
Authority Analysis of Counting the State Financial Loss in the Investigation of Criminal Act of Corruption in Indonesia (Study at the BPK Representative Office and BPKP Lampung Province)

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Abstract

The authority to calculate the state losses in corruption, until now, is still a problem that must be addressed with government policy in conducting investigations Audit Board of the Republic of Indonesia (BPK) and Financial and Development Supervisory Agency (BPKP). Both of these bodies in issuing products for calculating state losses, apply different process of completing the product of the investigation conducted. Information from Indonesian Republic Police (Polri) investigators prefer the BPKP as a partner in determining state losses in a criminal act upon request of the investigators to BPKP to calculate the state losses. The method used in this study normative research and the approaches used are juridical and empirical approaches. The results of the study is BPK pursuant to Law No. 15 of 2006 has the authority to calculate State losses carried out by the Main Investigator Auditor (AUI) which has the authority to conduct Investigation Examinations, Although the Supreme Audit Agency Acts and has the authority to calculate State losses,. In addition to the BPK there are other bodies that have the authority to calculate State losses, that is Corruption Criminal Investigators that are more likely to use BPKP to calculate State losses compared to BPK.

Keywords: authority, corruption, state loss

I. INTRODUCTION

As a manifestation of good governance, which is the most critical part in the process of achieving a good governance, transparency and accountability in the management of state finances must be realized. Good control and responsibility of state finances primarily consist of several stages, starting from planning and budgeting; budget execution, accounting, reporting and budget accountability; internal supervision and financial checks by independent external auditors. Corruption is an emotional disorder and trying to cure (Talvitie, 2017). Many countries have failed to create good budget management because of corruption from the officers on duty. Sihombing (2018) suggested a solution on corruption anticipation from a different perspective, namely identifying youth perceptions of crime and integrity in the Indonesian context. Indonesian youth is defined as corruption as depriving the rights of others. They show that taking other money is an example of corruption. All research findings combined with a review of the literature on corruption and integrity will be the indicators of corruption and integrity in the steps to develop the next scale (Sihombing, 2018). In Indonesia, to eradicate such a corruption problem, some particular institutions were established which were tasked with eliminating corruption. To realise this, the government has primarily compiled a package of state finance laws, consisting of three draft laws; State Finance Bill, Draft State Treasury Bill and Draft Law on Examination of State Financial Responsibility. The three bills were finally approved by the House of Representatives and became a package of State Finance Law, which consisted of Law Number 17 of 2003 (referred to as the State Finance Law), Law Number 1 of 2004 (which is referred to as the State Treasury Law) and Law Number 15 of 2004 concerning the Examination of the Management and Financial Responsibility of the

State (hereinafter referred to as the State Audit Board Act). The three packages of law are a juridical basis for the state to carry out its duties and authorities relating to the examination, management and responsibility of state finances.

The third law package is guided by the third amendment to the 1945 Constitution that is part of the country's commitment to implement a good, clean and free government from Corruption, Collusion and Nepotism (*KKN*) which demands changes, including changes in legislation and state institutions. In the third amendment to the 1945 Constitution of the Republic of Indonesia, changes were made to Article 23 paragraph (5) of the 1945 Constitution of the Republic of Indonesia which regulates the Supreme Audit Board. Article 23 paragraph (5) of the 1945 Constitution of the Republic of Indonesia also describes the position of the Indonesian Supreme Audit Agency (*BPK*) and the strengthening of the role of the *BPK* function to be an independent state institution and free from dependence on the government in terms of institution, finance and report. This is clearly very necessary by the *BPK*, so that the duties and mandates given by the 1945 Constitution of the Republic of Indonesia can be implemented properly. Equipments, vehicles, and communication tools are adequate in quantity to support the task of corruption criminal investigation. There two highlighted factors: 1) community factor, the community and NGO supports by providing information on the crime of corruption; and 2) cultural factor, the culture of society has began to support the war on corruption because they have realized that corruption is very harmful to the state and society itself.

Mardiasmo stated along with the reform movement in 1998, which gave birth to demands that demanded a change and improvement in the governance system, which prioritized the role of the private sector/business world and civil society or people based on Good Governance. To realize the ideals of reform, institutional reform and public management reform and a series of further reforms, especially those related to the state financial management system, are needed (Mardiasmo, 2004). Regarding the supervision of the state's finances, Muchsan argued that in order to create a strong and clean government, the government must try to suppress the minimum possible occurrences of government officials whose tendencies are detrimental to state finances (Muchsan, 1981). Whereas, in the supervision of the actions of government officials can be carried out by all government officials or other apparatus outside the executive functionally, and or it can also be carried out by the judicial authority. The position of the Republic of Indonesia Supreme Audit Agency (*BPK RI*) is as one of the state institutions that are implementing the constitutional mandate in examining, managing and being responsible for the state finances, as regulated in Chapter VIII A, Article 23 E, 23F, and 23 G of the 1945 Constitution.

