



## **Assessment Policy and Determination Of State Losses By The Corruption Eradication Commission In Committing Corruption Crime**

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### **Abstract**

The criminal act of corruption is a crime that has an impact on all fields, not only on the existence of state finances but also on the economic impact on society, social impact on society, and the environmental impact is also impacted arising from the existence of criminal acts of corruption. Therefore, a mechanism for dealing with criminal acts of corruption that do not only emphasize the existence of state losses must be created. The research objective in this research is to find the concept of state loss that is assessed and determined by the KPK and to analyze and discover the concept of overcoming corruption that the KPK can carry out. The approach method uses normative juridical. The data collection technique used in this research is document study. The method of data analysis is qualitative normative. The conclusions in this journal are first, the concept of state losses assessed and determined by the Corruption Eradication Commission is by attaching to the concept of state losses on the existence of state finances, namely the fulfillment of the elements of state financial losses whether carried out intentionally, namely the existence of illegal acts, or negligence. KPK, as a state institution, has the authority to deal with criminal acts of corruption by examining or coordinating with other agencies, including legal entities or companies, to seek material truth. Second, the concept of tackling corruption that the Corruption Eradication Commission can carry out by embedding the costs of social crimes and the social costs of corruption so that the realm of recovery or compensation for criminal acts of corruption does not only depend on state finances but in a broad field, namely touching the governance of people's lives.

**Keywords:** Assessment and Determination, State Financial Losses, Corruption

### **INTRODUCTION**

It is understood that the occurrence of criminal acts of corruption is commonplace of criminal acts of corruption that occur. This can be seen from the many acts of corruption, even though corruption is a crime whose consequences touch various fields [1]. Corruption is a crime that destroys all aspects of social and state life, which results in state losses being categorized as dangerous [2].

In Indonesia, handling criminal acts of corruption has been carried out by issuing various regulations regarding the prevention of criminal acts of corruption, such as Article 10 of the Criminal Code, where asset confiscation is included in additional crimes. In addition, Article 39 paragraph (1) of the Criminal Code and Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended to become law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes and many others.

One of the handlings of criminal acts of corruption is the confiscation of assets which is a priority in overcoming criminal acts of corruption [3]. These assets are things that must be proven as an integral part of the evidence for the element of the perpetrator's guilt [4]. However, according to the author, criminal confiscation of assets can only be carried out after the perpetrator of a

crime has been proven in court to have committed a crime [5]. It is considered inflexible because the law seems to be waiting (not progressive). On the other hand, losses from corruption have occurred and require handling.

The thing that researchers criticize the existence of criminal acts of corruption is the emphasis on the existence of criminal acts of corruption attached to state financial losses. According to the researcher, this is not quite right, considering the impact of the existence of criminal acts of corruption must also be the focus of law enforcement on the existence of criminal acts of corruption.

One example of a corruption case in which, according to the authors, the impact of corruption must be considered is a criminal case of corruption, the seizure of forest area land by PT Duta Palma Group with a value of IDR 78 trillion in state financial and economic losses. The economic losses are environmental losses due to forest encroachment, which used to be forests into oil palm plantations.[6]

According to researchers, including minor economic losses is a natural thing. However, repairing or reforesting the results of forest encroachment is a complex matter, considering that the forest area is small and the time it takes for the forest to become beautiful again. According to researchers, applying criminal law must also cover this situation.

In addition to the cases above, other cases have ensnared the former Minister of Maritime Affairs and Fisheries Eddy Prabowo, for the bribery of lobster seed export permits totaling IDR 25.7 billion from clear lobster seed exporters (BBL) or fry.[7] The impact that occurs from this bribery is the destruction of fisheries resources, in this case, lobsters, in the long term. [8]

The corruption case shows that the cessation of the sustainability of lobster management will occur when the export of lobster seeds is carried out without regard to the management of Indonesian lobsters. When this happens, the farmer will suffer losses and even lose livelihood for lobster management, considering that there are no lobster seeds.

Another case besides the two cases above regarding corruption cases that can be taken into consideration for the impact that has occurred is the alleged corruption case of the 2016 Batang Bangko riverbank emergency project as a follow-up to BPK findings, with the discovery of state losses of over IDR 1.5 billion from the emergency budget IDR 4 billion[9].

