questions and to provide recommendations for achieving legal certainty in relation to the authority to calculate state financial losses in corruption cases.[15]

Results Efforts to Achieve Legal Certainty in the Authority to Calculate State Losses in Corruption Cases

In the calculation of state financial losses in corruption cases, there is a noticeable lack of synchronization between the legal norms governing such authority and the practices of law enforcement. In several corruption cases, investigators from the District Prosecutor’s Office

have engaged auditors from public accounting firms to assess state financial losses. The involvement of these firms is often justified on the grounds of efficiency, professionalism, and the availability of competent experts in auditing. However, the use of public accounting firms is frequently challenged during judicial proceedings, particularly by defendants who argue that such auditors lack formal authority compared to state institutions such as the Badan Pemeriksa Keuangan (BPK) or the Badan Pengawasan Keuangan dan Pembangunan (BPKP). This situation highlights a normative gap that creates legal uncertainty in proving the element of state financial loss.

As reflected in Pretrial Decision Number 6/Pid.Pra/2022/PN.Kbj, there were differing views regarding the authority to calculate state financial losses. In that case, the calculation was conducted by an auditor from a public accounting firm (Swasra) at the request of investigators from the District Prosecutor's Office of Karo. However, the presiding judge held that the authority to determine state financial losses lies with the BPK and/or the BPKP.

In response to the pretrial application, the panel of judges granted the petition in its entirety. As stated in the ruling, the court: (1) approved the pretrial application in full; (2) declared that the respondent's action in designating the applicant as a suspect in the alleged corruption case involving the management of a public cemetery area in Salit Village, Tiga Panah District, Karo Regency, for the 2019 fiscal year—with a budget ceiling of IDR 3,030,322,600—was unlawful and without legal force; and (3) ordered the respondent to immediately terminate the investigation by issuing a warrant for termination of investigation (SP3).

The annulment of the suspect designation in the ruling was primarily based on the calculation of state financial losses conducted by a private auditor. In its legal reasoning, the court referred to Supreme Court Circular Letter (SEMA) Number 4 of 2016, Section A, Criminal Chamber Legal Formulation Number 6, which states that the institution authorized to determine the existence of state financial losses is the BPK, as it holds constitutional authority. Meanwhile, other institutions such as the BPKP, inspectorates, or regional government work units remain authorized to conduct audits and examinations of state financial management, but they do not have the authority to formally declare the existence of state financial losses. In certain circumstances, judges may, based on the facts presented during trial, independently assess the existence and extent of such losses.

Normatively, the authority to calculate state financial losses is distributed among several institutions, both external and internal, including the BPK, the BPKP, and the Government Internal Supervisory Apparatus (APIP). Nevertheless, within judicial proceedings, judges retain the authority to evaluate state financial losses, with calculations provided by the BPK or BPKP serving as evidentiary tools to support judicial conviction.

The establishment of state financial losses based on calculations conducted by public accountants is closely linked to the fulfillment of the constituent elements of the offense as set out in Article 3 of Law Number 31 of 1999, as amended by Law Number 20 of 2001 on the Eradication of Corruption. In principle, any person whose actions cause losses to state finances or the national economy may be subjected to criminal sanctions, provided that sufficient and legally admissible evidence is established.

The elucidation of Article 32 paragraph (1) of Law Number 31 of 1999, as amended by Law Number 20 of 2001, clarifies that "actual state financial loss" refers to a loss that can be quantified based on findings issued by a competent authority or by an appointed public accountant. This provision implicitly recognizes that the determination of state losses may involve both authorized institutions and designated independent auditors.

However, the provisions under Articles 2 and 3 of the Anti-Corruption Law, which regulate state financial loss as a core element of corruption offenses, do not explicitly identify which institutions or parties are authorized to determine such losses. The elucidation of Article 32 merely states that state financial loss is a quantifiable loss based on findings from a competent authority or an appointed public accountant, without further specifying the scope of such authority.

In addition, Putusan Mahkamah Konstitusi Nomor 31/PUU-X/2012 affirms that investigators in corruption cases are entitled to coordinate with any institution, including the

Badan Pemeriksa Keuangan (BPK), the Badan Pengawasan Keuangan dan Pembangunan (BPKP), or other entities possessing the capability to determine state financial losses. Ultimately, the assessment of such calculations rests within the discretion of the panel of judges. The Constitutional Court, through this decision, rejected a restrictive interpretation suggesting that only the BPK has the authority to determine state losses.

This decision effectively broadens the interpretation of institutions authorized to calculate state financial losses, encompassing the BPK, the BPKP, other governmental bodies such as inspectorates or equivalent supervisory agencies, as well as external parties—including private entities—capable of establishing material truth in the calculation of state financial losses and supporting evidentiary processes in ongoing cases.