The duties and authorities of the Republic of Indonesia Supreme Audit Agency (*BPK RI*) are regulated in Article 6 paragraph (1) of Law Number: 15 of 2006 concerning the Supreme Audit Agency (*BPK*) which explains the duties of the board, namely to examine the management and responsibility of state finances, implemented by the Central Government, Regional Governments, other state institutions, Bank Indonesia, State-owned Enterprises (*BUMN*), Public Service Agencies, Village-Owned Enterprises (*BUMDs*) and institutions that manage state finances. In addition, the *BPK RI*'s duties are also set in Article 7 paragraph (1) which explains that the *BPK* must submit the results of investigation on the management of state finances to the Indonesian House of Representatives (*DPR*), Regional Representative Council (*DPD*) and to the Regional People's Representative Assembly (*DPRD*). The authority of the *BPK* is regulated in Article 10 paragraph (1) of Law Number 15 of 2006 concerning the State Audit Board (*BPK*) which states:

The Supreme Audit Agency (*BPK*) has the authority to assess and other institutions or agencies that manage state finances. The authority to calculate state losses, in practice during this time can also be carried out by other institutions, namely the Financial and Development Supervisory Agency (*BPKP*) which is guided by the Presidential Decree Number 103 of 2001, concerning the Position of Tasks, Functions, Authorities, Organizational Structure and Work Procedures of Non-Departmental Government Institutions as amended by the Presidential Regulation of the Republic of Indonesia Number: 192 of 2014, concerning the Financial and Development Supervisory Agency. In the amendment to the Presidential Decree it was not regulated and not mentioned the authority of the Financial and Development Supervisory Agency to calculate state losses.

Although the amendment to the Presidential Decree is not regulated by the authority of the Financial

and Development Supervisory Agency (*BPKP*), but in carrying out the task of calculating State losses, *BPKP* is guided by the Government Regulation of the Republic of Indonesia Number: 60 of 2008 concerning The Government's Internal Control System, which in Article 49 paragraphs (1) and (2) of the Government Regulation explains, that the *BPKP* conducts internal supervision through audit activities, especially investigative or audit audits with specific objectives which ultimately led to the calculation of state losses. This authority was then strengthened by the decision of the Constitutional Court Number 31/PUUX/2012 dated October 23, 2012, which strengthens the authority of the *BPKP* to conduct investigative audits based on Presidential Regulation No. 192 of 2014 and Government Regulation Number: 60 of 2008. Therefore, the *BPKP* and the Supreme Audit Agency (*BPK*) formally have the authority to calculate state losses.

A research on corruption has been done, one of which is by, Kim (2018) who said a recent anti-corruption investigation in China showed companies registered in China reported a total of \$ 30 billion in corporate value because of corruption. Furthermore, more effective anti-corruption agreements compile high officials are targeted (Kim, Li, & Tarzia, 2018). Referring to the same topic about the investigation of corruption audits, Bramastyo (2014) found that investigative audit reports could be used as preliminary evidence on investigations of criminal acts of corruption because under Article 44 of Law Number 30 of 2002 concerning Commission 18 Ibid 19 Ibid Corruption Eradication there was an extension given towards the evidence regulated in Article 184 paragraph (1) of the Criminal Procedure Code. Secondly, an Investigative Audit can accurately determine the elements of state mistakes and losses in corruption that occur in bureaucracy correctly because the method used in investigative audits is a combination of the science of auditing and the science of investigation that can determine the *modus operandi*, parties involved in criminal acts corruption, and state losses incurred. So that in the investigation process investigators can carefully identify the parties involved and minimise making mistakes in investigating cases of corruption (Bramastyo, Endrawati, & Zakaria, 2014).

Based on the provisions stipulated in the three packages of laws relating to State finances, Presidential regulations and Government Regulations mentioned above, normatively the implementation of the authority to calculate state losses is not a Constraint, both faced by the State Audit Board (*BPK*) in carrying out duties and functions as an institution that conducts checks on the management of State finances, as well as those carried out by other institutions, namely the Financial and Development Supervisory Agency (*BPKP*), but in law enforcement practices there are differences in internal perception of law enforcers in Indonesia, that there is a tendency of lack of interest law enforcers use the State's loss calculation products that are carried out by the Supreme Audit Agency, because the value is too slow and there is no legal certainty regarding the results of investigative investigations conducted by the Supreme Audit Agency when finding state losses. Finance still provides an opportunity for budget executors when in routine inspections find losses to the State. This difference in views leads to differences in perceptions and interpretations of law enforcers in the field, which then becomes a problem in the implementation of the Criminal Justice System in Indonesia.

II. METHOD

The method used in this study is normative. The approaches to legislation used are empirical and juridical approaches. The results are analyzed qualitatively. Based on the explanation above, the authors are interested in examining the problems faced by integrated Law Enforcement in the Criminal Justice System, which has been carried out by the two institutions, namely the Supreme Audit Agency (*BPK*) and the Financial and Development Supervisory Agency (*BPKP*). The results of this study will be compiled in a scientific journal entitled "Analysis of Authority in Calculating State Losses on Corruption Crimes (Counting State Losses on CPC in Corruption in Indonesia)".