The development is basically to anticipate the annual flood that always occurs. This is ironic, considering that the emergency construction of the Batang Bangko river bank was an attempt to avoid flooding. However, this criminal act of corruption indicated an omission of the flood disaster.

The three cases above show the need for a mechanism for dealing with criminal acts of corruption, which not only emphasizes the existence of state losses alone but the impact of the existence of criminal acts of corruption must also be considered in imposing punishment. Based on this, the authors identify the problem, namely the first, how is the concept of state loss assessed and determined by the KPK. Second, what is the concept of tackling corruption that the Corruption Eradication Commission (KPK) can carry out.

## RESEARCH METHODS

This journal contains descriptive-analytical research specifications, namely the existence, and use of primary, secondary, and legal materials, which will be studied and analyzed to obtain an overview of the issues studied. The method in this journal is to use a normative juridical approach, namely analyzing laws and regulations, which are secondary data. This also shows that the research conducted by the author was carried out in the literature and the field. Data analysis in the journal used by the author is a qualitative juridical analysis, namely analyzing data whose final result sentences.

## DISCUSSION

### A. The Concept of State Losses Assessed and Determined by the Corruption Eradication Commission

#### 1. The Concept of State Losses on the Existence of State Finances

Understanding state finances can be done by knowing the definition, which is reviewed from the realm of law. There are many definitions of state finance from the legal realm, as can be based on Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning Eradication of Corruption Crimes, Law Number 17 of 2003 concerning State Finances, Law Number 15 of 2006 concerning the Supreme Audit Agency, and implicitly contained in Government Regulation Number 14 of 2005 as amended with Government Regulation Number 33 of 2006 concerning Amendments to Government Regulation Number 14 of 2005 concerning Procedures for Writing Off State/Regional Receivables.

One definition of state finances can be based on the Elucidation of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption is all state assets in any form, separated or not separated, rights and obligations that occur because of:

- a. Control or management, as well as accountability by officials from national institutions (central/regional)
- b. Control or management, as well as a responsibility by officials from BUMN or BUMD, or foundations, legal entities, or companies in which there is state capital participation or based on the existence of an agreement with the state

Understanding more about state losses can be based on the provisions of Article 1 paragraph (22) of Law Number 1 of 2004 concerning the State Treasury and Article 1 paragraph (15) of Law Number 15 of 2006 concerning the Supreme Audit Agency, which states that:

"Lack of money, securities and goods, a real and certain amount as a result of an unlawful act, whether intentional or negligent."

Based on the above understanding, it can be seen that the elements of state losses are [10]:

- a. Existence of perpetrator/presence of the person in charge
- b. The existence of a shortage of money/securities/goods
- c. There is a form of loss with a real and definite amount
- d. There is an unlawful act, either done intentionally or by negligence

It is. There is causality between state losses and unlawful acts

Based on the preceding, the above elements must be fulfilled when there is an alleged event of state losses. The opposite happens when the above mentioned elements are not fulfilled, and it is not worth mentioning that there is a loss in state finances. It can also be seen that the person in charge as the perpetrator of state financial losses can be carried out by the treasurer, a civil servant whose position is treasurer/another official (a government official who has authority in running the government[11]) who is considered to have committed an unlawful act (intentionally or negligently). The thing that must be done when a state financial loss occurs is the need to handle the compensation settlement procedure (legally) based on whether or not the element of state financial loss is fulfilled. In other words, if the elements have been fulfilled, the legal procedures for settling state finances can be carried out. However, if the elements are not fulfilled, the legal procedures for settling state finances cannot be carried out. The existence of

a settlement procedure can be known by knowing the following:

- a. There is a loss attached to a claim for loss due to an unlawful act (intentional/negligent).
- b. some losses cannot be attached to claims because the loss to the country's finances was born from circumstances beyond the human ability or control/*force majeure*

#### 2. The Authority of the KPK in Assessing and Determining State Financial Losses

Based on the provisions of Article 6 of Law Number 30 of 2002 concerning the Corruption Eradication Commission, the KPK's duties are not only to eradicate (corruption), but to coordinate with other agencies authorized to eradicate corruption. Provisions of Article 6 Law Number 30 of 2002 concerning the KPK explain that the duties and powers of the KPK are:

- a. Coordinate with agencies that have the authority to eradicate corruption

b. Carry out supervisory actions on agencies that have the authority to eradicate criminal acts of corruption,

c. Taking action in the form of prevention of criminal acts of corruption, thus the KPK has the authority to:

1) Registration or examination of reports on assets of state administrators

2) Receiving reports or determining the status of gratuities

3) Implementation of anti-corruption education programs at existing education levels

What must be known is that all forms of authority over inquiries, investigations, and prosecutions based on the Criminal Procedure Code apply to KPK investigators, investigators, and public prosecutors. This is applied in Article 38, paragraph (1). The existence of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Investigations, investigations, and public prosecutions are carried out based on orders and act for and on behalf of the KPK.

The KPK, as a state institution in carrying out its duties and authorities, is independent and free from the influence of any powers [12] which, in carrying out its duties and authorities, does not only rely on reports of state financial losses from the BPK, but the KPK can carry out a series of actions based on its authority to do their proof of the existence of state financial losses by coordinating with various other agencies not just BPK. The KPK can carry out proof of the existence of state financial losses by (one of them) inviting experts or can request material from the inspectorate general or even other bodies that have the same function on this matter, even from companies related to acts of state financial losses by seeking material truth of the calculation of state financial losses.

### **B. The Concept of Overcoming Corruption Crimes That the KPK can do**

No concept about the concept will be sought. As for the concept, the concept is not yet quite the right to use. Based on this, the concept of overcoming corruption can be based on delays in development. It is very common for delays in development to occur when criminal acts of corruption occur because development funds are not used properly (which were originally for development but turned out to be used for personal purposes or interests).

The dialectic when the current concept is inaccurate is the replacement of money. Payment of replacement money is an additional punishment attached to the perpetrators of corruption, essentially an attempt to recover state financial losses [13]. However, according to the author, replacement money has yet to be able to answer the challenges of justice for the delays in development. The author knows that reimbursement money is a state effort, in this case, the legal framework for returning state financial losses. However, there needs to be more clarity and certainty (replacement money) regarding the time of payment and sanctions for not making payments. Apart from that, the purpose of compensation money is only aimed at the existence of losses to state finances. The main element the author wants to aim at is the loss of society due to the obstruction or even non-existence of development due to corruption in the funds.

Law No. 31 of 1999, with the existence of Article 18 paragraph (2), stipulates 1 (one) month for the convict to pay off the crime of replacement money or a scheme for confiscating the convict's assets which can be auctioned as a substitute for replacement money. Subsidiary punishment or substitute imprisonment is strictly avoided to replace monetary compensation for defendants in corruption cases who have been proven and convinced to commit corruption because defendants who are proven to have committed corruption are required to return the proceeds of corruption as a way to recover state losses. However, this time limit is irrelevant considering the short time the payment or the auction is conducted. It is unimaginable to sell a large number of auction assets in only a short time, and this is where the law needs to show the certainty of its benefits. Subsidiary imprisonment can close the opportunity for the State to recover losses due to corruption. The Supreme Court (MA) of the Republic of Indonesia, for example, in many decisions, only handed down replacement money decisions without subsidiary prison sentences as a way to force the defendant to return state funds. Subsidiary prison sentences can be imposed for corruption with a small amount of loss to the State, or because of certain circumstances, it is impossible for the accused to pay. If due to legal provisions, there must be

a subsidiary prison sentence, and then the alternative imprisonment sentence must be made heavier.

Criminal acts that impede or negate development damage society's economic order. A concrete example is the case handled by the Tangerang City District Attorney, who has named 4 suspects in a corruption case involving the construction of an environmental market in Periuk District, Tangerang City, Banten, using an APBD of Rp. 5,063,479,000.[14], One of the suspects is an employee of the City Industry and Trade Office Tangerang.

The situation when the author criticizes the example case above by linking it to economic damage to society is the market as a means of economic activity (buying and selling). The existence of a market will certainly increase economic activity, at least for market participants, namely sellers, and buyers. When the fund market's development is corrupted, the corruptors have eliminated the market itself. In other words, economic activity does not exist or at least does not increase. This must be a legal consideration in attaching punishment to perpetrators of corruption, not only measuring losses at the stages of state losses (market development funds).