In the case under analysis, a significant divergence of views emerged between investigators and judges regarding the authority to calculate state financial losses. Investigators maintained that audit results produced by a public accounting firm were valid and admissible as evidence, particularly because the auditors had been formally appointed to conduct the audit for investigative purposes. Conversely, the judge in the pretrial decision held that the authority to calculate state financial losses lies with the BPK and/or the BPKP. This difference in perspective reflects the lack of uniform interpretation of the applicable legal framework, which in turn contributes to inconsistency in the application of the law.

In the pretrial case, the panel of judges granted the applicant's petition in its entirety, essentially declaring that the designation of the suspect was unlawful because the calculation of state financial losses had not been conducted by an institution deemed competent. This ruling indicates that the court adopted a formalistic approach in assessing the admissibility of evidence, particularly with regard to the authority of the auditing body. As a consequence, audit results produced by public accounting firms—despite their professional competence—were not legally recognized, thereby impeding the effective enforcement of corruption laws.

From a normative perspective, however, the elucidation of Article 32 paragraph (1) of Law Number 31 of 1999, as amended by Law Number 20 of 2001, explicitly provides that state financial losses are those that can be quantified based on findings issued either by a competent authority or by an appointed public accountant. This provision clearly allows for the involvement of public accountants in calculating state losses, provided that their appointment is legally valid. Accordingly, a judicial interpretation that restricts such authority solely to the Badan Pemeriksa Keuangan (BPK) and/or the Badan Pengawasan Keuangan dan Pembangunan (BPKP) may be considered inconsistent with the prevailing legal framework.

This situation reflects a tension between the normative legal framework and judicial practice in determining the authority to calculate state financial losses.[16] On the one hand, statutory provisions confer legitimacy upon public accountants; on the other hand, judicial practice tends to prioritize certain state institutions as the sole authorized entities. This inconsistency creates legal uncertainty, which in turn affects the effectiveness of corruption law enforcement. Moreover, it opens the possibility for defendants to challenge and weaken the evidentiary basis presented by prosecutors.

Furthermore, these differing perspectives highlight the absence of standardized criteria regarding both the methodology and the authority for calculating state financial losses. While the BPK, as a constitutional body, holds primary authority in auditing state finances, the BPKP plays a role in internal governmental supervision. In practice, however, the need for efficiency often leads investigators to engage external parties, such as public accounting firms. Without clear and uniform guidelines, the involvement of multiple institutions may instead generate divergent interpretations, ultimately resulting in legal uncertainty.

From the standpoint of legal theory, such conditions are at odds with the principle of legal certainty, which requires clarity, consistency, and predictability in the application of law. When significant differences in interpretation arise between law enforcement authorities and the judiciary, the objective of ensuring legal certainty becomes difficult to achieve. This situation may also undermine the principle of justice, as judicial outcomes become heavily dependent on subjective interpretations regarding institutional authority. Therefore, harmonization between legal norms and judicial practice is essential to prevent disparities in court decisions.

As part of efforts to achieve legal certainty, several measures are necessary, including the clarification of regulations concerning the authority to calculate state financial losses, whether through legislative amendments or the issuance of implementing regulations. In addition, the Supreme Court should provide consistent guidelines or jurisprudence regarding the recognition of audit results from various institutions, including public accounting firms. With clearer authority and standardized methodologies in place, it is expected that the evidentiary process in corruption cases can be conducted more effectively, fairly, and in a manner that ensures legal certainty for all parties involved.

Conclusion

Legal certainty regarding the authority to calculate state financial losses in corruption cases continues to face significant challenges, particularly due to overlapping mandates among authorized institutions. This overlap often results in differing assessments of state financial losses, leading to inconsistencies in evidentiary processes during trials and influencing judicial decisions. Moreover, the absence of clear and definitive regulations identifying which institution holds primary authority in conducting such calculations further undermines legal certainty.

Efforts to establish legal certainty in this area require both normative and practical measures. From a normative standpoint, it is essential to harmonize and synchronize existing laws and regulations in order to clearly delineate the scope of authority of each institution and to eliminate overlapping competencies. From a practical perspective, it is necessary to develop standardized and universally accepted methodologies that can serve as common guidelines for calculating state financial losses. In addition, strengthening inter-agency coordination and enhancing the professionalism of law enforcement officials are crucial factors in supporting the realization of legal certainty.

Ultimately, legal certainty in the authority to calculate state financial losses can only be achieved through regulatory clarity, methodological uniformity, and institutional synergy among the relevant bodies. These elements are expected to improve the effectiveness of law enforcement in corruption cases while ensuring the realization of justice and legal certainty.

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