III. RESULT AND DISCUSSION

Juridical Foundation of BPK-RI

Formal juridical provisions governing *BPK-RI* tupoksi in proving that State losses have occurred in a real and definite manner are the authority of the Supreme Audit Agency based on the provisions of Article 23E paragraph (1) of the 1945 Constitution. mandated by the Constitution to examine the management and responsibility of the State's finances. The results of the audit by the Supreme Audit

Agency are the Audit Results Report (LHP). The *LHP* has a function as stated in the *BPK* Regulation Number: 1 of 2007 Attachment VI point 3. The implementation of the audit, management and responsibility of state finances by the *BPK* serves to minimize financial abuse, prevent corruption and can also be used as a tool sufficiently strong evidence in handling Corruption Crimes.

Likewise, the duties of the *BPK-RI* as stipulated in the Law of the Republic of Indonesia Number 15 of 2006 concerning the Supreme Audit Agency, contained in CHAPTER III, the first and second sections, namely examining the management and responsibility of state finances carried out by the Central Government/Region, Bank Indonesia, *BUMN/BUMD*, public service agencies or other institutions or agencies that manage state finances. The examination must be based on the Law on Examination and Management of State Financial Responsibility. Furthermore the Supreme Audit Agency (*BPK*) discussed the findings of the examination with the object being examined in accordance with the State financial audit standards.

In addition to the above main tasks, *BPK-RI* has the authority as stipulated in Chapter III of the Law of the Republic of Indonesia Number: 15 of 2006, namely determining objects, planning, carrying out inspections, determining the time and method of inspection and preparing and presenting inspection reports; request information and/or documents that must be given for examination; conduct checks in the depository of money and property of the State, at the place where the activities, bookkeeping and administration of the State's finances are carried out and checks of calculations, letters, evidence, checking accounts, liabilities and other lists relating to the management of State finances ; determine the types of documents, data and information regarding the management and responsibility of the State finances that must be submitted to the Supreme Audit Agency; apply the state financial audit standard after consultation with the central government, regional government which must be used in the management examination and State financial responsibility; establish a code of ethics for examining management and State financial responsibility; using experts and/or examiners outside the financial examining body who work for and on behalf of the Supreme Audit Board; fostering functional examiner positions; giving consideration to government accounting standards; giving consideration to the design of the central or regional government internal control system before being determined by the central government or regional government.

The scope of the examination carried out by the Supreme Audit Agency is based on the *BPK* Regulation Number 01 of 2007, concerning the Financial Examination Standard, which includes examining the state finances, examining performance and examining certain objectives. Examination of State finances is an examination of the State's financial statements. Examination of State finances aims to provide adequate confidence in the State's financial statements has been presented correctly. The presentation covers all material matters in accordance with generally accepted accounting principles in Indonesia or a comprehensive accounting base other than the principle. generally accepted accounting. The ones examined are Financial Statements from the Central Government/Regional Government, Bank Indonesia, Other State Institutions, State/Regional Owned Enterprises, Public Service Agencies, Other Agencies or Institutions that carry out management and responsibility for State finances.

In calculating the loss of State Finance, it must first be known whether the case calculated for the country's financial loss is still within the scope of State Finance. According to Law Number: 17 of 2003, concerning State Finance are all state rights and obligations that can be assessed by money, as well as everything in the form of money or in the form of goods that can be used as state property in connection with the implementation of these rights and obligations. State finances occur if there is a shortage of money, securities, and goods, which is real and certain in number as a result of unlawful acts whether intentional or negligent. This is similar to the accounting principle, the achievement received as a debit side while the money issued by the state as credit. Between debit and credit must be the same (balance). Some definitions of state financial losses regulated in the law are as follows:

- 1) Article 1 point 22 of Law Number 1 of 2004 concerning State Treasury states, "State losses/the area is lack of money, securities, and goods, which are real and certain in number as a result of unlawful acts whether intentional or negligent ".
- 2) Whereas in Article 1 number 15 of Act Number 15 of 2006 concerning the State Audit Agency, "State/Regional Losses are short of money, securities and goods, the amount of which is real and certain as a result of unlawful acts of unlawful . "

- 3) And in the elucidation of Article 2 paragraph (1) of Law Number 31 of 1999, Law Number 20 of 2001 concerning Corruption Crime states, "what is meant by the actual loss of state finances" is a calculated loss. the amount is based on the findings of an authorized agency or a designated public accountant.

The purpose of the investigation or examination examination in the context of calculating state financial losses is to determine the existence of a corruption offense and to calculate the real and certain state losses from the crime. Even though a crime has not occurred despite state losses. In connection with the duration of the calculation of state losses, even though it must be admitted that the interpretation and practice of law enforcement so far has obscured the true meaning and understanding of the previous legislators of Article 2 paragraph (1) and Article 3. And precisely puts the state's loss as a the necessity to fulfill the offense, so that it often depends on the results of the audit of state losses

In the Constitutional Court Decision stated, that the phrase "can" is unconstitutional, which places the emergence of a consequence of the core of the offense. This puts the emergence of state losses into a matter that must be proven by the Investigator first, thus causing the investigator to wait for the outcome of the state loss audit first. , either by the *BPK* or *BPKP*. The decision of the Constitutional Court can make the eradication of corruption becomes slower and slower. In the eradication of corruption, it is feared to be slower with the Supreme Court Circular Number 4 of 2016. This will make law enforcers are increasingly dependent on the *BPK* as the only institution authorized to calculate state losses. This will have an impact on the slowdown in corruption law enforcement efforts.