Other things apart from economic losses from criminal acts of corruption that impede development are social losses. The law should cover this for corruption, not just concentrate on returning state finances. This is reasonable considering that corruption is an extraordinary crime, so handling it should not be ordinary. According to the author, recovering state financial losses is normal, but external dimensions usually need clarification.

Social loss is a new dimension for criminal acts of corruption. The concept is that convicts must be responsible for damage or social problems that occur due to criminal acts of corruption that they commit. This is normal, considering that the community has the right to enjoy the development directly. When development is not carried out, the community cannot enjoy this development. Even though the corrupted funds were intended for development, the community could enjoy the results.

The construction of an environmental market in Periuk District, Tangerang City, Banten, clearly shows that the community cannot enjoy the development plans announced by the state. The impact of not developing the market is that the social condition of the community needs to improve. The concretization is that the existence of a market will lead to economic activity. When economic activity does not exist, people will take other paths to meet their needs. In this situation, the community may commit a criminal act, such as theft or something else. This social situation must be addressed wisely by law, considering that a damaged social condition will lead to massive actions from society which will certainly harm all parties (not just society, the environment, and even the state). The concept of punishment for perpetrators of corruption must also cover impacts like this (social damage). The author wants to show that corruption has a very large effect on the pattern of human life.

Other than the two damages above, damage that cannot be denied is environmental damage. A concrete example of environmental damage is a case of alleged crime, corruption land grabbing of forest areas by PT Duta Palma Group. State financial and economic losses with a total achievement of IDR 78 trillion. When detailed, it can be seen that the total loss on state finances is IDR 10 trillion, while the rest is a loss to the country's economy. An unimaginable thing when the forest is damaged. Floods, landslides, and other disasters, such as damaged flora and fauna, will occur. Talking about damaged forest problems means talking about damaged environmental problems. This damage is the author's tendency to attach punishment to perpetrators of corruption, which is damaging the environment. Responsibility for the damaged environment must be carried out by making the environment as it was before the damage occurred or the damage that is possible to occur.

Based on the three damages above, the law must be able to position itself as an inventory of nominal losses from corrupted state finances. The real impacts society faces must become one of the additional inventories in calculating losses due to criminal acts of corruption. According to the author, the imposition of punishment based on the damage resulting from criminal acts of

corruption is not hyperbole about the situation but social facts that show this. Thus, the law must also be able to position itself as an intermediary or even establish justice for society.

What should be understood is that a crime does not only tend to benefit the perpetrators of the crime but creates costs for society. Criminal acts will create social costs, considering that the profits obtained by criminals are always smaller than the costs borne by society due to these crimes. The implication is that every effort to reduce crime rates, both in terms of prosecution and prevention, will benefit society by reducing the social costs of crime. Therefore, it is appropriate to formulate the existence of crime costs which consist of economic costs and social costs. Economic costs are calculated in money, such as stolen and destroyed property. Meanwhile, social costs such as trauma and physical disability, although they cannot be calculated in terms of money, can be replaced in the form of money.

According to the author, with the existence of social costs of crime and social costs of corruption, the criminal acts of corruption that harm state finances are widespread but can accommodate all losses caused, not limited to state financial losses, but also touch social losses suffered by the community.

## CONCLUSION

1. The concept of state losses that are assessed and determined by the Corruption Eradication Commission is by attaching to the concept of state losses on the existence of state finances, namely the fulfillment of the elements of state financial loss whether done intentionally, namely the existence of acts against the law, or negligence. KPK, as a state institution, has the authority to deal with criminal acts of corruption by examining or coordinating with other agencies, including legal entities or companies, to seek material truth.
2. The concept of overcoming corruption crimes that the KPK can carry out is by attaching the costs of social crimes and the social costs of corruption so that the realm of restoration or replacement of criminal acts of corruption is not only in state finances but in a broad field, namely touching the governance of people's lives.

## SUGGESTION

1. Create a mechanism for investigating state financial losses
2. Making the costs of social crime and the social costs of corruption into punishment

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