The BPK Method in Calculating State Losses

The method used as a basis for *BPK-RI* in examining and calculating state financial losses must be accountable and refer to professional judgment, which refers to Lawrence Friedman's legal system theory as a knife of analysis in assessing the problems faced, namely; Legal Substance, Legal Structure, and Legal Culture. The substance of the law (legal substance), in it covers all material laws of a formal legal nature. Substance also means the legal products produced by the government through the existing legal system, including the decisions they issue, the new rules they form like Article 3 of Law Number: 20 of 2001, concerning Amendments to Law Number: 31 of 1999, concerning Eradication of Criminal Acts of Corruption states that "Anyone who aims to benefit himself or another person or a corporation misuses the authority, opportunity or means available to him because of his position or position which could harm the state's finances or the country's economy.

Legal structure, encompassing legal institutions, legal apparatus and law enforcement systems. Legal structure/Law Institutions in Lawrence Meir Fried's theory are referred to as structural systems that determine whether or not the law is carried out properly. The legal structure referred to here is the operation of the legal structure system based on Law Number 8 of 1981, covering; starting from the Police, Attorney General's Office, Court and Criminal Executing Agency (*Lapas*).

Legal culture is an emphasis on law enforcement in terms of cultural aspects in general, people's habits, public opinion, ways of acting and thinking, which lead to social forces that exist in society. Law Culture according to Lawrence Meir Friedman is a human attitude towards legal rules and systems, including; his beliefs, values, thoughts, and hopes. Legal culture is the atmosphere of social thought and social power that determines how the law is used, avoided, or misused. Legal culture is closely related to public legal awareness. The higher the level of community legal awareness, the better law enforcement will be created.

Based on the description above, it is known that in order to oversee the good management and responsibility of state finances through an audit mechanism by the *BPK-RI*, a strong legal substance is needed. *BPK-RI* itself has been supported by Law Number: 15 of 2004 concerning Management Examination and State Financial Responsibility. Further analysis is needed whether or not the legal substance can be carried out.

The upholding of the law is not only determined by the legal substance, but also by the existence of a strong legal structure. In carrying out the examination of the management and responsibility of state finances in the eradication of corruption, the Supreme Audit Agency (*BPK*) is a part of the joint structure with police organizations, prosecutors, courts, Advocates and Correctional Institutions.

Interaction between these law-serving components determines the legal structure. *BPK-RI* itself has been supported by Law Number 15 of 2006 concerning the Supreme Audit Agency which regulates the position and structure of *BPK-RI* institutionally. Even so, the upholding of this law is not only determined by the strength of the structure, but also related to the legal culture in society. In the context of this legal culture includes the legal awareness of all legal subjects of the community as a whole. As an example in terms of implementing state expenditures for national programs for community empowerment, all related parties such as the State Audit Agency (*BPK*) as a state institution that checks the management and responsibility of the State's finances and all institutions or agencies must comply with regulations in the implementation of the duties and authorities of the *BPK*. With legal awareness of all elements, the legal system comes alive and has benefits for society.

Notion of Corruption

According to Big Indonesian Dictionary (KBBI), a corruption is a misuse or embezzlement of state or company money for personal gain or someone else. The word "corrupt" based on the *KBBI* means bad, damaged, rotten, likes to use the goods (money) entrusted to him, can be bribed (through power) for personal gain. Based on Law Number: 31 of 1999 and Law Number: 20 of 2001 concerning Eradication of Corruption Crimes, what is meant by corruption is that anyone who unlawfully acts to enrich himself or another person or a corporation that can harm the financial Corruption can also be stated as a deviation by public officials over the norms adopted by the community with the aim of obtaining personal and other benefits. Syed Husein Alatas's opinion, stating "Corruption is abuse of trust in interest of private gain - corruption is a misuse of trust for personal gain". Based on these understandings it can be concluded that corruption is an act carried out by everyone against law, acts to enrich themselves or other people or a corporation, causing losses to the state or the economy of the State and for personal gain or for others (Alatas, 1986).

Causes of Corruption

Corruption can be caused by the perpetrators themselves, including the weakness of morality, religion and faith of the perpetrators. Another thing is the desire to have goods whose prices exceed the income they have, this is caused by the lifestyle factors of the corruptors. In addition to internal factors, corruption can also be caused by external factors that cause a person to commit a criminal act of corruption, which in general is an economic problem, related to basic needs, such as clothing, food and shelter or to meet tertiary economic needs. In addition, corruption is also caused by opportunities, although the perpetrators themselves initially did not intend to commit corruption.

Ansari Yamanah stated in her view that the external factors that cause a person to commit corruption in general are economic reasons, both because they meet basic needs such as clothing, food and shelter, as well as to meet tertiary economic needs. In addition, corruption can also be caused by opportunities, even though the perpetrators themselves initially did not intend to corruption. He further stated, when the materialistic and consumptive behavior of the community and the political system that still "deify" the material can "force" the occurrence of money games and corruption. With this condition almost certainly all officials then "forced" corruption if they have served.

Based on the factors that cause corruption as described above, the causes of corruption actually consist of internal and external factors. In this connection Arifin argues, that the factors that cause corruption include: first, aspects of individual behavior; second, organizational aspects, and thirdly, aspects of society where individuals and organizations are located.

State Loss Theory

The notion and conception of losses and claims for compensation will differ between the realm of criminal law and the realm of civil law and state administrative law. Civil law is the realm of private law that has a view on compensation that is different from the laws of the State Administration and Criminal Law that enter public law. Comparison of different thoughts about compensation and claims for compensation according to civil law, the law of State Administration and Criminal Law will show points of tangibility among the three. State or regional losses are associated with unlawful acts. Understanding of the relationship between losses and tort against the law (*onrechstmatigedaad*), listed in Article 1365 of the Civil Code (*KUHPerdata*). This article reads "every act that violates the law and brings harm to

others, obliges the person who caused the loss because of his mistake to replace the loss".

State losses in the practice of state administrative law are actually not very different from the previous explanation. If you see from the instructions issued by the *BPK*, then the meaning of losses in the sense of State Losses is based on Article 2 paragraph (1) which states, that State Losses are a reduction in State wealth caused by something unlawful or someone's negligence and/or due to an unexpected situation and beyond human ability (*force majeure*). And the amount of state loss must first be examined and collected evidence to determine the amount of loss suffered by the State. In this study it should be noted that it is not permitted to make compensation claims for amounts greater than the actual losses suffered (Governements Secretaris Letter 30 August 1993 No. 2498/B). Therefore basically the amount of state loss cannot be determined by estimation or estimation.

Notion of Losses according to Civil Law

The parts regulated in the Civil Code include Article 1243 to Article 1252, which fully states "reimbursement of costs, losses and interest due to the non-fulfillment of an agreement". This article shows two things, namely; First, the expression "replacement of costs, losses and interest" has a distinctive meaning; Second, the expression "because an engagement is not fulfilled" has the meaning of compensation arising from an injury to the promise (*wanprestatie*). In these articles, the term debtor, creditor or other engagement will be found (rent, wages, interest throughout life, etc.). This is an important difference between the State's losses in the State Administration and the loss of State finances in Law Number 31 of 1999, concerning Eradication of Corruption which is a loss in the public sector.

Although there are differences in the context of loss as described above, there is a point of reference to the phrase "reimbursement of costs, losses and interest" meaning "loss" expressed in these three terms. In the original (Dutch), this concept is known as *kosten, schaden en interessen*. This concept is very old and has long been known in its home country. Civil law in Indonesian generally cites the writings of Subekti which provide an explanation of the meaning of *kosten, schaden en interessen*, including losses that can be requested for replacement not only limited to those in the form of actual costs incurred (*kosten*), or a loss that truly befalls the debtor's property (*schaden*), but also in the form of *interessen* loss, namely the profit that will be obtained if the debtor is not negligent (*winstderving*). Explanation of the term *kosten, schaden en interessen* separately - separate, intended to facilitate understanding, as a legal term, that the word is a unity, with the meaning "loss".

Notion of Losses according to State Administration Law

Article 1 paragraph (22) of Law Number 1 of 2004 concerning State Treasury provides a definition of "loss" in the context of state losses/area is lack of money, securities and tangible goods in a certain amount as a result of unlawful acts intentionally or negligently. Not all losses of state/regional finance arising can be prosecuted. Losses arising from a situation beyond human ability (*force majeure*) cannot be prosecuted. State/regional losses that can be prosecuted are those arising as a result of unlawful acts, whether intentional or negligent. The notions expressed in Article 1365 of the Civil Code are only reflected in state/regional losses that can be prosecuted in the domain of State Administrative Law, the interpretation of "real and definite" terminology as something that really happens and can be calculated in exact numbers. "Real" interpretation like this is right and makes it easy for the examiner and the examiner to reach agreement on "real shortcomings". This is because real is something that is objective and not an element of subjective interpretation. Meanwhile, related to the "definite" size in number, sometimes it creates a debate, as a result of differences in point of view. The determination of this amount sometimes involves professional judgment of each examiner. In the practice of state administrative law, the meaning of state losses is actually not too different from the previous explanation. If you see from the instructions issued by the *BPK*, then the meaning of losses in the sense of State Losses is as follows:

First, the term State loss according to Article 2 paragraph (1) is a reduction in State wealth caused by something unlawful/negligence of a person and/or due to an unexpected situation and beyond human ability (*force majeure*); Second, related to the amount of loss, first of all there is need to examine and collect the evidence to determine the amount of losses suffered by the State. In this study it should be noted that it is not permitted to claim compensation for amounts greater than the actual losses suffered (Governements Secretaris Letter August 30, 1993 No. 2498/B). This is because the magnitude of the

State's loss cannot basically be determined by estimation or estimation. Based on the above *BPK* guidelines, it can also be understood that state losses are basically to be "real and definite". The magnitude of the State's loss must not be determined on an estimation. This is one of the meanings of the term "real and definite in number" as described above.

Notion of Losses according to number 31 of 1999

In eradicating corruption in Indonesia, to date there are two articles that are most often used to criminalize the perpetrators of corruption. In these two articles there is a very important phrase in the crime of corruption, namely the element of "loss of state finances". Article 2 paragraph (1) of Law Number 31 of 1999 stipulates "every person who unlawfully acts to enrich himself or another person or a corporation that can "harm the state's finances or the economy of the State ", shall be sentenced to life imprisonment or a minimum imprisonment of 4 years and a maximum of twenty years and a fine of at least two hundred million rupiah and a maximum of one billion rupiah".

Article 3 of Law Number 31 of 1999 reads "every person who aims to benefit himself or another person or a corporation, misuses the authority, opportunity or means available to him because of the position or position that could harm the State's finances or the State's economy, convicted with a life imprisonment or a maximum imprisonment of one year and a maximum of twenty years and or a fine of at least fifty million rupiah and a maximum of one billion rupiah ".

Based on the provisions stipulated by the Constitutional Court of the Republic of Indonesia at Case No. 03/ PUU-IV/2006 concerning the Testing of Law Number 31 of 1999 amended by Act Number 20 of 2001, concerning the Eradication of Corruption Crimes against the 1945 Constitution Considering according to the Court this matter does not cause legal uncertainty (*onrechtszekerheid*) which is contrary to the constitution as argued by the applicant, because the existence of the word cannot at all determine the factor of the presence or absence of legal certainty that causes an innocent person to be subject to corruption or otherwise the person who commits a crime of corruption cannot be punished. The formulation of the articles relating to financial losses and the economy of the state is very strict, the formula using the phrase "can" means that state losses can already occur, or have the potential 'able' to be occur.

Authority to calculate State losses

Authority of the Supreme Audit Agency

The duties and authorities of the Financial Supervisory Agency are contained in the Law of the Republic of Indonesia Number 15 of 2006, separately in Chapter III of the first and second sections. The duties of *BPK-RI* according to the Act is included in the first part, namely; a. Examination of management and financial responsibilities carried out by *BPK* is limited to the Central Government, Regional Governments, Bank Indonesia, other State Institutions, *BUMNs*, Public Service Agencies, *BUMD*, and all other institutions that manage State finances; b. the *BPK* audit is carried out on the basis of the law concerning the examination of the management and responsibility of the State finances; c. Examinations conducted by *BPK* include performance, financial, and examination checks with specific intentions; d. the results of inspections conducted by the *BPK* must be discussed in accordance with the applicable state financial audit standards; e. the results of the examination of management and the responsibility of state finances are submitted to the *DPD*, *DPR*, and *DPRD*, and also submit the results of the examination in writing to the President, Governor, and Regent/Mayor; and f. if a criminal act is proven, the *BPK* must report to the authorized agency no later than 1 month after the criminal act is known.

While the authority of *BPK-RI* based on the Act is; a. in carrying out its duties, the *BPK* has the authority to determine the object of examination, plan and carry out the examination. Determining the time and method of inspection and preparing and presenting reports are also the authority of the *BPK*; b. all data, information, files and all matters relating to the management and responsibility of state finances are only as a tool for inspection material; c. *BPK* is also authorized to provide opinions to the *DPR*, *DPD*, *DPRD*, and all other state financial institutions needed to support the nature of *BPK*'s work; d. The *BPK* has the authority to provide advice/opinions relating to the consideration of resolving state loss problems. Based on the description of the authority of the *BPK-RI*, then explicitly it has been stated, that

the task of the authority to give an opinion with consideration of the settlement of the problem of state loss is the authority of the Republic of Indonesia Supreme Audit Agency. calculate state losses and or the country's economy. In connection with the writing of this scientific journal, what will be described is the authority of the Supreme Audit Agency of the Lampung Province Representative Office in calculating State Losses.

The task and responsibility of examining regional financial management carried out by the *BPK* Lampung Representative, divided into two auditory; first, Lampung Lampung Sub Auditorate Carry out duties and responsibilities to examine regional financial management in the Lampung provincial government, West Lampung regency government, North Lampung, West Bulang Tulang, Mesuji, Way Kanandan *BUMD* in the institution. While assignments and the responsibility of Lampung Lampung II Sub Auditor is to examine the financial management of Bandar Lampung city administration, Metro, South Lampung regency government, Tanggamus, Pesawaran, Pringsewu, East Lampung, Central Lampung and existing *BUMD* in the institution. From that description it can be understood that the authority to calculate financial losses implicitly based on Law Number 15 of 2006, it is the main function of the *BPK* as the Agency responsible for examining the management of State finances.

Legal Basis of the Main Investigation Auditor (AUI)

The results of the interview with Nugroho Heru Wibowo stated that the Supreme Audit Agency had determined Decree Number 10/K/I-XIII.2/11/2016, concerning the second amendment to the decision Number: 3/K/I-XIII.2/7/2014, dated November 2, 2016, concerning the Organization and Work Procedure of the Executing Body of the Supreme Audit Board. it regulates the establishment of the Main Investigation Auditor (AUI) which carries out the main duties and functions and the authority of the Supreme Audit Agency (Interview, August 1, 2017).

Main Tasks and AUI Functions

Determination of types of irregularities that indicate state/regional crime and/or loss; examine deviations that indicate state/regional crime and/or loss, assess fraud/fraud risk, pre-plan investigative investigations, and provide expert information regarding state losses, determination of fraud/fraud risk assessment on state/regional financial management; examination of problems with fraud/fraud indications, management of requests for investigation investigations, requests for State Loss Calculations, and requests for expert information from law enforcement agencies and other agencies, determination of the results of pre-planning investigative investigations, program preparation, implementation and control of investigative inspection activities, Calculation of Country Losses and Provision of Experts on the scope of AUI duties, both those conducted by AUI and those assigned to *BPK* Representatives, proposing inspection teams to carry out PI activities and Calculating State Losses; I Investigation report (LHP) report and Calculation of State Loss report to be submitted to law enforcement agencies, monitoring follow-up of *LHP* investigation and report on Counting State Losses submitted to the competent agency, request for opinions and legal consultation related to audit results on the scope of work AUI to be submitted to the Main Directorate of Legal Development and Development, requests for legal assistance in the framework of providing expert information; and periodic reporting of results of activities to the *BPK*.

Working Mechanism of the Main Investigation Auditor (AUI)

The results of the interview with Cosmas Andri stated that given the changes in the Investigation Examination Management Pattern, which is currently still in the process of drafting by the Main Directorate of Planning, Evaluation and Development (*Ditama Rembang*), a temporary working mechanism for AUI is needed regarding Investigation, Counting State Losses and Provision of Expert Information. In the 2017 *BPK-V* session held on February 8, 2017, it was decided that "the conduct of the Investigation Examination, Calculation of State Losses and Provision of Expert Experts both ongoing and to be carried out refers to the temporary working mechanism until the latest PMPI is determined" .

Main Auditorat Products Investigation (Indonesian term is AUI)

According to Cosmas Andri, investigations can be proposed by *AUI*, among others, based on the

results of the analysis of the Audit Results Report, the results of the audit profile analysis, the results of data analysis and public information (business intelligence) and the results of fraud risk assessment. The *AUI* products are as follows:

Investigation Examination

Investigation examination is an examination designed by the *AUI* with the aim of finding irregularities with indications of crime. Investigation examination is carried out through stages:

- 1) the process of reviewing the initial information to determine, that there is a reason that is strong and accurate so that the examination can be carried out objectively and can be accounted for, the product of which is the Initial Information Review Report (*LHPIA*).
- 2) the acceptance and administration and review of initial information. What is meant by Initial Information is the preliminary information regarding a deviation that indicates a criminal offense. Because not all information received as a basis for conducting investigative checks has the same reliability and validity. For this reason, every initial information received needs to be reviewed first. The initial information obtained can be sourced from: a) internal *BPK* such as: the request of the investigations from representative institutions and/ or authorized agencies and public complaint reports

Documents containing preliminary information can take the form of a request letter to conduct checks and complaints from the community that are delivered directly through the Information and Communication Center (*PIK*) or indirectly such as through information technology, which is received through; request of the Agency, the results of an examination indicating the State's crime and/or loss, the results of the *AUI* Review, the request of an investigative examination from the representative institution and/or the authorized agency, the public complaint report. On the basis of the initial information document received, *AUI* conducted a preliminary information review (*PIA*) to ascertain the adequacy of the reasons for the investigation/investigation.

Procedure of Calculating the State Losses by BPK

The investigation inquiry request procedure for calculating state losses is carried out in accordance with the provisions carried out by the *AUI* in Investigation Examination as described in point 1) b) above that the initial information obtained from the external *BPK* such as: request for investigation investigation from the representative institution and/or agency authorized and public complaint reports. The process of the course is as follows:

- 1) Counting State Losses is an investigation examination conducted to calculate the value of state losses that occur due to irregularities in the management of state/regional finances.
- 2) Calculation of State Losses can be carried out based on the Request of an authorized institution to calculate the value of state losses on a criminal case that is being processed by law.
- 3) In general, the request of the authorized institution to calculate the value of state losses is carried out during the Investigation Stage.
- 4) This request is usually associated with giving expert testimony by the Expert assigned by the *BPK* in the judicial process.
- 5) The assignment of State Loss Calculation is a form of examination and not just a mathematical calculation Calculation of State Losses is carried out by evaluating the evidence, namely by comparing the conditions with the criteria. In Calculating State Losses an examiner also assesses the truth, credibility and reliability of information.
- 6) The purpose of calculating state losses is to determine whether or not there is an indication of state losses, including calculating the value of state losses incurred.
- 7) The products that are produced in the State Loss Calculation are Reports on Counting State Losses.
- 8) Reports on the Calculation of State Losses are used by *BPK* officials/staff assigned as Experts to provide information regarding state losses in the judicial process.

- 9) Counting Stages of State Losses consist of: Pre-Planning, Planning, Implementation, and Reporting.

Authority of BPKP

In addition to the Supreme Audit Agency (*BPK*), the authority to calculate state losses so far can also be carried out by other institutions, namely the Financial and Development Supervisory Agency (*BPKP*). The authority of the *BPKP* was initially regulated by Presidential Decree Number 103 of 2001, concerning the Position of Tasks, Functions, Authorities, Organizational Structure and Work Procedures of Non-Departmental Government Institutions as amended last time by the Republic of Indonesia Presidential Regulation Number 192 of 2014, concerning the Financial Supervisory Agency and Development. However, the Presidential Decree does not regulate and mention the authority of the *BPKP* to calculate state losses.

BPKP's authority to calculate state losses was previously regulated in the Government Regulation of the Republic of Indonesia Number 60 of 2008, concerning the Government's Internal Control System, which is explicitly stated in Article 49 paragraph (1) and (2). The Government Regulation explains that the *BPKP* carries out internal supervision through audit activities, particularly investigative or audit audits with certain objectives whose realm then leads to state losses. This authority is then strengthened by a Constitutional Court Decision Number 31/PUUX/2012 dated October 23, 2012 which strengthens the authority of *BPKP* to conduct investigative audits based on Presidential Regulation 192 of 2014 and Government Regulation Number 60 of 2008. Therefore, *BPKP* and *BPK* have juridical authority to conduct audits or investigation investigations and calculate state loss.

Constraints in Calculating State Losses

Based on the results of interviews conducted against Corruption Criminal Investigators of Lampung Regional Police, the Intensity of Using State Loss Calculation Products both issued by the *BPK* or *BPKP*, with a comparative approach in extracting field data found facts, that the use of *BPK* products is much lower than with *BPKP* products. The low interest of corrupt law enforcers in using investigative inspection products in the form of State Loss Calculations conducted by the Supreme Audit Agency, is caused by the internal factors of the *BPK* itself, namely:

- 1) Time Factor: According to Risky based on practical experience he had done when he was in the Central Lampung Criminal Investigation Unit, in submitting an application for Calculating State Losses to the *BPK* Representative of Lampung Province, the results of calculations published by the *BPK* were very long between 3 months and 6 months. Whereas in the process of investigating criminal acts based on the provisions of the Criminal Procedure Code, a maximum of 120 days.
- 2) Factors of Legal Certainty: Based on the results of investigative investigations carried out routinely, or sourced from internal *BPK*, either through public complaints or the results of the investigation itself, the products resulting from the State loss calculation conducted by the *BPK* have not reflected *BPKP*'s commitment to provide legal certainty, due to findings The *BPK* submitted to the local government, district government and municipal government can still be improved by covering losses that occur in the management of State finances, by giving a maximum time limit of 6 (six) months since the budget management is declared a disclaimer by the *BPK*. The policy raises doubts about law enforcement in using products from the State's calculations issued by the *BPK*.
- 3) Investigation Cooperation Factors: Risky's experience in the field proves that joint investment has never been carried out by the *BPK* and tends to be independent, but on the contrary with *BPKP* Auditors the collaboration factor becomes the main thing in determining the occurrence of fraud on the management of State finances by government officials. field *BPKP* auditors must include investigators who handle cases.

IV. CONCLUSION

The results of research that has been carried out using normative juridical and empirical juridical approaches can be summarized as follows:

In formal juridical terms, the *BPK* pursuant to Law No. 15 of 2006 has the authority to calculate State

losses carried out by the Main Investigator Auditor (AUI) which has the authority to conduct Investigation Examinations, one of which is to calculate state losses submitted by the institution or agency.

Although the Supreme Audit Agency (*BPK*) Acts and has the authority to calculate State losses, in practice investigators of criminal acts of corruption rarely use *BPK* as a reference in calculating State losses, this is because the *BPK* bureaucracy is too complicated.

In addition to the *BPK* there are other bodies that have the authority to calculate State losses, namely *BPKP*, which is legally regulated in Government Regulation Number 60 of 2008 and RI Presidential Regulation Number 192 of 2014, as well as Decision of the Constitutional Court Number 31/PUUX/2012 dated October 23, 2012 which strengthens the authority of *BPKP* to conduct investigative audits.

In practice in the field, Corruption Criminal Investigators are more likely to use *BPKP* to calculate State losses compared to *BPK*, this is because *BPKP* bureaucracy is not so complicated and in conducting investigative audits carried out together, after going through a joint case process conducted in *BPKP* representative office.

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